ENNHRI European Network of National Human Rights Institutions

# Protecting human rights of migrants at the borders

## Evidence and work of European National Human Rights Institutions

ENNHRI

# Contents


Introduction ..... 3

Human rights violations at Europe's borders ..... 4

NHRIs' unique mandate and role in promoting and protecting migrants' human rights at the borders ..... 9

Moving forward: protecting human rights beyond borders ..... 36

About ENNHRI ..... 39

Notes ..... 41

# Introduction

**Everyone has human rights, regardless of where they come from, their migration status and where they are. However, people on the move, including those fleeing war and persecution, are often subject to numerous human rights violations throughout their journey. In Europe, human rights concerns at the borders are well-documented by a wide range of credible actors, such as National Human Rights Institutions (NHRIs), civil society organisations, and international and regional human rights bodies, among others.**

In this background paper, ENNHRI sheds light on the findings of NHRIs about human rights violations at the borders and how they have used their strong, broad mandate to promote and protect migrants' human rights. Looking forward, this paper serves as a starting point for European NHRIs to put forward recommendations to national and regional authorities to ensure that human rights are also respected at the borders.

As state bodies, independent from the government, NHRIs are well-placed to demonstrate that migration policy, legislation and practice can and must go hand in hand with respect for human rights. In the end, this benefits migrants, countries of transit, host countries and society as a whole. This has been recognised by the vast majority of European states during the adoption of the United Nations Global Compact on Migration, which also recognises the role of NHRIs in supporting implementation and monitoring of states' approach on migration.[1]

ENNHRI

## Human rights violations at Europe's borders

NHRIs have contributed to a growing body of evidence indicating the existence of widespread violations of migrants' human rights at the borders in Europe, in line with the concerns raised by civil society organisations, international and regional human rights bodies. NHRIs from countries at both sides of the external borders of the European Union (EU) have particularly identified growing violations of migrants' rights, both due to the geographic position and the impact of national and European-wide legislations and policies. NHRIs have also identified human rights violations at the borders between EU Member States.[2]

In the past years, reforms of asylum legislation and policy in the vast majority of European countries has had a direct impact on the protection of migrants' human rights, particularly at the borders.[3] In many cases, NHRIs' findings point to the existence of a migration approach by states, through legislation, policy and/or practice, that ultimately leads to the violation of the rights of migrants crossing or having already crossed the borders, rather than these violations being isolated cases of poor practice.

International, EU and national law includes strong human rights safeguards to migrants and corresponding obligations on states. In particular, most issues faced by migrants at the borders are regulated by EU law, which is binding on EU Member States but also impacts on neighbouring countries and the wider region.

Guidance materials from the Office of the United Nations High Commissioner for Human Rights (OHCHR) have also translated international human rights standards into principles and concrete guidance.[4] They inform the work of States, international agencies and

other stakeholders in ensuring human rights-based border governance.

The existence of persisting practices at the borders in contravention of legal standards points to the need of ensuring that migrants have their human rights respected in practice, not only in theory.

European NHRIs have been making use of their strong, broad human rights mandate to tackle structural issues and ensure that States protect migrants' rights. They find that in many countries the borders have become a focussed place for human rights violations and impunity. As with other independent bodies, NHRIs across Europe have reported and spoken out against the violation of migrants' right to dignity, to seek asylum, not to be subject to inhumane or degrading treatment, and not to be arbitrarily or unlawfully detained, right to life, among others.

## Violence, pushbacks, refoulement and denial of access to asylum procedures

Among the many human rights violations at the borders, NHRIs have repeatedly highlighted the mistreatment of migrants crossing or having just crossed the borders by law enforcement officials, particularly throughout the Balkans and Mediterranean border regions. In some border crossings, being subject to violence at the borders has become the norm, rather than the exception.[5]

NHRIs also confirmed the systematic occurrence of pushbacks, whereby migrants are intercepted and summarily sent back to the country they have just left by police or border guards without the opportunity to access appropriate procedures, such as applying for asylum, raising concerns about their return or other protection measures.[6] Pushbacks occur on land and at sea and not just close to the borders; in some states, NHRIs and other actors have reported migrants being intercepted deep

inside the country's territory and subsequently pushed back over the border.[7]

European NHRI have also documented repeated cases of violations of the principle of *non-refoulement*, whereby national authorities intercepting migrants at the borders have not individually or sufficiently assessed the circumstances of a migrant's circumstances and have forcibly remove them to a different country, including to countries where they would likely face persecution. This is in line with reports from civil society organisations and human rights bodies, including the UN OHCHR.[8]

NHRIs' findings coincide with the investigation carried out by the Parliamentary Assembly of the Council of Europe (PACE) and the indication that pushbacks are a systematic policy in some states, not just isolated incidents of bad practice.[9] Pushbacks also often involve violence and intimidation by state agents, including the use of dog attacks, beatings and the theft and destruction of migrants' possessions.[10]

Moreover, pushbacks routinely involve groups of migrants, without an individual assessment prior to their removal, in violation of the protection against collective expulsions under international law,[11] and in blatant disregard of the special circumstances of unaccompanied and separated children, families and other migrants that may find themselves in a particularly vulnerable situation.

## Immigration detention at the borders

Several NHRIs identify that formally detaining migrants or depriving them of their liberty through other means have become the rule rather than the exception, particularly at the borders. Despite strict legal safeguards under international law,[12] some European NHRIs have found that migrants are routinely deprived of their liberty at the borders without prior consideration of alternatives, individual assessments, identification of vulnerabilities or consideration of

the facilities in which they would be placed.

A main human rights concern for NHRIs has been the detention of migrant children, either unaccompanied or with their families, in places such as closed centres at the airports, border facilities, police stations and transit zones. The practice of detaining children on immigration grounds is in violation of international law, as reiterated by different UN bodies.[13] Individually and through ENNHRI, European NHRIs have repeatedly spoken against the detention of migrant children.[14]

Moreover, many places where migrants are detained along Europe's borders are overcrowded, isolated and below the minimal standards, in violation of the rights of those detained. There are also extensive reports about the lack of individual assessment of the circumstances of particularly vulnerable migrants, such as children and those requiring medical assistance, prior to their detention. In line with NHRIs' findings, some countries have been condemned by the United Nations (UN), the European Court of Human Rights (ECtHR)[15] and other monitoring bodies for conditions in places of detention that amount to inhuman or degrading treatment.[16]

## Deteriorating situation for independent human rights monitoring

In some European countries, NHRIs are facing strong opposition from state authorities when working on migration and borders issues, often in contravention of national legal provisions dictating NHRIs' mandate. This has included, for instance, not following-up on NHRIs' recommendations, refusing access to official documents and data related to concerns about the violation of rights, and discrediting NHRIs' work.[17] NHRIs have also raised concerns about the criminalisation and/or harassment of individuals or civil society organisations that work to protect migrants' rights, even of those providing humanitarian assistance at the borders.[18]

In addition, concerns regarding the access of NGOs to reception and detention facilities, the lack of sufficient or quality provision of legal advice and representation, the use of xenophobic rhetoric and smear campaigns against organisations providing assistance to migrants, among others, have led to a deterioration of the pillars of the human rights accountability system in many countries.

Civil society organisations are key partners of NHRIs and restrictions to their work negatively affect the effectiveness of NHRIs.[19]

Through ENNHRI, European NHRIs have been working towards ensuring an enabling environment for civil society organisations and responding to the undermining of democracy and threats faced by human rights defenders.[20]

# NHRIs' unique mandate and role in promoting and protecting migrants' human rights at the borders

As independent state bodies with a broad mandate to promote and protect human rights, NHRIs are key actors to ensure that states fulfil their human rights obligations, including those regarding the human rights of migrants at the borders. They make use of their various functions in a complementary manner and cooperate closely with other human rights defenders. Due to their presence on the ground, NHRIs are also able to listen to and work with migrants, making sure that their concerns are communicated to relevant national authorities so they can be addressed.

Most European NHRIs have increased their work in the area of migration, particularly since the rise in the number of arrivals of migrants in Europe in the past years and subsequent actions from states, which led to the human rights concerns outlined in the previous chapter.

While their specific functions vary from country to country, NHRIs responded to these human rights issues by making use of their diverse tools to promote and protect the rights of migrants at the borders, such as:

- Conducting investigations and official inquiries into human rights issues at the borders, including through monitoring crossing points and other places at the borders;
- Monitoring places at the borders where migrants are deprived of their liberty;
- Supporting and cooperating with civil society organisations present at the borders;
- Advising governments and parliaments on human rights and seeking to achieve human-rights compliant legislation, policy and practices affecting migrants' rights at the borders;

- Monitoring states' compliance with their human rights obligations and providing recommendations;
- Raising awareness of the public about the rights of migrants and building solidarity among migrants and host communities;
- Reporting to and engaging with regional and international human rights systems;
- Providing training to national authorities, such as border authorities, on human rights obligations;
- Providing assistance and information to migrants at the borders about their rights;
- Submitting third-party interventions before national and/or regional courts;
- Some NHRIs can receive individual complaints, including from migrants who believe they had their rights violated, and can issue formal conclusions and recommendations to national authorities;
- Some NHRIs can challenge the legality of a provision before Constitutional and/or lower courts, including of legislative provisions which may violate migrants' human rights.

In the following section, some NHRI functions will be explained in more detail and examples will be provided to illustrate how NHRIs in Europe are using these tools to promote and protect migrants' rights at the borders. It should be noted that this is not intended to be a comprehensive picture of NHRIs' work in this area.

## Monitoring human rights at the borders

Human rights monitoring is a crucial task of NHRIs, through which they gather, verify and use information to address the human rights situation of migrants at the borders. By acting as human rights watchdogs, NHRIs' independent monitoring allows them to assess whether international human rights standards are met at the national level, through domestic legislation, policy and practice. All NHRIs have broad monitoring powers and use the information they collect to inform their recommendations and reporting to the public, state

authorities and international mechanisms.

Monitoring can take many forms, including data collected from visits to the borders, open dialogue with migrants, accessing official documents and reviewing legislation. For example, the Greek NHRI (Greek National Commission for Human Rights) has conducted monitoring visits to examine the living conditions in hotspots and accommodation sites for migrants and refugees across Greece.[21] Similarly, the Georgian NHRI (Public Defender of Georgia) has monitored all border check points in the country, including at the airport.

Though monitoring and reporting is a common and ongoing task for NHRIs, they also engage in specific, in-depth monitoring exercises when they identify human rights issues of special concern. Examples of NHRIs' thematic reports on migrants rights at the borders include the French NHRI's (French National Consultative Commission on Human Rights) analysis of human rights in the overseas territories of France,[22] which included data and recommendations on asylum, and the Spanish NHRI's (Spanish Ombudsman) report on asylum in Spain, which focused on asylum applications made at the border posts of Tarajal (Ceuta) and Beni Enzar (Melilla).[23] The Armenian NHRI (Human Rights Defender of Armenia) also published a special report on the rights of refugees and asylum applicants in the country, covering statistical data, an analysis of relevant legislation and decisions of the Migration Service, and recommendations to national authorities.[24]

The German NHRI (German Institute for Human Rights), for instance, has analysed the impact of procedures in view of the re-introduction of border controls and the agreements between Germany and other countries, such as Greece and Spain, which allowed for the immediate return of migrants at the borders if they had been previously registered by Greek or Spanish authorities. The NHRI transmitted its views to the relevant authorities that these procedures

risked violating migrants' rights under EU and international law.[25]

For NHRIs, monitoring is not an end in itself. It is through monitoring that they gather reliable data to inform their recommendations and advocacy before national authorities, with the ultimate goal to change legislation, policy and practices that violate or negatively impact on the rights of migrants at the borders.

## Providing recommendations to national authorities

Due to their special standing as state institutions, NHRIs' have privileged access to national authorities. They have used this powerful mandate to submit targeted recommendations to national authorities, through meeting with relevant Ministries, issuing declarations and publishing press releases.

For example, the Greek NHRI released a statement regarding the migrant situation in Greece, particularly at the borders, and the serious impact it has on both migrants and Greek citizens.[26] In France, the NHRI has also released multiple opinions and declarations on migrants' human rights at the borders, such as regarding the precarious situation of migrants in Calais, after carrying out a field mission.[27] It also examined numerous violations of fundamental rights on the Franco-Italian border and drew authorities' attention to the particularly worrying situation of unaccompanied children and victims of human trafficking.[28] The French NHRI also issued an opinion calling for radical change in national migration policy in overseas territories.[29]

In the Netherlands, the NHRI (Netherlands Institute for Human Rights) published advice for state authorities regarding the automatic border detention of asylum applicants in the Schiphol Airport Criminal Justice Complex, which it had found to be in contravention of international human rights standards.[30] Similarly, the Spanish NHRI issued a recommendation to the Secretary General for Immigration and Migration calling for the urgent

formulation of a protocol for the prevention and response to sexual and gender-based violence in the Temporary Accommodation Centres for Immigrants in Melilla.[31]

ENNHRI's member in Estonia (Chancellor for Justice of Estonia) criticised national authorities for issuing orders to leave the territory to unaccompanied migrant children after they had irregularly crossed the border. The ENNHRI member highlighted that, without a prior examination related to all circumstances of the unaccompanied children's arrival, this practice was not in line with the law. In addition, it raised concerns that the children were not given enough information about their legal status, rights and options to access different procedures, including the asylum procedure.[32]

NHRIs also have the mandate to address the Parliament on relevant human rights issues and many are routinely asked to provide their formal views before Parliament on any matters affecting human rights. This is particularly the case where national policy or legislation related to migration is discussed or reviewed.

For example, in Armenia, the Constitutional Law mandates that all legal drafts regarding human rights, including those concerning migrants, must be sent to the NHRI for its opinion.

In Greece, the NHRI is called on to deliver its formal opinion on all parliamentary discussions related to human rights issues to help prevent any inconsistencies with Greece's obligations under international and European law. Recently, the NHRI was consulted prior to the adoption of the new asylum law in October 2019, and its recommendation on procedural safeguards for unaccompanied minors was partially adopted.

Other examples include the actions of the Serbian[33] (Protector of Citizens of the Republic of Serbia) and French[34] NHRIs, which issued opinions on draft laws that affected migrants' human rights. For instance, the French NHRI published an opinion in which it demanded the definitive repeal of the legal provisions that led people who

come to the aid of migrants to be increasingly victims of prosecution, intimidation or deterrence.[35] NHRIs in Slovenia[36] (Human Rights Ombudsman) and Northern Ireland[37] (Northern Ireland Human Rights Commission) also submitted advice to the authorities raising concerns and making recommendations about national legislation affecting migrants at the borders.

## Monitoring deprivation of liberty (including NPM mandate)

European NHRIs have repeatedly recommended states to ensure that detention should only be used as a measure of last resort in the context of migration. This equally applies where a migrant is intercepted by national authorities when crossing or having crossed the borders. Through ENNHRI, NHRIs also brought their concerns to the Council of Europe about the widespread use of detention without due consideration of alternatives.[38] The Council of Europe has recognised the role of NHRIs in monitoring the existence and effectiveness of alternatives to immigration detention.[39]

Several NHRIs identify that formally detaining migrants or depriving them of their liberty through other means[40] have become the rule rather than the exception, particularly at the borders. Where migrants are detained, NHRIs make use of their broad human rights mandate to monitor places of detention and deprivation of liberty.

Many NHRIs are also designated as the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture (OPCAT)[41]. This additional mandate empowers them to conduct regular, unannounced monitoring visits to places where migrants are formally or *de facto* detained or otherwise deprived of their liberty. NHRIs which are not NPMs also regularly monitor the detention conditions faced by migrants as part of their broad human rights mandate under the UN Paris Principles.[42]

In accordance with the views of the UN Subcommittee on Prevention of Torture and other organisations of

reference in the field of torture prevention,[43] European NHRIs have broadly interpreted the concept of "places where people are deprived of their liberty". This includes situations of deprivation of liberty at the borders and throughout a country's territory. For example, the NHRIs in Croatia[44] (Croatian Ombudswoman), Serbia[45] and Slovenia[46] conducted monitoring visits to police stations to examine the situations of migrants detained there. The Armenian NHRI, which also has the NPM mandate, also regularly monitors places of deprivation of liberty.[47]

NHRIs have conducted monitoring visits to border crossings[48], makeshift camps at the borders[49], registration centres[50], reception centres[51], transit centres[52], detention centres[53], airports[54], and temporary accommodation centres, among others.

During these monitoring visits, NHRIs identified various issues such as inhuman, degrading or poor conditions in facilities[55], collective expulsions[56] and summary returns[57], inadequate measures to identify vulnerable groups[58], lack of adequate interpretation[59] and poor coordination between different countries' border forces[60]. Based on these findings, NHRIs make recommendations to national authorities and inform the public and other stakeholders, including international bodies, about the conditions faced by migrants who are deprived of their liberty.

For instance, the Montenegrin NHRI (Protector of Human Rights and Freedoms of Montenegro) carried out a broad analysis of the treatment of migrants in Montenegro, through its NPM mandate, and recently compiled a report with recommendations to the relevant national authorities.[61]

Similarly, the ENNHRI member in Estonia inspected the new detention centre of the Police and Border Guard Board (PBGB) that accommodates migrants subject to expulsion as well as asylum applicants. They revealed that some of the so-called ordinary rooms in the detention centre had full time video surveillance. The ENNHRI

member stressed that it should always be considered whether 24-hour video surveillance is absolutely necessary to monitor a specific person. Moreover, hygiene corners in rooms have small windows opening on to the corridor and have a cover with a padlock. The ENNHRI member recommended that the internal rules of the centre must ensure that a hygiene corner is only monitored in very exceptional cases: for example, if a need exists to protect a person's life and health. If the police develop a reasonable suspicion that a detainee may harm themselves, the detainee should be accommodated in a specially adjusted room or transferred to another establishment.[62]

**In Focus: Recommendations against immigration detention of children at the airport in Portugal**

The Portuguese NHRI (Portuguese Ombudsman) identified different human rights concerns regarding the detention of migrants during its visits as the National Preventive Mechanism in Portugal. Particularly at the airports, it found that migrants were often treated poorly and that families with children were also detained. The NHRI intervened on this issue before the relevant authorities, recommending that migrant children should never be detained. Due to its action, the detention of children at the airport was limited to a maximum of 7 days.[63] The NHRI continues to call for the complete end of immigration detention of children in Portugal.

In addition to monitoring visits, some NHRIs use their NPM mandate to analyse draft laws, official documents and procedures to assess compliance with domestic and international law. For example, the Polish NHRI (Polish Commissioner for Human Rights) used its NPM mandate to examine the document on "Border Guard Procedures for Dealing with Migrants

Requiring Special Treatment" and made recommendations to the Chief Commander of the Border Guard. The NHRI was concerned that the new procedures could negatively impact on the effective mechanisms to identify victims of torture or other forms of violence.[64]

NHRIs that are not designated as the NPM have also made use of their broad mandate in a similar manner and regularly make recommendations to national authorities based on their findings, including on issues around prevention of torture, inhuman treatment and immigration detention. European NHRIs have reported that using their mandates in a complementary manner is an effective way of strengthening the impact of their work to promote and protect migrants' human rights.[65]

**In Focus: North Macedonian NHRI prevents return and ensures access to asylum procedure**

The NHRI in North Macedonia (Ombudsman) prevented an attempt of the border police to return a migrant to his country of origin without assessment of the risks and in spite of his intention to seek asylum. Using its NPM mandate, the NHRI visited the police station at the border crossing point at the Skopje international airport, where the person was held. By making use of its different mandates in a complementary manner, the NHRI hoped to stop the possible return of a Turkish citizen to his country of origin and to ensure his access to the asylum procedure. The person had been detained for several days in foreign airports in inhuman conditions with no access to basic rights. Due to an intervention of the NHRI, the person was able to exercise his right to apply for asylum and was accommodated in a reception centre for asylum applicants. Despite the positive outcome of this individual case, which was monitored by the North Macedonian NHRI from beginning to end, the NHRI reports that migrants are routinely sent back by the border police outside official procedures.[66]

## Independent monitoring of forced returns

The EU Return Directive (2008/115/EC) introduced an important fundamental rights safeguard for third-country nationals ordered to leave the EU because they do not, or no longer, fulfil the conditions for entry and/or stay. According to the Directive, EU Member States must provide for an effective forced-return monitoring system.[67]

In different countries, NHRIs act as the independent fundamental rights monitors for forced returns,[68] including of returns organised by the European Border and Coast Guard Agency (Frontex). This is the case, for instance, in Bulgaria, Cyprus, Czech Republic, Georgia, Montenegro, Serbia, Spain and Latvia, where NHRIs have monitored forced returns to ensure that migrants' rights are respected.[69] In many other countries, civil society organisations or public bodies are the ones monitoring forced returns.

Based on their monitoring, NHRIs make recommendations aimed at further strengthening the respect for human rights in future return operations and can hold authorities to account where violations occur. The existence of an independent monitoring authority, such as NHRIs, is also believed to act as a deterrence against the violation of the rights of migrants being returned.

**In Focus: Ensuring that human rights are protected before, during and after forced returns**

The Spanish NHRI has monitored if authorities have complied with their human rights obligations before, during and after the forced return of migrants. In 2018, the NHRI monitored 15 operations of forced return concerning 563 migrants.[70] While a lack of sufficient resources does not allow the NHRI to monitor all phases of the return in every case, the NHRI has consistently sent its observations and recommendations to relevant authorities and, where pertinent, to Frontex. The NHRI has identified the following human rights concerns: lack of information to migrants about the date and time of their return, insufficient provision of food and water during the journey from the facilities to the airports, lack of medical checks to ensure that migrants are "fit to travel", among others.[71]

In some cases, the Spanish NHRI has also cooperated with NHRIs or other independent bodies in the countries to which a migrant is about to be returned, to ensure adequate follow-up.

The Latvian NHRI (Ombudsman's Office of the Republic of Latvia) has also monitored the forced return of migrants, including unaccompanied children, and submitted its recommendations to national authorities to ensure human rights compliance in the future. The NHRI monitored the return of 44 migrants in 2016,[72] 60 migrants in 2017,[73] and 30 migrants in 2018.[74] Often, this has included inspecting their places of detention and speaking to migrants prior to their removal. The NHRI placed special emphasis on the observation of forced returns of vulnerable groups, such as unaccompanied children and persons with reduced mobility. The recommendations to the State Border Guard included issues regarding privacy during medical checks, the

need for proper translation, ensuring family unity when unaccompanied children are returned, and certifying that migrants have appropriate clothing for their removals.[75]

While this mandate has become an important monitoring tool for NHRIs, some NHRIs are concerned that the increased work in this area is not being followed by a corresponding increase of resources, which may impact on their ability to effectively carry out their wide-ranging work in the field of migration.[76]

## Human rights training to border authorities

NHRIs are also a source of expertise on human rights and, due to their particular status as independent state institutions and their understanding of national administrations, are approached to conduct training to relevant authorities, such as border police guards, on human rights obligations towards migrants. As a result, they contribute to improving the implementation of human rights at the borders, often in cooperation with relevant regional organisations and NGOs.

For example, the Armenian NHRI provided training in cooperation with the Armenian Red Cross and the Armenian Office of the UNHCR on international and national legal standards concerning refugee and asylum applicants. The training was provided to border guards serving at several land border-crossing points, as well as at two airports, where they have responsibility for the treatment of migrants.[77] In addition, the NHRI hosted roundtable discussions focussed on refugee protection, the identification and referral of asylum applicants and the admission and support for refugees at border crossing points. The discussions included the participation of relevant stakeholders, such as relevant NGOs, Border Guard Troops under the National Security Services, UNHCR, Frontex, and the Migration Service.[78]

Similarly, the NHRI in Azerbaijan (Commissioner for Human Rights (Ombudsman) of Azerbaijan) has cooperated regularly with state and regional bodies to provide training to

border guards, health professionals and local law enforcement bodies working in border areas and at the international airport.[79]

The Georgian NHRI (Public Defender (Ombudsman) of Georgia) also cooperated with UNHCR to conduct trainings for the Georgian patrol and border police on national and international standards with regards to international protection. The trainings were conducted in all border crossing points of Georgia, allowing the NHRI to reach all relevant staff of the police.

The Serbian NHRI also provided training organised by Frontex for escorts and police authorities carrying out forced returns operations.[80] In Kosovo*, the ENNHRI member (Ombudsperson Institution of Kosovo), acting as NPM, also informed the police about the the Ombudsperson's functions and mandate under national law at a training session on forced returns organised by Frontex and the IOM for the Kosovo* Police.[81] The ENNHRI member in Romania (Romanian Institute for Human Rights) also held several training courses on the rights of migrants for police officers and border guards.

## Raising awareness of migrants' rights

In order to promote a wide understanding and observance of human rights principles and standards, NHRIs undertake awareness-raising activities, such as campaigns, publications, cooperating with academia and schools, making use of the media, engaging with local and regional authorities, and countering incorrect narratives on migration by providing accurate information to the general public.

In Belgium, Myria (the Federal Centre on Migration) dedicates a substantial part of its work to informing relevant authorities and the general public about the nature of migration in Belgium and the human rights issues faced by migrants.[82] Similarly, the Romanian Institute for Human Rights (RIHR) organises regular activities to promote diversity and the rights of

** This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence*

migrants living in Romania, such as dialogues with students in schools both in Bucharest and other cities throughout the country.[83]

NHRIs also work towards open, tolerant and diverse societies and help combat discrimination and intolerance towards migrants. For instance, the Spanish NHRI has called on national authorities and civil society to combat intolerant and xenophobic messages targeting unaccompanied children.[84] Another example comes from Greece, where the NHRI coordinates, together with UNHCR, the "Racist Violence Recording Network", in which 46 civil society organisations participate, as well as the Greek Ombudsman and the Migrants' Integration Council of the Municipality of Athens, as observers. The initiative's primary goal is to record racially-motivated acts on different grounds, including nationality or ethnic origin. In 2018, the Network recorded an increase in incidents of racist violence, especially against refugees and migrants. The initiative has been recognised and welcomed by different international organisations.[85]

Cooperation with academia and universities has also been identified by NHRIs as a way to increase the effectiveness and diversity of their work. In Greece, the NHRI cooperates closely with academia. In fact, representatives from three Greek universities are members of the Greek NHRI's Commission and the NHRI has developed an extensive network of universities collaborating in research and training activities. In Georgia, the NHRI works with UNHCR to provide training on refugee law for students, which includes a moot court.

In addition, NHRIs also raise migrants' awareness about their own rights and available procedures. For instance, the Armenian NHRI, in cooperation with UNHCR, distributes leaflets and banners in several languages to migrants at the borders about their rights, contact information and responsibilities of all relevant stakeholders. Staff from the NHRI also periodically meets with asylum applicants and refugees to further

inform them of their rights and to hear about any issues.

Data collected by NHRIs in Europe show that there are important gaps in migrants' access to information on their rights.[86]

## Receiving and handling individual complaints

Within their human rights protection mandate, some NHRIs receive and investigate individual complaints about possible violations of human rights. Some NHRIs can act as quasi-judicial bodies and, upon hearing and investigating a complaint, they issue recommendations, decisions or resolutions to the relevant national authorities. In countries where NHRIs handle individual complaints, this mandate is accompanied by an obligation of other authorities to pay due regard to the views of the NHRI. Strong international standards applicable to both NHRIs and Ombudsman institutions also require authorities to at least respond to the recommendations on an individual case within a reasonable time.[87]

In relation to individual complaints concerning migrants' rights at the borders, European NHRIs report that a majority of complaints are about police and border guards preventing access to the asylum procedure, collective expulsions and the use of violence to push migrants back across the border into neighbouring countries.

In Croatia, many complaints received by the NHRI details these issues, with migrants stating they had been pushed back into Serbia or Bosnia and Herzegovina, often with the use of violence.[88] In Poland, the NHRI has received several complaints about summary returns to Belarus or Ukraine. This led the Polish NHRI to identify it as a systemic issue and to write a letter to the Commander in Chief of the Border Guard requesting that he consider taking steps to ensure uniformity of the practices of the units under his command by, for example, issuing appropriate guidelines for ensuring access to the territory and to the asylum procedures at the border. In Slovenia, the NHRI received individual

complaints about pushbacks to Croatia. For instance, one migrant reported that he had been roughly treated by police, prevented from applying for asylum and then fined for crossing the border illegally.[89]

In Spain, the NHRI has received many individual complaints and made recommendations on the issue of pushbacks at the Spanish borders with Morocco in the enclave cities of Ceuta and Melilla. The NHRI also received complaints regarding returns of migrants at sea, from both individuals and NGOs, which provided audio-visual material recording these practices. The NHRI has stated on several occasions that the Spanish authorities must ensure that migrants can apply for international protection when they are intercepted by Spanish officials, regardless of whether they are located outside or within Spanish territorial waters.[90]

In general, NHRIs should be able to refer individuals to competent authorities and inform the complainants of their rights and available remedies. For example, one of ENNHRI's members in Belgium, Myria (the Federal Migration Centre), often receives information requests or complaints from migrants. In this context, it has monitored concerns about migrants being arrested at the borders, being mistreated by the police when in transit, the refusal of access to the territory and the detention of vulnerable people.[91]

**In Focus: Portuguese NHRI aids access to legal aid for airport detainees**

In 2016, the Portuguese NHRI received a complaint that lawyers were being charged a fee each time they entered the Lisbon airport to visit their foreign clients in the detention facility. The NHRI called on the Portuguese Immigration and Border Service (SEF) and the independent regulatory body, the National Civil Aviation Authority (ANAC), to eliminate the charging of these fees, as they violated the right to a due process of law and legal aid. They also asked for free access for other specific visitors, such as a detainee's relatives. As a result, the ANAC sent a recommendation to the concessionary company overseeing the charging, establishing an exemption from these fees for lawyers and relatives of detainees.[92]

This example shows how handling individual complaints can help NHRIs to identify and address broader, systemic issues affecting the rights of migrants at borders.

## Cooperation with regional and international human rights bodies

Besides sharing their findings to national authorities, NHRIs also report to different regional and international bodies on states' compliance with international human rights law. The role of NHRIs to promote and protect human rights has been repeatedly recognised at the UN, Council of Europe and EU levels.[93]

When NHRIs bring their concerns about the violation of migrants' human rights at the borders to regional or international human rights bodies, they help raising awareness for these issues and assist these bodies in the development of their recommendations to states. NHRIs may also cooperate with these bodies

when they make national visits, by providing them with information on the domestic human rights situation.

For instance, the Netherlands NHRI submitted a report to the UN Human Rights Committee on the state's implementation of the International Covenant on Civil and Political Rights (ICCPR). The report included the examination of the border detention of migrants at Schiphol Airport and its compatibility with international human rights standards. In this way, the NHRI seeks to influence the questions that the UN Human Rights Committee asks the state, thereby ensuring that the reality of the situation on the ground is reflected in the UN process.[94]

Similarly, the Northern Ireland NHRI submitted a Parallel Report to the Sixth Periodic Report submitted by the UK government to the UN Committee Against Torture (CAT). This report detailed human rights issues, including the lengthy detention asylum applicants face when crossing the border with the Republic of Ireland, and suggested recommendations that the UN CAT could make to the state to improve the situation on the ground.[95]

One of ENNHRI's members in Belgium, Myria (Federal Migration Centre), criticised the Belgian authorities in its Parallel Report to the UN Committee on the Rights of the Child regarding the detention of migrant children and families, paying particular attention to the situation of unaccompanied children at the border.[96]

The UN Paris Principles also require NHRIs to encourage national governments to ratify international human rights treaties to improve the protection of rights. For instance, Myria has persistently recommended that Belgium should establish an NPM after it ratified the Optional Protocol to the Convention against Torture in 2018.[97]

NHRIs also work closely on border issues with international human rights agencies present in their countries. For example, the Spanish NHRI reported that it successfully collaborated with UNHCR to improve

migrants' access to the asylum procedure in Melilla, which led to the permanent presence of UNCHR in the enclave and a significant increase in the number of people able to apply for asylum.[98] Other NHRIs cooperate with international organisations, such as UNHCR, through joint trainings to relevant authorities, receiving funding for projects tackling violations at the borders and organising joint meetings with national authorities.

Finally, European NHRIs have cooperated closely with EU actors, such as the European Asylum Support Office (EASO), the European Border and Coast Guard Agency (Frontex) and the EU's Fundamental Rights Agency (FRA). For instance, NHRIs regularly share their findings with the FRA, allowing for a better understanding of regional and sub-regional trends in the field of migration.[99]

## Strategic litigation and third party interventions

Depending on the national context, some NHRIs are also vested with strong legal powers, such as being able to challenge legal provisions before administrative and/or Constitutional Courts, to join court proceedings as third parties at the national and regional levels, or to submit communications on the execution of judgments of the European Court of Human Rights (ECtHR). NHRIs have relied upon this enhanced mandate to challenge legal provisions which they deem to be in violation of migrants' rights, which is particularly relevant in view of the fast-paced legislative and policy changes in the field of asylum in Europe during the past years.

For example, the Slovenian NHRI directly challenged problematic amendments to the country's foreigners act before the Constitutional Court and succeeded in having the changes partially annulled. The provisions would have allowed for a special temporary regime on the border in the event of mass migration, under which intentions to apply for asylum would be rejected by the border police if migrants entered Slovenia from a neighbouring EU

Member State, without a prior assessment of their circumstances or giving them the opportunity to lodge an asylum application. The Court annulled parts of these provisions as it found them to be contrary to the principle of *non-refoulement*.[100] This example shows how NHRIs can use their special mandate to challenge legislative reforms that would dramatically impinge on migrants' rights at the borders, including the right to asylum, in violation of national and international law.

The Armenian NHRI can also submit direct applications to the Constitutional Court regarding human rights issues, including those concerning migrants. Moreover, the NHRI can initiate legal amendments and present third party interventions (amicus briefs) to the Constitutional Court.

Similarly, the Georgian NHRI can submit *amicus briefs* before the common courts and Constitutional Court. In one instance, the NHRI intervened in a case concerning an Iranian family who had their asylum applications rejected on national security allegations. The NHRI relied on international standards, including case-law from the European Court of Human Rights, to argue that the return of the family to Iran would violate their rights not to be subjected to torture, inhuman or degrading treatment. The Court ruled in accordance with the NHRI's views and recognised the family's refugee status.

The Polish NHRI has also joined proceedings on cases concerning the rights of migrants at the borders. For instance, in a case before the Administrative Court concerning the refusal of an asylum application on the basis of "confidential information", the NHRI challenged the lawfulness of the legal provisions that allowed for the refusal of access to confidential case files and that no factual justification of an administrative decision needed to be provided in such cases. The NHRI finds that the national legislation was contrary to the provisions under EU Law, including Article 47 of the Charter of Fundamental Rights of the EU on the right to an effective remedy.[101]

**In Focus: from monitoring the human rights of migrants to intervening before the ECtHR**

The French NHRI submitted a third party intervention to the European Court of Human Rights (ECtHR)[102] concerning the appalling situation in which migrants were living in makeshift camps in Calais. The intervention drew on the NHRI's findings after visiting the camps and their repeated recommendations to French authorities.

On 28 February 2019, the Court ruled in the *Khan v. France* case finding that the French state had failed to protect an unaccompanied child who had been living in makeshift shelters around Calais between 2015-2016 without any care from the authorities, despite being only 11 years old.[103] Referring to the opinion adopted by the French NHRI in 2015 on the situation of migrants in and around Calais,[104] the Court found that the child lived in an "environment totally unsuitable for his condition as a child, whether in terms of safety, housing, hygiene or access to food and care, and in an unacceptable precariousness with regard to his young age".

Following the Court's judgment, the French NHRI submitted its observations to the Ministry of Foreign Affairs on general measures for the implementation of the decision, in line with the practice established between the NHRI and the Ministry reflecting the Brussels Declaration of 2015.[105] The NHRI also submitted a communication to the Council of Europe Committee of Ministers on the implementation of the decision by French authorities.[106]

This example shows how NHRIs can use their broad mandate in a complementary manner to better protect migrants' rights: by monitoring the situation faced by migrants at the borders, NHRIs can share this information with regional human rights courts, informing their decision and calling on national authorities to appropriately implement them.

## Cooperation with civil society organisations

Regular and constructive engagement with civil society organisations is essential for NHRIs to effectively fulfil their mandates. Some European NHRIs, such as the Greek and French NHRIs, have NGOs and other representatives of civil society as part of their composition. Other NHRIs have formalised their relationship with NGOs through establishing expert and advisory committees on topics of relevance. All European NHRIs cooperate with civil society organisations on a regular basis through a variety of activities, such as meetings, events, training sessions and information exchanges.

When it comes to migrants' human rights at the borders, cooperation between NHRIs and CSOs is ever more important and complementary. For instance, NHRIs benefit from relying on the information gathered from civil society organisations, some of which have a permanent presence at the borders; in turn, civil society organisations can work with NHRIs to consider if their broad mandate and privileged access to national authorities can support their finding and recommendations.

Some NHRIs also closely cooperate with civil society organisations when carrying out their NPM mandate, be it by inviting representatives from NGOs to join their monitoring visits or by sharing their findings and recommendations after the visits.

## Safeguarding democratic space and upholding the rule of law

Under the rule of law, all public authorities must act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent courts and the monitoring of independent public bodies, such as NHRIs.[107]

Despite strong legal provisions in national, EU and international law, threats to the rule of law have multiplied in Europe in the past years,

such as those impinging on the independence of the judiciary and media freedom. These worrying trends have led to different initiatives to further uphold the rule of law in Europe, including at the EU level.

Respect for human rights is also one of the pillars of a society based on the rule of law. In the same vein, threats to the rule of law can weaken or make ineffective the framework of a state's accountability for human rights. This is particularly worrying when violations occur at the borders, where human rights monitoring may already prove difficult due to the remoteness of border regions or lack of human rights organisations permanently working there. Without such systems of checks and balances in place, violations of fundamental rights are likely to persist, with a concurrent lack of accountability, investigation or remedy for those affected, in contravention of international standards.

ENNHRI members have prioritised activities on the important role that NHRIs can play to safeguard an enabling space for human rights defenders[108] and uphold the rule of law.[109]

As human rights defenders, some NHRIs have also been targeted by politicians, state authorities, media and anti-migration movements when speaking up against human rights violations at the borders. Some worrying examples include discrediting the work of the NHRI, denying NHRIs access to facilities even where NHRIs also hold the NPM mandate, smear campaigns against its staff members and an overall lack of cooperation and refusal to provide access to documents. ENNHRI stands ready to provide support to NHRIs that face threats to their work, including when working for the protection of the human rights of migrants.[110]

**In Focus: French NHRI speaks up against the criminalisation of humanitarian assistance to migrants**

The French NHRI has repeatedly raised its concerns about the growing threats, intimidation and prosecution of organisations and individuals providing humanitarian assistance to migrants in France, including at the borders. Through its monitoring activities and recommendations to national authorities, it has criticised the way in which legislation aimed at fighting trafficking and smuggling has been used as a tool to target citizens who are assisting migrants.[111]

The NHRI also submitted its formal opinion to relevant authorities calling for an end of the "crime of solidarity" in France.[112] Later, it sent its observations to the Constitutional Council in view of a request for constitutionality review of the relevant legislative provisions around the "crime of solidarity".[113] In its decision, the Constitutional Council upheld the "principle of fraternity" and quashed part of the provisions, ultimately exempting from prosecution those providing assistance to migrants with a humanitarian goal. Yet, human rights defenders working on migration still face challenges in France and the French NHRI continues to work on this issue.

## Cooperation and joint work with other NHRIs

The very nature of migration has led NHRIs to cooperate with their counterparts in the field of migrants' rights. Often, it is only by working together with each other that NHRIs can effectively tackle cross-border issues, as otherwise they may lack the necessary information and/or mandate to issue recommendations that also concern authorities in another state.

Through ENNHRI and bilaterally, it is a well-established practice of NHRIs to share information concerning migration issues, especially where they involve human rights violations at the borders, such as pushbacks. For instance, the Croatian NHRI cooperated with its Slovenian counterpart after the shifting of the refugee route towards the Slovenian border.[114] The NHRIs of Armenia and Georgia have also conducted joint border-monitoring.[115] Likewise, the North Macedonian NHRI carried out a joint monitoring visit with the Serbian NHRI to an admission centre on the northern border with Serbia.[116]

UNHCR has supported NHRIs to work together on border issues. For instance, the Montenegrin NHRI held meetings with UNHCR representatives and the border police of Montenegro and Albania, during which it recalled the police's obligation to respect the human rights of migrants at the borders and the importance of cooperating with the NHRIs on both sides of the border. The two NHRIs, together with UNHCR, also visited migrant shelters and border crossings. Among others, the NHRI in Montenegro stressed the importance of documenting visible injuries of migrants who may have been subject to human rights violations when crossing the borders.

In other cases, NHRIs may be in touch with their peers where they receive an individual complaint regarding human rights violations that occurred in another State, such as police violence at the borders and pushbacks. For instance, the NHRI in Montenegro forwarded to the NHRI in Bosnia and

Herzegovina (Human Rights Ombudsman of Bosnia and Herzegovina) a complaint lodged by an Algerian citizen who was subjected to brutal treatment by the border police from Bosnia and Herzegovina, as well as a different complaint of a migrant who had his personal belongings taken away.

Finally, as human rights challenges regarding migration are often not exclusive to one country and require regional and global responses, NHRIs work together through ENNHRI to participate in regional and international fora. For instance, by submitting joint recommendations to the EU and Council of Europe, ENNHRI brings the collective voice of NHRIs to the discussions on policy and legislative developments that will ultimately impact on the protection of the rights of migrants at the national level.

## NHRIs' work on developing issues at the borders

New policies and practices at the borders have led NHRIs to use their broad human rights mandate to work on developing issues impacting on the human rights of migrants.

One example is the use of information technology, biometrics and enhanced interoperability of information systems in the field of migration. While such systems can help protect migrants' rights, for example to trace missing migrant children or to increase the effectiveness of procedures, their use also brings various human rights concerns, such as the violation of a migrants' right to privacy, unlawful access to data by national authorities, and violation of a migrants' right to dignity when taking fingerprints.[117]

While this is an incipient area of work for NHRIs, it is likely to play a bigger role in the field of migration and can have direct impact on the rights of migrants at the borders. NHRIs are ideally placed to advise states on how to ensure that developing legislation or practices on migration systems are not detrimental to migrants' human rights, including the right to privacy. However, they also face challenges

when working on the impact of information technology on human rights, such as the lack of resources and the need to build their capacity on technical aspects and how they related to human rights.

Another growing topic on migration, to which some NHRIs have started to respond, has been the impact of the use of migration funding, for instance from the EU, on human rights.[118] Funding for migration can and should be an instrument of European solidarity as it can positively impact on a states' ability to cope with migration flows while respecting migrants' human rights. However, its (mis)use can also lead to funding being spent exclusively on boosting border control, in some cases allowing practices of violations at the borders to be continued or increased. Civil society organisations have found that in many countries EU funding is disproportionally used in the area of return rather than on asylum or integration.[119]

While many NHRIs do not have solid experience working on this issue, they can build on other work related to the use of public spending and the need for a human rights-based approach, such as when tackling poverty or other economic and social rights.[120] Some NHRIs have tried to assess if and how EU funding has been used to address the main human rights concerns of migrants in the country. For instance, the Spanish NHRI has inquired with national authorities about the use of such funding and how they relate to the respect for human rights, in follow-up to a letter from the European Ombudsman.[121] This led to more transparency from national authorities on how the funding is spent.[122]

These examples show the variety of new challenges in the field of migration, which have required from NHRIs the capacity to use their mandates in a complementary manner. However, due to limited financial and human resources, many NHRIs found that they do not have enough capacity to go beyond their traditional mandates when working on migration.

ENNHRI

# Moving forward: protecting human rights beyond borders

This background paper confirms that human rights violations at the borders are far from being occasional missteps: rather, evidence from NHRIs and other independent organisations indicates a crisis of human rights in many of the borders throughout Europe. While violations are widely dispersed throughout Europe, NHRIs working in countries on both sides of the EU's external borders have identified that violations are persistent, often go unaccounted and severely impact on migrants' rights, from the right to asylum to the protection against degrading or inhumane treatment. In many countries, the violation of migrants' rights at the borders is a systemic issue or an inevitable consequence of the migration policy.

In order to respond to growing concerns at the borders, NHRIs have increased their work on the issue. This has included preventive, reactive and remedial actions. To prevent future violations, NHRIs provide advice to parliaments on draft legislation that could impact on the human rights of migrants at the borders and raise awareness of these rights. They also monitor places where migrants are hosted or detained and provide recommendations to national authorities. Where legislation, policy or practice that are not compliant with human rights are already in place, NHRIs react by adopting official recommendations to national and international authorities and, where applicable, using their legal functions, such as submitting third party interventions or challenging the lawfulness of provisions before national courts. Finally, where migrants had their rights violated at the borders, NHRIs work to ensure that they have access to an effective remedy. This can include providing information to migrants about the available mechanisms for redress,

receiving and handling individual complaints, and adopting formal recommendations to national authorities to appropriately resolve complaints.

In some countries, NHRIs face obstacles, threats or a lack of cooperation from the government when working on migration issues. ENNHRI recalls that states have the obligation to ensure that NHRIs can carry out their work, including work at the borders, effectively and independently. All national authorities, including border guards and the police, must respect and cooperate with NHRIs, in line with NHRIs' mandate under national law and strong international standards.

States must also ensure that human rights defenders, including NHRIs and civil society organisations, can work at the borders and provide humanitarian assistance to migrants. It is only with strong human rights actors and a vibrant democratic space that violations at the borders can be prevented, identified and remediated.

Another challenge faced by NHRIs is the lack of capacity in view of the substantial increase of their work on migration issues, including at the borders. Under the Paris Principles, States must ensure that NHRIs are provided with sufficient funding to carry out their work in an effective and independent manner – this includes their work at the borders. Where NHRIs receive additional mandates, such as NPM or monitoring forced returns, a corresponding increase in the budget must be provided by the state.

EU migration law and policy has profound impacts on states' approach towards the borders, not only in EU Member States, but also in neighbouring countries and the wider region. EU law includes strong fundamental rights safeguards, such as the principle of *non-refoulement* and the right to dignity, which should also be respected at the borders. The European Commission, whose functions include ensuring that EU law is properly applied in all Member States, can rely on the findings from NHRIs, civil society organisations and

international human rights bodies on the persistent violation of migrants' human rights at the borders.

Moving forward, NHRIs join the voices of other actors such as civil society organisations and international human rights bodies in showing that a new approach towards migration is possible: one that is rooted on the respect for human rights, including at the borders. NHRIs' vast experience on migration and unique mandate as state bodies make them ideally placed to work with governments, regional actors and civil society organisations in ensuring that the human rights of migrants are respected at all places, including when crossing borders.

# About ENNHRI

**ENNHRI, the European Network of National Human Rights Institutions, works to enhance the promotion and protection of human rights in Europe through strengthening, supporting and connecting European NHRIs. It is made up of over 40 institutions across Europe. The network provides a platform for collaboration and solidarity in addressing human rights challenges and a common voice for NHRIs at the European level.**

## ENNHRI's work on asylum and migration

ENNHRI members have chosen asylum and migration to be one of the thematic priorities for the network, with special attention given to topics such as immigration detention, the rights of unaccompanied children and migrants' rights at the borders. This work is coordinated through ENNHRI's Asylum and Migration Working Group, which brings together over 25 European NHRIs.

In 2020, selected European NHRIs will monitor borders to assess if and how migrants' rights are respected. After this monitoring exercise, NHRIs will report on their findings and submit recommendations to national authorities. Through ENNHRI, they will also compare results and agree on joint recommendations to national and regional actors. A high-level conference with key stakeholders will take place in November 2020.

ENNHRI's work on migrants' rights at the borders is supported in part by a grant from the Foundation Open Society Institute in cooperation with the OSIFE of the Open Society Foundations.

## Advisory Group and collaboration with other actors

ENNHRI has established an Advisory Group to provide support to our work on migrants' rights at the borders. The general objectives of the group are to share experiences and good practices, to work together on the engagement with regional and international stakeholders, and to advise on the direction of this workstream. The Advisory Group is composed of civil society organisations, regional and international human rights bodies and ENNHRI members.

The content of ENNHRI's publications on migrants' rights at the borders is of its role responsibility and does not necessarily reflect the views of the members of the Advisory Group.

Members of the Advisory Group and other partners:

- European Council on Refugees and Exiles (ECRE)
- Amnesty International
- Association for the Prevention of Torture (APT)
- Office of the United Nations High Commissioner for Human Rights
- Council of Europe Commissioner for Human Rights
- Office of the Ombudswoman of Croatia (as Chair of ENNHRI's Working Group on Asylum and Migration)
- Other ENNHRI members involved in this activity

While not being formally a member of the Advisory Group, the EU Fundamental Rights Agency (FRA) provides valuable input to ENNHRI's work in this area.

# Notes

[1] United Nations, Global Compact for Safe, Orderly and Regular Migration (2018); GANHRI, Statement on the role of NHRIs in relation to the Global Compact on Migration (2018)

[2] For example, violations of migrants' rights have been reported at the Franco-Italian border. See: Human Rights Watch, Subject to Whim: The Treatment of Unaccompanied Migrant Children in the French Hautes-Alpes (2019); and French NHRI, Opinion on the situation of migrants at the Franco-Italian border (2018)

[3] For example, see: FRA, Migration: Key Fundamental Rights Concerns – 1. 7. 2019 - 30. 9. 2019 (2019); Parliamentary Assembly of the Council of Europe, Pushback Policies and Practice in the Council of Europe Member States (2019); UN OHCHR, In Search of Dignity: Report on the human rights of migrants at Europe's borders (2017)

[4] UN OHCHR, Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations (2018); UN OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders (2014)

[5] See, for example, the 2018 Annual Report of the Croatian NHRI (Ombudswoman of Croatia)

[6] See, for example, Oxfam, Joint agency briefing paper: A dangerous "game" – The pushback of migrants, including refugees, at Europe's borders (2017); PACE, Pushback policies and practice in Council of Europe member states (2019); Amnesty International, The human cost of fortress Europe: human rights violations against migrants and refugees at Europe's borders (2014); Asylum Information Database (AIDA) managed by European Council of Refugees and Exiles (ECRE); Country and comparative reports; and MSF, Harmful borders: An analysis of the daily struggle of migrants as they attempt to leave Ventimiglia for northern Europe (2018)

[7] For example, see PACE, Pushback policies and practice in Council of Europe member States (2019)

[8] UN OHCHR, In search of dignity: Report on the human rights of migrants at Europe's borders (2018)

[9] PACE, Pushback policies and practice in Council of Europe member States (2019)

[10] EU Fundamental Rights Agency, Fundamental Rights Report 2019

[11] For more information on the legal standards around the prohibition of collective expulsion, see, for instance: European Court of Human Rights, Factsheet: Collective Expulsions of Aliens (2019)

[12] ENNHRI, Submission to the Council of Europe's Drafting Group on Migration and Human Rights consultation on the draft "Practical Guidance on Alternatives to Immigration Detention" (2019); United Nations, Global Compact for Safe, Orderly and Regular Migration (2018)

[13] Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Joint General Comment No. 4 (2017); Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, Joint General Comment No. 23 (2017); UNHCR, Position regarding the detention of refugee and migrant children in the migration context (2017); OHCHR, Child Immigration Detention in the EU (2019)

[14] ENNHRI, Statement on Immigration Detention (2014); Submission to the Council of Europe's Drafting Group on Migration and Human Rights consultation on the draft "Practical Guidance on Alternatives to Immigration Detention" (2019)

[15] European Court of Human Rights, Press Unit, Overview of case-law, "Migrants in detention"; "Accompanied migrant minors in detention"; "Unaccompanied migrant minors in detention" and "Collective Expulsions"

[16] For more information, see Global Detention Project, Country Detention Reports (2009-2019); European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Visits (2019)

[17] FRA, Fundamental Rights Report 2019; OHCHR, Report on the human rights of migrants at Europe's borders (2017); PACE, Pushback policies and practice in Council of Europe member States (2019); and Oxfam, Joint Agency Briefing Paper (2017)

[18] FRA, Fundamental Rights Report 2019

[19] UN Principles Relating to the Status of National Human Rights Institutions; GANHRI Sub-Committee on Accreditation (SCA), General Observation 1.5 on "Cooperation with other human rights bodies"

[20] ENNHRI, Regional Action Plan on GANHRI Marrakesh Declaration. NHRI Action to Promote & Protect Human Rights Defenders (HRDs) & Enable Democratic Space (2019)

[21] Greek NHRI, Report on living conditions in hotspots and accommodation sites for migrants and refugees (2016)

[22] French NHRI, Study on Human Rights in Overseas territories of France (2018)

[23] Spanish NHRI, Annual Report 2016, p. 57

[24] Armenian NHRI, Ad-hoc Public Report on Ensuring Rights of Refugees and Asylum seekers in Armenia (2017)
[25] German NHRI, Zurückweisungen von Flüchtlingen an der Grenze? Eine menschen - und europarechtliche Bewertung (2018)
[26] Greek NHRI, Statement regarding the serious dimensions that the refugee/migration problem has taken in Greece (2016)
[27] French NHRI, Press release on the situation of migrants in Calais in 2015 and 2016 (2016)
[28] French NHRI, Opinion on the situation of migrants at the Franco-Italian border (2018)
[29] French NHRI, Opinion on rights of foreigners and right to asylum in overseas territories (2017)
[30] Netherlands NHRI, Advice: Crossing the Border (2014) (English summary)
[31] Spanish NHRI, Annual Report 2016, p. 58
[32] ENNHRI member in Estonia (Chancellor of Justice), 2016-2017 Overview of the Chancellor of Justice activities (2017), p. 14-15
[33] Serbian NHRI, Opinion on the Draft Law on Foreigners (2017); NPM's Opinion issued to the Ministry of Interior on the Draft of the Law on Amendments to the Law on Asylum and Temporary Protection in Annual Report (2018), p. 92
[34] French NHRI, Opinion on the draft law "For controlled immigration and an effective right of asylum" (2018)
[35] French NHRI, Opinion "End the crime of solidarity" (2017)
[36] Slovenian NHRI, Annual Report 2016, p. 155
[37] Northern Ireland NHRI, "Parliamentary Briefing Paper on Counter-Terrorism and Border Security Bill" in the Parallel Report to the Sixth Periodic Report (2019), p.105
[38] ENNHRI, Submission to the Council of Europe's Drafting Group on Migration and Human Rights consultation on the draft "Practical Guidance on Alternatives to Immigration Detention" (2019)
[39] Council of Europe, Practical Guidance on Alternatives to Immigration Detention: Fostering Effective Results (2019)
[40] ECRE, Boundaries of Liberty: AIDA Comparative Report (2018)
[41] For further information on OPCAT and NPMs, see OHCHR website
[42] The Paris Principles ("Principles Relating to the Status of National Human Rights Institutions") set out the minimum standards required by NHRIs to operate effectively and independently. See GANHRI website, Paris Principles and ENNHRI website, UN Paris Principles and Accreditation

[43] See the website of the UN Subcommittee on Prevention of Torture (SPT); the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT); and the Association for the Prevention of Torture (APT)
[44] Croatian NHRI, NPM Report 2017, p. 41
[45] Serbian NHRI, NPM Annual Report 2016, p. 30
[46] Slovenian NHRI, NPM Annual Report 2018, p. 135
[47] Armenian NHRI, NPM Annual Report 2017
[48] Croatian NHRI, NPM Report 2015, p. 37, 42; Serbian NHRI, Annual Report 2017, p. 65
[49] Serbian NHRI, NPM Annual Report 2016, p. 58
[50] Croatian NHRI, NPM Report 2015, p. 37, 42
[51] Serbian NHRI, NPM Annual Report 2016, p. 58
[52] North Macedonian NHRI, for example, conducted 10 visits to a transit centre using its NPM mandate. See Annual Report 2017, p. 41
[53] For example, the ENNHRI member in Kosovo* (Ombudsperson Institution of Kosovo) used its NPM mandate to visit a detention centre for foreigners to monitor conditions in March 2018. See Report with recommendations NMPT from the visit to the detention centre for foreigners in Vranidoll (2019). * This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence
[54] For example, the Portuguese NHRI, through its NPM mandate, visited the temporary detention facility at Lisbon Airport. See NPM Report 2015
[55] Slovenian NHRI, Annual Report 2015, p. 103
[56] North Macedonian NHRI, Annual Report 2017, p. 41
[57] For example, the Croatian NHRI found widespread use of "summary procedures" that did not allow enough time for migrants to present their case and mass decisions of 50 or more migrants at once that all led to return decisions, despite international law mandating individual assessments. See NPM report 2017, p. 41
[58] For example, the Serbian NHRI, through its NPM mandate, recommended the development of measures and procedures to identify unaccompanied children. See Annual Report 2016, p. 31
[59] Croatian NHRI, NPM Report 2017, p. 41
[60] North Macedonian NHRI, Annual Report 2015, p. 36
[61] Montenegrin NHRI, NPM Report on the treatment of migrants in Montenegro (2019)
[62] ENNHRI Member in Estonia (Chancellor of Justice), Annual Report 2019
[63] Portuguese NHRI, Update in Capacity Building minutes in Madrid, October 2019
[64] Polish NHRI, Annual Report 2017, p. 23

[65] As reported by NHRIs attending ENNHRI's A&M Working Group meetings in Madrid, October 2019
[66] North Macedonian NHRI, Annual Report 2017, p. 21
[67] FRA, Forced return monitoring systems - 2019 update
[68] Ibid.
[69] Ibid.
[70] In 2018, the Spanish NHRI monitored 15 operations of forced return. See NPM Annual Report 2018
[71] Ibid.
[72] Latvian NHRI, Annual Report 2016
[73] Latvian NHRI, Annual Report 2017
[74] Latvian NHRI, Annual Report 2018
[75] Latvian NHRI, Annual Report 2015; Annual Report 2016; Annual Report 2017; Annual Report
[76] Spanish NHRI, Annual NPM Report 2018, p. 20
[77] Armenian NHRI, Annual Report 2017, p. 333
[78] Ibid. p. 334
[79] Azerbaijan NHRI, Annual Report 2015, p. 42; Annual Report 2016, p. 41; Annual Report 2017, p. 40
[80] Serbian NHRI, Update at Madrid WG meeting, October 2019; NMP website of Protector of Citizens, Ombudsman of Serbia
[81] ENNHRI member in Kosovo* (Omudsperson Institution of Kosovo), Annual Report 2018, p. 144. * This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence
[82] Every three months, Myria provides an in-depth analysis of migration data in Belgium through its "Myriatics" reports. See Myria website, Myriatics
[83] For instance, in 2018, they co-organised a series of innovative dialogues with students in several schools in Ploiesti, Romania, on the topic of antidiscrimination. In 2019, in partnership with Europe Direct Information Centre, the RIHR organised an event that brought together migrant children and adults from different cultural backgrounds to learn about their traditions and discuss the importance of embracing diversity in Romania. For more information, see the website of Romanian Institute for Human Rights, Cursuri Formare
[84] Spanish NHRI, Call to combat intolerant messages and xenophobia against unaccompanied foreign children (2019)

[85] For more information about the Racist Violence Recording Network, Racist Violence Recording Network expresses concern over xenophobic reactions against refugees (2019); FRA, Promising Practices: Racist Violence Recording Network, Council of Europe, Reporting in Greece
[86] ENNHRI, Migrants' access to information on their rights: Recommendations to bridge theory and practice (2017)
[87] Principles on the protection and promotion of the Ombudsman institution (Venice Principles) (2019) para 17; the UN Paris Principles; General Observations of the Sub-Committee on Accreditation (2018) 2.9
[88] Croatian NHRI, Annual Report 2018, p. 294
[89] Slovenian NHRI, Annual Report 2018, p. 136
[90] Spanish NHRI, Summary Annual Report 2016, p. 57
[91] Myria, La migration en chiffres et en droits (2019); Note police et migrants de transit (2019)
[92] Portuguese Ombudsman, Annual Report 2016, p. 63, 158
[93] See ENNHRI website, NHRI Recognition
[94] Netherlands NHRI, Report to the 126th session of the Human Rights Committee on the examination of the 5th periodic report of the Kingdom of The Netherlands (2019), p. 11
[95] Northern Ireland NHRI, Parallel Report (2019), p. 38
[96] Myria, Parallel Report to the UN CRC (2018), p. 12-13
[97] Myria, 2019 Report, p. 11
[98] Spanish NHRI, Update at Madrid WG meeting, October 2019
[99] FRA, Regular overviews of migration-related fundamental rights concerns
[100] See Slovenian NHRI website, Varuh pozdravlja odločitev Ustavnega sodišča glede Zakona o tujcih; AIDA database, Slovenia: Constitutional Court Annuls Provision on Suspension of Asylum Procedure
[101] Polish NHRI, Annual Report 2017, p. 39
[102] For more information about third party interventions and how NHRIs use them, see ENNHRI website, Legal Working Group discusses third party intervention before the ECtHR, plans future activities
[103] For more details of the case, see French NHRI website, Arrêt Khan contre France : la France condamnée par la Cour européenne des droits de l'homme
[104] French NHRI, Opinion on the situation of migrants in Calais and Calaisis (2015)
[105] Council of Europe, Brussels Declaration, High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility" (2015)

[106] See French NHRI website, Arrêt Khan contre France : la France condamnée par la Cour européenne des droits de l'homme
[107] European Commission, Communication from the European Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, "Strengthening the rule of law within the Union – a blueprint for action" (2019)
[108] ENNHRI, National Human Rights Institutions and Human Rights Defenders: Enabling human rights and democratic space in Europe (2018)
[109] ENNHRI, Input to European Commission's Communication, "Opening a debate to strengthen the rule of law in the EU" (2019)
[110] See ENNHRI website, NHRIs under threat
[111] French NHRI, Opinion on the situation of migrants at the Franco-Italian border (2018)
[112] French NHRI, Mettre fin au délit de solidarité (2017)
[113] French NHRI, Observations de la CNCDH sur les questions prioritaires de constitutionnalité 2018-717 et 2018-718 (2018)
[114] Croatian NHRI, NPM Report 2015, p. 43
[115] German Institute for Human Rights on behalf of GANHRI, Analysis of National Human Rights Institutions and their work on migrants' human rights (2018), p. 38
[116] North Macedonia NHRI, Annual Report 2015, p. 123
[117] EU Fundamental Rights Agency, Under watchful eyes: biometrics, EU IT systems and fundamental rights (2018); Fundamental rights and the interoperability of EU information systems: borders and security (2017)
[118] EPAM, The future of the Asylum, Migration and Integration Fund: Our call for more humane, transparent and effective resources for asylum and migration in the Union (2019)
[119] ECRE and UNHCR, "Follow th€ Money II" - Assessing the use of EU Asylum, Migration and Integration Fund (AMIF) funding at the national level 2014-2018 (2019)
[120] ENNHRI, Applying a Human Rights-Based Approach to Poverty Reduction and Measurement: A Guide for National Human Rights Institutions (2019)
[121] Spanish NHRI, A study of asylum in Spain: International Protection and Reception System Resources (2016); European Ombudsman, Letter from the European Ombudsman to the members of the European Network of Ombudsmen on the Asylum, Migration and Integration Fund (AMIF) (2015)
[122] Ibid. See website of Spanish Ministry of Labour, Migrations & Social Security, page Fondo de Asilo, Migración e Integración (FAMI)

**Photo credits:** Peter Tkac (p. 1), EU/ECHO (p. 2), Steve Evans (p. 8), Fotomovimiento (p. 18), Fotomovimiento (p. 24), malachybrowne (p. 32), John Englart (p. 38)

ENNHRI

European Network of
National Human Rights Institutions

+32 (0) 2212 3175 ▪ info@ennhri.org
Rue Royale 138, B-1000 Brussels, Belgium

ennhri.org @ennhri ENNHRI

Published: December 2019

Supported in part by a grant from the
Foundation Open Society Institute in cooperation
with the OSIFE of the Open Society Foundations

Co-funded by
the European Union