



European Network of  
National Human Rights Institutions

# Complementary Guidance

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Monitoring human rights of  
migrants at borders during the  
COVID-19 pandemic



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**The outbreak of COVID-19 and governments' responses profoundly impacted the lives of migrants, refugees and people seeking asylum in Europe. While exacerbating existing issues, such as obstacles to accessing asylum, inadequate reception conditions, and the lack of alternatives to detention, the pandemic has also brought new challenges that require human rights defenders to shift priorities and adopt new ways of working.**

National Human Rights Institutions (NHRIs) [have acted swiftly](#) to respond to these challenges. As state bodies independent from governments, NHRIs help ensure that human rights are respected during emergencies, especially by monitoring and reporting violations, and by advising and holding governments accountable. The emergency measures and enhanced powers to national authorities make monitoring bodies ever more important to prevent abuses and protect human rights, including at borders.

At the beginning of the pandemic, most European NHRIs temporarily suspended their on-site visits, such as to border facilities and immigration detention centres, in light of the “do no harm” principle and to ensure the safety of monitors and individuals concerned. To continue promoting and protecting human rights, NHRIs resorted to remote monitoring, such as by enhancing cooperation with civil society organisations and receiving individual testimony of human rights violations through virtual means. Many NHRIs have already resumed their on-site monitoring activities, following health precautions and, where necessary, revising their methodology.

This resource complements the [ENNHRI Guidance on human rights border monitoring](#) with a series of guiding questions relevant to the pandemic context. Following the full Guidance's approach, each cluster of questions addresses potential human rights issues that monitoring bodies can investigate when assessing the situation at borders during the pandemic.

Due to the fast-evolving nature of the pandemic, this Complementary Guidance does not intend to give an all-encompassing overview of the human rights issues that need being monitored and addressed. It must be read together with the wider principles and questions presented in the full Guidance and complemented by the best practices and standards identified by expert organisations (some of which are listed in this document).

This Complementary Guidance builds on the mandate and experience of NHRIs, but we encourage its use by all bodies monitoring human rights at borders.

## Cluster 1: Returns and violence at the borders

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### Access to territory

- ✓ Do border restrictions enacted as a response to the pandemic further impede access to territory to those seeking international protection? Are there any explicit exemptions from border closures, or any good practice, to ensure the right to access territory, asylum and other forms of protection under international human rights law at borders?
- ✓ Have increased border restrictions negatively affected the respect of the principle of non-refoulement and the prohibition of collective expulsions?

### Forced-return operations, pushbacks and violence at borders

- ✓ Do removals take place despite challenges brought by the pandemic (entry bans, health risk, scarce availability of services and means of transport)?
- ✓ Do authorities (e.g. police, border officials, other national authorities, Frontex if applicable) apply all required national health protection measures during removals?
- ✓ Do return decisions consider the health and safety standards in the third country/country of origin of migrants? Do authorities consider alternatives to returns, in light of the imposition of entry bans, reduced services and the scarce availability of commercial flights?
- ✓ Has your NHRI received reports of pushbacks at borders during the pandemic? If so, did you acquire this information first-hand (e.g. on-site visits, interviews with victims) and/or second-hand (remote monitoring, including through cooperation with NGOs and grassroots organisations at borders)?
- ✓ Has your NHRI documented any increase in the occurrence of violent events at borders, including by private citizens, caused by discrimination and stigmatisation of migrants as spreaders of the virus?

## Cluster 2: Access to relevant procedures at the borders

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### Access to asylum

- ✓ Are asylum seekers able to lodge their applications to competent authorities, despite measures imposed to respond to the pandemic?
- ✓ Has the suspension of face-to-face services for the lodging and examination of applications been replaced by remote forms, such as online or by post? Has this led to human rights and procedural concerns, impacting on the right to access asylum procedures?
- ✓ Do online procedures provide for privacy safeguards relating to the treatment of personal data? Are asylum seekers given accurate information about temporary changes to procedures by competent actors?
- ✓ Has your NHRI recorded delays in the registration or handling of applications, caused by the pandemic? If yes, are they proportionate and in accordance with the law? Do delays impinge on the rights of asylum seekers (for instance, their access to material reception conditions)? Have pending applications been extended?
- ✓ Have specific measures been taken for asylum seekers under the EU Dublin Regulation, to consider the pandemic? If so, have these measures led to human rights concerns?

### Access to relevant procedures other than asylum

- ✓ Are migrants and asylum seekers ensured access to relevant information on the pandemic and health safeguards at borders, such as medical screening or testing (measurement of body temperature, questionnaires, presentation of health certificates, medical examination, etc.)? Is information provided in a language they understand and in an accessible format? Are health screenings non-discriminatory, necessary, proportionate and reasonable to the aim of protecting public health?
- ✓ Is the health screening of migrants in vulnerable situations, such as the elderly or those with chronic diseases, as well as of new arrivals in accommodation or detention facilities, prioritised? Are migrants with special needs given special attention?
- ✓ Are migrants who newly arrived or are suspected of infection placed in separate accommodation facilities?
- ✓ Are migrants, such as victims of torture, victims of trafficking, unaccompanied children or those risking refoulement, still ensured access human rights protection as provided by international human rights law (beyond asylum), during the pandemic?

## Cluster 3: Reception conditions and deprivation of liberty at the borders

### Reception conditions at borders

- ✓ Are national and international health protocols properly implemented in migrant facilities, including quarantine space (for instance, use of PPE, testing, isolation rooms, personnel safety, hygiene standards, availability of hygiene products, social distancing, access to open air and outside world)? Are additional measures implemented to consider the needs of individuals in a vulnerable situation?
- ✓ Do authorities resort to medical isolation in migrant facilities in response to the pandemic? Does it ever take the form of solitary confinement? Is medical isolation based on an individual medical evaluation? Is isolation proportionate, limited in time and respectful of procedural safeguards?
- ✓ Do migrants have access to information on the pandemic in a language they understand and through easy-to-read tools, such as leaflets or audio-visual material? Do they have access to internet connection and channels for communication?
- ✓ Have restrictions to non-essential visits resulted in unjustified limitations being imposed to lawyers, guardians, international organisations and monitoring bodies? Are these restrictions temporary and proportionate?
- ✓ Whenever possible, have authorities shifted to independent private accommodation or smaller collective centres in order to better comply with safety requirements and social distancing (if applicable)?
- ✓ Are migrants, asylum seekers or stateless persons that are homeless or stay in informal settlements constantly monitored, supported and informed as to the impact of the pandemic?
- ✓ Have quarantine/isolation spaces been opened at borders? Does quarantine take the form of a preventive and timebound measure, implemented in a non-discriminatory and proportionate manner to safeguard the health of all?

## Detention and deprivation of liberty

- ✓ Has detention for the purpose of removal ceased, if there is no reasonable prospect for removal (in light of travel restrictions brought by the pandemic)? Has any detention centre been closed? Upon release, is any non-custodial alternative to detention implemented to prevent absconding? If so, are these measures appropriate, especially as far as healthcare is concerned?
- ✓ In case migrants have been released from immigration detention as a response to the pandemic, has early release of migrants and asylum seekers from detention been applied also at borders? Are these measures followed by further social assistance? Is the release of and support for migrants in vulnerable situations prioritised?
- ✓ Have emergency measures resulted in the extension of detention at borders? Are detention decisions substantiated and accompanied by adequate procedural guarantees?
- ✓ If regularisation measures or extensions of work and residency permits have taken place, have they been extended to those in temporary detention at borders?

## Cluster 4: Human rights accountability at the borders

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### A system for human rights accountability at borders

- ✓ Have the pandemic and responding measures impacted on human rights accountability at borders (monitoring of human rights, access to justice and complaints mechanisms, investigation of alleged violations, redress measures, etc.)?
- ✓ Has your NHRI conducted on-site monitoring visits at borders during the COVID-19 pandemic? If so, has your NHRI revised its monitoring methodology according to new circumstances (e.g. by shortening visits, reducing the monitoring team members, adapting visits' objectives and the use of PPE)?
- ✓ Has your NHRI suspended on-site monitoring activities? If so, during which period? What measures are put in place to guarantee the continuity of human rights oversight at borders despite reduced or lack of on-site visits (examination of second-hand information, remote forms of communication, strengthened collaboration with grassroots organisations, etc.)?

### NHRIs' mandate and work at the borders as human rights defenders

- ✓ Has your NHRI experienced any limitations, threats or budgetary cuts that are linked to the government's response to the pandemic?
- ✓ Has your NHRI received sufficient support by competent authorities to continue to carry out its mandate and visiting activities (additional financial support if necessary, provision of materials or information, etc)? Has your NHRI been granted unhindered access to closed facilities and information, in accordance with national law and international standards, as applicable?
- ✓ How would you assess your relationship with the government, relevant immigration authorities and EU Agencies, if relevant, during the pandemic? Have the exceptional circumstances of the pandemic resulted in an improved, similar, or worsened dialogue and collaboration among the various actors operating at borders?
- ✓ Has your NHRI been consulted by state authorities when drafting new measures and restrictions applying at borders that could impact on migrants' rights, in the context of the pandemic?

## Other relevant resources

Association for the Prevention of Torture (ATP) and OSCE Office for Democratic Institutions and Human Rights (ODIHR), [Guidance. Monitoring Places of Detention through the COVID-19 Pandemic](#), June 2020.

Council of Europe Commissioner for Human Rights, [Statement. Commissioner calls for release of immigration detainees while Covid-19 crisis continues](#), March 2020, and [Statement. Pushbacks and border violence against refugees must end](#), June 2020.

EASO, [Practical recommendations on conducting remote/online registration \(lodging\)](#), June 2020.

European Asylum Support Office (EASO), [Practical recommendations on conducting the personal interview remotely](#), May 2020.

European Commission, [Communication: COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement](#), April 2020.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease \(COVID-19\) pandemic](#), March 2020.

European Union Agency for Fundamental Rights (FRA), [Border controls and fundamental rights at external land borders](#), July 2020.

Fair Trials, [Safeguarding The Right To A Fair Trial During The Coronavirus Pandemic: Remote Criminal Justice Proceedings](#), March 2020.

UN Committee on Migrant Workers and UN Special Rapporteur on the Human Rights of Migrants, [Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants](#), May 2020.

UN High Commissioner for Refugees (UNHCR), [Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response](#), March 2020.

UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (STP), [Advice of the Subcommittee to States parties and national preventive mechanisms relating to the coronavirus disease \(COVID-19\) pandemic](#), April 2020.

UNHCR, [5 Key calls to the European Union on the COVID-19 Response](#), June 2020.

UNHCR Regional Bureau for Europe, [Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic](#), 9 April 2020.

## About ENNHRI

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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.

### Our 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 migrant 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 2019, ENNHRI initiated a new project aimed at supporting European NHRIs in promoting and protecting the rights of migrants at borders. Due to the outbreak of the pandemic in early 2020, most NHRIs shifted to remote forms of monitoring of closed facilities, reception centres and situations at borders. Since then, ENNHRI facilitated the exchange knowledge and good monitoring practices among NHRIs through online meetings, monthly updates, email communication and an online platform. In May 2020, following consultations with members, ENNHRI published a [position paper](#) calling for a stronger role for NHRIs in monitoring human rights of migrants at borders. ENNHRI continues to engage in advocacy activities with relevant European partners and policy-makers.

In 2020 and 2021, selected European NHRIs will continue conducting their monitoring activities, on-site and remotely. 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 webinar will also take place in 2021.

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 and is co-funded by the European Union.

## 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 objectives of the group are to share experiences and good practices, to work together on 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.

This Complementary Guidance on monitoring human rights of migrants at borders during the COVID-19 pandemic is the sole responsibility of ENNHRI 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
- Ombudsman 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.