

GUIDELINES for Forced-Return Monitors in Moldova

January 2022

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Background and purpose

This Guidelines were drafted within the framework of the project “Development of a Forced-Return Monitoring System in the Republic of Moldova” (FReMM), funded by the Polish Ministry of the Interior and Administration. The project was aimed at (1) strengthening the legal/institutional framework relevant to forced-return monitoring, (2) increasing the capacities of the relevant institutions to monitor forced-return operations, and (3) contributing to the effective communication and cooperation between the return enforcing institution and the monitoring bodies in Moldova.

The Guidelines are the outcome of a dedicated workshop with the relevant national stakeholders¹, and are based on related documents developed within the FReMM project such as the *Standard Monitor’s Profile*² and the *Management Framework for a forced return monitoring system in Moldova*³. The document is also based on the *EU Good Practice Report*⁴ and a number of outputs of the EU-funded Forced-Return Monitoring III (FReM III) project, such as relevant training material, manuals, hand-outs, and guidelines. A large part is based on the document *The Pool of Forced-Return Monitors: Guidelines for Monitors (September 2021)* that contain EU good practices and standards on forced-return monitoring by charter flights.⁵ However, the Guidelines are aimed at covering any travel modality, including return by land as applicable.

The document aims to outline the principles and rules that a forced-return monitor is expected to comply with while monitoring forced-return operations. Specifically, they shall promote professional monitoring within the newly established forced return monitoring system in Moldova, based on the principle that people who are forcibly returned should be treated in a manner that complies with international human rights standards and national legal obligations, including the principles governing the legality, necessity and proportionality of the use of force and means of restraint.

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- 1 Workshop on developing a set of guidelines for forced return monitoring held in Chisinau on 24 September, 2021.
 - 2 Developed with the Moldovan stakeholders during a workshop on 23 April 2021.
 - 3 Developed and presented with the Moldovan stakeholders during a workshops on 13 July and 10 December 2021, respectively.
 - 4 Referred to as: *Forced-Return Monitoring Systems in the European Union - Comparison of Legal Systems, Actors, and Procedures*, ICMPD March 2021.
 - 5 The Forced-Return Monitoring III project (FReM III) was co-funded by the Asylum, Migration and Integration Fund (AMIF) of the European Union and twenty-two partner countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, Germany, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Sweden and Switzerland. The project was carried out by the International Centre for Migration Policy Development (ICMPD) from 1 December 2018 to 31 December 2021 in co-operation with the European Border and Coast Guard Agency (Frontex), the European Union Agency for Fundamental Rights (FRA) and twenty two partner countries.



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Finally, the Guidelines aim to equip forced-return monitors with the knowledge and tools that will enable them to accurately, objectively and independently observe, gather information and report on forced-return operations. The ultimate objective is to enable the monitor to establish whether a forced-return operation has been conducted in a humane manner, respectful of the dignity of the returnee and in line with human rights as enshrined in the UN and Council of Europe's conventions against torture and other international human rights standards.

Definitions

Acronym (if applicable)	Term	Definition
	Arrival phase	Covers the period starting from arrival in the country of return and ending when the returnees are handed over to the national authority in the country of return.
	Briefing	A meeting organized before the in-travel phase, with all relevant participants, in particular the escort leaders, the monitor(s), and doctors, in order to provide information about latest developments on the implementation of the return operation.
CRO	Collecting return operation	A return operation initiated by an Organizing EU Member State, with aircraft and escorts provided by a country of return and returnees handed over to them by the Organizing Member State/Participating Member State on the territory of a Member State.
	Debriefing	A meeting organized after the return operation, with all relevant participants, in particular the escort leaders, the monitor(s), and the doctor in order to assess the implementation of the return operation.
	Embarkation airport	An airport where passengers from a national contingent embark on a return operation.
EL	Escort leader	Leader of the national escort team and responsible, within his/her team, for the adequate implementation of the return operation. He/she will be the highest authority/decision maker after the captain.
EO	Escort officer	The security personnel, including persons employed by a private contractor, responsible for accompanying the returnees, in particular during their transportation out of the country.
	Fit-to-travel	Refers to a returnee's medical condition (both physical and mental), which indicates that the person can undertake the journey safely.
	Forced-return	The obligatory return of an individual to the country of origin, transit, or third country (i.e. country of return), on the basis of an administrative or judicial act.

Acronym (if applicable)	Term	Definition
	In-travel phase	Starts with the closure of the doors of the aircraft used for the removal and ends with the arrival at the final destination and the opening of the doors on arrival (country of return or, in the case of an unsuccessful return, back to the country of departure or, in the case of joint return operations, back to the hub), including the transit via another country.
	Illegal versus irregular migrant	Migrants and migration are often referred to as either irregular or illegal, sometimes interchangeably. However, language and terms carry certain meanings. In this regard, the term “illegal” carries a criminal connotation. Therefore, when referring to a person, “irregular” is preferred to “illegal”. Furthermore, migration flows are mixed and irregular migrants can therefore also be refugees and/or victims of trafficking. This perspective can also be observed in the fact that the Council of Europe distinguishes between illegal migration and irregular migrant. Based on the Resolution 1509 (2006) of the Council of Europe Parliamentary Assembly, illegal is preferred when referring to a status and process, and irregular is preferred when referring to a person.
	Monitor	Refers to the person who observes a return operation in accordance with the effective monitoring system established by the country.
	Monitoring	“Monitoring” is a broad term describing the active collection, verification and immediate use of information to address human rights issues. Human rights monitoring includes gathering information about incidents, observing events, visiting sites, discussions with authorities to obtain information and to pursue remedies and other immediate follow-up (Office of the High Commissioner for Human Rights, United Nations). In this context, the return operation is observed, analysed and reported on whether it was conducted in a humane manner, respectful of the dignity of the person and in compliance with fundamental rights as enshrined in the applicable international human rights law. The monitor of forced-return operations has no powers of intervention and thus should never intervene.

Acronym (if applicable)	Term	Definition
	Participant	Any person, including escorts, monitors, interpreters and medical staff, taking part in a return operation, other than the returnee.
	Pre-departure phase	The period starting with transportation to the airport. It covers the period from leaving the (temporary) holding/ detention facility until embarkation on the aircraft.
	Removal	The enforcement of the obligation to return, namely the physical transportation out of the country.
	Return	The process of a foreign national going back – whether in voluntary compliance with an obligation to return, or enforced – to his or her country of origin, or a country of transit in accordance with readmission agreements or other arrangements, or another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted.
	Return decision	An administrative or judicial decision or act, stating or declaring the stay of a foreigner to be illegal and imposing or stating an obligation to return.
	Returnee	An irregularly staying foreign national who is the subject of a return decision issued by the country.
RO	Return operation	An operation that is coordinated by the returning authority under which returnees are returned either on a forced or voluntary basis.
	Risk assessment	The returning authority carries out a risk assessment of returnees (based on factors such as previous behaviour and removal history). Such assessments should be used to determine the number of escorts and ground staff and the size of the back-up team in order to ensure security during all the return operation phases, as well as for the determination of the possible use of coercive measures.
	Dynamic risk assessment	An ongoing risk assessment (see risk assessment above).
	Transit country	A country via whose airport return operation passengers transit to connect to the next flight.

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Acronym (if applicable)	Term	Definition
VD	Voluntary departure	Voluntary compliance with an obligation to return to a third country.
	Voluntary return	The assisted or independent return to the country of origin, transit, or third country, based on the free will of the returnee.
	Vulnerable persons	Including minors, unaccompanied minors, persons with disabilities, elderly people, pregnant women, victims of human trafficking, single parents with young children, persons with medical conditions, and persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence.

1. Role of the forced-return monitors

The role of the forced-return monitor is to observe, analyse and report on whether the return operation was conducted in a humane manner, respectful of the dignity of the person and in compliance with human rights as enshrined in the applicable international human rights law and national legislation. They monitor the whole return operation⁶ and afterwards submit a report to the competent national authorities. The monitor of forced-return operations has no powers of intervention and should, therefore, never intervene.

Monitoring is a tool for reinforcing observance of human rights during a forced-return operation. It is a way of verifying that those carrying out the forced-return operation uphold the human rights of returnees during the whole process. Monitors play a preventive role through their presence during forced-return operations and can help to ensure there is a greater level of accountability in the event of actions or omissions by officials carrying out the forced-return operation that contravene the applicable international human rights law and national legislation. The presence of monitors observing and reporting on the forced-return operation means that those responsible for carrying out the return operation can be held accountable for the actions they take, or fail to take, during the operation.

The task of the forced-return monitor is to focus on how the return operation is conducted. They would not be allowed to question the decision, or enforcement of the decision to return though they can note down any complaints returnees make about the decision to return them, in their reports about the return operation.⁷

A forced-return monitor is consequently tasked with observing and gathering information in order to produce a report on whether the forced-return operation was conducted in compliance with human rights. Observance of human rights is expected to be enhanced through continuous evaluation of the return operations and improvements that are made to them based on the reports and recommendations made by monitors.

6 In case of national return operations (NRO), the forced-return monitor monitors the whole return operation from the pre-departure phase until the handover of the returnees in the third country of return. In case of collecting return operations (CROs), the returnees are already handed over to the Moldova authorities on the territory of an EU Member State and the monitor observes the whole return operation until arrival in Moldova.

7 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) standards include allowing returnees to lodge last-minute applications for asylum. In some countries a representative from the national authorities is assigned to the return operation to allow any last-minute asylum application to be lodged, including before a judge.

Forced-return monitors should be independent from the organisation enforcing the return so that they are not bound by the orders of the members of the return operation carrying out the forced-return operation. They should also preferably not have been involved in providing services such as legal advice or psycho-social counselling, to the returnee beforehand. These measures are important to safeguard the objectivity and independence of the monitor. Thus, when a monitor is assigned, his/her independence from that State should be guaranteed.

In order to fulfil the professional standards expected, monitors need to exercise neutrality, confidentiality, and ethical commitment and have an acute understanding of the importance of the monitor's report. In order to be able to fulfil their role and tasks, the monitor has to understand and accept the mandate and responsibilities of the officials in charge of the operation, in particular the escort officers and escort leaders.

2. How does monitoring reinforce observance of human rights?

Monitors must observe and report on the whole return operation. The monitoring of forced-return operations shall be carried out by the forced-return monitor on the basis of objective and transparent criteria and shall cover the whole return operation.⁸

The following definition of forced-return monitoring helps to clarify how monitoring reinforces the observance of human rights:

Forced-return monitoring is an activity during which a return operation is observed, analysed and reported on whether it was conducted in a humane manner, respectful of the dignity of the person and in compliance with human rights as enshrined in the applicable international human rights law. The monitor of forced-return operations has no powers of intervention and thus should never intervene. Forced-return monitors must know and understand their mandate during a forced-return operation and always use this mandate as a framework for their actions. Monitors must have knowledge and understanding of the international human rights standards relevant to their role during the operation. This knowledge can be gained through participation in training on human rights, and by regular consultation with colleagues and/or supervisors on the various aspects of human rights monitoring. Ideally, all monitors complete the same training.

Monitoring can act as control mechanism in return practices and can be a tool for a greater level of transparency to ensure that return operations are carried out in line with human rights standards. The presence of independent monitor(s) accurately and impartially monitoring the operation and submitting their reports can lead to increased awareness among those conducting the return operations about the importance of complying with human rights law and adhering to the rules and standards set by national, regional and international bodies. The unbiased and neutral reporting by an independent monitor contributes to creating greater transparency, and serves the interest of both the returnees and the enforcing authorities:

⁸ In case of NROs, the forced-return monitor monitors the whole return operation from the pre-departure phase until the handover of the returnees in the third country of return. In case of CROs, the returnees are already handed over to the Moldova authorities on the territory of an EU Member State and the monitor observes the whole return operation until arrival in Moldova.

- For the returnee, a monitor's report can provide evidence for supporting, for example, possible claims of mistreatment and excessive use of force⁹;
- For the escorts and the escort leader (EL), a report can be used as evidence in investigations by an independent authority into the claims or accusations to clear the escorts if the allegations prove to be unfounded.

Monitors must be objective. Therefore, it is crucial they gather as much information as possible, especially through dialogue with the officials responsible for carrying out the operation, throughout every phase of the operation.

Reporting is the final step in the monitoring process, the ultimate aim of which is to safeguard the human rights of the returnees. Therefore, the monitoring reports must be objective, precise and accurate to clearly document possible violations of human rights during the forced-return operation. The reports should also include other observations and recommendations on steps to improve the way a forced-return operation is conducted and raise standards of protection. They should also report good practices, as applicable.

Monitoring reports may be used in investigations following claims or accusations against officials. Similarly, monitoring reports serve as an important tool to continuously evaluate and revise future return operations by taking corrective measures, where required.

9 The term 'use of force' means any type of physical intervention used on another person.

3. Key tasks and responsibilities of a forced-return monitor

A forced-return monitor has a number of specific tasks and responsibilities to perform during the course of the different phases of a forced-return operation. These are described in more detail under the various headings below. The following are a forced-return monitor's key tasks and responsibilities:

- Report on whether the forced-return operation was conducted in a humane manner and in compliance with human rights¹⁰;
- Report on whether returnees were treated respectfully and in compliance with rights;
- Report on whether any use of force was in line with the rules, did not exceed reasonable force and was used with due respect for the returnee's rights, dignity and physical integrity;
- Report on the returnees' behaviour towards the escort officers or any other person taking part in a return operation other than the returnee;
- Report on any other incidents;
- Maintain a position where they can properly observe the return operation, but without obstructing the work of the escort officers or hampering the effectiveness, security, or safety of the operation;
- Collect all the relevant facts during the pre-departure, travel, and arrival phases focusing on the questions: What do I see? What does it mean? What needs to be improved (bad practice) or multiplied (good practice)?
- Respect the principles of accuracy, confidentiality, impartiality, and non-discrimination at all times;
- May address the escort leader with any observations or questions at an opportune moment;
- Indicate when information was received from third-parties;
- Make recommendations to end or improve bad practices or ones to spread good practices based on the facts they have observed and where applicable, address them to the relevant stakeholders.

10 A monitor needs to observe human rights compliance in forced-return operations, paying particular attention to the following rights: right to life; right to liberty and security; prohibition of torture and inhuman or degrading treatment or punishment; prohibition of *refoulement*; right to human dignity; right to non-discrimination; freedom of thought, conscience and religion; access to information; right to health; access to food and water as basic needs; rights of vulnerable groups (Vulnerable persons include minors, unaccompanied minors, persons with disabilities, elderly people, pregnant women, victims of human trafficking, single parents with small children, persons with medical conditions, and persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence); right to family unity; rights of the child/best interest of the child; right to personal data protection; right to privacy; right to property; right to complaint/good administration.

3.1. What it means to be a forced-return monitor

The essential questions the monitor should ask themselves are:

- What do I see and hear?
- What does it mean?
- What aspects of the return operation need to be improved and what aspects work well that could be duplicated elsewhere?

In order to fulfil their duties, forced return monitors should:

- Have the necessary training in forced-return monitoring;
- Be physically, medically and psychologically fit to perform the duties of a forced-return monitor;
- Demonstrate the maturity and emotional stability to be able to perform their tasks as a forced-return monitor;
- Have very good knowledge of the procedures, and the duties and rights of all the officials involved;
- Follow the principles of accuracy, confidentiality, impartiality and non-discrimination;
- Carry out their assigned tasks in a dutiful, timely, and accurate manner throughout the forced-return operation;
- Know what coercive measures are permitted;
- Have access to all the necessary information prior to and during the return operation;
- Keep calm in all situations;
- Maintain a professionally distant manner throughout the entire return operation;
- Be impartial and objective towards all parties involved in a forced-return operation;
- Be able to distance themselves emotionally;
- Respect confidentiality and not disclose any information gained while fulfilling their monitoring obligations to any other parties besides those clearly stated in the reporting criteria;
- Have the necessary equipment, such as a pen and notebook during the return operation.

3.2. Profile of a forced-return monitor

1. Qualifications and experience required

A forced-return monitor has to have knowledge and understanding of:

- Human rights obligations, in particular rights applicable in return operations such as human dignity, respect for the principle of *non-refoulement*, the necessity and proportionality principles and the duty of precaution in the context of use of force and coercive measures;
- The principle of non-discrimination and the right to complain to the competent authorities; national, regional and international human rights standards, procedures and recommendations pertaining to forced return operations, such as the Council of Europe's Twenty Guidelines on Forced Returns (2005)¹¹ and the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)¹², among others.
- Regional and international standards on child protection, other vulnerable groups as well as gender aspects.
- National constitutional framework as well as relevant provisions of national legislation in the field of migration and asylum;
- Cultural and social contexts of the returnees.

A forced-return monitor has to be able to:

- Impartially observe human rights compliance in return operations;
- Identify conduct and/or contexts in which a human right might be breached or at risk and link this to the relevant legal standards;
- Take notes and draft a detailed monitoring report in accordance with the procedures and reporting tools, outlining all relevant information as well as detailing relevant observations, including recommendations as well as good practices and lessons learned concerning return activities;
- Demonstrate flexibility, openness and resilience to face the complexities of the role.

11 Adopted by the Committee of Ministers on 4 May 2005 at the 925th meeting of the Ministers' Deputies of Council of Europe.

12 Council of Europe, <https://www.coe.int/en/web/cpt/standards>

In addition, a forced-return monitor shall:

- Exercise the appropriate level of autonomy and the good ability to assess and act adequately in complex situations in the process of monitoring return operations.

2. Eligibility criteria

To be a monitor in a forced-return operation, a person must meet the following criteria:

- Be a law graduate and possess knowledge, skills and competences as described under section 1 above: “Qualifications and experience required”;
- Be appointed/nominated by the competent body with the mandate to monitor human rights compliance;
- Have undergone the training relevant to the tasks / functions of a forced-return monitor.
- Have experience in working with foreigners, either through monitoring of earlier return operations or through readmissions and/or places of accommodation/placement detention of foreigners;
- Have a conversational level of English, French, or Russian.
- Be able to psychologically cope with the tasks, including the ability to remain patient and calm in challenging situations. Evidence of some training in the area would be preferable.

In addition, the following would be advantageous:

- Specific expertise in child protection or experience of working with children;
- Experience in similar areas, such as prevention of torture, detention, or working with vulnerable groups, preferably in a migration context;
- Knowledge of languages spoken in countries of destination of return operations;
- Knowledge and/or experience in de-escalation and/or mediation techniques and methodologies;
- Basic medical knowledge;
- Training on emergency procedures on board an aircraft.

Incompatibilities:

- A former representative/attorney/case officer or someone who previously worked with the returnee(s) in another capacity cannot act as monitor in the respective monitoring operation.

4. Types of Forced-Return Operations

4.1. National Return Operations - NROs

National Return Operations (NRO) to return third-country nationals who are subject to individual return decisions issued by the Republic of Moldova (taken by a court or competent administrative body) to a country of return, are organised and carried out in coordination with the country of return. The return enforcing authority in Moldova organises the national escorts and all the necessary support staff who will be on the trip. This also includes medical personnel and interpreter(s), if required. Prior to departure, the Moldovan authorities are required to carry out a medical examination of a returnee, where they are known to have a medical condition or where medical treatment is required. This is subject to the returnee's agreement. Individuals can only be returned if they are considered by a doctor to be fit to travel. The processing of medical information related to the returnee must be carried out in line with relevant data protection legislation regarding use of personal data.

4.2. Collecting Return Operations – CROs

A Collecting Return Operation (CRO) is a return operation initiated by an EU Member State for which the aircraft and forced-return escorts are provided by the Republic of Moldova, as country of return and where the returnees are handed over to the escorts from Moldova on the territory of an EU Member State. As with the other types of return operations, the purpose of a CRO is to remove Moldovan nationals who are subject to individual return decisions issued by the respective EU Member State(s) from the territory of one or more EU Member States to the Republic of Moldova.

5. Phases in a forced-return operation

5.1. Pre-Departure Phase

NRO: The pre-departure phase covers the period from leaving the (temporary) holding/detention facility until the embarkation on the means of transportation.

CRO: The pre-departure phase covers the period from leaving the (temporary) holding/detention facility, handover of returnees to the Moldovan authorities until the embarkation on the means of transportation.

In this phase, the physical security check (body search) of the returnee(s) is conducted, the escort team is briefed and the returnee may stay in a holding/waiting/detention facility at the place of embarkation on the means of transportation.

5.2. Travel Phase

The travel phase starts with the closure of the doors in the means of transportation used for the removal and ends with the arrival at the final destination, i.e. the country of return (Moldova in the case of a CRO). In the case of an unsuccessful return during an NRO, there is a return flight back to Moldova, including transit via another country.

5.3. Arrival Phase

NRO: The arrival phase covers the period starting from arrival at the country of return, and ends when the returnees are handed over to the national authorities in the country of return, or in the case of an unsuccessful return, with the handover to the authorities back in Moldova.

CRO: The arrival phase covers the period starting from arrival in the Republic of Moldova and ending with the debriefing with the relevant participating stakeholders.

6. Preparation of the monitoring mission

Monitoring forced-return operations requires a large amount of preparation, including by the monitor. The following preparatory steps involve the monitor:

- An email is sent to the monitors concerned which contains information on date, time, place, number of returnees and their profile (vulnerabilities), country(ies), itinerary, the escort leader, etc.
- If monitors need additional support (e.g. visa support letter, information on vaccinations etc.), they are entitled to support from the returning authority.
- If there are changes to the travel schedule, they are supposed to be informed promptly. As soon as new/additional operational information becomes known, the returning authority forwards it to the monitors.
- If a monitor other than the one who was assigned to a particular return operation is needed (e.g. the assigned monitor falls ill and cannot be deployed), the returning authority contacts the Ombudsman Office to try to arrange for another nomination.

6.1. Preparation checklist for monitors

Information a monitor would need in preparation for a forced-return monitoring mission:

- The date and time of the return operation and ports of departure;
- The country(ies) of return;
- Port of departure, stopover information (when applicable);
- Essential travel documents and other documentation;
- The number of returnees and their gender and origin;
- List of recommended immunisations (if required by the country of return). It is the responsibility of the monitor to get their immunisations and/or other necessary medical precautions;
- Information on the restraints that are authorised and those that are forbidden;
- Indication of any returnees considered vulnerable including minors, unaccompanied minors, persons with disabilities, elderly people, pregnant women, victims of human trafficking, single parents with small children, persons with medical conditions, and persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence.

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Essential travel documents:

- Details/information regarding visa arrangements;
- Valid passport and visa, if required;
- Letter/Act of appointment to the mission;
- ID card/passport (also required to show alongside the letter of appointment to confirm the monitor's identity, if available);
- Valid certificate of vaccination (if required);
- Travel and health insurance information.

Personal belongings:

- Backpack for ease of movement and to keep both hands free;
- Pocket-sized notepad (not A4) and pen;
- Mobile phone for personal use with the approval of the escort leader;
- Some cash and a credit/ATM card;
- Mosquito repellent (if required);
- Spare set of glasses (if required);
- Any medication required.

Dress code:

- Civilian clothes (avoid uncomfortable clothing such as high heels, neck tie, etc.);
- Extra set of clothes, whether a stopover is planned or not, as the schedule might change;
- If possible, reflective vest, identifying the person wearing it as a "monitor", and ensuring they are easily identified so they can access restricted areas, such as the airfield. The reflective vest is to be worn in all weathers over the coat;
- Waterproof clothing with a hood or cap; no umbrellas as they impede movement and observation;
- Sleeping masks, headphones and earplugs are not permitted (with the exception of returns completed successfully and an empty travel back to the country of departure).

7. Key Monitoring Standards that apply throughout every phase of the forced-return operation

The monitoring standards outlined below apply to all the phases of the forced-return operation.

7.1. Access to Information

In order to ensure an effective monitoring system, monitors must be provided with all the relevant information concerning the forced-return operation, have access to returnees, and unless the risk assessment carried out prescribes otherwise, have unimpeded access to all areas used for the return operation. Monitors should document in writing any situation in which access was denied and provide details accordingly.

Only if the monitor has access to all relevant information can they decide where to position themselves in order to conduct the monitoring duties in the best way possible, i.e. to observe, listen and make notes about the conduct of the return operation. As the escort leader/head of operation is responsible for the security of the persons involved in the operation, the escort leader and the monitor need to come to a mutual understanding about where the monitor positions themselves in order to best fulfil their role that is, to observe, analyse and report on whether the return operation was conducted in a humane manner, respectful of the dignity of the person and in compliance with human rights as enshrined in the applicable international human rights law and national legislation. This understanding is ideally based on a level of flexibility between the two parties so that any security concerns are balanced with the monitor's ability to observe what is going on.

7.2. Interaction of Monitors with Escort Leaders

Monitors must follow the instructions given by the escort leader at all times. Monitors should inform the escort leader(s) of any perceived irregularities as soon as possible or at the earliest opportunity or opportune moment. The monitor may not, under any circumstances, interfere with the planned implementation of the return operation or any measures taken by the escorts. In other words, the monitor should never impede or interfere in the work of the escorts and should keep a safe distance from any incident.

If a returnee expresses their wish to complain about the treatment they have received during the forced-return operation, the monitor should note down what the returnee says and pass this information to the escort leader. The escort leader is responsible to inform the returnee about the procedure to follow if they wish to make a complaint.

7.3. Documentation

If any significant incidents occur or any coercive measures are used in the course of the operation, the escort leader is obliged to make a detailed report about these incidents. The obligation of the escort leader to report these incidents should not prevent the monitor from carrying out their duty to observe, document and report on incidents or use of coercive measures during the forced return operation.

7.4. Coercive Measures (use of force and means of restraint)

The role of escorts is to ensure that the return takes place in a safe and humane manner and in accordance with human rights. However, if the safety and health of returnees, escorts and other participating stakeholders, and the airline crew or property is threatened by the actions and behaviour of returnees or to secure the continuation of the forced operation, coercive measures in line with those permitted by national law may be used.

The core principles of legality, necessity, and proportionality must be observed at all times. Coercive measures shall be used as a last resort and where possible only used after de-escalation has failed and/or the returnee and/or other participating stakeholders are put in danger. Prior to the return operation, the escort leader must provide returnees with all the relevant information related to their removal in a language they understand that includes information that uncooperative behaviour will not result in the return operation being aborted. The returnees' behaviour, and the security checks, will give a good indication whether coercive measures are or might be required.

The returning authority carry out individual and systematic (ongoing, dynamic) risk assessments of the returnees based on factors such as previous behaviour and removal history. Such assessments are used to determine the number of escorts in order to ensure the security of every phase of a return operation, as well as for determining the possible need for the use of coercive measures.

In cases where a prior risk assessment has revealed a returnee/s might refuse to co-operate or might resort to violence, the escorts can determine the use and level of coercive measures by national law in order to guarantee the safety and security of the returnees and everyone else. As already highlighted above, the core principles of legality, necessity, and proportionality must be observed at all times.

General principles regarding use of coercive measures:

- The use of coercive measures must be legal, necessary and proportional, not exceeding reasonable force, and with due respect to the returnee's rights, dignity and physical integrity. The use of coercive measures takes appropriate account of the individual circumstances of each person, such as their vulnerable condition.
- Coercive measures may be used only when strictly necessary on returnees who refuse or resist removal or in response to an immediate and serious risk of the returnee escaping, causing injury to themselves or to a third party, or causing damage to property.
- Coercive measures likely to compromise or threaten the possibility of the returnees to breathe normally are prohibited.¹³ Based on a dynamic risk assessment, the relevant escort leader periodically reviews the continuing necessity and proportionality of deploying coercive measures and particularly of applying means of restraint when these are used for prolonged periods.
- The monitors should know the authorised restraints.
- The use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures under medical supervision to ensure travel security.¹⁴
- Returnees must not be threatened in order for them to board a means of transport. They must not be punished for not having done so without prejudice to sanctions provided for by applicable legislation.

Whenever coercive measures are applied, the monitor needs to observe: the circumstances in which they are used; what is used; how it is used; where it is used; for how long; when it ceases, and whether there were any immediate visible injuries and where, in order to be able to make an objective judgement on the appropriateness of its use. They should make detailed notes and drawings, noting the time the coercive measures were used. This should all be reflected in their report. It is recommended that the monitor speaks to the escort leader after the incident to understand their reasons for using restraints or force. This should preferably be done in private and out of hearing of the returnees. Monitors should also check that steps

¹³ Positional asphyxia (or postural asphyxia) is a form of asphyxia that occurs when someone's position prevents them from breathing adequately. A number of people have died during restraint procedures. Therefore, the use of force that impedes the breathing of a returnee is strictly forbidden.

¹⁴ The administration of sedatives is only allowed by medical personnel with the consent of the returnee.

were taken in an appropriate manner to move family members, and particularly minors, away from the incident.

The observations and information gathered by the monitor for their report can be used to determine whether under the circumstances, the use of coercive measures were justified and whether their use conformed with the principles of legality, proportionality and necessity.

8. Note-taking

Monitors are advised to use a notebook with a hard protective cover (a hard cover also makes it easier to take notes) with pages that are sewn in, so that they do not fall out and cannot easily be removed. Ideally, the pages of the notebook should also be numbered. If the notebook does not have page numbers pre-printed, it is advisable to number them before the start of the forced-return operation.

As the notebook is a primary source of evidence and may be needed if there is an investigation, it is important to keep it somewhere secure.

The following advice is designed to make note-taking easier for monitors and to make the notes easier to use when the report is being drafted after the mission:

1. Make sure you understand the reporting format expected by the Ombudsman Office.
2. Start the notes for each operation you participate in on a new page and write the name and date of the operation at the top.
3. Keep the first page to record the names of the officials involved in the operation. Alongside each name, add their role, e.g. “doctor”.¹⁵
4. From the third page onwards, make timed notes, starting with the exact time on your wristwatch. This should remain set to the time zone where the operation started throughout the entire operation.
5. For speed, use whatever abbreviations you would normally use when you make notes, provided that you can read and understand them afterwards when you are drafting your report.
6. If you observe the use of force or restraints, you should make a quick sketch immediately after observing the incident, annotating the sketch to show the position/s of the returnee/s and the escort/s and what each/all of them were doing. This will make it easier for you to accurately describe the incident in your report.

¹⁵ In the report, remember not to include personal data about any of the officials or returnees such as their names.



GUIDELINES

for Forced-Return Monitors in Moldova

7. Even if the operation is going well and things are calm, you should continuously observe the returnees and everything that is happening around them.
8. At intervals, you should note down examples of good practices, e.g. escorts answering returnees' questions. This is evidence of the overall conduct of the operation.
9. After the operation is over, do not alter or erase any notes.

9. Monitoring

In case of NROs, the forced-return monitor monitors the whole return operation from the pre-departure phase until the handover of the returnees in the third country of return. In case of CROs, the returnees are already handed over to the Moldova authorities on the territory of an EU Member State and the monitor observes the whole return operation until arrival in Moldova. The forced-return monitors monitor pre-departure phase, the travel phase, and the arrival phase.

Note: *Certain parts below are more relevant to return operations carried out with an aircraft such as CROs. However, many of the standards apply to any type of return operations.*

9.1. Monitoring the pre-departure phase

NRO: The pre-departure phase covers the period from leaving the (temporary) holding/detention facility until the embarkation on the means of transportation.

CRO: The pre-departure phase covers the period from leaving the (temporary) holding/detention facility, handover of returnees to the Moldovan authorities until the embarkation on the means of transportation.

In this phase, the physical security check (body search) of the returnee(s) is conducted, the escort team is briefed and the returnee may stay in a holding/waiting/detention facility at the place of embarkation on the means of transportation.

The monitor shall:

- Be introduced to the escort team and other participating stakeholders by name and role;
- Be informed about the outcome of the risk assessment of the returnees and the operation itself. The monitor can request information about the returnees, especially regarding any hunger strikes, self-injury, medical conditions, threats against escorts, and/or aborted removals etc.;
- Gather information on any particular vulnerabilities or any vulnerable persons among the returnees and whether particular attention is being paid to their situation and concerns;
- Know about the restraints that are authorised and those that are forbidden (including certain materials that might be forbidden);
- Acquaint themselves with the operation details e.g. means of transportation used, seating plan, final number of returnees, etc.

Information gathered at the beginning of the operation, will help the monitor decide what the priorities are and determine which aspects of the return operation may require particular attention. The monitor should pay particular attention to those returnees who, based on the outcome of the risk assessment, are most likely to be uncooperative as these returnees are more likely than others to be restrained because of their behaviour. Therefore, these returnees should be closely monitored to see that whatever happens during the course of the return operation complies with the human rights of all the returnees. Attention should also be paid to the treatment of any vulnerable persons (e.g. children, elderly people, pregnant women, people with disabilities, etc.).

Physical security check

The monitor should be present while the returnees are undergoing the physical security check, to gather information about any incidents, medical problems or issues involving self-harm, that may have occurred after the returnees were informed that they were being returned. They should also find out how any such medical issues have been treated.

Positioning of the monitor

The monitor should be present during physical security checks, if possible. Where the monitor is not of the same gender as the returnee (and under certain circumstances), the monitor can monitor the situation from outside the room with the door kept ajar.

What to observe

The monitor should observe that:

- The escorts clearly explain to the returnee that they are going to be carrying out a physical security check before they commence;
- The physical security check is conducted with appropriate regard to privacy, particularly if the returnee is asked to remove their clothing completely;
- The physical security check is carried out by officers of the same sex (i.e. a female officer conducts the physical security check on a female returnee and a male officer on a male returnee);
- The door to the room where the security check is being carried out is not closed completely but remains ajar so that a monitor is aware of any escalating situation such as a verbal dispute indicated by one or both parties screaming and/or shouting;
- If the monitor is not of the same sex as the returnee, they should at least be allowed to hear what is going on during a body search (e.g. with the door kept ajar) and note down in their report if this practice is not followed;

- In addition to any personal belongings that have to be taken away for security reasons (e.g. a belt), all valuable items such as money and jewellery are collected by the escorts and a protocol listing the items is prepared. The returnee should sign the list and the package containing their personal belongings should be marked with their name. The returnee should be informed about the procedure regarding their personal belongings, who will be in charge of keeping them safe during the trip and when they will be returned to the returnee. The escorts need to take these precautions to ensure that returnees' personal belongings are clearly marked so that they are not mixed up or get lost.

It is also very important that the monitor observes and takes notes to ensure that:

- The escorts carry out the physical security check calmly, professionally, and respectfully and that they do not allow spectators to gather. Any use of inappropriate language, or unprofessional or juvenile behaviour by the escort staff or any other officials at the holding facility should be immediately reported to the escort leader, and included in the final report;
- If coercive measures are used, the monitor makes notes and sketches of the techniques and restraints that were used, and whether they were legal, necessary and applied proportionally (i.e. the duration was kept as short and with as minimal an intensity as possible). This should also be included in the final report.

Transfer of the returnees from the holding facility to the port of departure

The monitor should be present when the escorts pick up the returnees from the holding/detention facility where they are temporarily being held.

Positioning of the monitor

Wherever possible, the monitor should be in the same vehicle as the returnees. Different types of vehicles can be used to transfer returnees from a holding/detention facility to the port of departure. Depending on the outcome of the risk assessment, a returnee may be transferred in a regular vehicle, e.g. a coach or bus, or in police-secured transport, which may be a police car or van with a specially adapted cell. If more than one vehicle is used to transport the returnees, the monitor, following the instructions of the escort leader, should travel in the same vehicle as returnees evaluated to be at higher risk of resisting removal or with vulnerable returnees. The monitor should be seated in the best position to be able to clearly see and hear what is happening during the transfer. The escort leader will make the decision about where the monitor sits as they are in the best place to be able to make this assessment. It is important to note that it always remains at the discretion of the escort leader to decide which vehicle the monitor sits in and where they sit in that vehicle.

What to observe

At this stage, the monitor should observe that:

- The returnees are appropriately dressed. If a belt has had to be removed for security reasons it has to be guaranteed that a returnee's trousers stay up without them having to use their hands to hold them up. If shoelaces have had to be removed, the returnees should still be able to walk normally and not lose their shoes while they are walking;
- The vehicles for transportation of returnees are clean and well maintained;
- Depending on the season and weather conditions, any air-conditioning system is used appropriately. This should equally be applied in the seating area and holding cells;
- The time returnees have to spend in cells inside a police coach is limited to the minimum length possible;
- Cells inside a police coach are not used as waiting areas;
- The doors of the vehicle are kept open if there is a delay and a wait cannot be avoided, (provided it is in line with the risk assessment that has been carried out);
- Vulnerable persons among the returnees are treated appropriately. As stated above, where vulnerable groups are transported separately, the monitor should decide which group to accompany after consultation with the escort leader, who has the final say.
- In cases where a family member, such as a parent, resists removal and therefore has to be separated from the rest of family and transported separately to the airport or other port of departure, the monitor should pay attention and note that:
- The family is kept informed about the situation of the member of the family who is resisting removal and that the person resisting removal knows what is happening to the family;
- The length of separation is kept as short as possible.

Positioning of the monitor

The monitor is not required to be in any particular position. They should introduce themselves and request information about the returnees, particularly any information about incidents that may have occurred prior to the operation as well as information regarding the use of coercive measures and any known vulnerabilities.

What to observe

- In case of a CRO, the monitor participates in the briefing prior to the return operation, in order to be:

- Introduced to the escort leaders and other participating stakeholders by name and role;
- Informed about the outcome of the risk assessment of the returnees and the operation itself. The monitor can request information about the returnees, especially regarding any hunger strikes, self-injury, medical conditions, threats against escorts, and/or aborted removals etc.;
- Given confirmation on the authorised/forbidden restraints (including certain materials that might be forbidden) agreed by those responsible for the operation;
- Informed about the elements of the operation including security, surveillance plan, type of means of transportation, seating plan;
- Informed about any vulnerabilities or any vulnerable persons among the returnees and whether their specific needs have been considered and taken into account.

Returnees in the waiting area at the port of departure

During return operations, returnees wait with the escorts and the monitor(s) until the departure in an appropriate waiting or holding area that allows for supervision and security.

Positioning of the monitor

The monitor should stay with the returnees if all the returnees have to wait in the same room. Otherwise, the monitor should divide their time between the different rooms/cells where the returnees are waiting. The monitor should position themselves strategically, to ensure that they are able to observe returnees who, following the risk assessment, are considered to be of higher risk. At this stage, the monitor should be able to move freely around the waiting area (in accordance with the outcome of the risk assessment).

What to observe

At this stage, the monitor should observe that:

- Depending on the number of returnees and the risk assessment, an emergency doctor is present or on call and that during return operations appropriate medical staff are present throughout the return operation;
- Medical staff have checked on returnees with medical problems or special needs;
- Agitated returnees are separated from other returnees to calm the situation and avoid tension;
- Sufficient food, water, non-alcoholic drinks but no hot beverages is offered to the returnees, including during unexpected delays such as technical problems with the means of

transportation, bad weather conditions, etc. Due to the schedule of the return operation and the related transfer, returnees may have missed a meal in the holding/detention facility and this should be taken into consideration;

- Returnees are given the opportunity to use the toilet and that the visit to the toilet is carried out in line with the correct procedure for visits to the toilet;
- The needs of smokers to smoke are addressed as far as possible;
- Religious needs are addressed as far as possible;
- The waiting facility is properly equipped e.g. that there are sufficient number of chairs, a children's play area is set up, if required and possible, etc.

Transport to the means of transportation at the port of departure

The escorts should accompany the returnees, remaining vigilant and taking precautions against returnees self-harming.

Positioning of the monitor

On the transfer to the means of transportation being used for the return operation, the monitor should ask to be assigned to a seat either in the middle of the vehicle or at the back, to be able to have a good view of the escorts and the returnees.

Arriving at the means of transportation being used for the return operation, the monitor should be one of the first to exit and position themselves where they can observe how the returnees and escorts leave the vehicle. If a returnee refuses to disembark, the monitor should closely observe the situation, without hindering the escorts and make a note of the time and what happened.

What to observe

At this stage, the monitor should observe that:

- The escorts are close to the returnees while guiding them to the means of transportation being used for the return operation and should check the number and position of escorts accompanying the returnees;
- Measures to prevent returnees from self-harming have been taken
- The restraints and materials being used are the ones authorised for use during the transport and embarkation on the means of transportation, and are only used if strictly necessary;

- Vulnerable persons among the returnees are attended to appropriately, and that due consideration is given to how and when vulnerable groups such as families with young children and individuals with disabilities are boarded.

Embarkation on the on the means of transportation

Positioning of the monitor

For the embarkation process, the monitor should position themselves at the entrance of the means of transportation being used for the return operation in order to be able to observe the procedure. Where a returnee refuses to embark, the monitor should closely observe the situation without hindering the escorts and make a brief note of the incident and timing.

What to observe

At this stage, the monitor should observe that:

- The escorts accompany the returnees when they disembark from the coach or bus, walk to the means of transportation being used for the return operation, board the means of transportation and walk to the seat they have been allocated without unnecessary use of force.

9.2. Monitoring the travel phase

The travel phase starts with the closure of the doors in the means of transportation used for the removal and ends with the arrival at the final destination, i.e. the country of return (Moldova in the case of a CRO). In the case of an unsuccessful return during an NRO, there is a return flight back to Moldova, including transit via another country.

The monitor should pay special attention to the following;

- The seating positions, including the location of children in relation to other returnees and the adult(s) accompanying them;
- Any incident that takes place and the behaviour/response of escorts;
- Any means of restraint that were used; the mode of use and the duration (legality, necessity and proportionality);
- Medical incidents, the presence of a doctor or other medical personnel and what they did;

- The provision of food and drink;
- Lavatory procedures;
- Complaints made by returnees and the response to these.

Transportation of returnees to the country of return

Positioning of the monitor

In case of returns by aircraft such as CROS, it is important to remember that airplanes have different interiors. Some have one continuous cabin for passengers while others are divided into different compartments. In general, the monitor should be assigned to a seat that allows them to observe the escorts and the returnees. If a particular returnee needs to be observed more closely, where possible, the monitor should find a seat in one of the rows nearby.

The monitor should avoid being seated in a place where their view or ability to move is restricted. The escort leader should inform the monitor about the seating arrangements during the briefing of a CRO, and should address any questions or concerns the monitor may have. Where more than one lavatory is available, the monitor should use the lavatory the escorts have been told to use.

Monitors should not remain seated throughout the entire journey, but if the means of transportation allows should move around from time to time in order to observe what is going on.

If two monitors are monitoring this phase of the forced-return operation, ideally, one should be seated at the back of the cabin and the other should be seated in the middle or at the front of the cabin in order to be able to see what is going on throughout the cabin. Monitors should stay awake for the entire return operation.

What to observe

At this stage, the monitor should observe that:

- The means of transportation meets the requirements of the return operation as well as the needs of returnees, including vulnerable groups, and escorts (regarding availability of seats, lavatories, temperature, etc.);
- Lavatory visits take place upon requests, in line with the needs of returnees, and are conducted in line with the lavatory procedure;
- Sufficient food, water, non-alcoholic beverages, including for those with specific health and religious requirements, is offered to returnees. Escorts and returnees should be

offered the same kind of food and drinks. Hot liquids, e.g. coffee, tea should be avoided as should cutlery;¹⁶

- The catering for returnees is adequate. In order to evaluate whether it is or not, the monitor should consume the same food and/or drinks the airline provides to the returnees;
- Where a means of restraint is used, the escorts check the returnee regularly. The monitor should observe means of restraint being used for as long as they are in place and document their use, making a quick sketch immediately after observing the incident, annotating the sketch to show the position/s of the returnee/s and the escort(s) and what each/all of them were doing. It should also include the exact duration, as accurately as possible. If the monitor has reason to believe that a means of restraint is no longer appropriate, or that the intensity could be reduced, they can communicate this to the escort leader and/or head of operation;¹⁷
- In cases of perceived imminent danger, the monitor should inform the escort leader immediately;
- Access to medical care is guaranteed, as required. If the monitor has any questions about a particular returnee they should ask the doctor/paramedic on board for clarification. The role of the monitor is not to double-check the medical care provided by the doctor, but to report whether care was provided and what type of care was provided;
- Sedatives to facilitate removal are not used as they are forbidden without prejudice to emergency measures under medical supervision to ensure travel security.

9.3. Monitoring the arrival phase

NRO: The arrival phase covers the period starting from arrival at the country of return, and ends when the returnees are handed over to the national authorities in the country of return, or in the case of an unsuccessful return, with the handover to the authorities back in Moldova.

CRO: The arrival phase covers the period starting from arrival in the Republic of Moldova and ending with the debriefing with the relevant participating stakeholders.

National authorities in the country of return can refuse the readmission of a returnee. This may be the case when documents are not accepted, if there are doubts about the nationality of the returnee, or the returnee is in need of specific medical care, which the country of return is not equipped to provide. The number of refusals for the reasons given here is usually low.

16 Ideal catering would include finger food such as sandwiches. Cutlery (knives, spoons and forks) should always be avoided.

17 The decision regarding the use or termination of the use of means of restraint, however, remains strictly with the escort leader.

The monitoring responsibility ends the moment the escorts hand the returnees over to the national authorities in the country of return (or in the case of an unsuccessful return, back to Moldova). Monitoring the treatment of the returnees by the national authorities on arrival is not within the forced-return monitor's remit. However, if the monitor witnesses any mistreatment, they should include details in the monitoring report and gather as much information as possible from the escort leader.

Arrival in the country of return

Positioning of the monitor

Upon arrival in the country of return, the monitor should stay close to the group of returnees as the escorts prepare to hand them over to the national authorities.

What to observe

At this stage the monitor should observe that:

- Any remaining hand-cuffs, body-cuffs or other restraints are removed following arrival, if possible;
- All the personal belongings, which were taken away for security reasons, are given back to the right person prior to the handover to the national authorities in the country of return;
- Legitimate complaints by returnees that e.g. luggage, money or documents have been lost or damaged are handled efficiently by the escorts;
- Any other complaints by returnees related e.g. to their treatment by the escorts or other participating stakeholders are received and/or the escort leader informs returnees about the complaints procedure. The monitor should include details of the complaints made by the returnees e.g. against escorts, in their monitoring report.

Handover of returnees to the authorities in the country of return

The returning authority is responsible for contacting the authorities of the country of return prior to the operation. This takes place well in advance of the operation itself. Once the return operation has been conducted and the aircraft has arrived in the country of return, the escort leader/head of operation establishes first contact with the national authorities. The escort leader hands the returnees over to the authorities of the country of return, with their luggage and any other items.

Where appropriate and feasible, the returning authority invite consular staff or immigration liaison officers to facilitate the handover of the returnees to the local authorities, insofar as this is consistent with national practices and procedure.

Positioning of the monitor

When the returnees are handed over to the local officials inside the means of transportation, the monitor should be close to the entrance, where they have a good view of what is going on and are within hearing range. If the returnees disembark and are handed over to the authorities outside the means of transportation (e.g. the arrival building), the monitor should closely follow any instructions given by the escort leader and if possible, accompany the escorts and the returnees to the place where the returnees are handed over.

What to observe

At this stage the monitor should observe that:

- Any remaining hand-cuffs, body-cuffs or other restraints have been removed immediately after arrival, if possible;
- All personal belongings, which were taken away for security reasons have been handed back to the returnees prior to disembarkation and prior to the handover to the authorities in the country of return;
- The luggage of the returnees is still in good condition and returned to the returnees in an organised way, if it is possible to monitor this procedure;
- The returnees are handed over to the national authorities by the escort leader.

Monitors should also observe how the returnees were treated by local policemen or border guards. Any incidents or mistreatment by local policemen or border guards witnessed by the monitor should be documented in the monitoring report. In preparing future return operations to this country of return, the Moldovan authorities can make use of this information to put in place measures that may help to ensure the correct treatment of returnees when they arrive.

Overnight stay – if applicable

It is rare that an overnight stay in the country of return is necessary, as the returning authority will try to organise a return directly after arrival. However, an overnight stay might be necessary if a forced-return operation has covered a long distance, if airport opening-hours make permission for take-off and landing a problem, or if there is a technical problem with the plane. If this happens, different countries have different procedures. It may also be that returnees are

not accepted by the authorities in the country of return and have to stay overnight before the return journey back to the country of departure. The monitor should closely follow any instructions given by the escort leader. However, monitoring tasks related to this specific situation are not included in these guidelines.

9.4. Monitoring specific incidents

If a particular incident occurs during the course of the forced-return operation, monitors should take note of the following details:

- Description of facts e.g. what happened during the incident (including location and time);
- The role of each person in the incident;
- Whether the actions were legal, necessary and proportional and the basis for that assessment;
- What factors triggered the incident;
- What activities were performed well and by whom, e.g. escort, escort leader, returnee, etc.

9.5. Monitoring the use of force and means of restraint

Monitors must pay particular attention to every incident that involves the use of force or means of restraint on a returnee – each time it is used and/or used more than once or repeatedly. They should make careful notes of the incident and sketches to include in their monitoring report.

The monitor should observe the use of force and should note the context in which the restraints are used, the time, what type of restraints were used and for how long. The monitor should also note: the effects of the restraint on the returnee; whether there are any injuries; what was going on around the returnee (e.g. were other family members present who witnessed the use of force?); if there were threats to other returnees or escorts.

It is important that the monitor reports each instance of the use of force and means of restraint in the monitoring report they submit. The monitor should request information including details about the measures applied, from the escort leader at an appropriate time, e.g. after the situation has been brought under control. The monitor should also take notes of any good practice in handling situations such as this and include it in their final report. Including examples of good practice in the reports that go to the relevant authorities involved in the operation can help to spread good practice in other forced-return operations.

In order for the monitor to be able to assess the legality of the use of force, they need to know about the different types of restraint measures allowed under the national legal framework.

Ideally, monitors should experience during respective training what it is like to use restraints on someone or have them used on them as part of their training in order to be knowledgeable about the various techniques and their application.

For the note-taking and subsequent reporting, it is important to keep in mind the following questions in relation to the use of coercive measures:

- Did the relevant authorities carry out an individual risk assessment before the forced-return operation and did it take into account any vulnerabilities?
- Did the returnee have any medical conditions that were taken into account?
- Did the escort leader/escorts inform the returnee that it was in their interest to co-operate, and that uncooperative behaviour would not stop the return operation? When was the returnee informed and in what context?
- Did the escorts make use of de-escalation and communication skills prior to using force or restraints?
- What was the specific situation that required the use of force by the escorts?
- If family members were also present, did they move them away? If not, was it because e.g. it was not possible under the circumstances?
- Did the use of restraint measures comply with legal provisions set out in national laws?
- In addition to the legal provisions for restraint measures, were they necessary and proportional?
- For how long were restraint measures used? Was the length reasonable or excessive?
- Did the returnee show signs of injury?
- Positional asphyxia: Were returnees restrained in a way that prevented or impeded the mechanism of normal breathing? What led to the returnee being restrained? Was it to limit a potentially dangerous situation? Was the returnee closely monitored by the escorts and medical personnel whilst restrained?¹⁸
- Did the escorts comply with their legal obligation to report incidents in relation to the use of force?
- Did the returnee say they wanted to file a complaint?
- Was the returnee informed that they could lodge a complaint and how to do it?

18 Officials should recognise the heightened risk of positional asphyxia during restraint; they must take steps to avoid it, should be able to recognise the heightened risk factors, recognise the warning signs of positional asphyxia, reduce the risk of it happening and take immediate emergency action in the event that positional asphyxia is suspected.

10. Reporting

10.1. General principles of reporting

The report should reflect the facts and details of the observations the monitor made and the notes they took from the pre-departure phase of the operation until returnees were handed over to the authorities in the country of return or, in the case of unaccepted returnees, when they were handed back to the authorities in Moldova. It should also include any noteworthy details from the debriefing.

It should follow a presentation of facts that covers:

- a) What the monitor observed
- b) What it means, and
- c) Recommendations - what needs to change.

The monitoring reports must, therefore, be objective, precise and accurate to clearly document possible violations of human rights during the forced-return operation. The reports should also include other observations and recommendations on steps to improve the way a forced-return operation is conducted and raise standards of protection.

The monitor must be as objective, precise, and concise as possible whilst always ensuring that all the relevant details are included.

When drafting the report, monitors should:

- Include the same findings/observations in the report as addressed during the debriefing;
- Only include facts. If the information is not first-hand, they should state the source of the information;
- Use appropriate language i.e. language that is neutral and impartial;
- Avoid reporting in the first person “I” and instead write in the third person since the returnees and escorts should be the focus of the report at all times;
- Verify the information included in the report, even if this takes time after the forced-return operation, particularly if there are details you are not sure of or need to check with others involved in the return operation such as an official or a fellow monitor;
- Indicate whether the preparation of the mission was sufficient or if any challenges were encountered during the preparation, what the challenges were and how the escorts dealt with them;

- If means of restraint were used during the operation, describe the context and circumstances leading up to restraints being used, the type of restraints used and duration, attitude and behaviour of those responsible for using the restraints, any injuries to either returnee or escort, and what happened afterwards;
- If any force was used, describe the context and circumstances, the duration, attitude and behaviour of the escorts, any injuries to either returnee or escort and what happened afterwards;
- Include any complaint made by a returnee against any alleged ill-treatment by an official that took place during the operation;
- Include any actions that proved to be particularly helpful and/or positive (to spread good practice and include in lessons learned);
- Reflect in the summary of the report, your main findings, using precise terminology. Make sure your information is factually correct and highlight any incidents or particular problems;
- Provide recommendations drawn from the operation that are backed up the details (evidence) of the incident or problem you observed, including examples of both good practices to be shared and bad practices that need to be addressed. Always indicate who these recommendations, or a particular recommendation, are addressed to where relevant.

In view of the strong focus on the human rights of those being returned, it is easy to forget that the monitor also has the duty to report on any misbehaviour on the part of a returnee towards an escort. Positive comments and good practices identified should be included so that the return enforcing authority can benefit and learn from each other's practices. Experienced monitors should also mention any particular patterns they observe, e.g negative ones such as where legal standards including the human rights of those being returned are contravened, or alternatively, those that have a positive outcome and that should be replicated by other colleagues.

Monitors should respect the principles of accuracy, confidentiality, impartiality, and non-discrimination at all times before, during, and after the forced-return operation.

Accuracy:

Make a clear distinction between facts and allegations by either cross-checking the information provided or ensuring the full factual account of the different parties within the report. In the reports, be as precise and concise as possible, while at the same time ensuring that all the relevant details have been included to establish whether or not human rights and/or procedures have been observed or violated.

How might accuracy be compromised?

This could be as a result of:

- Unconscious bias of the monitor in favour of or against someone in the return operation, be it escorts or returnees;
- Receiving contradictory information and not taking the time to double check it;
- Lack of access to information;
- Reproducing allegations as facts;
- Not taking notes while observing or shortly after observing a situation.

Confidentiality:

Not to disclose to any other party any information gained in the course of fulfilling monitoring obligations.

How might confidentiality be compromised?

This could be as a result of:

- Careless handling of notes e.g. losing them;
- Believing that the other person is so far removed from your work that it does not matter if you disclose information;
- Stress and the need to unburden oneself by telling someone else e.g. a partner, family member or friend.

Impartiality and non-discrimination:

It is not appropriate to include personal opinions in the report about the general conduct and implementation of a forced return or return decisions. All data should be properly documented and all accounts should be stated without prejudice and/or discrimination towards anyone based on their sex, nationality, religion, and/or role within the forced-return operation.

How might impartiality and non-discrimination be compromised?

This could be as a result of:

- Holding strong views on migration or on law enforcement agencies;

- Personal or family life experiences of migration or encounters with migrants, refugees, or security services;
- Personal or family life experiences of people from different ethnicities, different colour of skin, a different religion, sexual orientation, age, etc.;
- Allowing those in the hierarchy, who you believe to be better informed or superior to you, to influence what you put in the report or allowing them to put pressure on you.

10.2. “Dos” and “don’ts” when drafting the report

When drafting the report, the monitor needs to:

- Understand the reporting format expected by the Ombudsman Office in order to take the necessary notes during the operation;
- Besides documenting what you see and hear, focus on the exceptions to highlight good and bad practices rather than confirming the standards;
- Use appropriate language;
- Always keep in mind the core principles of monitoring: accuracy; confidentiality; impartiality, and non-discrimination;
- Reflect the facts by following the guiding questions: a) what did I observe, b) what does it mean, and c) recommendations - what needs to change or what should be maintained (good practice);
- Be as precise, concise, and as brief as possible while ensuring that all the relevant details are included;
- Clearly differentiate between own observations (making sure to use the third person) and information obtained from secondary sources;
- Report every instance of the use of force and means of restraint;
- Remember that the monitor also has a duty to include in the report any incidence of misbehaviour on the part of a returnee towards an escort.

In relation to a specific incident, the report should include in detail the following points they noted down during the return operation:

- Description of the facts e.g. the factors that lead up to the incident and what happened during the incident (including location and time);
- The role of each person in the incident;
- Whether the actions were legal, proportional and necessary, and what the basis was for this assessment (based on the monitor’s own observations but also any information gathered during the debriefing or while talking to the escort leader);

- Whether there were any injuries to the returnee or escort (including sketches of the injury);
- Who else witnessed the incident e.g. family members, other returnees;
- What can be done to address any concerns;
- What activities were performed well and by whom, e.g. escort, Escort Leader, returnee, etc.

The monitor should:

- Address the same findings/observations in the report, as addressed during the debriefing;
- Discern between facts they observed and hearsay or interpretation, and include only the former;
- State the source of the information, if it is not first-hand;
- Always verify the information included in the report, even if this takes time after the forced-return operation (e.g. contact the escort leader);
- Use quotation marks when quoting someone and indicate whether it is e.g. the escort leader, medical doctor, etc. without including their personal data (i.e. their name).

The monitor should be as precise and concise as possible whilst ensuring that all the relevant details are included. As well as including all the relevant information about the forced-return operation, including the number of returnees, the report should contain the following information:

- Any significant incidents that occurred;
- Any means of restraint (type and duration) used in the course of the operation as well as the circumstances leading to it;
- Any force applied;
- Any complaint regarding any alleged ill-treatment, incident, or other situation, including alleged violations of human rights that took place during the operation; and
- Any actions that proved to be particularly helpful and/or positive (to provide lessons learned).

10.3. Formulation of recommendations

Recommendations should be drawn from the operation and should be supported by the facts (evidence) about the incident that occurred or the problem that was observed. When making recommendations, the monitor must explain why they are making the recommendation and what it relates to. Wherever relevant, these recommendations should indicate the relevant stakeholders, they are addressed to e.g. recommendations for the return enforcing authority; recommendations for the escort leader (for the escorts, medical staff, interpreter, etc.).



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Recommendations should seek to propose specific solutions. They should follow on logically from the monitoring report and should be specific, measurable, and achievable. They should propose how a given situation/problem could be improved by suggesting an alternative action that could be taken. If the monitor identifies actions/procedures that are not currently being followed or permitted, laws or policies that might need amending, or where the return authority is not abiding by regional or international laws the country has ratified, they should point these out. Similarly, they should put forward any recommendations regarding additional or new practices or safeguards that could improve human rights protection.

