Call for inputs: Externalization of Migration and the Impact on the Human Rights of Migrants

Deadline 10 June 2025

Inputs from the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Cooperation in Europe (OSCE).

For brevity and clarity, ODIHR's inputs focus on questions 1, 2, 5 and 6.

1. **Examples of externalization measures:**

Please find below few examples of externalization measures in the OSCE region, reported to ODIHR by its civil society partners:

- Exit restrictions: some States impose travel bans or passport seizures to stop migrants from departing, often through formal bilateral or informal arrangements.
- Pushbacks and pullbacks at sea and green borders: Undertaken via naval or coast guard interventions, these are often based on bilateral maritime agreements allowing interception and forced return of migrants outside destination territory.
- Readmission agreements and use of safe third country concepts: These structured treaties requiring partner countries to accept returns are increasingly used in the OSCE region.
- Third-country/ offshore processing and extraterritorial detention, such as "return hubs": The use of return hubs is on the rise in the OSCE region, where migrants are frequently detained prior to being forcibly returned to their countries of origin.

2. **Transparency and monitoring**

ODIHR notes that bilateral agreements often remain undisclosed or only selectively published. Freedom of information may apply but requests are inconsistently honoured. Many MoUs remain classified. Civil society sometimes conducts reporting, but structural oversight is frequently weak and fragmented. Human Rights impact assessments are not always mandated before signing externalisation agreements. Where conducted, results are often not published. Complaint mechanisms remain very limited; dependent on local judicial or ombudsperson channels, often inaccessible to migrants. ODIHR promotes independent border-monitoring frameworks.

5. **Use of Technology**

The emergence and growing use of new border management technologies to prevent departures from transit countries or manage reception/detention centres that gather and process large amounts of personal data to track, identify and control those crossing borders poses new challenges for the protection of human rights.

When drones, biometric databases and/or surveillance systems are employed to track and control migration via partner states, data is often held by cooperating states or contracted companies, with little transparency over retention, sharing, or privacy protection. States should put forward robust legislative frameworks that regulate the use of new technologies at borders and provide strong human rights safeguards. They should ensure that these safeguards are integrated into all related international and transnational co-operation agreements, including in relation to data sharing.

Additionally, human rights due diligence and human rights impacts assessments should be conducted in the development of and prior to deployment of any such technology and at regular intervals in its operation by those developing, procuring and operating the systems, to assess and where necessary, mitigate human rights risks. Such assessments should be mandatory and consultative, involving non-governmental organizations as well as groups and communities whose rights are most affected. It is also crucial that border guards and others using new technology systems receive adequate human rights training and are sensitized to potential bias and human rights implications of the systems.

The ODIHR Director underlined that human rights risks of using of new technologies in border management need urgent attention. As well as publishing a policy brief on border management and human rights, ODIHR has made an animation highlighting the risks and human rights implications of new technologies in border management, particularly for refugees. The Office is organizing series of regional training courses to enable human right defenders and National human rights institutions to better understand the human rights implications of border technologies and improve their skills in monitoring respect for human rights at borders.

6. Human rights implications

The externalisation of migration carries serious risks, including lowering of standards by shifting responsibilities to countries that may have less stringent human rights oversight mechansims. Please find below a non-exhaustive list of implications, frequently reported to ODIHR:

- Under such externalisation agreements, migrants are increasingly vulnerable to arbitrary detention, human trafficking, violence, torture and ill-treatment, and typically receive less access to legal aid and effective remedy in the receiving countries than they would in the sending states.
- A key concern is the wide-spread use of (de-facto) detention in third countries, both for asylum seekers and for irregular third-country nationals pending return. The ODIHR Director reminded that immigration detention is never in the best interest of children and must end.
- Access to effective asylum procedure in the third country is not always guaranteed, leading to risks of refoulement.
- Another key concern is lack of accountability and independent oversight, making rights violations in third countries more difficult to document and legally challenge. Even when the sending country complies with human rights obligations, identifying rights violations and implementing appropriate corrective measures remain a significant challenge. Determining responsibility is equally complex, whether it lies with the state outsourcing migration control or the third country carrying out the measures.

Recommendations:

1. **Establish human rights compliant legal frameworks:** Develop and implement clear, accessible, and transparent legal frameworks governing externalization policies that ensure accountability and compliance with international human rights standards.
2. **Conduct systematic human rights impact assessments**: Establish mandatory, comprehensive, consultative independent human rights impact assessments before entering into or renewing externalization agreements, with regular follow-ups to monitor ongoing compliance. Conduct data-protection impact assessments whenever data is transferred to/managed by third countries.
3. **Ensure effective access to asylum:**
   Guarantee that all individuals affected by externalization measures have access to fair, timely, and effective asylum procedures, regardless of location or migration status.

4. **Suspend immediately the implementation of externalization agreements lacking human rights safeguards:** Suspend or refrain from entering into agreements with third countries where minimum human rights guarantees cannot be ensured or where there is evidence of violations.
5. **Prevent the arbitrary or mass use of immigration detention:** Prohibit the use of mass or arbitrary immigration detention as a tool of migration control in the context of externalization, in line with international legal standards.
6. **Promote independent human rights monitoring of migration management:** Facilitate and support independent human rights monitoring mechanisms at international borders and in transit zones, during returns and in third-countries, ensuring unhindered access for relevant bodies.
7. **Strengthen oversight and accountability mechanisms:** Establish meaningful and independent oversight mechanisms to monitor the implementation of externalization policies, with clear channels for investigation and redress in cases of abuse. Ensure legal clarity regarding the attribution of responsibility for such violations, particularly in the context of agreements involving multiple states or third-country actors.
8. **Support civil society and human rights defenders in third countries:** Promote a safe and enabling environment for human rights defenders and civil society organizations in third countries, and encourage cross-border collaboration to ensure robust monitoring and accountability.