

Human rights scrutiny of public funds for migration and asylum

Role, opportunities and challenges for NHRIs

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ENNHRI's Project on Migrants' Rights at Borders

Human Rights Institutions (ENNHRI) brings together over 40 National Human Rights Institutions (NHRIs) across wider Europe. One of ENNHRI's thematic priorities is our work on "[asylum and migration](#)", which is facilitated through our Asylum and Migration Working Group, which brings together over 30 European NHRIs.

In order to support NHRIs' work to promote and protect the rights of migrants at borders, ENNHRI has initiated a project in 2019, supported in part by a grant from the Foundation Open Society Institute in cooperation with the OSIFE of the Open Society Foundations. The main objective of the project is to achieve a better promotion and protection of the human rights of migrants at the borders through different capacity building, advocacy, communication and reporting activities involving NHRIs in Europe.

Under this project, ENNHRI also has published several resources, such as the:

- Background Paper on "Protecting human rights of migrants at borders: evidence and work of European NHRIs", available [here](#).
- Guidance on "Monitoring Human Rights at Borders: building on the mandate and functions of NHRIs", available [here](#).

- Statement on “Stronger human rights monitoring at Europe’s borders – why NHRIs are part of the solution”, available [here](#).
- Complementary Guidance on “Monitoring human rights of migrants at borders during the Covid-19 pandemic”, available [here](#).
- Article on “Protecting the rights of migrants during the pandemic: How have NHRIs responded?”, available [here](#).
- Recommendations on “Independent Human Rights Monitoring Mechanisms at Borders under the EU Pact on Migration and Asylum”, available [here](#).

In addition, under this project, five NHRIs - from Croatia, France, Greece, Serbia, and Slovenia – have developed national monitoring reports with the result of their human rights monitoring at borders. A comparative regional report will be published in July 2021, building on these findings and reflecting regional developments.

Content of this report

NHRIs in compliance with the UN Paris Principles can play an important role in ensuring that governments spend public funds for migration and asylum in a way that complies with their human rights obligations.

The first section of this document explains the strong relationship between budget allocations and the realisation of human rights. It also summarises recent policy developments that offer strong opportunities for the involvement of NHRIs. The second section suggests four types of activities that NHRIs could implement to ensure that governments take human rights into consideration when allocating public funds for migration and asylum for the coming years. The third section directly responds to four perceived challenges that could hold NHRIs back from working on this issue. The last section highlights the special role that ENNHRI can play to support its members in this area.

1. NHRIs and public funds for migration and asylum

1.1 Public funds are crucial for the mandate of NHRIs to protect and promote human rights at the national level

International human rights law obliges governments to respect, protect and fulfil human rights, and to make available the necessary resources to meet these obligations. This means that the way in which governments prioritise, allocate and spend public funds is an essential means by which to assess their efforts for the realisation of human rights.

Several international human rights mechanisms have already highlighted the close relationship between how governments allocate public funds and whether they comply with human rights obligations. Human rights-focused organisations have also started to use specific tools – from social audits to budget scorecards – to ensure that public funds are used effectively and efficiently to protect and promote the full range of human rights, including civil, political, economic, social and cultural rights.

The strong relationship between budget allocations and the realisation of human rights is not surprising. In the end, it is only through a targeted use of public funds that governments can close the gap between the rhetoric and the reality of human rights. As put by the EU's Fundamental Rights Agency (FRA) on its report on "Strong and effective NHRIs", involving NHRIs in this process can strengthen their potential to meet the needs on the ground and strengthen their effectiveness when carrying out their mandate to promote and protect human rights.

1.2 The special case for NHRIs to focus on EU funding for migration and asylum

Migration and border management represent one of the seven priority areas in the European Union's multi-annual financial framework (MFF) for the years 2021-2027. The MFF is the EU's long-term budget and is operationalized by allocating resources to financial instruments (that is, funds) and, where relevant, to EU specialized agencies. For the migration and border management area, the MFF allocates resources to two funds: the Asylum, Migration and Integration Fund (AMIF) and the Integrated Border Management Fund (IBMF). The resources shall be used as follows: 65% shall be allocated to national programmes that are jointly managed by the EU and EU Member States, and 35% shall be

allocated to a thematic facility managed directly by the European Commission's Directorate-General for Migration and Home Affairs (DG HOME). These funds largely build on two predecessors: the 2014-2020 AMIF and the 2014-2020 Internal Security Fund. The AMIF is intended to support EU policies on asylum, migration, integration and return activities. The IBMF is intended to support the EU policies on border management and visa activities.

From a historical perspective, the (now expired) 2014-2020 regulations establishing the AMIF and the ISF did include an obligation for Member States (MS) to organise a partnership with relevant authorities and stakeholders and consult them in the preparation and monitoring of the funds. This has become to be known as the "partnership principle." However, these regulations did not contain any explicit requirement to involve rights-focused stakeholders. Moreover, partnerships were limited to the national level.

With a significant improvement from their predecessors, the (new) 2021-2027 regulations establishing the AMIF and the IBMF now **include an explicit legal basis not only for NHRIs but also for ENNHRI to engage with national governments and the European Commission on how they plan to spend EU funding for migration and asylum.** This legal basis encompasses three different areas.

First, the 2021-2027 regulation establishing the AMIF explicitly mentions NHRIs as one of the actors which should be covered by the partnership principle. The regulation specifies, with a new article, that partnerships shall include "regional, local, urban and other public authorities or their representative associations, relevant international organisations, nongovernmental organisations, such as particular refugee and migrant-led organisations, **national human rights institutions** and equality bodies, and economic and social partners" (emphasis added).

Second, the 2021-2027 regulations establishing the AMIF and the IBMF include a new obligation for the European Commission to engage "with civil society organizations and **relevant networks**, notably in view of preparing and evaluating the work programmes for Union actions financed through the instrument" (emphasis added). This provision empowers ENNHRI's engagement at the European level, which can support the role of its members at the national level.

Third, the new IBMF Regulation places an obligation on the EC to ensure that the knowledge and expertise of the EU Agency for Fundamental Rights is taken into account in the development of the MS' programmes at an early stage and in a timely manner. This provision offers an important counterbalance to the participation of agencies that are

mainly focused on migration control, like Frontex and EU-LISA. It also offers a window of opportunity to strengthen the collaboration between the FRA and ENNHRI.

2. Opportunities for NHRIs to engage on EU funding for migration and asylum

The policy cycle of EU funds has three main phases: programming, implementation, and monitoring and evaluation. The first and the third phases offer the most concrete opportunities for NHRIs to engage with national governments on how human rights obligations should be taken into consideration when MS prioritise, allocate and spend EU funds for migration and asylum.

With respect to the first phase (programming), in the second half of 2021 MS will formally negotiate their national programmes with the EC. The national programmes are the documents that set the basis for how governments will spend EU funds in each country for the coming seven years. During this programming phase, NHRIs could participate in the consultation process for the development of the national programmes, contributing to the identification and selection of funding priorities to ensure that the most pressing and important human rights issues receive appropriate funding.

With respect to the third phase (monitoring and evaluation), in 2023 MS and the EC are obliged to conduct a mid-term evaluation to assess progress against the national programmes, as a result of which budget allocations often are updated and reviewed. At that time, NHRIs could assess how government actually spent the EU funds and offer recommendations on improvements and corrections.

The sub-sections below offer a deeper dive on the programming phase (which is more urgent, as it will take place in the coming six months), suggesting four levels of increasing involvement for NHRIs and providing concrete examples of potential actions.

2.1 Ask information to the national managing authorities and remind them that governments have an obligation to implement the partnership principle

The first level of involvement that is available to NHRIs entails asking for information and reminding governments about their obligation to consult relevant rights-focused

organisation, including the NHRI itself. On its own, asking for information could facilitate the engagement of other actors, such as civil society organizations as well as local and regional authorities. In this way, NHRIs would be acting as a bridge both between the state and civil society, but also between the national and local arenas. At the same time, NHRIs would be promoting the principles of participation and accountability, which are necessary conditions for an effective scrutiny of how public funds are spent, as well as important principles of a Human Rights-Based Approach (HRBA). Moreover, this first level of involvement could be a useful start for NHRIs to gather relevant information to prepare for the next level of engagement.

In particular, NHRIs could:

- Ask the managing authorities for information about the status of the negotiations and the next steps in the preparation of the AMIF and IBMF national programmes.
- Ask the managing authorities to share and publish the draft AMIF and IBMF national programmes.
- Remind the managing authorities that governments have an obligation to consult rights-focused organisations in the preparation and monitoring of the national programmes, both for the AMIF and the IBMF.

2.2 Inform the managing authorities and relevant policy-makers about their human rights obligations in relation to migration and asylum

The second level of involvement entails participating in the development of the national programmes by sharing information which NHRIs already have (e.g., retrieving information from NHRI's annual or ad-hoc reports) with the relevant authorities. The objective here is to contribute to the identification and selection of funding priorities to ensure that the most pressing and important human rights issues receive appropriate attention in the decision-making process. Sharing information could also raise the awareness of relevant human rights obligations. In this way, NHRIs would act as a bridge between the international human rights framework and the migration and asylum situation on the ground.

In particular, NHRIs could:

- Inform the managing authorities and relevant policy-makers about their human rights obligations and the main human rights issues faced by asylum seekers, migrants and refugees.

- Raise attention on the most pressing issues that need to be addressed (e.g., issues related to the capacity and quality of the reception system, such as shortages of reception places and lack of evaluation frameworks, as well as issues related to the access and quality of the procedure for international protection, such as deficiencies in the provision of information, and legal assistance and representation).
- Raise attention on the needs of people in a particularly vulnerable position (e.g., the need to develop an identification and referral mechanisms for children and unaccompanied minors arriving at the EU borders).

2.3 Provide recommendations to strengthen the draft AMIF and IBMF national programmes

The third level of involvement entails participating in the consultation process for the development of the AMIF and IBMF national programmes by providing concrete recommendations on how the draft programmes should change to ensure that human rights are protected and promoted. Here as well, NHRIs could largely elaborate on information already included in their annual or ad-hoc reports.

In particular, NHRIs could:

- Review the draft national programmes to flag which funding priorities identified by the government and the EC should be implemented first and/or suggest additional funding priorities.
- Review the draft national programmes to call attention about potential budget shifts if this would create the risk of retrogression on previous commitments.
- Review the draft national programmes to raise attention on specific issues or groups of people that are missing from the national programmes. (e.g., raising attention on the need to allocate EU funding for measures targeting applicants with specific reception or procedural needs, such as minors, and suggest concrete measures that should be financed).
- Provide feedback on the appropriateness of the targets and resource allocations that already included and/or that are missing from the national programmes (e.g., reviewing the number and type of reception facilities that will be created, provide

feedback on the type and number of training programmes, advising on the quality standards of public procurement procedures).

2.4 Participate in the AMIF and IBMF Monitoring Committee

In addition to the above, NHRIs could also participate in the AMIF and IBMF Monitoring Committees. The role of these Committees is to review the implementation of the national programmes on an ongoing basis. The time and resources needed for participation in the AMIF and IBMF Monitoring Committees depend on the specificities of each country and the way in which each Monitoring Committee functions. For example, in the case of Spain, meetings of the Committee take place once or twice a year.

3. Responses to perceived challenges for NHRIs to engage on public funds for migration and asylum

NHRIs may have valid concerns about why new activities in the area of public funds for migration and asylum are challenging to implement. This section offers a first response to four of these perceived challenges.

3.1 The mandate of NHRIs

The scope of work of NHRIs traditionally focuses on activities like monitoring the respect for human rights on the ground, preparing special reports on human rights violations, evaluating national regulations and legislative proposals, carrying out visits and, in some cases, receiving individual complaints.

However, advising on public spending falls within the broad mandate of NHRIs to promote and protect human rights. For example, as stated in the UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions (2010), “NHRI can monitor progress and make recommendations so that budgets respond to Treaty Body report recommendations and move forward on MDGs. At the very least, NHRIs can ensure that there is no retrogression or roll-back on previous commitments, and no budget cuts regarding established programmes that have advanced human rights.”

3.2 Time and resources

NHRIs may have limited staff and not enough financial resources to expand on new areas of work. However, most of the activities suggested in this document may not be particularly burdensome, such as providing valuable information which NHRIs have already collected and published. NHRIs can also plan to engage in phases of AMIF and IBMF cycle process which do not clash with peak workloads. Finally, NHRIs could support the work of civil society organizations regarding AMIF and IBMF funding and spending, instead of leading the preparation and submission of recommendations on their own.

3.3 Cooperation from national authorities

Governments may not be forthcoming in involving NHRIs in the AMIF and IBMF policy cycles. However, under the new AMIF regulation NHRIs have a legal provision under EU law to substantiate their wish to participate in the consultation process for the development and monitoring of the national programmes.

3.4 Impact

NHRIs may feel that their engagement in the EU funds' policy cycle will have a limited impact. However, even if their recommendations will not be fully implemented by the managing authorities, their participation would ensure that governments know that they need to take human rights into consideration while developing and implementing the AMIF and IBMF national programmes. Moreover, NHRIs' recommendations may receive the attention of the EC, civil society organizations and other stakeholders, which could strengthen the pressure on national government to integrate human rights in their national budgets.

4. How ENNHRI can help amplify the opportunities and overcome the perceived challenges

ENNHRI can play an important role to amplify the opportunities and overcome the perceived challenges highlighted in this document. As explained in the first section of this note, the 2021-2027 regulations establishing the AMIF and the IBMF empower "relevant networks" such as ENNHRI to engage directly with the EC in the preparation and evaluation of the work programmes for Union actions. Work programmes for Union actions are

annual documents that set the basis for how the EC will spend 35% of the funds available under the AMIF and IBMF.

In a similar fashion to NHRIs at the national level, ENNHRI could undertake all of the actions described in section 2 as part of the process to develop work programmes at the European level. For example, ENNHRI could inform relevant policy-makers in DG HOME about common European human rights issues in relation to migration and asylum and about good practices from different European countries.

These activities would give NHRIs additional visibility at the European level, helping to position them as independent actors with very valuable expertise to bridge the gap between the international and the national arenas, not only for the EC but also for civil society and other international organisations, like the Council of Europe. This may also increase the impact of their work and add pressure on national governments. Through ENNHRI's engagement, NHRIs could enrich their analysis and knowledge on migrants and refugees matters from other European countries. Finally, this could strengthen the collaboration between the FRA, ENNHRI and other strategic partners.

ENNHRI could also support in raising awareness to the potential and specific role that NHRIs can play in this process, such as through releasing statements to national authorities and liaising with the European Commission. This could contribute to the recognition of NHRIs' unique added-value in the process.



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