



The human rights of migrants at borders

Regional report

About

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Title

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Executive summary

Persistent and systematic violations of the human rights of migrants, asylum applicants and refugees at borders is a core issue in Europe. Widespread reports on violations have pointed to a deterioration of human rights and rule of law safeguards at borders, raising particular concern among Human Rights Defenders in the region.

National Human Rights Institutions (NHRIs) have relied on their unique legal standing, being state bodies yet independent of governments, to uphold the human rights of migrants, including at borders. Through independent monitoring, reporting, investigations, among other means, NHRIs have contributed to filling protection and accountability gaps, while promoting human rights-compliant migration policies.

In the past years, in response to the increasing evidence of human rights violations at borders, European NHRIs have intensified their work in asylum and migration. In July 2019, through ENNHRI, European NHRIs initiated a series of activities under a dedicated project aimed at ensuring compliance of migrants' rights at borders. Under this project, five European NHRIs (in Croatia, France, Greece, Serbia and Slovenia) produced national reports including practices, findings, recommendations, and other information arising from their monitoring work between July 2019 and April 2021. ENNHRI has served as a platform for its members to strengthen their work, including by promoting inter-NHRI cooperation and facilitating engagement with key regional stakeholders.

Based on NHRIs' experiences, this report highlights main regional trends, good practices, and common challenges in relation to main human rights issues at borders, with the goal to inform on and amplify individual NHRIs' efforts, voices and impacts. Regional findings are summarised in a dedicated section.

While it is not the aim of this report to provide a comprehensive overview of human rights violations at borders, it adds to other credible documentation through a regional overview that points to serious deficiencies in human rights protection and in safeguarding the rule of law. NHRIs have particularly reported unlawful return practices (pushbacks), difficulties or lack of access to asylum procedures, substandard reception conditions, unlawful or disproportionate use of administrative detention, inadequate care for vulnerable people, as well as the absence of effective accountability systems and a general incursion on civic space at borders.

NHRIs play a crucial role in addressing systematic violations at borders and holding states to account. Their practices and findings should inform regional developments and foster stronger human rights accountability both at national and regional levels. As state bodies, NHRIs should be consistently consulted to ensure that human rights-complaint policies are implemented in the field of asylum and migration.

ENNHRI puts forward ten recommendations for achieving human rights-sensitive governance at borders, which are presented in the last section of this report:

1. Take human rights seriously to stop impunity and foster accountability at borders
2. Ensure independent and effective human rights monitoring at borders
3. Protect Human Rights Defenders and ensure an enabling space for human rights work at borders
4. Commit to using immigration detention as a last resort and end detention of children
5. Identify and provide care for vulnerable people at borders
6. Pursue a sustainable and fair approach to asylum and migration, such as more legal pathways to Europe and achieving more solidarity in the region
7. Restore protection-sensitive national frameworks
8. Increase EU-NHRI cooperation in the field of migration
9. Enhance relations between NHRIs and EU agencies operating at borders
10. Follow up on NHRIs' recommendations

ENNHRI encourages national and regional actors to implement these recommendations and consider fully the information presented in this report during the discussions on reforms that will have a significant impact on the situation at borders, such as the proposals under the EU Pact on Migration and Asylum. This report contributes to an informed, evidence-based analysis of legislative and policy proposals at the national and regional levels.

Finally, drawing on NHRIs' findings, this report also identifies a few areas for NHRIs' greater engagement towards better promotion and protection of human rights at borders.



Introduction



About ENNHRI and NHRIs

The [European Network of National Human Rights Institutions](#) (ENNHRI) brings together over [40 National Human Rights Institutions](#) (NHRIs) from wider Europe. By providing a common platform for collaboration, ENNHRI [works to](#) strengthen, connect, and support NHRIs, including during their [establishment](#) and [accreditation](#) processes, or when they come [under threat](#). Also, ENNHRI brings its members' common voice before regional mechanisms and promotes their strategic engagement with key actors like the Council of Europe (CoE) and the European Union (EU).

NHRIs are state-mandated bodies, independent of government, with a broad legal or constitutional mandate to promote and protect human rights. NHRIs may take different forms, such as Ombud institutions, human rights commissions, and institutes. NHRIs' independence and effectiveness are regularly assessed through an [accreditation process](#) against standards of independence, pluralism, accountability, and effectiveness, as set out by the [UN Paris Principles](#), adopted by the UN General Assembly in 1993. The accreditation process is carried out by the [Sub-Committee on Accreditation](#) (SCA) of the [Global Alliance of NHRIs](#) (GANHRI), under the auspices of the United Nations.

Asylum and migration (A&M) is a well-established [priority](#) for European NHRIs. The cooperation among European NHRIs in the field of asylum and migration has grown progressively since 2013, when the ENNHRI's A&M Working Group (WG) was established.

NHRIs have made use of their strong mandates to promote and protect the rights of migrants in many ways. For instance, NHRIs have:

- ▶ Reported on the human rights violations of migrants at the national, regional, and international levels;
- ▶ Monitored reception facilities and places of detention, including where they are also vested with the mandate as the National Preventive Mechanism (NPM);
- ▶ Initiated and contributed to investigations into allegations of rights violations, including in the context of individual complaint handling, where applicable;
- ▶ Submitted recommendations to authorities, building on the findings from their work on the ground; advising the executive and legislative on human rights standards and feeding into discussions on draft legislation; monitored states' compliance with their human rights obligations;
- ▶ Provided human rights training to competent authorities;
- ▶ Engaged in awareness raising activities, including among migrants.

NHRIs, therefore, hold distinctive features within the landscape of human rights actors, and may be particularly effective to ensure that the human rights of migrants are respected, including at borders:

- ▶ NHRIs enjoy a special standing in society, being part of the state apparatus, yet independent of governments. Among others, a recent Recommendation of the Council of Europe Committee of Ministers notes that states "should implement the recommendations of NHRIs and are encouraged to make it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame". NHRIs, in turn, have a privileged access to government, national parliament and other authorities, to whom they submit their recommendations.
- ▶ NHRIs are neither NGOs, nor international organisations, nor government representatives. Yet NHRIs must constructively interact with all these actors. This way, NHRIs act as bridge builders between the state and civil society, as well as between national and international actors.
- ▶ In addition to their broad human rights mandate, some NHRIs cumulate additional mandates, such as Ombudsman institutions or as National Preventive Mechanism (NPM), which for example grants them unhindered and unannounced access to all places of deprivation of liberty.

"Considering that effective, pluralist and independent national human rights institutions (NHRIs) are among the pillars of respect for human rights, the rule of law and democracy. [...] Emphasising at the same time that it is vitally important that any such institution be established and function in full compliance with the minimum standards contained in the Paris Principles."

Recommendation CM/Rec(2021)1 of the Committee of Ministers to Member States on the development and strengthening of effective, pluralist and independent national human rights institutions

ENNHRI project on migrants' human rights at borders

In the past years, in response to the increasing evidence of human rights violations at borders, European NHRIs have intensified their work in asylum and migration. Building on the activities of ENNHRI's Asylum and Migration Working Group, ENNHRI initiated a [project](#) co-funded by the European Union with the support of the Open Society Initiative for Europe (OSIFE) of the Open Society Foundations (OSF). The project aimed at supporting and strengthening European NHRIs' work as Human Rights Defenders at borders, with the goal of ultimately achieving a better promotion and protection of the human rights of migrants.

The project facilitated NHRIs' stronger engagement at borders through three main streams of work: monitoring, reporting, protecting.

Monitoring

European NHRIs have addressed the alarming situation at borders by increasing their monitoring work. In January 2020, ENNHRI published a [background paper](#) taking stock of existing NHRIs' practices at borders. This assisted NHRIs in finding commonalities between their work and raised the

awareness of national and regional actors on the role of NHRIs in the field of migration.

A [common methodology](#), building on NHRIs' mandates and experiences, has steered NHRIs' monitoring activities. This guidance is the outcome of a close consultation with European NHRIs and other partners with a strong expertise in asylum and migration. Through capacity-building activities and regular meetings, ENNHRI facilitated peer discussions, the sharing of good border monitoring practices, as well as ideas to overcome challenges on the ground. During NHRIs' monitoring work, the guidance has especially favoured the collection of evidence on key human rights issues, while supporting NHRIs to identify further challenges and drawing recommendations to the competent authorities.

Looking forward, the common guidance aims at assisting future monitoring exercises performed by NHRIs as well as other human rights monitors. Due to its broad applicability, the methodology can also serve as reference for civil society organisations, regional and international human rights bodies, and other actors monitoring the human rights situation at borders.



Reporting

Over 30 European NHRIs have conducted independent human rights border monitoring during the project's reporting period. Additionally, a selection of 5 NHRIs (from [Croatia](#), [France](#), [Greece](#), [Slovenia](#), and [Serbia](#)) produced national reports based on their monitoring work in the context of the project. These reports highlight findings, human rights concerns, good practices, actions taken by the NHRI, and recommendations for national or regional stakeholders.

The present regional comparative report consolidates the outcomes of the 5 national submissions, as well as other relevant NHRI practices, in the effort to identify main trends and key findings that could inform regional policy and legislative developments, such as at the European Union (EU) level.

Protecting

NHRIs use their monitoring activities to provide human rights-based recommendations to relevant national authorities. At the regional level, common trends and findings inform the position of European NHRIs vis-à-vis regional developments, such as through ENNHRI's opinion on "[independent monitoring mechanisms at borders](#)". NHRIs' reporting also serves as a credible source of information, adding to widespread reports from other actors such as NGOs, which are instrumental when pursuing strategic litigation and verifying states' compliance with their international obligations.

The findings are part of a broader range of human rights protection activities carried out by NHRIs, such as targeted advocacy, strategic litigation, policy and legislative discussions, handling individual complaints where applicable, and facilitating access to justice for victims of violations at borders.

The impact of COVID-19

In addition to creating novel human rights challenges and worsening outstanding concerns, the outbreak of COVID-19 also had an impact on NHRIs' work and the project's planned activities. In early 2020, most NHRIs temporarily shifted to remote forms of monitoring.

"NHRIs (...) should play a key role in installing a human rights culture in border management entities, as well as in national and local authorities more broadly, so that human rights are not perceived as an obstacle to border governance, but as living values that serve the common interest."

Birgit Van Hout, UN Human Rights Office, ENNHRI
High level conference,
2 June 2021.

ENNHRI increased its activities to facilitate peer learning through regular virtual exchanges, thematic meetings, monthly updates, among others. Examples of good practices from NHRIs to promote and protect the human rights of migrants during the COVID-19 pandemic were showcased in a [dedicated article](#) on ENNHRI's website.

In October 2020, further to consultations with its members and partners, ENNHRI published a [complementary guidance](#) on monitoring human rights at borders during the COVID-19 pandemic. This resource complemented ENNHRI's [common methodology](#) and assisted NHRIs and other actors to adapt their monitoring work during the pandemic.

High-level conference

On 2-3 June 2021, ENNHRI hosted a high-level conference for discussions on NHRIs' role to protect and promote migrants' rights at borders and opportunities for further cooperation. NHRIs were represented by their leadership and expert staff and joined by European policymakers, international organisations, and leading NGOs.

Key reflections from the conference are incorporated throughout this report, notably in the section on NHRIs' engagement in relation to regional policy developments. Key messages and the recording of the conference are [available online](#).



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Advisory group

Throughout the implementation of its project, ENNHRI relied on the expertise of an Advisory Group bringing together relevant regional actors, such as civil society and international organisations. The Advisory Group actively participated in the project's activities by sharing their insights, contributing to discussions, commenting on draft recommendations, and fostering engagement with regional and international stakeholders. The Advisory Group is comprised of:

- ▶ 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 (OHCHR)
- ▶ Council of Europe Commissioner for Human Rights
- ▶ Greek National Commission for Human Rights (Chair of ENNHRI's Working Group on Asylum and Migration)
- ▶ Ombudswoman of the Republic of Croatia (former Chair of ENNHRI's Working Group on Asylum and Migration)
- ▶ Other ENNHRI members

Albeit not a formal member of the Advisory Group, the Fundamental Rights Agency of the EU (FRA) has also supported the implementation of the project.



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Methodology

Rationale

The ENNHRI's comparative regional report consolidates information from NHRIs' monitoring and reporting with a twofold objective:

- To further **INFORM** about the main trends, findings on the human rights situation, and promising practices arising from NHRIs' monitoring work across Europe's borders;
- To **AMPLIFY** NHRIs' individual voices by identifying common findings and learning that should inform regional and national stakeholders and contribute towards evidence and human rights-based reforms that must lead to respect for human rights at European borders.

National reports: areas of concern

In the context of their reporting and monitoring activities, European NHRIs identified four main areas of human rights concerns at borders, which shaped the common monitoring methodology:

1. Returns and violence
2. Access to relevant procedures
3. Reception conditions and deprivation of liberty
4. Human rights accountability

Reporting NHRIs based their monitoring activities on these four clusters of human rights topics, providing an overview of border situations along major migratory routes into the EU (such as the Greek-Turkish border and the Western Balkan region, as well as secondary movements at French borders).

Through common reporting structures, contributing NHRIs submitted accounts, recommendations, and actions undertaken in relation to each of the monitoring clusters. In addition, reporting NHRIs elaborated on: NHRIs' mandates and their work in the field of migration; NHRIs' cooperation with other HRDs in the area of asylum and migration; and the impact of COVID-19 on NHRIs' work in relation to asylum and migration.

Due to their different specific mandates and national contexts, the five NHRI submissions are diverse. For instance, Ombud-type institutions included information on their handling of complaints, commissions/advisory bodies focused on their monitoring and advisory role, while NHRIs that also have the mandate as NPMs have reported on their on-site visits and inspections. However, a common reporting template enabled ENNHRI to collect sufficiently consistent and comparable data, as well as relevant NHRI practices.

The following table provides an overview of the 5 NHRI submissions.

				Monitoring/reporting deliverables			
Country		ENNHRI member	Accreditation status (as of July 2021)	National Report	Executive Summary	Factsheet	Promo Video
1	Croatia	Ombudswoman of the Republic of Croatia	A status	Here	Here	Here	Here
2	France	French National Consultative Commission on Human Rights	A status	Here	Here	Here	Here
3	Greece	Greek National Commission for Human Rights	A status	Here	Here	Here	Here
4	Serbia	Protector of Citizens of the Republic of Serbia	A status	Here	Here	Here	Here
5	Slovenia	Human Rights Ombudsman of the Republic of Slovenia	A status	Here	Here	Here	Here

Reporting periods

Overall, NHRI monitoring activities were greatly impacted by the outbreak of the COVID-19 pandemic across Europe. Due to the high infection risk, in early 2020, most NHRIs had to temporarily suspend their on-site monitoring activities, also to ensure respect for the do-no-harm principle. While resorting to remote and alternative forms of monitoring, NHRIs had to readjust their working methods and, in many circumstances, revise planning and priorities. Other factors which affected the monitoring periods were individual NHRIs' resources and capacity, as well as external restrictions such as sudden developments at borders.

As a result, reporting periods from the five contributing NHRIs varied. To provide for a common timeframe, the regional comparative report considers information dating between July 2019 (kick-off of the project) and April 2021.

Other sources

While drawing upon the submissions from the 5 contributing NHRIs, the regional comparative report also includes other relevant NHRI practices. ENNHRI collated and compared information shared by European NHRIs on their [websites](#), as well as in the context of the ENNHRI's WG on Asylum and Migration, including through the group's internal newsletter, regular meetings, and online peer exchanges.

Widening the scope of the report proved beneficial to provide a better overview of border situations across wider Europe and related actions from NHRIs.

NHRIs' reporting limitations

Despite their strong legal or constitutional mandate, NHRIs also experience challenges when monitoring and reporting on human rights at borders. Some of these limitations are of a practical nature, while others are imposed or derived from a lack of cooperation by national authorities.

The following challenges were identified during the reporting exercise:

- ▶ Lack of cooperation and limitations imposed by national authorities in accessing information on the treatment of irregular migrants at borders, including figures on apprehensions and decisions issued by authorities;
- ▶ Fast-evolving migratory situation, including at times high mobility of migrants across borders, which made it difficult to collect testimonies from victims and witnesses, and to follow-up on complaints;
- ▶ Poor or circumstantial information included in police files, which was not conducive to substantiate breaches of rights at borders.

Any restrictions to the full exercise of NHRIs' mandates should raise great concern and require a response from national, regional, and international actors. External factors, such as lack of cooperation by the government or blatant disregard to NHRIs' mandate, which can result in limited monitoring and reporting at borders by NHRIs, are in itself strong indicators of human rights accountability gaps. Therefore, they have been reflected throughout this report.





European NHRIs' work at borders: trends, challenges, good practices

This chapter collates information from NHRIs' monitoring and reporting activities in relation to the four human rights clusters identified above. The human rights violations reported below mirror the well-established body of law applicable at borders, which comprises international human rights law, international refugee law, international humanitarian law, as well as relevant domestic legislation and jurisprudence from national or international courts. Regional and international human rights actors have already issued guidelines to assist states in translating into reality the plethora of their human rights obligations.¹ NHRI reporting builds on such existing guidance and are rooted on the applicable regional and international legal frameworks.

This section, however, does not intend to provide an all-encompassing overview of information collected by NHRIs during the project's reporting period. The selection of relevant practices and findings contribute to identifying regional trends and recommendations, as well as challenges faced by European NHRIs. This report will later identify common findings and recommendations which, in turn, may inform regional developments in the field of asylum and migration.

Returns and violence at borders

Pushbacks and border violence

NHRI's national reports provided detailed accounts on unlawful practices of summary returns (such as pushbacks and collective expulsions) at border areas across Europe, such as at the Greek land and sea borders with Turkey, the Western Balkan route, or the French frontiers with Italy and the United Kingdom (UK). Some NHRIs also reported on these practices to the UN Special Rapporteur on the human rights of migrants, whose report confirmed that pushbacks are widespread along most migratory routes.

Throughout 2020, the Greek NHRI, which is a commission-type NHRI with a Plenary currently comprised of 42 expert members including NGOs, Greek Ombudsman, bar associations, trade unions, and local administrations, has been regularly informed about **individual and collective pushbacks** at borders, as well as the use of **life-threatening deterrence measures at sea**.²

Likewise, since 2017, the French NHRI has been alerted about the systematic denials of entry and **lack of respect for procedural guarantees during removals** at French borders, including at official border crossing points. Following a visit to the border region of Calais and Grande-Synthe in December 2020, the NHRI issued an opinion, including recommendations to state authorities. Among others, the NHRI pointed out that increased border patrolling and surveillance have led many to attempt the sea border crossing to the United Kingdom on **precarious makeshift boats**, with the death toll and the number of missing migrants on the rise.³

Similar concerns were raised by the Slovenian NHRI, which reported that border regimes in the region have pushed migrants to undertake **more perilous journeys**. The Slovenian NHRI also reported that most migrants intercepted at borders are returned to Croatia and other neighboring countries by the Slovenian authorities without being issued a written decision, thus having no access to legal remedy to challenge their return or transfer.

During the reporting period, both the Serbian and Croatian NHRIs were alerted about **unlawful summary expulsions following detections** at borders or even deep within the states' territory.⁴



Throughout 2020, the Croatian NHRI has opened 39 cases, based on the reception of complaints as well as the concerning findings from independent journalism or NGOs, such as The Guardian and Amnesty International.⁵ A number of these complaints pertain to summary returns at the Croatian green borders with Bosnia and Herzegovina in contravention of applicable procedural standards and human rights guarantees.

Under its NPM mandate, the Serbian NHRI has carried out several interviews which highlighted **recurrent patterns of police violence** at the borders with Croatia, Romania, Bosnia and Herzegovina and North Macedonia. In one case, testimonies reported that violent practices were perpetuated by non-uniformed people who had identified themselves as Serbian police.

Cross-border violations require cross-border solutions

In their national reports, NHRIs from Serbia, Slovenia, and Croatia collected testimonies of people being repeatedly pushed back to different countries along the Western Balkan route, with the involvement of law enforcement officials from bordering countries (so-called 'chain pushbacks'). NHRIs' oversight and investigative powers, however, do not extend to actions taken by state authorities from bordering countries. This points to the essentially cross-border nature of unlawful returns and emphasizes the challenges experienced by national Human Rights Defenders during their monitoring at borders and actions to foster accountability. European NHRIs have suggested that strengthened intraregional NHRI cooperation, including through ENNHRI, could help to effectively address these challenges.⁶

Following the resurgence of the Western Africa migratory route, arrivals to the Spanish shores in the Canary Islands have raised serious human rights concerns. In May 2020, the Spanish NHRI condemned the Spanish authorities' conduct during **rescue operations at sea**. According to the NHRI, the involvement of the Spanish Guardia Civil in the return to Morocco of people intercepted at sea, including women and children, amounted to a **'hot return'** and a clear breach of international refugee law. The NHRI rebutted arguments put forward by the authorities and recalled the need to promptly rescue those in distress⁷

NHRIs from Croatia, Greece, and Serbia reported that the current general **climate of impunity** at borders is boosted by the **lack of sufficient and effective inquiries into border officers' conducts**. The Croatian NHRI reported that, when inquired into allegations, authorities point to the issuance of return decisions or simply rebut all allegations of ill-treatment. In Greece, the NHRI reported that cases of pushbacks and border violence are hardly ever brought to national courts. This, in turn, leaves unaddressed concerns by several actors around the lack of clarity on the applicable legal frameworks, and its conformity with human rights standards, especially at sea borders.⁸

All contributing NHRIs reported **violence and disproportionate use of force by border officers**, for instance in the form of confiscation or destruction of personal properties (especially money, shoes, mobile phones), theft, sexual abuse, disproportionate use of police dogs, as well as physical and verbal harassment, such as humiliating statements, beating, electric shocks, including during removal and evacuation operations.⁹ For example, further to a visit in a migrant detention centre, the Slovenian NHRI has recently asked the Ministry of Interior to stop using police dogs within the facility.¹⁰

Furthermore, NHRIs from Slovenia, Serbia, and Greece identified as a challenge the gathering of material evidence in specific cases of allegations of pushback and violence, for instance due to victims' challenges in specifically locating events in place and time, difficulties to document alleged injuries, and some victims' unwillingness to initiate complaints due to their intention to continue their migration route or lack of trust in the human rights accountability system in the country.¹¹ Moreover, one challenge identified by the Slovenian NHRI was that the information included in police files was poor or insufficient, adding to investigators' challenges to probing into pushback allegations.¹²

Grassroot organisations from Greece indicated to the NHRI that the **collection of electronic and audiovisual recordings** from the Greek Coast Guard's operations may be a way to collecting solid material evidence and addressing the absence of an effective judicial oversight on pushback allegations and difficulties in collecting evidence. The NHRI has subsequently forwarded and endorsed this recommendation before competent authorities.¹³

Monitoring by the Greek NHRI during the COVID-19 pandemic

During the reporting period, the Greek NHRI has addressed gaps arising from the temporary suspension of on-site monitoring during the COVID-19 pandemic by maintaining close relationships with relevant stakeholders and state authorities. In 2020, for the first time, the Minister of Asylum and Migration addressed questions raised by members of the NHRI during its plenary meeting. In July 2020, the Greek NHRI requested information from representatives of the Ministry of Asylum and Migration, the Hellenic Police, and the Hellenic Coast Guard about their operational procedures upon detection of irregular crossings. State authorities were heard by the NHRI during an online hearing bringing together other relevant national and international actors, such as the Greek Ombudsman, the Committee for the Prevention of Torture (CPT), NGOs and civil society.¹⁴

As a result of the hearing, the Greek NHRI issued a statement calling upon state authorities to comply with the prohibition of non-refoulement, including at sea; to independently and effectively record, monitor, and investigate allegations of pushbacks and violence, while ensuring that perpetrators are brought to justice; to facilitate effective investigations by cooperating with judicial bodies and collecting objective data, including through technological equipment; and to ensure protection and access to justice to victims. Finally, the NHRI called on Frontex to comply with its international obligations, including in the context of search and rescue operations.

Forced return monitoring

Several European NHRIs are mandated to monitor forced-return operations, including in the context of bilateral readmission agreements, Frontex-coordinated operations, and as the designated "forced return monitors". The EU Return Directive (2008/115/EC) obliges Member States to provide for an effective forced-return monitoring system. As of today, ENNHRI members from Bulgaria, Cyprus, Czech Republic, Georgia, Latvia, Montenegro, Serbia, and Spain, are designated as the forced-return monitoring bodies.¹⁵

The Polish NHRI has requested the Minister of the Interior and Administration to strengthen the national forced-return monitoring system, in particular by amending the regulations on the participation of observers in deportation operations, requiring the Border Guard to fully document the deportations of persons from vulnerable groups, and obliging the Commander-in-Chief of the Border Guard to regularly publish reports on the deportations.¹⁶ Moreover, based on the proposal for amendment of the Polish Act on Foreigners, the Polish NHRI is to be involved in forced-return monitoring in the future.¹⁷



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© Greek National Commission for Human Rights

During the reporting period, NHRIs from the Western Balkans have raised particular concerns over **forced returns carried out under formal readmission agreements** between neighbouring countries, especially regarding the lack of sufficient respect for procedural safeguards. These concerns are in line with the views of NGOs on the ground, which have noted that the limited access to asylum and to other relevant procedures make these returns a form of ‘legalised pushbacks’.¹⁸

The Serbian NHRI, which since 2019 has monitored forced returns, most of which are done on the basis of readmission agreements with neighbouring countries, has called for better access to interpreters, doctors, and legal aid. As a result, the NHRI pointed out that, during proceedings, returnees cannot communicate with the competent officials and do not have a possibility to report their situation to decision-making authorities, raising **concerns on the return decisions’ compliance with the prohibition of non-refoulement**.

Similarly, the Slovenian NHRI expressed **concerns around procedural standards of removal orders**. For instance, people returned to Croatia without a return decision under the bilateral readmission agreement between Slovenia and Croatia, which represents most cases, are prevented from challenging return orders.¹⁹

Finally, the Croatian NHRI received complaints informing that removal operations have been taking place, despite the imposition of border closures and travel restrictions in the COVID-19 context.

The examples point to systematic practices of border authorities aimed at ensuring returns at all costs, including summary returns, without respect for procedures and in contravention of human rights safeguards.

The Slovenian NHRI challenges the legality of a return without a return decision before the Constitutional Court

In 2020, the Slovenian NHRI brought to the Constitutional Court of the Republic of Slovenia the case of a Moroccan national who was expelled under the readmission agreement between Slovenia and Croatia in disrespect of the necessary procedural safeguards (right to be heard, right to legal remedy, etc.). Arguing that the readmission agreement cannot be regarded as an agreement or arrangement between Member States in the sense of Article 6(3) of the EU Return Directive (an exception under which Member States may refrain from issuing a return decision), the NHRI also invited the Court to inquiry the Court of Justice of the EU about this question.²⁰ At the time of drafting this report, the case is still pending. This practice shows how NHRIs may use their powers strategically, such as by challenging provisions that impinge on migrants’ rights before domestic courts, where they have this mandate.



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Access to relevant procedures at borders

The access to relevant procedures at borders, such as the application for international protection, the identification of victims of human trafficking, or age assessments, was overall found insufficient and not compliant with human rights standards by several NHRIs. Additionally, the COVID-19 pandemic has made lodging applications even harder due to the temporary suspension of asylum proceedings or the introduction of new administrative processes by many immigration authorities.²¹

Asylum

In its national report, the French NHRI restated its long-lasting concerns regarding the **lack to access to asylum procedures** at the French borders with Italy and the UK, as well as the **poor procedural guarantees** during asylum proceedings. Reportedly, border officers are not fully aware of the process to determine the competent state under the Dublin Regulation, and the Regulation's humanitarian clause is not considered. Moreover, in view of Brexit, the NHRI has recently called upon the state to review its bilateral agreements with the UK and promptly establish legal pathways to safely access the UK.²²

In Greece, the NHRI found that numerous legal and policy reforms have gradually **dismantled a protection-sensitive asylum system** and consistently reduced the applicable legal safeguards, such as through the systematic use of accelerated border procedures following the adoption of the EU-Turkey Statement.²³

During the reporting period, the Greek NHRI has particularly observed **flaws, backlogs and inconsistencies in the lodging and processing of asylum claims**, as well as practical obstacles in exercising the right to appeal. The consistent use of accelerated border procedures has worsened the situation leading, for instance, to poorer quality of asylum decisions.²⁴ According to the NHRI, **delays in ensuring that asylum applications by unaccompanied minors (UAMs) are formally lodged are** particularly problematic as it can negatively impact on the exercise of their right to family reunification under the Dublin Regulation.²⁵ The NHRI has also noted that the increased responsibilities of Reception and Identification Centres (RICs) in the registration of asylum seekers should be accompanied by adequate procedural safeguards, including through trained staff, qualified interpretation services, sufficient processing times, etc. For instance, data misspellings during the registration phase proved difficult to be corrected and may halt or delay relocations across Europe.

Likewise, the Slovenian NHRI reported that, since 2017, policy and legal reforms led to **the weakening of human rights standards** in the country. Over time, reforms have resulted in: limited access to free legal aid due to funding cuts;²⁶ suspended access to asylum under 'complex migration emergencies';²⁷ and lowered protection standards for asylum seekers, especially in relation to the right to privacy, right to an effective remedy, and freedom of movement.²⁸

Systemic issues in the Greek asylum system have led to human rights violations

The Greek NHRI noted that, in practice, the Greek asylum system does not function in full respect of national, regional, and international human rights standards. For instance, local administrations have not been able to meet the big number of requests for free legal aid during appeal procedures,²⁹ which are necessary to ensure the right to an effective remedy as envisaged by the European Convention on Human Rights (ECHR), EU and national law.³⁰ Information on the right to appeal was found to be unclear and insufficient.³¹ The NHRI was alerted that the digitalisation of asylum proceedings, following amendments to the law in 2020, has exacerbated the situation. As a result, the NHRI recommended competent authorities to introduce explicit safeguards when objective reasons prevented applicants from receiving free legal aid upon request. The NHRI also noted that the abolition of the automatic suspensive effect of appeals may infringe on the right to an effective remedy and the jurisprudence of the European Court of Human Rights (ECtHR).³²

Overall, **NHRIs from the Western Balkan region reported widespread difficulties for migrants to access asylum procedures at borders.** Throughout 2020, the Croatian NHRI received several allegations of denials of access to asylum by people pushed back to Croatia when trying to reach neighbouring countries.³³ Likewise, those interviewed by the Serbian NHRI during the reporting period stated that, before being forcibly returned from neighbouring countries, their asylum claims had been systematically disregarded by the police.³⁴ While identifying some good practices, such as in relation to the provision of information to asylum seekers, the referral of vulnerabilities and the deployment of female police officers as well as interpreters, the Serbian NHRI has noted that asylum applications have remained rather low in the country, with only 143 applications lodged throughout 2020 out of several thousands of migrants transiting through the country.³⁵

In Slovenia, following an investigation, the Slovenian NHRI uncovered different human rights breaches during the border detection of 108 people in July 2019. In addition to raising concerns with regards to access to asylum, the NHRI identified poor respect for procedural safeguards and a lack of individual assessments. Authorities claimed that, out of 108, only seven persons had applied for asylum, which justified the return to Croatia of the remaining migrants.³⁶ During on-site visits to the Postojna detention centre, carried out in 2020, the Slovenian NHRI also identified considerable delays in asylum proceedings. During that time, persons who had expressed their intention of seeking international protection but had not formally lodged their applications were "illegal aliens", in contravention of legal standards and impacting on their ability to access reception conditions guaranteed to applicants for international protection.³⁷ Finally, the high rate of annulled asylum decisions by the Administrative Court raises concern over the quality of asylum decisions taken by the first instance authority.³⁸



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Similarly, recent concerns raised by the Polish NHRI point to obstacles for migrants when seeking to access asylum procedures at EU eastern borders.³⁹ A visit conducted in September 2019 at the Polish border with Belarus confirmed previous concerns of the NHRI on the limited access to asylum, including for families from war-torn places such as Chechnya and Tajikistan.⁴⁰ The NHRI's findings aligns with a recent ECtHR judgment which found that Polish border guards had acted against the prohibition of non-refoulement and collective expulsions.⁴¹ Among others, the judgment drew upon reports drafted by the Polish NHRI further to on-site visits at the border.⁴² The Polish NHRI continues to monitor the human rights situation at the borders with Belarus, including in relation to immigration detention.⁴³

In the context of the COVID-19 pandemic, the Polish NHRI also addressed the introduction of new entry regulations, which omit migrants seeking protection from persecution from the categories of persons retaining the right to enter Poland. Despite inquiring the Border Guard about this issue and receiving assurances that such individuals would be allowed into Poland, complaints received by the Polish NHRI have confirmed that some migrants have difficulties submitting applications for international protection at borders due to the entry restrictions under the COVID-19 regulations.⁴⁴

Slovenian NHRI intervened in milestone asylum case

The Slovenian NHRI intervened as an amicus curia during legal proceedings concerning a Cameroonian national who was subject to a "chain pushback" from Slovenia to Croatia and later to Bosnia and Herzegovina. In the first instance, the Slovenian Administrative Court found violations of article 18 (right to asylum) and article 19 (prohibition of collective expulsions) of the EU Charter of Fundamental Rights. After being appealed twice by the Slovenian government, the first-instance decision was finally upheld by the Supreme Court in April 2021, and the plaintiff, still residing in Bosnia and Herzegovina, was granted access to the Slovenian territory and to the asylum procedure. According to the NHRI, this case is likely to positively impact national policies and practices in the field of asylum.

Those making their way to Europe through the Western African Atlantic route also face challenges to access asylum. On top of noting a number of shortcomings in asylum proceedings, the Spanish NHRI has raised concerns about the low numbers of asylum applications lodged by individuals, notably by unaccompanied minors, compared to the total figure on arrivals. The NHRI has particularly questioned the competences and limitations faced by police officers and legal advisors in providing information and facilitating the lodging of application at borders.⁴⁵

Identification and respect for the rights and needs of vulnerable migrants

The reporting NHRIs emphasised **poor practices at borders to identify vulnerable groups**, such as unaccompanied minors, traumatized individuals, people in need of medical assistance or victims of trafficking, and to refer them to the appropriate channels.

For instance, the Greek NHRI pointed out that screening procedures at borders fall short of meeting the necessary human rights standards. This is due to the shortage of medical personnel, qualified staff, and specialised facilities, as well as an inadequate legal framework and backlogs resulting in delayed vulnerability assessments. Also, the NHRI was informed about repeated errors in the registration of minors as adults by Frontex personnel.⁴⁶ Another issue of particular concern is the absence of an automatic exemption from accelerated border procedures for certain vulnerable groups, such as unaccompanied minors and victims of torture. According to the NHRI, the series of reforms to the national asylum law over the last years lead to the further weakening of procedural and human rights standards for unaccompanied children.⁴⁷

In 2020, the Croatian NHRI examined the circumstances in which a group of 30 people of different nationalities, comprising 15 children, 4 women, one of whom pregnant, was apprehended and detained at borders. The NHRI questioned how the determination of family links and the assessment of the best interest of the child could be properly conducted without the deployment of interpreters. Moreover, the group's detention conditions were found to be below the minimum standards required under international human rights law. The NHRI called on authorities to ensure the provision of adequate interpretation services upon detections at borders, including during removals.⁴⁸

In Slovenia, the NHRI noted the practice of conducting group interviews at the border and recalled to authorities that only individual assessments allow for an effective identification of vulnerable individuals.⁴⁹ Moreover, detention of minors was found to be a common practice in Slovenia. According to official statistics, in 2020 alone, 304 unaccompanied minors and 97 children with families were detained in the immigration detention centre in Postojna.⁵⁰



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Gaps in the protection of migrants in a vulnerable position in Greece

The Greek NHRI has openly criticised the lack of clarity of national legal provisions with regards to the requirements for excluding individuals in a vulnerable position from accelerated border procedures and accessing special protection measures. The absence of qualified personnel and referral mechanisms for victims of violence and torture was especially noted. Following desk research and open consultations, the NHRI observed that the EU Reception Conditions Directive was incorrectly transposed into national law, and submitted to the government a proposal for amendments to the law.⁵¹

During the recent visit in the region of Calais and Grande-Synthe, the French NHRI found evidence of procedural barriers during age assessment procedures and poor identification practices of victims of human trafficking. The NHRI called upon authorities to guarantee effective safeguards for vulnerable groups, while recalling that the best interest of the child and the presumption of minority should prevail.⁵²

Since 2019, **irregularities during age assessment procedures** have also been addressed by NHRIs from Luxembourg,⁵³ Great Britain,⁵⁴ among others. For instance, following different individual complaints, the Spanish NHRI investigated age assessment procedures across the country. The NHRI noted that identification documents were often questioned by authorities only in the context of age determination, while they were considered valid during other administrative procedures.⁵⁵ Therefore, the NHRI recalled to authorities that the national law establishes that those in possession of identification documents should not undergo a medical age assessment.



European NHRIs have also addressed the issue of **missing migrants** (see text box below) and of **shipwreck survivors**. As noted by the NHRIs from France and Spain, witnesses of deaths at sea are particularly traumatised individuals, who need special care and psychological support. Unfortunately, both NHRIs reported that shipwreck survivors are not given sufficient support at borders and, in some circumstances, are even left in detention, living in makeshift camps,⁵⁸ or deported to countries of transit or origin, such as Morocco and Mauritania.⁵⁹

Missing migrants: forgotten amongst the forgotten

Notorious incidents at land and sea borders have led NHRIs to speak up for those who are forgotten amongst the forgotten: missing migrants. During a recent visit to the Canary Islands, the Spanish NHRI noted the complete absence of any clear protocols to track and identify migrants gone missing *en route*.⁶⁰ The NHRI sought to address this gap by inquiring competent authorities into any actions undertaken at the local and national level on this regard, as well as by collecting existing information on missing migrants and the applicable national framework.⁶¹ In October 2020, the German NHRI published a study which highlighted state obligations with regard to disappeared migrants and refugees, as arising from the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Among others, the study found that states' cooperation in investigating disappearances, assisting victims, and searching for those gone missing, is crucial. Finally, the Norwegian NHRI has addressed the competent ministry with concerns on the lack of adequate statistics on unaccompanied minors going missing from Norwegian reception centres.⁶² In January 2021, in view of Norway's periodic reporting, the NHRI also raised this issue before the UN Committee on Torture.⁶³

Recommendations from the Spanish NHRI to protect unaccompanied minors

Figures show that the age assessment of minors is a widespread practice upon arrival at borders in Spain. According to official data, between 2020 and the first months of 2021, out of 2,776 newly arrived unaccompanied minors on the Canary Islands, 2,084 are still waiting for their age assessment procedure to be completed.⁵⁶ In this context, the Spanish NHRI has strongly called upon the government to expedite age assessments and coordinate joint countrywide efforts to offer adequate protection to almost 3,000 minors accommodated on the Canaries at that time.⁵⁷ The NHRI has also engaged in awareness-raising activities by supporting the translation of a child-friendly explanatory [video](#) jointly produced by EASO and the Council of Europe.

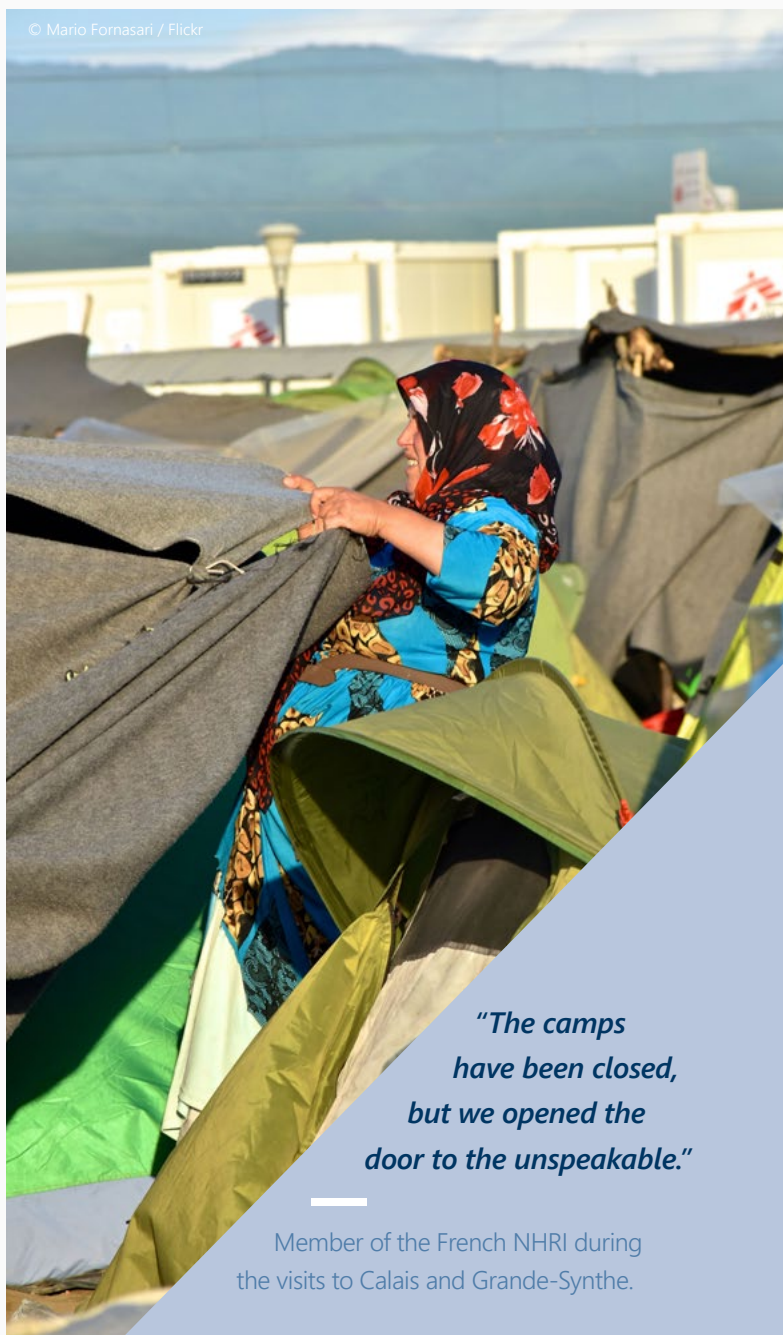


Reception conditions and deprivation of liberty at borders

Most NHRIs have reported an **increase in the use of detention at borders** and **dire conditions in both reception and detention facilities**. Most common issues of concern include: the widespread use of administrative detention; deprivation of liberty at borders under unclear legal basis; the lack of access to basic services such as food or health care; the insufficient support for unaccompanied minors and vulnerable people; the limited capacity of national reception systems; prolonged stays in makeshift camps in undignified living conditions; and the disrespect for procedural safeguards in detention centres prior to migrants' return.

Living and reception conditions

While visiting the Calais and Grande-Synthe region in December 2020, the French NHRI found insufficient access to essential services for migrants, including water, food, hygiene, health, means of communication and dignified accommodations.⁶⁴ According to the NHRI, transit migrants at the French-UK border experience particularly **poor living conditions within temporary makeshift camps**, which are systematically torn down by the police.



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"The camps have been closed, but we opened the door to the unspeakable."

Member of the French NHRI during the visits to Calais and Grande-Synthe.



“After its visit on Samos in early 2020, the GNCHR concluded that the [reception] system had collapsed.”

Greek National Report on the situation of human rights of migrants at the borders, p. 50.

The French NHRI condemns the fight against ‘anchor points’ at the French-UK border

Since 2016, the French NHRI has condemned the policy implemented by state authorities aimed at dismantling the so-called ‘anchor points’ to deter transit migrants from settling along the Northern French coast. According to the NHRI, the systematic destruction of migrants’ temporary shelters on the coast has led to increasingly worsened living conditions and forced migrants to settle in even more perilous and precarious accommodations. The NHRI informed that those active on the ground reported that the situation of migrants in Calais and Grande-Synthe was the worst they have known since 2010. The NHRI also reported that evacuation operations are sometimes carried out under unclear legal grounds and involve the unjustified use of force by police. In light of this, the NHRI called on authorities to ensure adequate accommodation solutions and more efficient allocations within the national reception system, while refraining from any unnecessary use of force. The NHRI also encouraged authorities to build an effective ‘humanitarian infrastructure’ at the border, including small living units for “exiled persons to find a secure place and a respite time conducive to reflection on their migration plans”.⁶⁵

In Greece, the EU-Turkey Statement resulted in many being trapped on the islands in undignified living conditions for a long period of time, including by virtue of restrictions to migrants’ freedom of movement, as reported by the Greek NHRI.⁶⁶ The NHRI was also critical towards the decision to build new reception centres in isolated areas located far away from urban settlements and to automatically place new arrivals in detention under so-called ‘pilot programs’.⁶⁷ While transfers to the mainland have proceeded rather slowly, reception centres on the islands have operated far beyond their capacity, which led many to settle in makeshift camps or set ‘sleeping shifts’ inside the available containers.⁶⁸ Only further to the outbreak of COVID-19, the Greek government accelerated transfers from the islands,⁶⁹ a measure which was welcomed by the NHRI.⁷⁰ Yet, recent developments and persistent concerns regarding saturated reception system in the islands point to the conclusion that the improvement was not sustainable.

Similarly, the Spanish NHRI has extensively regretted the introduction of movement restrictions and **the lack of transfers to the mainland** which entrapped newly arrived people in overcrowded centres on the Canary Islands and the enclaves of Ceuta and Melilla.⁷¹ Throughout 2020, the Spanish NHRI have called for prompt transfers to the mainland, especially for vulnerable groups, unaccompanied minors and those with family links in Spain or across Europe.



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While transfers of vulnerable people were partially implemented from Melilla,⁷² migrants, including those in possession of valid travel documents and applications for international protection, are still prevented from leaving the Canaries to reach mainland Spain.⁷³ In a recent hearing before the national Senate, the acting Head of the Spanish NHRI recalled that the lifting of restrictions to migrants' free movement within the country have been also demanded by the Spanish Supreme Court as well as other regional courts.⁷⁴

Overall, reports from the Greek and the Spanish NHRIs add further evidence to the **severe human rights consequences of containment policies at the EU external borders**.

Deprivation of liberty

The French NHRI noted that the placement of migrants and unaccompanied minors in *de facto* **administrative detention at borders is a common practice**.⁷⁵ The outbreak of **COVID-19 has worsened the conditions** of those put in administrative detention due to the high risk of infection and the implementation of poor health protocols.⁷⁶ As a result, in April 2020, the NHRI strongly encouraged authorities to shut down administrative detention centres and, given the lack of reasonable prospects for removal, cease migrants' detention for the purpose of removal.⁷⁷

Likewise, the Greek NHRI has reported that administrative immigration detention has become the rule in the country, including for asylum seekers,

vulnerable groups or unaccompanied minors.⁷⁸ The **widespread and indiscriminate use of administrative detention** was eventually formalised by the recent legal reforms which extends the possibility to detain applicants of international protection up to 18 months, including by virtue of a broader interpretation of 'public order risk'.⁷⁹

European NHRIs contribute to implementing alternatives to immigration detention during the COVID-19 pandemic

COVID-19 has put to a serious test migration management models based on the widespread use of detention. The implementation of health protocols, including social distancing or medical isolation, proved to be particularly difficult in many detention centres across Europe. Moreover, border closures and the unavailability of flights made prospects for removals less likely. In this context, European NHRIs from Armenia⁸⁰, Cyprus⁸¹, France⁸², Greece⁸³, Moldova⁸⁴, Poland⁸⁵, among others, called on their national authorities to release migrants from detention and seek for alternative accommodation solutions, especially when reasonable prospects for removal were lacking. In some countries, these calls led to unprecedented successful results.



In Cyprus, following consultation with the NHRI, authorities proceeded with the early release and the placement in open prison schemes of a number of migrants detained.⁸⁶ In Spain, joint efforts by the Spanish NHRI, local authorities and NGOs, led, for the first time, to the complete evacuation of all migration detention centres in the country within a few months. Most migrants were placed in reception facilities, former places of domicile, or alternative accommodations. The NHRI has monitored migrants' releases and facilitated allocations within the national reception system, with special attention to those intending to apply for asylum.⁸⁷ While Spanish immigration detention centres were reopened as the state of emergency was lifted, this achievement showed the effectiveness and workability of community-based responses in migration management, for more 'human' and dignified solutions for migrants.

Under their NPM mandate, NHRIs from Serbia, Slovenia, and Croatia monitored conditions of places of deprivation of liberty for migrants, including in the context of the COVID-19 pandemic. During the reporting period, the Serbian NHRI visited different prisons and centres for removals, including under-construction facilities and dedicated rooms at air borders. While the reception and living conditions were deemed to be overall satisfactory, some **procedural gaps in detention centres** were identified.⁸⁸

Similarly, the Slovenian NHRI found during an investigation of a specific case that the detention of 101 migrants at the Croatian border in July 2019 was unlawful and did not meet the necessary legal and procedural standards.⁸⁹

Also, the NHRI noted that asylum seekers had been detained in a pre-reception area of the asylum reception facility for increasingly longer periods of time (up to 20 days during the COVID-19 pandemic), with little personal space and insufficient respect for their privacy. The NHRI's visits under the NPM mandate showed that the pre-reception area is a closed facility where people, including minors, are placed under video-surveillance, without the issuance of any written detention orders. Finally, after visiting the Postojna detention centre in 2020, the NHRI has raised concerns with regards to **people being held in containers with little daylight and no access to open air**. The NHRI has also found that **COVID-19 health protocols were not fully implemented**. As a result, recommendations were sent to all relevant authorities to promptly address these shortcomings.⁹⁰

In 2020, the Croatian NHRI found that migrants in the detention centre of Ježevu were neither provided with contacts of legal advisors, nor made aware of their right to free legal assistance, including in the context of returns. The NHRI promptly recommended authorities to improve migrants' access to adequate information and free legal aid.⁹¹

In 2021, the Polish NHRI carried out multiple on-site monitoring visits in guarded centers for foreigners, under its NPM mandate. Based on the findings from its visits, the NHRI published a report that includes a number of practical recommendations concerning, *inter alia*, the preparation of staff working in the facilities, actions to be taken when victims of torture and inhuman treatment are placed at guarded centres, ensuring migrants in detention can exercise their rights, and respecting standards regarding the material conditions in the facilities.⁹²

Human rights accountability at borders

Human rights monitoring is not an end in itself.

Rather, human rights oversight at borders should lead to a stronger accountability system and human rights compliance at the national, regional, and international levels.

European NHRIs are an integral part of the wider human rights accountability system at borders.

They help ensuring independent scrutiny and reporting on what happens at borders and contribute to holding relevant actors accountable for their (in) actions and decisions. NHRIs also contribute to identifying the duty bearers and the actions they must take to comply with their obligations, including under national provisions and international human rights and refugee law. Accountability includes both ensuring that human rights violations are properly investigated and remediated, and ensuring that legislation, policy or practice are revised in order to avoid repetition of violations.

Any **obstacles to NHRIs' independent and effective functioning may indicate a threat to the national check and balances system and the rule of law.** NHRIs are Human Rights Defenders (HRDs) themselves⁹³, and also support and closely cooperate with other HRDs⁹⁴. An enabling environment, including through the fruitful cooperation with government and border authorities, is crucial for NHRIs' effective functioning.

A system for human rights accountability at borders

The reporting NHRIs point to the existence of some form of **human rights accountability systems** at the national level. Yet, most reports find **flaws in the effective and independent functioning** of these systems.

In Greece, the NHRI found that, throughout 2020, the Hellenic police and the Greek Prosecutor investigated two and four pushback cases, respectively. So far, no internal investigation has resulted in alleged violations being substantiated or brought to court. The Greek NHRI cooperates closely with the Greek Ombudsman, which has used its mandate to examine alleged misconducts of state border officers.⁹⁵ Finally, long-standing concerns around the lack of accountability of Frontex worsen the situation at the Greek sea and land borders.⁹⁶

The Greek NHRI seeks to address the lack of accountability at borders

In light of the lack of effective investigations, the persistence of complaints, and the Greek government's unwillingness to address the situation, the Greek NHRI has recently established a working group to develop a common and transparent recording and monitoring mechanism of informal forced removals. While contributing to the existing body of evidence, the working group aims at strengthening accountability, including through the protection of monitors affiliated to the NHRI.⁹⁷



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In France, the NHRI reported that most inquiries into police misconducts run by the Defender of Rights and the General Controller of Places of Deprivation of Liberty have not encountered sufficient cooperation by state authorities and have been concluded.⁹⁸

The **low number of investigations** is also linked to victims' reluctance to launch formal complaints, as reported by the Greek and Serbian NHRIs. For instance, in Serbia, most migrants are not willing to seek judicial remedies as they aim at proceeding as soon as possible towards their final destinations in the EU.⁹⁹ This also points to the increased protection challenges for transit migrants, who often cannot, or do not want to, access protection frameworks and authorities.

Additionally, as noted by the Slovenian NHRI, the *de facto* informality of certain practices, with lack of any written decisions taken by a competent authority, hampers any effective monitoring and access to legal remedies.¹⁰⁰

The Greek NHRI monitors the execution of court judgements

Unlike pushback allegations, lawsuits pertaining to reception and detention conditions have been subject of a considerable body of national and international jurisprudence. For instance, the ECtHR have issued judgments and ordered interim measures in a number of cases. In this regard, the Greek NHRI welcomed the overall good level of enforcement of the ECtHR's judgments and interim measures by the Greek administrative and judicial bodies.¹⁰¹

NHRIs' work as Human Rights Defenders at borders

Recommendations to governments and other national authorities

Cooperation between NHRIs and national authorities may take different forms, such as providing advice on draft legislation, exchanging of information, providing human rights training, as well as the facilitation of access to public premises and relevant documents.

During the reporting period, NHRIs from France, Greece, Latvia, Serbia, and Slovenia have overall expressed satisfaction with regards to their **access to premises and official files**, including in the context of on-site monitoring visits and the COVID-19 pandemic. By contrast, ENNHRI members from Croatia and Czech Republic have reported difficulties in fully exercising their mandates when requesting access to information and monitoring forced-return operations, respectively. The monitoring staff from the Czech Public Defender of Rights is systematically prevented from entering the police escort vehicles during the forced-return operations, thus monitors do not have access to the returnees during all stages of the removal process. The same limitation applies in cases where vulnerable groups are being subjected to removal procedures or if means of restraint or force were used.

NHRIs have relied on their mandates to seek to influence domestic legislative and policy processes, such as through submitting recommendations and inputting into draft legislation. While highlighting good practices, NHRIs highlighted the need for **improved follow-up on NHRIs' recommendations** by competent authorities.

During the reporting period, NHRIs from France, Greece, and Slovenia flagged that their recommendations were either not implemented, or only partially implemented, by authorities.¹⁰² The Slovenian NHRI reported no issues regarding the communications channel established with the Specialised State Prosecutor's Office, which may use the information submitted by the NHRI to substantiate allegations of misconduct.¹⁰³

Similarly, the Serbian NHRI noted that, in a number of circumstances, the implementation of its recommendations led to tangible positive changes on the ground. For instance, acting on the NHRI's recommendations, competent authorities have improved access to information for migrants hosted in all reception centers visited by the NPM, including on the possibility to file a complaint to the NHRI.¹⁰⁴



In this context, as reported by the Croatian and German NHRIs, the **presentation of NHRIs' annual reports before national parliaments** proved to be a good occasion to give their recommendations further visibility.¹⁰⁵ The Croatian NHRI reported that the engagement with the competent parliamentary committees has been particularly beneficial.¹⁰⁶ In its last annual report, the Croatian NHRI has called on the Ministry of Interior among others to respect international and EU law when intercepting irregular migrants at borders, to provide interpretation during return operations and to establish an independent monitoring mechanism at borders.

Follow-up to the recommendation of Spanish NHRI led to the shutdown of inadequate facilities in the Canary Islands

Further to the surge in arrivals on the Canaries, the NHRI carried out two on-site visits in November 2020 to a first-line, temporary reception facility in the Arguineguín harbour in Mogan (Gran Canaria). The NHRI found alarming living conditions, such as severe overcrowding (around 2,000 individuals hosted in tents), unbearable heat (up to 40 degrees), insufficient bathrooms, and a lack of access to potable water. The NHRI urged authorities to swiftly evacuate the camps. Four days after the NHRI's visit, local authorities acted on these recommendations by dismantling the Arguineguín centre and transferring migrants to nearby alternative military premises. Similarly, in April 2021, following an unannounced visit by the NHRI, the Spanish authorities shut down a quarantine ship in Fuerteventura due to its inadequate reception and living conditions.¹⁰⁷ One day after this decision, 22 women and 3 kids were already transferred outside of the facility.¹⁰⁸ This example demonstrates that, where national authorities swiftly follow-up on NHRI recommendations, human rights protection can be achieved on the ground.

Inputting into draft legislation is a common practice for European NHRIs, including upon explicit invitation by governments. During the reporting period, several European NHRIs submitted their observations and recommendations to authorities regarding draft laws on asylum and migration. For instance, the Norwegian NHRI has been regularly consulted on legislative projects in the area of asylum and migration, including in relation to the treatment of migrants' personal data and the supervision of forced return operations.¹⁰⁹ Myria, the Belgian Federal Migration Centre, provided its views on five legislative proposals in 2021 alone, including at the invitation of the competent authorities.¹¹⁰ The Latvian NHRI reported that it recently took part in the consultation process for a new immigration law.¹¹¹

Another example comes from Poland, where the NHRI provided its opinion on a document prepared by the Polish authorities presenting principles for the Polish migration policy for the years 2021-2022. Among others, the Polish NHRI expressed its concern about the lack of emphasis on the guarantee of access to the asylum procedure for migrants who declare their intention to submit an asylum application during check-ins at a border crossing point.¹¹² Additionally, the Polish NHRI expressed its opinion on the proposed changes in the migration law concerning the deportation of migrants to their country of origin.¹¹³





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While NHRIs regularly engage with authorities in relation to *national* legislation affecting human rights at borders, there is **scope for more involvement of NHRIs in negotiations of EU legislative proposals and to monitor the national implementation of and respect for EU legislation**. This report has identified only a few practices in this regard. For instance, in 2020, the Croatian NHRI took part in a series of meetings with the European Commission's Directorate-General for Migration and Home Affairs to discuss the overall situation regarding irregular migrants and asylum seekers, as well as Croatia's monitoring exercises at the external borders.¹¹⁷ In April 2020, NHRIs from Germany, Greece, Croatia and Bosnia and Herzegovina, issued a joint statement on the human rights situation at European borders and the impact of EU asylum policy, including a set of recommendations for more human rights-complaint border policies. The statement was submitted to EU institutions and national governments, in view of the development of the EU's Pact on Migration and Asylum, released in September 2020.¹¹⁸

In the past years, ENNHRI has increased its advocacy in the field of migration before EU actors. ENNHRI held bilateral meetings with EU officials, including the EU Commissioner for Home Affairs, and raised their awareness of the mandate and role that NHRI can play in monitoring and protecting migrants' rights at borders.

The Danish NHRI reacted to draft law on the externalisation of asylum proceedings

In early 2021, the Danish government presented a legislative proposal aimed at shifting the responsibility to process asylum claims and accommodate asylum applicants to third countries. The draft law encountered open criticism and resistance by many rights defenders and international organisations, such as UNHCR.¹¹⁴ The Danish NHRI reacted to the legislative proposal through exchanges with the executive and awareness raising activities. The NHRI participated in the consultations on the draft bill and provided a strong, critical assessment of the proposal, recalling Denmark's human rights obligations.¹¹⁵ The draft law was eventually adopted by the Danish parliament in early June 2021, amid widespread criticism.¹¹⁶ This one example shows that, despite NHRIs' expertise and mandate, governments not always implement and follow-up on their recommendations.

NHRIs' advocacy in relation to the EU Pact on Migration and Asylum

At the time of writing, negotiations on proposals under the EU Pact are ongoing. Some European NHRIs have engaged with governments to ensure that any legislative and policy proposals take into account the respect for the human rights of migrants. In 2020, upon request by the government, the Slovenian NHRI submitted an opinion on the proposed Screening Regulation.¹¹⁹ Similarly, the Estonian NHRI shared comments encompassing the pact's proposals more broadly.¹²⁰ Finally, at the time of drafting of this report, the Greek NHRI was preparing a submission to the Greek government including observations on the pact's legislative and policy proposals.¹²¹

Cooperation with other HRDs

As set out in the UN Paris Principles, cooperating with other Human Rights Defenders, such as civil society organisations and other national human rights bodies is an integral part of NHRI's mandate and essential to their effective work. At borders, cooperation with local NGOs, grassroot organisations or Ombud-institutions, where they are not the NHRIs, has proved beneficial **to fill information gaps and strengthen protection frameworks.**

Across Europe, most **NHRIs draw consistently on the findings of NGOs on the ground and other Human Rights Defenders**, including to inform the drafting of recommendations to authorities. In some cases, cooperation between NHRIs and other HRDs takes more structured forms. For instance, the Croatian NHRI is supported by a permanent advisory body comprising representatives from CSOs, academia, media, and national minorities. This body proposes strategic guidelines and ensures a continuous cooperation between the NHRI and different segments of society.¹²² In Poland, the Committee of Experts for Migrants operates under the Polish NHRI and includes representatives of organisations dealing with migrant and refugee issues. In 2021, the members of the Committee and the Polish NHRI prepared a joint position paper on the situation of male and female migrants during the pandemic, which were used in subsequent submissions to the Polish authorities.¹²³

NHRIs' cooperation with NGOs and other HRDs has proven particularly beneficial in the context of on-site monitoring visits at borders. Through public tenders, many European NHRIs, such as from Croatia, Moldova, Serbia, Slovenia, and Ukraine, have invited NGOs and other human rights actors to take part in joint monitoring teams¹²⁴. In this context, the Slovenian NHRI reported that their present cooperation with nine NGOs, which provide around 40 staff members for joint work on NPM activities, is considered a good practice since it guarantees a wider pool of experts who possess additional information and alternative perspectives obtained through their own work, which can lead to more successful investigations.¹²⁵

Still, civil society organisations indicate that there is still scope for better engagement between NHRIs and NGOs in the field of migration, and encourage this cooperation at the national and regional levels, in line with the UN Paris Principles.¹²⁶

"The advocacy at capital level on regional frameworks, especially the EU legal order, has been weak for a long time, but NHRIs have a key role to play in making this stronger."

Catherine Wollard, Secretary General of ECRE, ENNHRI's High Level Meeting on 2-3 June 2021.

NHRIs also cooperate with other national or regional bodies. For instance, the Serbian NHRI and the Provincial Ombudsman of the Autonomous Province of Vojvodina signed the *Memorandum of Association in Performing Operations of the NPM*, envisaging that the Provincial Ombudsman shall actively participate in visits of the Serbian NPM's Monitoring Team to the institutions holding persons deprived of their liberty located in the Autonomous Province.

Unlawful practices stopped following the Spanish NHRI's intervention and cooperation with the Spanish Data Protection Agency

In 2020, the Spanish NHRI uncovered different unlawful practices performed by local administrations to facilitate the return of irregular migrants from the Spanish territory. For example, one local authority summoned irregular migrants to appear before its offices for alleged registration purposes. Yet, in many cases, this resulted in the sharing of migrants' data to other authorities for the purposes of detention prior to expulsions from the Spanish territory. The Spanish NHRI investigated this case and promptly escalated it to the Spanish Data Protection Agency. The practice was suspended as from April 2020 and, in 2021, the Data Protection Agency found breaches in the treatment of migrants' personal data and imposed sanctions on competent authorities.¹²⁷

“Thanks to this cooperation, we had a unique opportunity to learn from one another and find common solutions to carry out our respective mandates effectively in the context of asylum and migration.”

Georgian and
Armenian NHRIs

© Protector of Citizens of the Republic of Serbia



Joint activities and strong cooperation among NHRIs at borders: the good practice of the Armenian and Georgian NHRIs

NHRIs from Georgia and Armenia have greatly valued their cooperation when conducting human rights monitoring at borders. Both NHRIs declared that the joint field visits, which were conducted in collaboration with UNHCR, enhanced the institutions' capacity and the monitoring's methodology, while resulting in more accurate findings and impactful recommendations. Finally, the NHRIs noted that the involvement of UNHCR contributed to raising awareness on applicable international standards and to developing a common understanding of a protection-sensitive border management among Armenian and Georgian border officers.¹²⁸ This practice can serve as an inspiration for other NHRIs to consider joint activities and stronger cooperation at borders.

Cooperation with international human rights bodies

Monitoring and reporting by NHRIs is widely recognised and relied upon at the international level. For instance, international mechanisms and UN Treaty Bodies regularly rely on NHRIs' submissions to assess states' human rights performance and draw recommendations accordingly.¹²⁹ By bringing human rights concerns at the international level, NHRIs contribute to exercise pressure on states towards the national enforcement of human rights obligations.

During the reporting period, NHRIs from Great Britain,¹³⁰ Greece,¹³¹ Netherlands,¹³² Norway,¹³³ Poland, Portugal,¹³⁴ Romania,¹³⁵ Slovenia¹³⁶, among others, have reported to international human rights bodies on states' compliance in the field of asylum and migration.

Recently, NHRIs from France, Greece, Poland, and Slovenia have submitted their inputs to the UN Special Rapporteur on the Rights of Migrants in reply to the questionnaire on pushback practices and their impact on the human rights of migrants.¹³⁷ The report examines trends and findings arising from the submissions and, draws recommendations for states to better protect the human rights of migrants at borders, in line with international human rights standards.¹³⁸

Likewise, European NHRIs regularly cooperate with the Council of Europe's (CoE) bodies and mechanisms. For instance, in 2020, the Greek NHRI, through its Racist Violence Recording Network, submitted a Communication to the CoE Committee of Ministers for the supervision of the execution of judgments, in relation to a leading case on racist attacks against undocumented migrants.¹³⁹

ENNHRI facilitates direct participation of NHRIs in regional mechanisms and represent their collective voice before regional bodies. This includes bilateral meetings and presenting opinions and statements.¹⁴⁰

Enabling environment for HRDs at borders

NHRIs have identified **worrying trends in relation to the shrinking enabling environment for civil society organisations working at borders.**

NHRIs from France and Greece found that the **increasing policing of the civil society** space has often resulted in investigations, prosecutions, intimidating acts, and unjustified restrictions on their work. Moreover, through the Racist Violence Recording Network, the Greek NHRI has recorded racist and xenophobic attacks against international organisations' employees, CSOs, and journalists.¹⁴¹ The Slovenian NHRI has raised concerns over the increasing media attacks against civil society, including by means of unfounded accusations and the spreading of fake news.¹⁴²

In Croatia, the NHRI has devoted an entire chapter of its 2020 annual report to the Croatian parliament to limitations faced by civil society in the country. The report highlighted the insufficient support to CSOs during the COVID-19 pandemic, the inadequate policy framework for fostering cooperation with CSOs, the shortage of funding for human rights organisations, as well as their lack of access to statistical data and information. According to the NHRI, **limitations were particularly experienced by those HRDs working in the field of migration**, especially when requesting access to immigration reception and detention centres.¹⁴³



The French NHRI reacts to the crackdown on civil society at the French-UK border

In France, the governments' fight to the so-called 'anchor points' have been accompanied by an increasing crackdown on civil society organisations and individuals providing humanitarian assistance to migrants on the move. The NHRI reported that humanitarian organisations operating in Calais have increasingly experienced: identity checks, arrests, vehicle and body searches, as well as unjustified fines and restrictions, such as the prohibition to distribute free food and drinks in several city centers across the country. The NHRI has called on authorities to promptly halt any form of harassment against Human Rights Defenders, including by referring to the constitutionally-recognized principle of fraternity. In January 2021, further to an on-site visit to makeshift camps in Calais and Grande-Synthe, the NHRI publicly inquired the mayor of Calais about the recent installation of physical barriers preventing local associations from distributing food and drinks to migrants in need.¹⁴⁴

NHRIs counterbalancing executive powers during times of emergency

The COVID-19 pandemic further emphasised the need for strong, independent, and effective actors to promote and protect the rights of people in vulnerable situations, such as asylum seekers and undocumented migrants. NHRIs, as part of the domestic institutional order, have relied on their special standing to **counterbalance executive powers and oversight the proportionality, necessity, and legality of governments' responses to the pandemic**, in line with international human rights standards. For instance, NHRIs have advised governments on draft emergency laws, while drawing attention on the rights of migrants.

In 2020, the Greek NHRI noted that the restrictions imposed to migrants during the pandemic were unfairly harsher than those applying to the rest of the population. Moreover, as the situation improved, certain restrictions continued to apply for migrants only.¹⁴⁵

In Slovenia, after the outbreak of the COVID-19 pandemic, asylum decision-making has been suspended, as well as administrative decision-making not considered "urgent". The NHRI called upon the authorities to consider asylum claims as urgent due to their impact on people's legal status and related entitlements. Asylum decision-making was later resumed.¹⁴⁶



Similarly, as the pandemic outbreaked in the country, the Estonian NHRI made an inquiry about the government's decision to suspend all migration-related proceedings (except those concerning the right to work), in order to verify its compliance with the domestic law and constitution.¹⁴⁷

In early 2021, the Latvian NHRI submitted to the parliament concerns on the exemption of beneficiaries of international protection from COVID-19 social benefits.¹⁴⁸

While drawing attention on the impact of COVID-19 to migrants and refugees,¹⁴⁹ the Polish NHRI also inquired the Chancellery of the Prime Minister on the access to vaccinations for beneficiaries of international protection and asylum seekers.¹⁵⁰

Some European NHRIs also have contributed to raising migrants' awareness of their existing rights and obligations during the pandemic. For instance, the Armenian NHRI issued information on its website targeted at migrants on how they can lodge an asylum request, while publishing a practical guide which, among others, examined the impact of the pandemic on the right to asylum.¹⁵¹ The guide was translated into the most frequently spoken languages by migrants residing in the country.¹⁵²







Recommendations: towards human rights protection at borders

These recommendations are based on the extensive information taken from and trends identified in NHRIs' recent work to promote and protect the human rights of migrants at borders. They set out clear steps that relevant actors at the national and regional levels can take to ensure a human rights-sensitive governance at borders.

“Migrants should be empowered to report cases of ill-treatment towards them by police officers and other law enforcement officials in an appropriate procedure, so that their case can be investigated.”

Serbian National Report
on the situation of
human rights of
migrants at the
borders.

01

Take human rights seriously to stop impunity and foster accountability at borders

The vast amount of information collected by NHRIs adds to the robust body of evidence indicating that numerous and serious human rights violations continue to occur at borders. Worryingly, a common trend highlighted by European NHRIs is the increasing climate of impunity at borders, with a lack of investigations into rights violations, poor reporting by the police and borders authorities, and the reliance on the ‘absence of objective evidence’ to confirm violations. The absence of an effective and functioning accountability system has contributed to a prevalence of human rights violations at borders.

States must respect human rights at borders and fulfil their international obligations. They must design, review, and implement human rights-sensitive models of border governance. Where systemic deficiencies are observed, they must implement reforms where needed at the legislative, policy or operational level in order to address human rights challenges effectively. States can rely on the human rights expertise of NHRIs, NGOs and international organisations in these efforts.

States must ensure the existence of a fully functioning human rights accountability system, including at borders, which is able to guarantee the availability of an effective remedy to an individual whose rights may have been breached. Migrants should be fully informed and empowered to access the accountability mechanism, be it administrative or judicial. Accountability cannot be merely theoretical: states must ensure that migrants are able to resort to it in practice. Where complaints have been received, states have a positive duty to conduct an effective and independent investigation into the allegations.

NHRIs will continue to remind governments of their obligation to undertake effective investigations into all allegations of human rights violations, including through the use of technology and recording. By facilitating victims’ access to justice or cooperating with prosecutors and investigative authorities, NHRIs may fill serious accountability gaps and support states to achieve better human rights compliance at borders. A recent publication by the EU Fundamental Rights Agency (FRA) and the Council of Europe sets out human rights standards stemming from EU law and the ECHR that apply to effective remedies for human rights violations at borders.¹⁵³

The European Commission, in turn, should use all its available means to monitor and ensure the correct and effective implementation of EU law at borders by EU Member States, fulfilling its role as ‘guardian of the treaties’. In this regard, NHRIs are a valuable partner for the EU and can contribute to monitoring the respect for the EU Charter of Fundamental Rights and the state of the rule of law in EU Member States.

“The Council recognises that independent NHRIs and equality bodies play a crucial role in the protection and promotion of fundamental rights and in awareness raising, and contribute to ensuring compliance of national policies with the Charter. NHRIs are key for the implementation of the Charter, given their broad and horizontal fundamental rights mandate and their proximity to citizens.”

Council of the EU, Council conclusions on strengthening the application of the Charter of Fundamental Rights in the European Union.

02

Ensure independent and effective human rights monitoring at borders

As this report showed, human rights monitoring is a powerful tool that contributes to a better understanding of the situation at borders, while also providing evidence for human rights accountability and data to inform policy and legislative changes.

NHRIs in compliance with the UN Paris Principles take advantage of their strategic position as state bodies, independent of government, to access information, data, and individuals at borders. This report also demonstrates how inter-NHRI cooperation, as well as NHRI cooperation with other HRDs, can be particularly beneficial in the monitoring context to tackle cross-border violations, including across wider Europe and neighbouring regions. ENNHRI has a key role to play in fostering cooperation among European NHRIs and facilitating their engagement with civil society organisations and other human rights actors at the regional and international level.

Among the initiatives under the EU Pact on Migration and Asylum, the European Commission proposes the establishment of human rights monitoring mechanisms at borders by each EU Member State in its legislative proposal for a new Screening Regulation.

Human rights monitoring should be an essential part of European and national approaches to borders, migration and asylum. However, establishing a monitoring mechanism alone is not enough to achieve a human rights-compliant migration policy. The starting point should always be that authorities must respect human rights at borders, regardless of an individual's migration status.

Therefore, while the initiative of ensuring monitoring at borders is welcomed, NHRIs¹⁵⁴ and other actors¹⁵⁵ have maintained that the new proposal, with its geographical and procedural limitations, may fall short of addressing the broad range of human rights violations at borders.

ENNHRI has made recommendations to ensure that such a mechanism is truly effective and independent.¹⁵⁶ Among other proposals, ENNHRI has called for a strong, transparent, truly independent, and well-resourced mechanism, which relies on or cooperates with NHRIs and can contribute to accountability at borders.

ENNHRI reiterates its call to the EU and its Member States to strengthen existing organisations carrying out human rights monitoring at borders, such as NHRIs. At the same time, when creating or designating the independent mechanism set out under the proposed legislation, national authorities must rely on the advice and recommendations of actors with experience and expertise of conducting human rights monitoring.

“Member States should ensure that NHRIs can operate independently, in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of impartiality, integrity, transparency and fairness.”

Recommendation CM/Rec(2021)1 of the Committee of Ministers to Member States on the development and strengthening of effective, pluralist and independent national human rights institutions.

03

Protect Human Rights Defenders and ensure an enabling space for human rights work at borders

NHRIs reported shrinking civic space and a crackdown on Human Rights Defenders at borders, for instance through administrative and regulatory frameworks to limit NGOs from providing humanitarian and legal assistance to migrants. In some countries, NHRIs themselves have faced undue challenges, a lack of cooperation, and a disregard for their legal mandate by national authorities.

States must cease with all threats and intimidation, as well as administrative provisions and practices that unduly limit the work of Human Rights Defenders (like NHRIs and NGOs) at borders. Instead, national authorities must ensure an enabling space for human rights and humanitarian work at borders. For instance, in addition to refraining from undue interference in their work, they must investigate threats or actions targeting Human Rights Defenders at borders and engage with them in a spirit of cooperation.

All relevant authorities, including national border guards and the police, as well as EU officials operating at borders, must respect the mandate of and work constructively with NHRIs. This obligation must be clearly defined, as well as safeguards and consequences for when national authorities obstruct or do not cooperate with NHRIs.

The European Commission and the European Parliament must take strong and swift action within their mandates when NHRIs and other Human Rights Defenders are at risk or under threat, for instance due to their migration work, making use of all applicable political, financial and legal options where appropriate.

Human rights monitoring and accountability at borders must also be considered as an element of the respect for the rule of law. Therefore, the European Commission must take these elements into account during its evaluation and monitoring exercises, such as under the Rule of Law Review Cycle or the Schengen Evaluation Monitoring Mechanism.

In this regard, the Council of the European Union stressed “the necessity of safeguarding an enabling environment for independent national human rights institutions, Equality Bodies and other human rights mechanisms”.¹⁵⁷

“Immigration detention of children and their families has a pervasive impact on children’s physical, social, emotional and cognitive skills development, depriving them of their fundamental rights and their future.”

Special Rapporteur on the human rights of migrants, Report on ending immigration detention of children and seeking adequate reception and care for them.

04

Commit to using immigration detention as a last resort and ending detention of children

The widespread use of immigration detention, including of unaccompanied children and families, has been one of the main concerns expressed by NHRIs as a consequence of current regional and national policies implemented at the EU’s external borders. NHRIs have reminded national authorities repeatedly that administrative detention of asylum seekers should only be used as a last resort, and must always comply with strict procedural safeguards.¹⁵⁸ Good practices implemented during the COVID-19 pandemic, including with the support of NHRIs, have demonstrated that alternatives to immigration detention are feasible.

Special attention should be paid to unaccompanied and/or separated children, who must never be detained due to their heightened vulnerability. The duty to consider alternatives to detention for children and their families also follows on from States’ obligation to assess and respect the best interests of the child, their right to non-discrimination, and their right to be heard.¹⁵⁹

05

Identify and provide care for vulnerable people at borders

NHRIs found serious deficiencies in the identification and provision of care at borders for vulnerable migrants, that is persons found to have special needs after individual evaluation of their situation and who are entitled to call on states’ obligations to provide them with special protection and assistance. They include families, unaccompanied children, traumatised individuals, victims of trafficking, shipwreck survivors, women, and families of missing migrants.

European NHRIs have emphasised the need for national and European authorities at borders to provide protection for vulnerable groups in the context of border management, including through effective identification procedures and referral mechanisms. States must enhance their capacity to identify and protect vulnerable persons at borders, and must take all steps possible to implement the Council of Europe’s Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025).¹⁶⁰

“We must alert the international community on the need to adopt sustainable development policies to break the vicious circle of forced migration and (...) address migration in a holistic way as part of the human experience.”

Head of Greek NHRI during the 45th Regular Session of the UN Human Rights Council, 18.10.2020, Greek NHRI national report, pp. 55-56.

06

Pursue a sustainable and fair approach to asylum and migration, such as more legal pathways to Europe and achieving more solidarity in the region

European NHRIs have highlighted that the restrictive approach towards asylum and migration, coupled with insufficient safe and legal pathways to Europe, have led migrants and asylum seekers to pursue perilous journeys and to resort to human smuggling networks, or to be subject to exploitation or human trafficking.

National and regional actors should pursue more durable and long-term solutions, guaranteeing legal and dignified pathways to reach Europe and preventing deadly border crossings. This also reflects the commitments under the UN Global Compact for Refugees, such as the objective to facilitate durable solutions, for instance through expanded resettlement and complementary pathways for admission to third countries.¹⁶¹ The European Commission has taken some steps in this direction under the EU Pact on Migration and Asylum.¹⁶²

Yet the findings of NHRIs confirm the need for stronger commitments to relocation and responsibility sharing in Europe, in contradiction to migration policies that trap people at borders in undignified living conditions.

07

Restore protection-sensitive national frameworks

European NHRIs noted with alarm how different governments have gradually dismantled protection-sensitive asylum systems, notably through restrictive legal and policy reforms. This has had negative impacts on the human rights of migrants, access to asylum and other relevant procedures, as well as reception and detention conditions. Moreover, summary returns circumventing the necessary procedural standards are often formalised under bilateral readmission agreements.

NHRIs have called on authorities to ensure that human rights and refugee law, as arising from the EU Charter on Fundamental Rights, the European Convention on Human Rights, the 1951 Refugee Convention and its 1967 Protocol, among others, are always mainstreamed across border governance. This must result in human rights-based approaches and practices that are applied at all levels, from ministries down to the national and local authorities at borders.

Building on their existing expertise and experience, NHRIs stand ready to support governments and European policymakers to restore effective protection frameworks for refugees and migrants and re-align with international human rights obligations. This may be achieved by engaging in more structured collaboration, regular exchanges, and consultations on draft laws with European NHRIs.

“The UN Human Rights Council and the General Assembly regularly emphasize the importance of NHRIs, and we would advocate for a similar privileged relationship of the EU with NHRIs. The EU Action Plan on Human Rights and Democracy (...) commits the EU to supporting NHRIs outside the EU that comply with the UN Paris Principles. I would like to encourage EU to stand up for NHRIs within the EU with no less commitment.”

Birgit Van Hout, UN
Human Rights Office,
ENNHRI High level
conference, 2
June 2021.

08

Increase EU-NHRI cooperation in the field of migration

European NHRIs' role in the area of asylum and migration has been increasingly acknowledged by regional actors, including through the support of ENNHRI. For instance, in February 2020, the Committee of Ministers of the Council of Europe underlined “the important role in preventing pushbacks played by National Human Rights Institutions and by National Preventive Mechanisms”. In turn, the European Parliament adopted resolutions which, among other recommendations, call on Member States to rely on NHRIs when carrying out fundamental rights monitoring, including in relation to forced-return operations and detention conditions.¹⁶³

The EU should also establish more structured channels for cooperating with NHRIs during EU policy and legislative processes in the field of migration, bilaterally with NHRIs and through ENNHRI. For instance, the European Commission could hold more regular and meaningful exchanges with ENNHRI/NHRIs and provide financial support for their work at borders.

The European Parliament could draw more consistently on NHRIs' findings and invite them to participate in relevant legislative and policy discussions. At the same time, the Council of the EU could expand its cooperation with NHRIs by inviting them to address relevant Working Parties discussing the legislative proposals under the EU Pact.

Another area of relevance for EU-NHRI cooperation is the human rights scrutiny of EU migration funds. NHRIs can play an important role in ensuring that governments spend public funds for migration and asylum in a way that complies or contributes to fulfilling human rights obligations. The new EU Regulations on its Multiannual Financial Framework (MFF) for the years 2021-2027 will provide a legal basis for European NHRIs and ENNHRI to engage with governments and the European Commission on this matter.¹⁶⁴

ENNHRI has published a paper presenting an overview of the EU funds for migration in the period of 2021-2027 and the related opportunities and challenges for NHRIs regarding human rights scrutiny on the use of the funds.¹⁶⁵

“The EU could draw more consistently on NHRIs as crucial actors for the implementation of fundamental rights, including by ensuring independent and effective fundamental rights monitoring in the EU Member States. Such reliance on NHRIs should be supported through close and regular relationships with specific NHRIs and ENNHRI in particular. A qualified interaction could be reserved for Paris Principles-compliant NHRIs and ENNHRI. The capacity of NHRIs and ENNHRI to engage effectively must also be ensured by providing sufficient human and financial resources.”

European Union Agency for
Fundamental Rights, Strong and
Effective National Human
Rights Institutions:
challenges, promising
Practices and
opportunities,
p. 13.

09

Enhance relations between NHRIs and EU agencies operating at borders

EU Justice and Home Affairs (JHA) agencies, such as Frontex and the European Asylum Support Office (EASO), have increasingly engaged in migration, asylum, and border management. In 2019, Frontex's capacity was strengthened in terms of staff and technical equipment, while it was also given a broader mandate to support border control, return and cooperation with third countries. In addition, EU Member States have recently agreed to transform EASO into a fully-fledged Asylum Agency, with stronger steering and monitoring functions.

With the expansion of their mandates, both agencies could benefit from closer cooperation with European NHRIs. This might be when developing and implementing human rights safeguards for their support operations or investigating possible violations and misconduct by their agents on the ground. For instance, NHRIs may support the Frontex Fundamental Rights Officer (FRO) in handling complaints submitted to the agency by individuals who believe their rights have been affected during Frontex operations, particularly when the government from the country where the alleged violations occurred is unwilling to assist in investigations. Additionally, as identified by the Frontex Scrutiny Working Group of the European Parliament, competent national human rights bodies, such as NHRIs, may provide credible insights from the ground when assessing the fundamental rights impact of Frontex operations and activities.¹⁶⁶

“EU Member States could ensure that there is a systematic tracking and public reporting of the follow-up and implementation of NHRIs’ recommendations. This could include reporting on which recommendations are still pending and at which stage, as well as which recommendations have explicitly been rejected or left without reaction by competent national authorities. If NHRIs’ recommendations are not acted on, there could be effective formal ways for NHRIs to have these addressed by parliament.”

European Union Agency for Fundamental Rights, Strong and Effective National Human Rights Institutions: challenges, promising Practices and opportunities, p. 15.

10

Follow up on NHRIs’ recommendations

Based on their monitoring work, NHRIs and other actors provide human rights-based recommendations to border police, relevant ministries, national authorities, and regional actors. If acted on, the recommendations lead to better protection of migrants’ rights at borders. However, while in some circumstances NHRIs reported that their recommendations were fully or partially implemented, they have too often reported an insufficient level of implementation of their recommendations by the competent authorities.

A recent Recommendation of the Council of Europe Committee of Ministers noted that states “should implement the recommendations of NHRIs and are encouraged to make it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame”. In turn, regional actors such as the European Union and the Council of Europe should, within their mandate, exert further pressure on states to consider, follow up and implement recommendations of NHRIs, including in the field of migration.

National authorities should engage in meaningful cooperation with human rights actors, including NHRIs, and constructively engage with them to fulfil their human rights obligations at borders.

Endnotes

- 1 See, for instance: UN General Assembly, Human Rights Council, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*, Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, A/HRC/47/30, 12.05.2021, available at <https://undocs.org/A/HRC/47/30>; FRA, *Migration: Fundamental rights issues at land borders*, 04.12.2020, available at <https://fra.europa.eu/en/publication/2020/migration-fundamental-rights-issues-land-borders>.
- 2 *Greek National Report on the situation of human rights of migrants at the borders*, hereafter *Greek NHRI Report on Rights at Borders*, p. 21, available at <http://ennhri.org/wp-content/uploads/2021/08/Greek-National-Report.pdf>.
- 3 The French NHRI reported that, according to official figures, 868 crossings or attempts to cross to the UK were detected in 2020, amounting to 9,551 people, – four times more than 2019 – while at least 12 bodies were found in 2020 only.
- 4 In 2021 alone, the Serbian NHRI was informed that reception centres recorded 766 allegations of expulsions on the Serbian-Croatian border.
- 5 *Croatian National Report on the situation of human rights of migrants at the borders*, hereafter *Croatian NHRI Report on Rights at Borders*, p. 10, available at <https://ennhri.org/wp-content/uploads/2021/08/Croatian-National-Report.pdf>.
- 6 Serbian NHRI, Asylum and Migration Working Group Meeting with partners, meeting minutes, 24.03.2021.
- 7 Spanish NHRI, *Annual Report 2020*, pp. 201-202, available [in Spanish] at https://www.defensordelpueblo.es/wp-content/uploads/2021/05/Informe_anual_2020-1.pdf; see also Maria Martin, *España camufla devoluciones en caliente como rescates en el mar. El Defensor del Pueblo denuncia la activación del protocolo de auxilio marítimo para expulsar migrantes desde los islotes de soberanía española*, El País, 18.05.2020, available at <https://elpais.com/espana/2020-05-17/espana-camufla-devoluciones-en-caliente-como-rescates-en-el-mar.html>.
- 8 *Greek NHRI Report on Rights at Borders*, p. 21. More certainty on the applicable legal framework during operations at land and sea borders was demanded by several actors following allegations of involvement in pushbacks at borders against Frontex. See, for instance: Frontex Management Board Working Group, *Final Report: Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea*, 01.03.2021, available at https://frontex.europa.eu/assets/Key_Documents/MB_Documents/Agenda_Point_WG_FRaLO_final_report.pdf; LIBE Frontex Scrutiny Group Meeting, 15.03.2021.
- 9 The French NHRI noted that, as early as 2017, the disproportionate use of force by border state agents was also noted by public authorities who concluded that ‘the investigations conducted on the spot confirm plausible breaches of doctrine and ethics of the internal security forces in Calais and to a lesser extent in Dunkirk’, *French National Report on the situation of human rights of migrants at the borders*, hereafter *French NHRI Report on Rights at Borders*, p. 12, available at <http://ennhri.org/wp-content/uploads/2021/08/French-National-Report-CNCDH.pdf>.
- 10 *Slovenian National Report on the situation of human rights of migrants at the borders*, hereafter *Slovenian NHRI Report on Rights at Borders*, p. 15, available at <http://ennhri.org/wp-content/uploads/2021/08/Slovenian-National-Report.pdf>.
- 11 The Serbian NPM reported that interviewees were not able to accurately locate the events in place and time, and that in many cases injuries were not documented.
- 12 Slovenian NHRI, Asylum and Migration Working Group Meeting, meeting minutes, 30.03.2021.
- 13 *Greek NHRI Report on Rights at Borders*, p. 24.
- 14 GNCHR, *The GNCHR held a hearing of bodies on issues of international protection and social security coverage of refugees*, 07.07.2020, available [in Greek] at <https://www.nchr.gr/ta-nea-mas/888-%CE%B1%CE%BA%CF%81%CF%8C%CE%B1%CF%83%CE%B7-%CF%86%CE%BF%CF%81%CE%AD%CF%89%CE%BD-%CE%B3%CE%B9%CE%B1-%CE%B6%CE%B7%CF%84%CE%AE%CE%BC%CE%B1%CF%84%CE%B1-%CE%B4%CE%B9%CE%B5%CE%B8%CE%BD%CE%BF%CF%8D%CF%82-%CF%80%CF%81%CE%BF%CF%83>.

- 15 For a full account of the forced return monitoring bodies in the EU, see: FRA, *Forced return monitoring systems - 2020 update*, 03.07.2020, available at <https://fra.europa.eu/en/publication/2020/forced-return-monitoring-systems-2020-update>.
- 16 Commissioner for Human Rights, *Report of the on the activities of the National Mechanism for the Prevention of Torture in Poland in 2020 (Summary)*, pp. 24-26, available at <https://bip.brpo.gov.pl/sites/default/files/Report%20of%20the%20Human%20Rights%20Defender%20on%20the%20activities%20of%20the%20NPM%20in%20Poland%20in%202020.pdf>
- 17 Proposal for amendment of the Polish Act on Foreigners, available at <https://legislacja.rcl.gov.pl/projekt/12347804/katalog/12794157#12794157>; Polish NHRI, *Statement on the proposal for amendment of the Polish Act on Foreigners*, available at https://bip.brpo.gov.pl/sites/default/files/RPO_opinia_projektu_nowelizacji_ustawy_cudzoziemcach_16.07.2021.pdf.
- 18 During ENNHRI's High Level Meeting on 2-3 June, the representative of the Border Violence Monitoring Network (BVMN) raised similar concerns by denouncing unlawful practices carried out under old and outdated readmission agreements among neighbouring countries in the Western Balkans.
- 19 *Slovenian NHRI Report on Rights at Borders*, pp. 13-15.
- 20 *Ibidem*.
- 21 For instance, the French NHRI reported that, between March and May 2020, the shutdown of competent authorities' offices made lodging new applications and appealing against rejected applications temporarily impossible.
- 22 *French NHRI Report on Rights at Borders*, p. 11.
- 23 In this report's reporting period alone, Law 4636/2019 on International Protection was amended four times. From: *Greek NHRI Report on Rights at Borders*, pp. 27-30. For further information on the NHRI's positions with regard to the national legal framework on asylum, see: GNCHR's *Observations on Draft Law of the Ministry for Citizen's Protection, "On international protection: provisions for the recognition and status of third country national or stateless persons as beneficiaries of international protection and other provisions"*, available [in Greek] at https://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/Paratiriseis%20EEDA%20sto%20no-mosxedio%20gia%20Asylo%2024.10.2019.pdf; GNCHR's *Observations on Draft Law of Ministry for Migration and Asylum "Improvement of migration legislation, amendments of provisions of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions"*, summary available at https://www.nchr.gr/images/English_Site/PROSFYGES/Summary_GNCHR%20Observations%20to%20Draft%20Law%20on%20Improvement%20of%20migration%20legislation.pdf.
- 24 The NHRI reported that these concerns are in line with findings from UNHCR, FRA and other relevant NGOs. From: *Greek NHRI Report on Rights at Borders*, p. 36.
- 25 GNCHR, *Reference Report on the refugee and migrant issue 2020*, p. 58.
- 26 According to the NHRI reporting, funding for free legal aid provided by local NGOs was stopped by the government as from April 2020.
- 27 This provision was introduced by amendments to the national asylum law in 2021. In 2019, following a proceeding initiated by the Slovenian NHRI, a similar provision was annulled and declared unconstitutional by the Constitutional Court. See: Decision U-I-59/17 of 18 September 2019, available [in Slovenian] at www.us-rs.si/media/u-i-59-17.-odlocba.pdf.
- 28 According to the latest amendments, legal counsellors may be required to disclose personal information, including facts that may exclude applicants from being granted international protection. Also, as from April 2021, asylum seekers can move freely only within the municipality in which they reside. From *Slovenian NHRI Report on Rights at Borders*, pp. 17-19.
- 29 In 2020, the NHRI found that around 30% of those appealing against negative decision have access to free legal aid, while on the percentage gets much lower on the islands. From: *Greek NHRI Report on Rights at Borders*, p. 34.
- 30 Art 20 and 46 of Directive 2013/32/EU; Art 47 of the EU Charter of Fundamental Rights; Art 13 of the ECHR; Greek national law 4636/2019.
- 31 This finding was reported by the NHRI, after a visit on the Samos Islands in early 2020.

- 32 Greek NHRI Report on Rights at Borders, p. 36.
- 33 Croatian NHRI Report on Rights at Borders, p. 11.
- 34 Serbian National Report on the situation of human rights of migrants at the borders, hereafter Serbian NHRI Report on Rights at Borders, p. 19, available at <http://ennhri.org/wp-content/uploads/2021/08/Serbian-National-Report.pdf>.
- 35 Ibid, p. 13
- 36 Slovenian NHRI, Report, 20.07.2020, available [in Slovenian] at https://www.varuh-rs.si/fileadmin/user_upload/pdf/Stalisca_in_ugotovitve/2020_7_22_-_Koncno_porocilo_o_prijetju_in_vracanju_migrantov_na_Hrvasko.pdf.
- 37 Accordingly, the NHRI has formulated recommendations for the competent authorities. From Slovenian NHRI Report on Rights at Borders, p. 17.
- 38 The NHRI reported that, in 2020, the Administrative Court annulled 151 first instance decisions out of a total of 215 cases under examination. From: Slovenian NHRI Report on Rights at Borders, p. 18.
- 39 Polish NHRI, Limited access of migrants to the refugee procedure in Poland. The NHRI information for the UN Special Rapporteur, 02.02.2021, available at <https://www.rpo.gov.pl/pl/content/ograniczony-dostep-migrantow-do-procedury-uchodzczej-informacje-rpo-dla-sprawozdawcy-onz>.
- 40 Polish NHRI, A visit to the railway border crossing in Terespol, 25.09.2019, available [In Polish] at <https://www.rpo.gov.pl/pl/content/wizytacja-kolejowego-przejscia-granicznego-w-terespolu-wrzesien-2019>.
- 41 M.K. and Others v Poland, 23.06.2020, available at <https://www.asylumlawdatabase.eu/en/content/mk-and-others-v-poland-repeated-refusal-accept-asylum-applications-amounted-collective>.
- 42 Polish NHRI, The ECtHR negatively assessed the practice of Polish services in matters of people seeking international protection in Poland, 23.07.2020, available [In Polish] at <https://www.rpo.gov.pl/pl/content/rpo-negatywna-ocena-etpc-braku-dostepu-do-procedur-uchodzczych>.
- 43 Polish NHRI, Więcej cudzoziemców zatrzymanych na "zielonej granicy" z Białorusią. Rzecznik pyta Straż Graniczną, available [In Polish] at <https://bip.brpo.gov.pl/pl/content/rpo-straz-graniczna-cudzoziemcy-granica-bialorus>
- 44 Polish NHRI, Coronavirus and the rights of foreigners seeking protection from persecution. The NHRI asks the Border Guard about current procedures at the eastern border, 02.04.2020, available [In Polish] at <https://bip.brpo.gov.pl/pl/content/koronawirus-granice-ochrona-miedzynarodowa-w-Polsce>
- 45 Spanish NHRI, Report: Migration on the Canary Islands, 2021, available at https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2021/04/INFORME_Canarias-EN.pdf.
- 46 Greek NHRI Report on Rights at Borders, p. 30.
- 47 Ibid, p. 38.
- 48 Croatian NHRI Report on Rights at Borders, p. 12.
- 49 Slovenian NHRI Report on Rights at Borders, p. 13.
- 50 Ibid, p. 20.
- 51 Greek NHRI Report on Rights at Borders, p. 37.
- 52 CNCDH, Opinion on the situation of exiled persons in Calais and Grande-Synthe, 11.02.2021, available at https://www.cncdh.fr/sites/default/files/a_-_2021_-_3_-_en_-_situation_of_exiled_persons_in_calais_and_grande-synthe_febr_2021.pdf.
- 53 In 2019, government consultations with the NHRI resulted in the review of the asylum seekers' age assessment procedures towards less intrusive methods. The process included the examination of alleged minors' genitals. From: Luxembourgish NHRI, Annual Report 2019, p. 42, available [In French] at <https://ccdh.public.lu/dam-assets/fr/publications/rapports-activite/Rapport-d-activites-2019.pdf>.
- 54 The British NHRI took on strategic litigation on age assessments of children seeking asylum, among other cases. See British NHRI, Annual Report 1 April 2019 – 31 March 2020, available at https://www.equalityhuman-rights.com/sites/default/files/ehrc_annual_report_2019-20_final_interactive.pdf.

- 55 Spanish NHRI, *Annual Report 2020*, pp. 214-215.
- 56 Spanish NHRI, *El Defensor pide a todas las administraciones que se impliquen en la acogida de los cerca de 3.000 menores extranjeros no acompañados llegados a canarias*, 27.04.2021, available at <https://www.defensordelpueblo.es/noticias/comparecencia-informe-canarias/>.
- 57 *Ibidem*.
- 58 French NHRI, *Opinion on the situation of exiled persons in Calais and Grande-Synthe*, 11.02.2021, pp. 10-11.
- 59 Spanish NHRI, *Annual Report 2020*, pp. 204-205.
- 60 UNHCR estimated that at least 480 individuals lost their lives on the Atlantic route in 2020 alone.
- 61 Spanish NHRI, *Report: Migration on the Canary Islands*, available at https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2021/04/INFORME_Canarias-EN.pdf.
- 62 Norwegian NHRI, *Unaccompanied minor asylum seekers who disappear from reception and inadequate statistics*, 12.03.2021, available at <https://www.nhri.no/2021/enslige-mindrearige-asylokere-som-forsviner-fra-mottak-og-mangelfull-statistikk/>. This also aligns with a recent investigation conducted by independent journalists who found that information on missing UAMs across Europe is often inconsistent and incomplete. The investigation especially found that, between January 2018 and December 2020, nearly 17 children a day went missing. In 2020 alone, 5,768 children disappeared in 13 European countries. From: Ismail Einashe and Adriana Homolova, *Nearly 17 child migrants a day vanished in Europe since 2018*, The Guardian, 21.04.2021, available at <https://www.theguardian.com/global-development/2021/apr/21/nearly-17-child-migrants-a-day-vanished-in-europe-since-2018#:~:text=An%20investigation%20by%20the%20Guardian,disappeared%20in%2013%20European%20countries.>
- 63 Norwegian NHRI, *Input to the UN Committee against Torture - The Convention against Torture*, 29.01.2021, available at <https://www.nhri.no/2021/innspill-til-fns-torturkomite-torturkonvensjonen/>.
- 64 French NHRI *Report on Rights at Borders*, p. 16.
- 65 French NHRI, *Opinion on the situation of exiled persons in Calais and Grande-Synthe*.
- 66 Greek NHRI *Report on Rights at Borders*, p. 43.
- 67 The Greek NHRI is waiting for the new policies and reception systems to be fully operational to devier an informed opinion. From: *Greek NHRI Report on Rights at Borders*, pp. 45-46.
- 68 For the detailed findings arising from the Greek NHRI's on site monitoring see: *Greek NHRI Report on Rights at Borders*, pp. 46-49.
- 69 According to data released by the Ministry of Asylum and Migration, in 2020 over 33.617 people were transferred from the islands to the mainland.
- 70 Greek NHRI *Report on Rights at Borders*, p. 53.
- 71 Spanish NHRI, *Report: Migration on the Canary Islands*, p. 26.
- 72 Spanish NHRI, *Annual Report 2020*, pp. 210-211.
- 73 ECRE, *Atlantic Route: Risky Attempts to Reach Spain Cost More Lives While Shortcomings in the Canary Islands Surface*, 30.04.2021, available at <https://www.ecre.org/atlantic-route-risky-attempts-to-reach-spain-cost-more-lives-while-shortcomings-in-the-canary-islands-surface/>.
- 74 Spanish NHRI, *El Defensor pide a todas las administraciones que se impliquen en la acogida de los cerca de 3.000 menores extranjeros no acompañados llegados a canarias*, 27.04.2021, available at <https://www.defensordelpueblo.es/noticias/comparecencia-informe-canarias/>.
- 75 In September 2020, the NHRI recommended authorities to end administrative detention for UAMs and families with children. See: French NHRI, *La rétention administrative des enfants doit être interdite*, 24.09.2020, available [in French] at https://www.French_NHRI.fr/fr/publications/la-retention-administrative-des-enfants-doit-etre-interdite.
- 76 French NHRI *Report on Rights at Borders*, p. 15.

- 77 French NHRI, *Etat d'urgence sanitaire et Etat de droit*, 28.04.2020, available at https://www.cncdh.fr/sites/default/files/avis_2020_-_2_-_200424_avis_etat_durgence_sanitaire_et_etat_de_droit.pdf.
- 78 Greek NHRI Report on Rights at Borders, pp. 40-42.
- 79 *Ibid*, pp. 44-45.
- 80 The Armenian NHRI sent a letter to the General Prosecutor Office and the Supreme Judicial Council on the possible implementation of alternatives to detention, especially for those at higher risk of infection, vulnerable groups and those with chronic diseases. ENNHRI's Asylum and Migration Working Group Meeting, July 2020.
- 81 Cyprus NHRI, *Letter to national authorities with recommendations on the treatment of persons deprived of their liberty during the pandemic*, available [in Greek] at [http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/BDDE33B1D61926DBC22585370040AFB1/\\$file/NPM%20Covid-19_26032020.pdf?OpenElement](http://www.ombudsman.gov.cy/ombudsman/ombudsman.nsf/All/BDDE33B1D61926DBC22585370040AFB1/$file/NPM%20Covid-19_26032020.pdf?OpenElement); See also: European Union Agency for Fundamental Rights, *Strong and Effective National Human Rights Institutions: challenges, promising practices and opportunities*, p. 62, available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-strong-effective-nhris_en.pdf
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- 88 Serbian NHRI Report on Rights at Borders, pp. 23-24.
- 89 Slovenian NHRI Report on Rights at Borders, p. 19.
- 90 *Ibid*, p. 21.
- 91 Croatian NHRI Report on Rights at Borders, p. 12.
- 92 Commissioner for Human Rights of Poland, *Foreigners in Administrative Detention: Results of monitoring in Guarded Centres for Foreigners in Poland by the National Mechanism for the Prevention of Torture, Inhuman, Degrading Treatment or Punishment of the Office of the Commissioner for Human Rights*, 2021, available at <https://bip.brpo.gov.pl/sites/default/files/Foreigners%20in%20Administrative%20Detention.pdf>.
- 93 Recommendation CM/Rec(2018)11 of the Council of Europe Committee of Ministers to Member States on the need to strengthen the protection and promotion of civil society space in Europe, available at <https://rm.coe.int/recommendation-cmrec-2018-11-civic-space/168097e937>; EU guidelines on Human Rights Defenders, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133601>; UN definition of HRDs (SR/ GA).
- 94 ENNHRI, *National Human Rights Institutions and Human Rights Defenders: Enabling human rights and democratic space in Europe*, available at <https://ennhri.org/wp-content/uploads/2019/09/Publication-NHRIs-and-Human-Rights-Defenders-Enabling-Human-Rights-and-Democratic-Space-in-Europe.pdf>.
- 95 Greek Ombudsman, *Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection: Interim Report*, 28.04.2021, available at <https://www.synigoros.gr/resources/docs/280421-pushbacks-interim-report-eng.pdf>.

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- 102 French NHRI Report on Rights at Borders, p. 17; Greek NHRI Report on Rights at Borders, p. 60; Slovenian NHRI Report on Rights at Borders, p. 12.
- 103 Slovenian NHRI Report on Rights at Borders, p. 21.
- 104 Serbian NHRI Report on Rights at Borders, pp. 25-26. Also, acting on the NHRIs' recommendations, the permanent presence of a medical team in the national shelter for returns is being discussed at the ministerial level. Finally, following the NHRIs' recommendations, authorities have improved migrants' access to relevant information at various border points and reception facilities. From: *Serbian NHRI Report on Rights at Borders*, pp. 22,25.
- 105 Croatian NHRI Report on Rights at Borders, p. 8; German NHRI, *Developments of the human rights situation in Germany July 2019 – June 2020: Executive Summary, Report to the German Federal Parliament in accordance with section 2 (5) of the Act on the Legal Status and Mandate of the German Institute for Human Rights*, available at https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Menschenrechtsbericht/Executive_Summary_Annual_Report_Development_Human_Rights_Situation_Germany_2020.pdf.
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- 107 Eldiario, *Migraciones ordena desalojar la nave para cuarentenas de Fuerteventura tras una denuncia del Defensor del Pueblo sobre sus malas condiciones*, 24.04.2021, available at https://www.eldiario.es/canariasahora/migraciones/migraciones-ordena-desalojar-nave-cuarentena-fuerteventura-denuncia-defensor-pueblo-malas-condiciones_1_7855264.html.
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- 112 Polish NHRI, *New proposals of the Ministry of Interior and Administration in matters of migrants and foreigners - reservations and comments of the NHRI*, 16.07.2021, available [in Polish] at <https://bip.brpo.gov.pl/pl/content/rpo-mswia-cudzoziemcy-migranci-polityka-migracyjna-nowela-ustawy>
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- 127 Spanish NHRI, *Annual Report 2020*, p. 241.
- 128 Tamta Papuashvili, Sergey Ghazinyan, *Joint Monitoring at Borders: practice of the Georgian and Armenian NHRIs in cooperation with UNHCR*, ENNHRI, 25.05.2021, available at <http://ennhri.org/news-and-blog/joint-monitoring-at-borders-practice-of-the-georgian-and-armenian-nhris-in-cooperation-with-unhcr/>.
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- 130 As part of its work on monitoring the International Covenant on Civil and Political Rights (ICCPR), the British NHRI submitted a report to the United Nations which, among others, raised concerns on immigration detention in the country. Moreover, the NHRI successfully influenced a UN review of the UK's compliance with the Convention Against Torture, with 71% of the concerns raised reflected in the UN Committee's recommendation. See: British NHRI, *Annual Report and Accounts: 1 April 2019 – 31 March 2020*, 2020, p. 38.
- 131 In September 2020, the Greek NHRI intervened at the 45th Regular Session of the UN Human Rights Council to report on the humanitarian crisis following the fire at the Moria Camp on the Lesbos island. From: Greek monthly update of September 2020, Asylum and Migration Working Group monthly newsletter September 2020.
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[paper-outlines-how-european-nhris-promote-and-protect-human-rights-of-migrants-at-borders/](#).

- 133 In January 2021, the Norwegian NHRI reported to the UN Committee on Torture prior to Norway's simplified reporting procedures on the situation of UAMs and migrant detainees. From: Norwegian NHRI, *Input to the UN Committee against Torture - The Convention against Torture*, 29.01.2021, available at <https://www.nhri.no/2021/innspill-til-fns-torturkomite-torturkonvensjonen/>.
- 134 In October 2019 and April 2020, respectively, the Portuguese NHRI submitted its contributions to the 7th periodic report of Portugal under convention against torture and to the Special Rapporteur on the human rights of migrant on children in detention. See: Portuguese NHRI, *UN Committee against Torture: Ombudsman updates situation in Portugal*, 20.11.2019, available at <http://www.provedor-jus.pt/?idc=35&idi=18147>; Portuguese NHRI, *Inputs of the Portuguese National Human Rights Institution to the Special Rapporteur on the human rights of migrants*, 24.04.2020, available at https://www.ohchr.org/Documents/Issues/Migration/CallEndingImmigrationDetentionChildren/NHRI/PortugueseOmbudsman_submission.docx.
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- 138 UN General Assembly, Human Rights Council, *Report on means to address the human rights impact of push-backs of migrants on land and at sea*, Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, A/HRC/47/30, 12.05.2021, available at <https://undocs.org/A/HRC/47/30>.
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- 142 Slovenian NHRI *Report on Rights at Borders*, p. 22.
- 143 Croatian NHRI *Report on Rights at Borders*, p. 8.
- 144 French NHRI, *Lettre à la Maire de Calais*, 19.01.2021, available [in French] at <https://www.cncdh.fr/fr/publications/lettre-la-maire-de-calais>.
- 145 Greek NHRI *Report on Rights at Borders*, pp. 52, 23.
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