



STUDY ON RESTRICTIONS TO CIVIL SOCIETY SPACE RELATING TO THE SUPPORT OF REFUGEES AND OTHER MIGRANTS IN THE COUNCIL OF EUROPE

Questionnaire on State Practice – December 2023

Council of Europe Conference of INGOs - Expert Council on NGO Law
[\[https://www.coe.int/en/web/ingo/expert-council\]](https://www.coe.int/en/web/ingo/expert-council)

Contact: Carla Ferstman, Member of the Expert Council on NGO Law [cf16045@essex.ac.uk]
Please provide answers & any further data to cf16045@essex.ac.uk by 31 January 2024

Background

The Expert Council on NGO Law is currently preparing a thematic study on challenges to civil society space pertaining to NGOs which are supporting refugees and other migrants in the Council of Europe. This study is a follow-up to a study the Expert Council published in 2019.¹

The practice once gathered will be assessed in the light of the applicable European standards governing freedom of association and the rights of NGOs, and will also consider the impact on the rights of refugees and other migrants.

We are keen to hear from the widest array of individuals, civil society groups, and state actors from all parts of the CoE. Particularly we welcome information from CoE Member States and State institutions, including human rights commissions, Ombuds institutions, parliamentarians, government officials from relevant sectors including justice, home affairs, security and health and social welfare. We are also keen to hear from NGOs, civil society groups and solidarity networks including from solidarity groups coming from refugee and migrant communities. We also welcome inputs from intergovernmental organizations (like UNHCR, IOM, and at the regional level, the European Union and OSCE), lawyers, doctors and health workers, social workers, educators, journalists and others engaging with civil society in the support of refugees and other migrants.

Instructions for those supplying information

We are seeking information from an array of sources in line with the questions set out below. We encourage all those with information to communicate that information, so that the report can benefit from the widest array of inputs.

¹ [“Using criminal law to restrict the work of NGOs supporting refugees and other migrants in Council of Europe Member States”](#) (CONF/EXP(2019)1, December 2019)

We recognise that not all questions will be relevant to each Member State, nor will each person reviewing this questionnaire have answers to each question. We encourage those consulting the questionnaire to answer all questions which are relevant to their circumstances and within their expertise.

If you are referring to official documentation (legislation, bills, parliamentary reports, jurisprudence) we would appreciate links to the official texts.

1. Contact details

Please specify your name, title, affiliation as well as contact details [email, telephone, postal address, other]. Please specify if you would like the information you supply or your personal details to remain confidential. Please also specify if you would be happy to be contacted for any follow-up information.

2. Legal framework [actual and draft (bill) legislation and reforms to existing legislation; parliamentary debates about legislation], and where relevant caselaw.

We are interested to review all relevant primary legislation, as well as legislation that is under discussion or in draft form, and all relevant caselaw, relevant to restrictions on civil society space pertaining to NGOs supporting migrants and refugees.

- Domestic anti-trafficking and anti-smuggling legislation [please supply any domestic legislation criminalising the facilitation of unauthorised entry/transit/residence]

- Legislation regulating the operation of nongovernmental organisations [In particular, please explain what legislation applies to regulate the comportment of NGOs working with migrants and refugees; what is the consequence for an NGO which acts in contravention of domestic law or policy]

- Criteria to determine whether a particular conduct (act/omission) should be criminalised. –For instance, in some States, the criminal law is only used to regulate behaviour if no lesser means of control is possible. Where, if anywhere, is this criteria set out? Does it appear in the constitution? Has it been the subject of litigation or parliamentary debate? How clear is it?

- Criminal law legislation (Criminal Code; Code of Criminal Procedure) consider i) generally whether there is a law prohibiting humanitarian assistance to migrants and ii) consider particularly whether/how the law applies to staff of organisations and/or to the organisation itself; iii) what sentences apply to persons (or organisations found guilty?); iv) Technically, is it possible under the domestic law of the State to prosecute an organisation? v) To what extent does the law criminalise acts of xenophobia/violence against NGOs supporting migrants?

- National security legislation (state security, emergency, counter-terrorism legislation, anti-organised crime legislation) which has been applied to the situation of refugees and other migrants, which might impact civil society space by preventing NGO access to certain restricted locations, preventing NGOs from making public statements or demonstrating in relation to issues affecting migrants, preventing NGOs from carrying out certain forms of work, or requiring special permits to carry out certain work.

- Administrative law or regulatory frameworks – Has administrative law or regulatory frameworks (e.g., Health and Safety Legislation; Safeguarding regulations etc.) been used to stop, impede or prevent NGOs from providing assistance or support to migrants and refugees? In what ways?

- Migration and refugee law – there is a perception that any application of the criminal law to persons or organizations assisting migrants and/or refugees stems from the criminalisation of the migrants/refugees themselves – how does the law deal with people who come and cross the border without already having a permit? For instance, are persons who enter a country without a permit deemed to be “illegal” entrants? If an individual or an organisation helps such an illegal entrant, does this constitute aiding and abetting under the criminal law?

- Freedom of Association and Expression – to what extent does domestic law protect individuals and organisations who express support for migrants and refugees or join forces/meet to discuss such protection etc – how does this interact with the criminalisation?

- Secrecy and freedom of information – To what extent is data about governmental policies and practices pertaining to migrants and refugees accessible to NGOs?

- Law of the Sea – (relevant for countries bordering international waters or whose vessels operate on the High Seas) – how are law of the sea provisions incorporated into domestic law; how does the obligation to assist people in distress, translate into domestic law; how does it interact with anti-trafficking/smuggling and refugee law.

3. Case examples

Please provide information on any cases, or patterns of cases, that you are aware of, which relate to challenges to civil society space pertaining to NGOs who are supporting refugees and other migrants.

For example (the list below is not exhaustive):

i. Criminalisation of NGOs, NGO workers and volunteers

Please provide information on, inter alia: The context; The charge; The factual context in which the employee, volunteer or NGO was charged; At the pre-trial stage, what happened? Was anyone detained? For how long? Was property, equipment or data seized or destroyed?; Procedural issues associated with how the case was handled; The outcome of the case – the court decision; the sentence or other/additional penalty/fine/sanction; The short-term impact [on the migrants who were in the process of being assisted; on the accused persons (who may be NGO employees or more often, volunteers or temporary contractors with very limited employment rights or other protections from the NGO) and for the organizations; The longer term impact on the individuals concerned and the NGOs.

Also consider whether criminalisation is used as a threat or whether it is something that regularly leads to prosecutions. If criminalisation is more of a threat – what are the types of consequences short of prosecution (seizure; forced stoppage of work; forced use of armed police during search and refugee operations; general hostile environment...)

Please consider: any criminal cases against civil society workers (individuals); Criminal cases against the organizations themselves; Administrative or related proceedings against the organizations in lieu of or following on from criminal proceedings.

ii. Regulatory restrictions on NGOs

Please provide information on, *inter alia*: the application of any special rules or regulations that have been put in place to monitor, limit, control or restrict NGO activities in providing assistance to refugees and other migrants. For instance, have NGOs working with migrants and refugees faced particular challenges to register in the country, denial of work permits or visas to foreigner workers; restrictions to receive funds, to travel to certain locations (e.g., reception centres, “hotspots”, migrant detention centres, border zones, ports), do they require specific permits to work, are they regularly subjected to fines, is their equipment seized or impounded?

iii. Cases involving harassment by state or non-state actors and other vigilante acts against NGOs who assist migrants (violent speech acts; violence; vandalism; threats...)

Please provide any information on any known instances in which harassment or vigilante attacks (verbal, physical assaults, destruction of property, threats) against NGOs and solidarity networks supporting refugees and migrants, and what response the competent authorities have taken (what steps have authorities taken to safeguard civil society’s ability to work and to feel safe; have such acts been reprimanded (criminal/nuisance...)

iv. Particular restrictions on NGOs involved in monitoring or responding to “pushbacks” at borders (both sea and land borders)

Please provide any information on instances in which NGOs and solidarity groups have been prevented from monitoring, reporting about or providing support to refugees and other migrants who have been forcibly prevented from entering the territory, or forcibly pushed back over a border without considering their individual circumstances and request to enter.

v. Restrictions on NGOs involved in monitoring or responding to state or intergovernmental policies related to the “externalisation of migration”

Please provide any information on instances in which NGOs and solidarity groups have been prevented from monitoring, reporting about or providing support to refugees and other migrants who have been subjected to the “externalisation policies” of States and/or intergovernmental organisations, which have the effect of preventing refugees and other migrants, from entering the legal jurisdictions or territories of destination countries or regions or making them legally inadmissible without individually considering the merits of their protection claims. These externalisation policies have been given effect through cooperation agreements with transit countries (such as Turkey, Tunisia, Libya, Morocco).

vi. Coverage by media, IGO or NGO policy reports, governments/parliaments

Please provide any links to media, intergovernmental and NGO policy reports, as well as government statements and reports.

6. Additional information?

Please provide any additional information relevant to this study, not already provided above.

Please provide any reflections on the context in your particular country, the reason(s) for the restrictions on civil society space and any recommendations about how to resolve the underlying problems.

Thank you for your time!!