



Strengthening Human Rights Accountability at Borders

ENNHRI Report

About

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Title

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Introduction

The robust body of evidence gathered by National Human Rights Institutions (NHRIs), civil society organisations (CSOs), journalists, and regional and international bodies demonstrates that serious violations of the human rights of migrants persist at European borders. While the situation at borders varies in different countries, violations such as summary returns, arbitrary detention, and denial of access to asylum procedures can be seen [across Europe](#). In addition, the use of violence and pushbacks has become more frequent and widened in scope.

Despite the mounting evidence of human rights violations, European NHRIs have highlighted that there remains a climate of impunity at borders. This is caused in part by a lack of adequate follow-up to the findings and recommendations of human rights monitors. While monitoring and reporting can be powerful tools, they are not enough: they should lead to stronger accountability and compliance with human rights obligations.

Several European NHRIs have [observed](#) that states have adopted restrictive policy and legislative reforms that are gradually dismantling protection-sensitive migration systems. In some countries, this includes attempts to provide a legal basis for collective expulsions and summary returns in domestic legislation, which are nonetheless prohibited under international and European Union (EU) law. Human rights actors, including NHRIs, have alerted to the need to ensure that national migration management policies and practices are aligned with international human rights and refugee law obligations.

As state-mandated bodies that are independent of governments, NHRIs have a broad mandate to promote and protect human rights, including the rights of migrants at borders. Their unique standing and access to authorities allows them to monitor border areas as well as reception and detention centres, report on their findings, submit recommendations to authorities, and advise governments in relation to international and regional human rights standards. Some NHRIs have specific legal functions – such as receiving individual complaints, intervening as a third party in national and regional cases, supporting individual complainants in courts, and bringing cases to national constitutional courts - that can be [strong tools](#) in achieving accountability where violations at borders occur.

Independent and effective NHRIs are also an [indicator](#) of respect for the rule of law and are [key actors](#) in the national system of checks and balances. They contribute to access to justice for migrants that have experienced violations, promote migrants' human rights, speak out on wrongdoings, and call for systemic policy or legislative changes to ensure human rights compliance.

ENNHRI understands accountability in a broad sense. Our understanding reflects the unique position, role, and status of NHRIs. Human rights accountability at borders encompasses five elements:

1. Independent and effective monitoring and reporting at borders, in line with international standards and human rights obligations.
2. Access to justice that is guaranteed in theory and in practice, in full respect of the right to an effective remedy and the possibility of redress for violations. This includes the existence of independent, accessible, and effective complaints mechanisms.
3. Independent investigations being carried out where allegations are received, which ensure that victims can be heard, lead to active steps to identify perpetrators, and which are capable of triggering or recommending appropriate consequences.
4. Revision of practices, policies, and legislation to ensure compliance with human rights standards and prevention of violations at borders. This encompasses following-up and implementing the recommendations of NHRIs.
5. A culture of respect for human rights, where national authorities responsible for border control and other actors at borders are trained on human rights, take their obligations seriously, and cooperate with Human Rights Defenders (HRDs).

In our December 2021 [Report](#) on “Gaps in Human Rights Accountability at Borders”, ENNHRI found numerous and serious deficiencies across all five elements of accountability systems at borders. The present report takes one step further by providing guidance and good practices on how to overcome these gaps. It explains how the specific mandate, role, and expertise of NHRIs can contribute to this goal. It builds on the extensive work done by European NHRIs on this topic, which is complementary to the efforts of other actors seeking accountability at borders.

This report is the result of desk research, input from NHRIs through interviews, questionnaires and an in-person meeting, as well as exchange with several partners (namely Amnesty International, Are You Syrious?, Centre for European Policy Studies (CEPS), Centre for Peace Studies (CMS) in Croatia, Danish Refugee Council, Office of the Council of Europe Commissioner for Human Rights, and the Peace Institute in Slovenia).

Ultimately, the report finds that accountability at borders can be achieved where there is a strong system of checks and balances and a commitment by authorities to respect and fulfil their human rights obligations, which can lead to changes in legislation, policy, and practice. Drawing on the practices of NHRIs and their recommendations for overcoming specific gaps in accountability, we advance five key messages to national and regional actors on the urgent need to strengthen accountability and prevent human rights violations at borders.

Gaps in monitoring and overall transparency

Independent and effective border monitoring is a precondition for a functioning accountability system. Through it, cases of human rights violations can be referred to the appropriate authorities, thorough investigations can be initiated, and trends and systemic issues can be identified. Monitoring serves as the basis for building recommendations aimed at overcoming gaps in accountability and preventing future violations from occurring.

Violations at borders often occur in remote and securitised areas and concern individuals in a vulnerable situation. Without monitoring, borders risk becoming blind spots for human rights protection, where violations go unnoticed, unreported, and unsanctioned. Despite this importance, human rights monitors – such as civil society, NHRIs, and other actors – continue to face undue obstacles and challenges in monitoring borders.

Guaranteeing and strengthening human rights monitoring at borders

Human rights monitoring at borders is a difficult exercise: it often needs to cover a vast geographic area, can be subject to strict security measures, involves a wide variety of actors, can be under increased scrutiny by the public and political interests, and it is affected by rapid shifts in migratory movements. In addition to these challenges, several authorities have restricted – and, in some cases, banned – HRDs with a field presence from monitoring border zones. As human rights defenders themselves, NHRIs have also **faced** restrictions and undue obstacles in monitoring migrants' rights at borders. In some countries, authorities have established and prolonged state of emergency laws that exclude independent observers from border areas.

A lack of sufficient human and financial resources can make it difficult for NHRIs and other monitors to maintain a sufficient, regular, or consistent presence at borders. Despite this obstacle, NHRIs have carried out frequent monitoring missions and unannounced visits to border areas, including to police stations. During such visits, they inspect facilities, interview migrants, access documents, and exchange with border and police authorities.

In the past decade, NHRIs have become an essential **source** of information about the situation of human rights at European borders. Thus, it is crucial that NHRIs are provided with **adequate resources** to fulfil this aspect of their mandate. This includes sufficient funding to ensure they have qualified staff and other resources needed to conduct monitoring visits. At the same time, it requires authorities to respect NHRIs' mandates and grant unimpeded and unannounced access to information, documents, people, and to all relevant places, including police stations, vehicles, temporary reception and detention centres, and formal and informal border crossing points.

While no European NHRI has a permanent presence at borders, they use their periodic visits and privileged access to reception facilities and detention centres strategically, for instance by building on existing information, focusing on places where violations have been reported, or by seeking to fill gaps in information. This approach helps to alleviate capacity constraints and the impossibility of maintaining a presence at borders. When they interview migrants, NHRIs focus not only on individual allegations of human rights violations but also seek to uncover trends and systemic issues at borders.

Cooperation between NHRIs, CSOs, international organisations and other HRDs strengthens the impact of human rights monitoring. In particular, CSOs often have a strong presence at borders and can have more direct contact with migrants, enabling them to collect testimonies and other evidence in cases of alleged violations. NHRIs have use this information to inform their monitoring work. For instance, in the framework of their monitoring visits to the Polish-Belarussian border, the Polish NHRI undertook interventions in specific areas where HRDs had identified migrants in need of humanitarian assistance and wishing to submit international protection claims.

HRDs with a field presence can also share their monitoring expertise and provide valuable information on key human rights concerns. Conducting joint monitoring visits to borders can also be a strong tool. For example, the Slovenian NHRI, as the National Preventive Mechanism (NPM), works with staff of CSOs to carry out joint monitoring visits to places of detention, including border police stations. This guarantees participation from a larger pool of experts and ensures access to additional expertise and alternative perspectives. Several other NHRIs that have a mandate as NPM also include CSOs, lawyers and other experts in their monitoring team.

Recognising the crucial contributions of CSOs working at borders, the Greek NHRI established an Informal Forced Returns Monitoring Mechanism, made up of CSOs with the operational capacity and experience needed to monitor and record informal returns by Greek authorities. The creation of the Mechanism as an autonomous body under the NHRI serves to enhance the credibility of reported incidents by implementing a common and transparent methodology. This also provides an opportunity to strengthen responses to recorded violations, and in turn, accountability.

Human rights monitoring at borders is negatively impacted by a shrinking civic space and the crackdown on HRDs, for instance through administrative and legal frameworks that are used to restrict, discourage, or even criminalise CSOs and individuals providing humanitarian and legal assistance to migrants. For example, the Polish NHRI has raised concerns about limitations put on CSOs ability to exercise their mandate while taking part in returns monitoring; they lacked access to relevant documentation and activities preceding the return, and in some cases their contact with the person concerned was impeded. The Polish NHRI requested the Minister of Interior amend the relevant regulation to ensure the participation of observers, to require border authorities to fully document deportation operations and to regularly publish reports on these.

As ENNHRI has previously recommended in its [Regional Report on the Human Rights of Migrants at Borders](#), states must cease all threats and intimidation, as well as administrative provisions and practices that unduly limit the work of HRDs (like NHRIs and CSOs) at borders.

The importance of human rights monitoring at borders has been increasingly recognised at the international, regional and EU level. Notably, the European Commission, in its [proposal for a Screening Regulation](#), proposed that each EU Member State establishes an “independent monitoring mechanism” to observe compliance with relevant obligations during the screening procedure and prompt effective handling of allegations. Several actors, including ENNHRI, have published opinions on the proposal. ENNHRI [argues](#), for instance, that any mechanism should consult, build on, and reinforce the work of existing institutions, and have guarantees for its effectiveness and independence, both in law and practice.

Further, ENNHRI has developed its position on the proposed measures, expanding on the opportunity to [strengthen and reinforce NHRIs](#) and providing [joint guidance](#) on the establishment of a monitoring mechanism in Greece. Beyond monitoring, the initiative should lead to stronger accountability for human rights violations. The Commission’s proposal is currently under negotiation by the Council and the European Parliament.

Strengthening accountability for cross-border violations

The cross-border nature of human rights violations at borders, such as summary returns (including pushbacks and collective expulsions), poses a challenge to achieving accountability. As the individual concerned is no longer in the same jurisdiction where the violations took place it is difficult for them to reach the appropriate channels to file complaints that would serve to hold perpetrators to account.

In order to overcome this challenge, NHRIs with a complaints handling function have sought to make their procedures more accessible. For example, the Croatian NHRI receives complaints and information about pushbacks perpetrated by Croatian authorities from civil society organizations working on the other side of the border, for instance those present in Bosnia and Herzegovina who can assist migrants in submitting complaints of ill-treatment by Croatian authorities. The Spanish NHRI also accepts complaints sent from abroad relating to the conduct of Spanish authorities. These practices contribute to strengthening accountability even when migrants lack access to the territory and to the jurisdiction of the perpetrators.

Another difficulty is when NHRIs receive information or complaints concerning authorities of other countries, as these fall outside their mandate. To tackle this, some NHRIs have developed bilateral cooperation with one another and engaged with other human rights actors in neighbouring countries. Cross-border cooperation between NHRIs can involve information sharing, **joint monitoring** missions at borders, and delivering trainings together to authorities on both sides of the border. They also work together through ENNHRI, for example when addressing **regional developments**.

Where allegations of cross-border violations are received, it is important that monitoring bodies and those receiving complaints forward relevant information and any evidence gathered to appropriate investigating authorities and human rights bodies in the neighbouring country; and that this is done while respecting victims' right to privacy and with their consent. If necessary to ensure access to an effective remedy, states should consider granting victims access to the territory or alternative ways to reach complaints mechanisms and accountability systems effectively.

Making border management cooperation more transparent

The multitude of actors operating at borders has contributed to a lack of transparency in border management processes. Border management activities, including surveillance, screening procedures, joint operations, asylum procedures, and reception, are frequently carried out by several actors, such as officer of various state services, international authorities, and even private companies. In addition, EU agencies such as the EU Asylum Agency (EUAA) and Frontex are deployed on some territories and can have shared or overlapping competences with national authorities. At the same time, all these actors are subject to different oversight and accountability systems. A lack of clarity about their specific role and responsibilities can make it difficult for individuals or their legal representatives to identify duty-bearers and the appropriate body before which to submit complaints.

NHRIs' mandates allow them to work with a broad spectrum of actors, making them well equipped to create communication channels with the different actors involved in border management through meetings and regular exchanges. Indeed, some NHRIs have highlighted the importance of clearer coordination between actors at borders. For instance, the Greek NHRIs has **called** for increased harmonisation of the work of the various authorities involved in the asylum procedure as a way to strengthen the transparency and efficacy of the process. Greater transparency can also act to enhance the human rights-compliance of cooperation between different actors at borders.

NHRIs can also expand their collaboration with EU agencies such as the EUAA and Frontex. This may include using the Agencies' complaint mechanisms by receiving and providing information on specific allegations. In light of the expanding mandate of EU Agencies working at borders, ENNHRI has **elaborated** on opportunities for cooperation between these agencies and NHRIs. In parallel, the growing presence of these Agencies on the ground necessitates that their officials are trained on national human rights frameworks, the role of national actors like NHRIs, and that they share relevant information with them in a spirit of cooperation. Indeed, the Frontex Consultative Forum has **recommended** that the Agency ensure that training for staff consider the perspective of, among others, NHRIs.

It is vital that all actors present at borders ensure transparency in the division of tasks, responsibilities, and competences. ENNHRI recommends that mechanisms be in place to ensure accountability for actions by national authorities deployed in another country. The same applies to border guards deployed under Frontex activities or acting on the basis of bilateral agreements.

Moreover, ENNHRI maintains that the acts or omissions of private entities involved in migration and border management must not be outside the scrutiny of human rights monitors and accountability systems. States must not ignore their human rights obligations when outsourcing activities to non-state actors.

Guaranteeing public scrutiny of readmission agreements

Border management cooperation is often based on bilateral readmission arrangements, technical agreements, and memoranda of understanding between countries. These instruments exist across the region and govern cooperation between neighbouring states as well as between EU and third countries. They are often subject to little public or democratic scrutiny by civil society and national parliaments. This poses a further challenge for accountability as there is a lack of clarity in what the agreements entail in practice, for instance in relation to division of competences. Additionally, at the EU level, cooperation with non-EU countries in the field of migration and border control increasingly relies on informal instruments, rather than formal EU readmission agreements, which risk reducing the scope of scrutiny by the European Parliament.

NHRIs have raised awareness of the human rights impact of these instruments and called on national authorities to ensure greater transparency and opportunities for their scrutiny. They also work with members of national parliaments to strengthen oversight over practices based on such arrangements.

In order to ensure practices resulting from inter-state cooperation at borders are lawful and satisfy legal certainty, ENNHRI believes that their legal basis should be made public. Attention must be paid not only to the substance of the agreement, but also to ensuring the negotiation process allows for democratic scrutiny and takes into account possible human rights impacts. For this reason, parliamentarians at the national and regional level should oversee and assess the impact of border management cooperation measures to ensure that they are not at odds with human rights obligations. In this regard, they can rely on the expertise of NHRIs in monitoring and advising on the human rights compliance of national legislation.

Gaps in access to justice

Human rights accountability at borders requires that migrants have effective access to justice. In theory, complaints mechanisms and justice processes are available across Europe - however, in practice, victims of violations at borders are often not able to exercise their right to an effective remedy or to seek redress for violations. Even if obstacles to access justice are a wider problem in the region, they disproportionately impact vulnerable groups, such as migrants.

Ensuring access to information

One of the most common reasons for which migrants do not report human rights violations is a lack of awareness or understanding of the process through which they can submit complaints and access justice. Efficient and adequate **access to information is decisive** for migrants to exercise their rights. NHRIs have **identified** a general trend of insufficient availability or poor quality of information provided to migrants by state authorities. This includes both information on the right to seek international protection and the right to seek redress where their rights have been breached.

Several actors, including CSOs and other HRDs, have worked towards ensuring that migrants at borders have information about their rights. NHRIs use their monitoring mandate and unrestricted access to places of reception and detention to increase migrants' awareness of their rights. For example, the Serbian NHRI, working jointly with OHCHR, produced informational brochures addressed to migrants, which they distributed during monitoring visits to reception and detention centres, as well as to informal migrant camps. Similarly, the Polish NHRI created and distributed brochures on international protection procedures in several languages during monitoring visits to border guard stations, guarded centres and during field interventions. Additionally, NHRIs work strategically to ensure access to information is provided in places where migrants may need them the most. For instance, the Georgian NHRI, together with UNHCR, prepared information desks on asylum procedures, located at all state borders and international airports.

NHRIs play a significant role in ensuring migrants are informed of their right to submit complaints against authorities and the applicable processes. For example, the Spanish NHRI has worked to ensure that complaints procedures are accessible by establishing an 'on call' service, available 24-hours a day, which also provides information for people seeking support on migration and asylum matters.

Moreover, CSOs with a field presence have established relationships of trust and daily interaction with migrants at borders, which allow them to provide timely information on possible pathways to accountability. They have also established trans-border networks, which are essential in contributing to migrants being informed of their rights and the **remedies available** to them along their route.

Information must be provided in detention and reception facilities as well as by authorities interacting with migrants in police stations and border crossing points. Ensuring information is available in places that are hard to reach is particularly important, as these may have less presence of CSOs or NHRIs.

Providing access to linguistic assistance and tailoring information

Several NHRIs have highlighted a failure on the part of authorities to overcome language and cultural barriers that prevent migrants from understanding and engaging meaningfully with information about their rights and available complaints mechanisms. NHRIs have reported insufficient or non-existent translation of key information about migrants' rights, a lack of access to interpreters, and a lack of willingness to ensure that information is presented in a manner the individual concerned can understand.

NHRIs have taken some steps to tackle language barriers. For instance, the previously mentioned information desks set up by the Georgian NHRI provide information to migrants and asylum seekers in four languages (English, Russian, Arabic and Farsi). As another example, the Serbian NHRI receives support from interpreters provided by UNHCR during monitoring visits, when interviewing and providing information to migrants.

The use of technologies has brought both opportunities and challenges in this regard. National authorities increasingly rely on technological solutions, such as mobile phone applications offering translations when they communicate important decisions and information to migrants. In some cases, this has supported migrants in submitting international protection claims and assisted human rights actors in providing information to migrants. However, in other cases the translation lacked quality.

Overall, while CSOs and NHRIs have tried to fill in this interpretation gap, it is ultimately the responsibility of national authorities to ensure there are adequate resources available to provide migrants with interpreters throughout all stages of the asylum and migration process.

Moreover, it is important that national authorities provide information about the right to an effective remedy and accountability mechanisms in a range of languages in transit zones, border crossing points, and in reception and detention centres.

In addition to being translated, ENNHRI recommends that information be provided in a manner that takes into consideration the specific situation and vulnerabilities of individuals. For example, the Spanish NHRI has highlighted the importance of ensuring that reception staff are trained in providing information in a child-friendly manner, which is necessary to ensure that unaccompanied children can understand and exercise their rights in practice.

Safeguarding the accessibility and quality of legal assistance

Access to quality legal assistance and representation is crucial to allow migrants to submit complaints and secure access to procedures capable of providing redress. Yet many European countries have restricted funding for legal aid for migrants, and authorities have often failed to inform migrants of their right to access legal aid. In addition, some countries have relied on states of emergency or the reasoning that there is an increase in arrivals to restrict the accessibility and quality of legal assistance.

Along with NHRIs, some of which have a mandate to provide individual legal assistance, CSOs have played a key role in offering legal support to migrants. In most cases this includes informing migrants of legal processes and their rights, supporting them throughout asylum, detention and return procedures, submitting appeals, and even seeking interim measures or representing migrants before the European Court of Human Rights.

NHRIs have observed that, without committed lawyers, the state of accountability for human rights violations at borders would be even worse. Yet, some national authorities have obstructed lawyers' work, including by making it difficult or impossible for them to access reception, detention, and other facilities at borders. NHRIs have used monitoring visits to strengthen migrants' awareness of their right to access legal aid. They often engage with legal practitioners and CSOs providing legal assistance to understand the challenges they face and their needs. NHRIs across Europe have called on authorities to strengthen the accessibility and quality of legal assistance provided to migrants.

Cooperating with human rights lawyers working on the ground has strengthened NHRIs' ability to react to human rights violations at borders. Upon their monitoring visits, NHRIs can notify public prosecutors of individual cases, and refer migrants to lawyers who can take their complaint further, such as in asylum procedures or even bringing criminal actions for wrongdoings. In some countries, NHRIs have access to reception or detention facilities that may be less easily accessible to lawyers, making their collaboration even more important to facilitate access to justice for individual cases.

It is vital that legal assistance providers, whether they are state-funded or CSOs, have access to borders, places of reception and detention, and other relevant places where migrants are housed. Authorities should ensure lawyers can speak privately with their clients to provide confidential and tailored legal assistance to each individual concerned.

ENNHRI recommends that states ensure the functioning of a robust, high-quality, and accessible legal aid system for migrants, including those at or crossing borders. This requires financial and other resources, as well as ensuring that those providing legal assistance are adequately compensated for their work. The provision of legal assistance and representation must be a central element of a human rights accountability system at borders.

Building trust in the independence and effectiveness of accountability systems

A lack of trust in the independence and effectiveness of accountability mechanisms, as well as a fear that engaging with states' accountability processes may result in reprisals, have prevented victims from coming forward. This is particularly the case for undocumented migrants or for individuals concerned about their immigration status. NHRIs have reported cases of individuals being returned or threatened in an effort to avoid scrutiny of their complaints. Cases have also been reported of refusal or obstruction of access to asylum procedure for individuals that had spoken with the media or filed a complaint.

When deciding whether to submit complaints, migrants often consider aspects such as their safety, migration journey, and integration. Moreover, not all migrants are willing to speak about incidents, while others may need more time and the appropriate environment to speak up. It is important that systems for human rights accountability take this into account. It is recommended that authorities make these processes accessible and put in place measures to support migrants in initiating and participating in complaints procedures and investigations. For example, the Greek NHRI has **put forward** a recommendation for authorities to take measures to address migrants' access to justice and their protection similarly to other victims of crime, such as victims of human trafficking. This approach may help in building trust in the accountability system, alleviate valid concerns of reprisals, and allow migrants to meaningfully engage with accountability actors, such as public prosecutors, NHRIs, and CSOs.

It is vital that the integrity, independence, and effectiveness of complaints procedures is secured, and that adequate safeguards are available to protect migrants who report human rights violations. In order to attain greater accountability, ENNHRI recommends that authorities cooperate with HRDs, including NHRIs, to strengthen complaints procedures and ensure trust in the accountability system. They must take steps to investigate, punish and prevent cases of retaliation towards those submitting complaints.

Gaps in investigations

Independent investigations capable of identifying and sanctioning perpetrators are a vital element of the accountability system. In most states, there are mechanisms in place to investigate human rights violations at borders, including through internal oversight bodies of law enforcement, public prosecutors, and NHRIs with an investigation mandate. However, in practice very few investigations into human rights violations at borders are carried out.

Gathering and presenting evidence of human rights violations

One of the key *reported* barriers to investigations into violations at borders stems from the difficulty in obtaining material evidence that can be regarded as meeting the threshold to trigger and sustain investigations.

In cases of informal returns, individuals are often not registered as having entered the territory nor issued a return decision, despite the authorities' legal obligation to do so. This makes it difficult not only to prove that their rights were violated by the summary return but also to show that they were even present within the state's territory or jurisdiction.

In some cases, migrants have contacted CSOs, the NHRI, and international organisations such as UNHCR, and, less frequently, local authorities upon entering the country, to indicate their presence in the country and to express their intention to seek international protection. This contact can act as evidence that the individual concerned was in the territory, especially if they are later subject to a pushback. As the NHRI is alerted to the individual case, they can respond proactively by contacting border authorities or the Ministry of Interior to inquire whether the person has been properly admitted to the territory and granted access to the asylum procedure. It is important to stress, however, that the responsibility to avoid pushbacks must never be put on migrants – national authorities are the ultimate duty bearers and must act in accordance with their human rights obligations.

Violations at borders often involve allegations of violence by authorities. In order to verify claims of violence, investigating authorities typically rely on medical evidence linking the conduct of an authority to the injuries sustained. Insufficient access to medical care at borders has resulted in difficulties in obtaining and compiling the medical documentation necessary to initiate investigations, not to mention the lack of urgent care and support individuals concerned need in such situations. Therefore, it is important that basic healthcare services, including those capable of documenting evidence of ill-treatment, are accessible at borders.

As CSOs and other organizations providing humanitarian assistance significantly contribute to providing medical services and collecting evidence of ill-treatment, authorities must refrain from policies that restrict their work at borders. Additionally, national authorities can support the collection of sufficient medical evidence by ensuring adequate training is provided to medical personnel working at borders, which would enable them to thoroughly and appropriately document injuries.

Another key challenge to collecting evidence arises when individual perpetrators intentionally **obstruct** attempts to identify them by hiding identification tags, covering their faces, or confiscating phones and other devices that could be used to record evidence.

It is important that police and border authorities comply with obligations to wear clear and distinguishable identification numbers and insignias. Further, to facilitate transparency, ENNHRI calls on national authorities to ensure that border control operations are properly recorded, including the time, place and description of each intervention, the identification of the officers and migrants involved, and the outcome of the intervention. This is crucial to more efficiently determining responsibility and identifying the relevant duty-bearers when violations occur at borders.

Photographic and video evidence has been key in initiating and sustaining investigations into violations at borders. Several European NHRIs have **advocated** for the use of body cameras by border and police authorities in return procedures and more broadly when working with migrants. ENNHRI believes that states should adopt policies that promote the use of body cameras by border guards and other officers involved in border management, while respecting standards on data protection. This would facilitate evidence gathering and could support investigations into violations. In this regard, it is vital that NHRIs and other actors investigating violations are given access to any footage in a timely manner that allows it to be used effectively in accountability processes.

Facilitating effective and independent investigations

States have an **obligation** to conduct thorough investigations where there are arguable claims of human rights violations. However, even in cases where the evidentiary threshold is met and investigations are initiated, authorities have demonstrated hesitation to gather and assess further evidence needed to identify perpetrators. Instead, many investigations and the allegations contained in them have been dismissed or discredited after the initial stages, without sufficient consideration.

Internal oversight mechanisms of law enforcement authorities are often the first bodies responsible for handling allegations of violations at borders. In this context, it is important that **internal investigations** are conducted by oversight bodies that are formally and practically independent from the officers and institutions they are called upon to investigate. ENNHRI recommends that States ensure the independence of internal investigations by strengthening transparency in the composition, mandate, and processes of these mechanisms. This would also serve to increase public trust and the legitimacy of decisions resulting from internal investigations. In this regard, NHRIs can be relied on for expertise and guidance in ensuring the independence and effectiveness of these processes.

A well-functioning accountability system requires cooperation between many different actors including the government, the parliament, the judiciary, CSOs and independent oversight bodies such as NHRIs. Broader **standards and best practices** in relation to police accountability, and **democratic oversight of the police**, can serve as inspiration to the migration context, even if **applying human rights in the context of border** governance has its specificities.

NHRIs can be well placed to link different actors and ensure a coherent approach to accountability. For example, they can engage with investigating authorities (including internal oversight mechanisms and public prosecutors) and inquire about their fact-finding activities. At the same time, they can draw on the findings of CSOs to support these investigations.

Gaps in revision and prevention

A strong accountability system should have a preventive effect and reduce the risk of reoccurring and systemic human rights violations. Where necessary, it should lead to the revision of laws and practices that contravene states' human rights obligations and weaken protection. States have demonstrated a reluctance to revise policies and practices at borders in response to recommendations made by human rights bodies, including NHRIs. At worst, legislative and policy changes at national and regional levels have resulted in weakened human rights protection and additional challenges to securing accountability.

Implementing the recommendations of NHRIs and other HRDs

NHRIs report that their recommendations related to asylum and migration issues are often implemented insufficiently or not followed-up on at all. This is a **wider issue** affecting human rights protection at the national level. However, in part due to the politicised nature of migration in many European countries, authorities have demonstrated a particular hesitance to implement recommendations strengthening accountability at borders.

The recommendations of NHRIs in this area often draw on and seek to strengthen the voices of other human rights actors. For instance, the French NHRI has cooperated with the French National Preventive Mechanism (Controller-General for Places of Deprivation of Liberty) to address the situation of the human rights of migrants at the Franco-Italian border and to issue a joint communication on the issue. By doing this, NHRIs seek to support other human rights defenders working on the ground.

In addition, NHRIs seek to reiterate the recommendations of international human rights bodies and advocate for their implementation nationally. For example, in the context of the legislative changes concerning returns at the Polish-Belarusian border, the Polish NHRI made repeated requests for authorities to stop pushbacks. In doing so, they called also for the implementation of the **recommendations of the Council of Europe Commissioner for Human Rights**.

NHRIs have increased their efforts to call for greater implementation of their recommendations, such as by raising this issue at parliamentary debates and having periodic meetings with national authorities. It is vital that national authorities engage in meaningful dialogue with NHRIs on the necessity and impact of recommendations to strengthen human rights protection at borders and accountability where violations occur. In fact, the Council of Europe Committee of Ministers **recommends** 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.”

National authorities should recognise the value and positive impact that implementing NHRIs’ recommendations can have on the legitimacy and sustainability of their migration policies and practices. For example, in response to allegations of disproportionate use of force against detained migrants, the Slovenian NHRI recommended that staff of the national detention facility wear body cameras to ensure there is evidence when allegations are made. This measure both protects migrants from ill-treatment and, upon implementation, was seen by authorities as an additional safeguard to protect officers from unfounded allegations.

Regional and international organisations play a crucial role in bolstering and reinforcing the recommendations of national actors, such as NHRIs and CSOs. By supporting their recommendations, regional and international actors send a signal to national authorities that there is additional external scrutiny of the national situation of human rights at borders.

Actors such as the European Union and the Council of Europe play a pivotal role in the broader accountability system. They should **build stronger relations with NHRIs** and encourage national authorities to meaningfully engage with, follow-up and implement recommendations, in line with the **standards** adopted by the Council of Europe Committee of Ministers. ENNHRI has outlined several areas and concrete activities for **stronger cooperation** between NHRIs and regional actors in the field of migration.

Strengthening implementation of court judgments

Strategic litigation has been a crucial tool for HRDs, including NHRIs, working to tackle systemic issues related to the protection of human rights at borders. It is an opportunity to secure justice in an individual case while also ensuring that subsequent human rights violations of a similar nature are prevented or, where they occur, access to justice is facilitated. Accordingly, there is a wealth of national and regional case-law relating to human rights violations at borders; however, its implementation is often lacking.

NHRIs are key stakeholders in ensuring the effective implementation of court decisions and as such, have taken steps to strengthen the execution process by consistently monitoring the status of judgments and engaging with the relevant authorities. For example, after successfully intervening in a case before the European Court of Human Rights, the French NHRI engaged at the national and regional levels to support the implementation of the decision. Indeed, the Council of Europe Department for Execution of Judgments requested the NHRI's opinion on the implementation of the case and the NHRI was approached by domestic authorities to provide guidance in this regard.

Additionally, through their cooperation with CSOs, NHRIs have supported calls for the implementation of interim measures. For example, Greek CSOs were able to support migrants located in the Evros region with securing interim measures from the ECtHR indicating that the Greek state must refrain from removing them to Turkey. Based on their ongoing partnership with CSOs, the Greek NHRI was informed of the case, which they used to request information from the government. The aim of this request was to ensure that authorities complied with the Court's decision and that the individuals concerned were given access to territory and relevant procedures as prescribed by the interim order.

While NHRIs have provided extensive support, the implementation of national and regional court decisions is ultimately the responsibility of the state. In fulfilling this responsibility, ENNHRI calls on national authorities to work constructively with HRDs, including NHRIs, to ensure that national and regional court decisions lead to appropriate and effective changes in policies and practices at borders, thus contributing to overcoming systemic problems and closing gaps in accountability.

Gaps in promoting the culture of rights

A culture of respect for human rights among law enforcement authorities and legal practitioners is a cornerstone of upholding and strengthening human rights accountability at borders.



Fostering a culture that respects the primacy of human rights

Several European NHRIs have indicated that there is insufficient attention paid to human rights within law enforcement authorities. Often, complaint-handling is deprioritised and there are rarely convictions or meaningful disciplinary action against officers accused of ill-treatment. At the same time, human rights training provided to law enforcement authorities does not sufficiently equip them with an understanding of the way theoretical human rights frameworks apply in practice.

Law enforcement officers themselves are important actors in ensuring stronger accountability. Often, they are key (as well as the only) witnesses of misconduct committed by their peers. It is vital that national authorities meet their **obligations** to provide adequate legal protection against any retaliation for whistle-blowers who report cases of ill-treatment at borders, and ensure they have access to adequate and independent legal support, where appropriate. NHRIs have played a **key role** in protecting whistle-blowers. In **some countries**, this has involved an expanded mandate and additional responsibilities for the NHRI. However, states must ensure that institutions providing support and protection for whistle-blowers receive adequate funding to carry out this role.

Moreover, ENNHRI underlines that the leadership within law enforcement must promote a culture of respect for migrants' rights and accountability for misconduct. This must be paired with a lack of tolerance and disciplinary action towards officers found to be disregarding human rights obligations. The relevant hierarchies must cultivate and ensure that there are fair, independent, and effective procedures to address misconduct by authorities, adequate resources and capacity provided to internal investigations, and transparent disciplinary processes. Meaningful engagement with human rights actors, including NHRIs, can act as an additional check on the internal accountability processes of police hierarchies.

NHRIs have provided training to border authorities on a variety of issues, including human rights frameworks, asylum procedures and refugee protection, as well as identification of vulnerabilities. Officers on the ground, including those holding leadership positions, as well as those operating under a Frontex mandate, should be equipped with sufficient human rights training. It is also crucial that human rights training is not provided as a less important part of the curricula of border authorities. Knowledge on human rights should be periodically assessed and training should be provided regularly. Training should reflect new standards and respond to the changing situation on the ground. Ultimately, comprehensive training contributes to an environment where violations are prevented and law enforcement is equipped to report or address cases of misconduct.

In this context, national and EU authorities should rely on NHRI's expertise when financially supporting, designing, or delivering human rights training. International and regional organisation such as the Council of Europe, OSCE, IOM and UNHCR can also collaborate with national actors in this regard.

Key messages for enhancing human rights accountability at borders

This report further confirms that gaps in human rights accountability at borders are a persistent and widespread issue in Europe. It draws on the practice of NHRIs to develop guidelines for strengthening accountability. At the same time, ENNHRI argues that a human rights-based approach to migration and asylum and is not only needed, but also essential to legitimate and sustainable border governance. While NHRIs are key actors to achieve accountability at borders, their work is bolstered by constructive cooperation with other actors, such as state authorities, other NHRIs, CSOs, lawyers, and international organisations. Their work, recommendations and examples of good practices provide a solid basis for working towards stronger human rights accountability at borders.

Building on the practices and solutions presented in this report and expanding on the recommendations put forward on specific gaps, ENNHRI concludes this report by presenting five key messages on human rights accountability at borders:

1 Accountability at borders requires proactive steps

To end the climate of impunity at borders, national and regional actors should be proactive in guaranteeing the functioning of independent and effective accountability systems at borders. They can no longer turn a blind eye to the well-recorded violations taking place at borders, which are not followed by investigations and access to justice, nor by actions to prevent further violations from occurring.

ENNHRI calls on states to provide adequate resources and funding to NHRIs as well as other HRDs to enable them to continue to protect human rights at borders and facilitate access to justice and accountability. Additionally, ENNHRI advocates that national and regional authorities, including EU agencies operating at borders, should respect the mandate of and work constructively with these actors to achieve a culture of respect for rights at borders. Such approaches should be taken at all levels, from ministries to local police and border authorities. These actors must demonstrate willingness to unveil misconduct, independently investigate complaints, and ensure that those responsible at all levels face appropriate disciplinary action.

As previously [highlighted](#), a system of accountability at borders should encompass independent human rights monitoring, accessible complaints mechanisms, effective investigation into reports of violations, access to justice, revision of policies and legislation, and a culture of respect for human rights.

ENNHRI believes that refugee-led organisations and people with lived-experience should be meaningfully consulted and participate in the set-up of policies and practices that contribute to stronger accountability at borders. Their guidance can help ensure that accountability systems reflect the needs and experience of migrants.

2 EU legislation and policy must contribute to bridging accountability gaps

Policy making at the regional level has a direct impact on national legislation, policies, and practices at borders. Therefore, ENNHRI has [recommended](#) that the EU establish more structured channels for cooperating with NHRIs during EU policy and legislative processes in the field of migration. Our [Scoping Paper](#) details the role of and opportunities for NHRIs and the EU in this regard.

In the past years, the EU has put forward many [initiatives and legislative proposals](#) in the field of asylum and migration. The outcome of EU negotiations will have a bearing on the level of human rights accountability at borders. Thus, EU institutions have a responsibility to ensure that legislative and policy proposals contribute to strengthening human rights accountability at borders, instead of widening existing gaps. This goal should be part of any impact assessment of these proposals.

In this regard, ENNHRI welcomes the leadership shown by the European Parliament in [engaging](#) and [recognising](#) the role of NHRIs and other human rights defenders, as well as in pushing for stronger human rights safeguards in EU legislation.

The European Commission must use all means available to monitor and support the implementation of EU law by national authorities, thus fulfilling its role as ‘guardian of the EU treaties’. NHRIs are [recognised](#) as key actors in monitoring the national application of the Charter of Fundamental Rights. Therefore, ENNHRI calls on the European Commission to use the expertise of NHRIs more often, for instance to obtain information on the level of implementation of EU law, including the EU Charter for Fundamental Rights, in the field of migration. It should also consider information from NHRIs and other human rights actors that indicate systemic issues and human rights violations at borders. When it identifies shortcomings in the respect of EU law, it should take necessary measures to ensure its implementation, such as infringement procedures.

By bringing up the data and evidence from their countries and sharing their concerns, NHRIs can provide information and context for ongoing negotiations on EU legislative proposals, such as the [Screening Regulation](#), [Asylum Procedures Regulation](#) and reforms to the [Schengen Borders Code](#).

In addition to providing political support to NHRIs, the EU could also disburse more funding aimed at building states’ accountability infrastructure at borders, including by enhancing the capacity of NHRIs and other HRDs.

3 Accountability at borders must be considered part of respect for rule of law

European NHRIs have [highlighted](#) the interlinked nature of human rights accountability and the rule of law: a strong regime of rule of law is vital to the protection of human rights, and the rule of law can only be fully realised in an environment that protects human rights. Inexistent or poor accountability for violations at borders impinges on several underlying elements of the rule of law, such as legal certainty, prohibition of arbitrariness, access to justice, non-discrimination, and equality before the law. It has also been demonstrated that independent public scrutiny of policies and practices at borders is lacking across Europe, indicating deficiencies in the system of checks and balances.

In addition, NHRIs and other HRDs actively working to promote and protect migrants’ human rights should not face undue restrictions, intimidations, and threats. States must [ensure an enabling environment](#) for human rights defenders addressing violations at borders and should take [positive steps](#) to do so, as this is a key safeguard to ensuring accountability. At the regional level, as previously [recommended by ENNHRI](#), the European Commission should support and protect a vibrant civic space, including through setting up protection mechanisms

for HRDs in the EU. Therefore, ENNHRI recommends that the European Commission 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. At the same time ENNHRI believes that national parliaments and other public authorities should consider accountability at borders as central to their evaluation of the state of rule of law in a country.

4 Cross-border violations require cross-border solutions

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, and put them at risk of exploitation or human trafficking. They have **called** for more durable and long-term solutions, based on a stronger commitment to responsibility sharing in Europe rather than an approach of containment of people at borders, often in undignified conditions and in contravention of their rights.

The cross-border nature of violations mean that individuals are often no longer in the same jurisdiction where violations took place. This requires that accountability systems also have a strong cross-border component, including bilateral and regional cooperation between actors involved in monitoring and accountability.

Joint advocacy and cross-border activities between NHRIs can be enhanced by ENNHRI, as it facilitates cooperation between its members and strengthens their engagement with regional actors such as the Council of Europe and EU institutions or Agencies.

5 Lessons learned from the response to forced displacement from Ukraine

Recent developments at the national and regional level show that alternative approaches to border management are possible. The armed attack on Ukraine has forced millions of people to flee the country. Across Europe, this has resulted in the rapid activation of humanitarian assistance and widespread solidarity largely at the grassroots level, as well as access to legal protection - at least at the short-term. It is important to recognise, however, that NHRIs have **identified serious human rights concerns** in this context, for instance in relation to **discrimination and violations** faced by non-Ukrainian nationals, people of colour and/or ethnic minorities. Other challenges include gender-based violence and safeguarding children's rights, obstacles to registration and increased risk of trafficking, access to adequate and safe accommodation, and access to public services and integration, particularly in relation to meeting medium and long-term needs.

While acknowledging the concerns above, the overall response to the migratory movement from Ukraine has demonstrated that national and European authorities can shift their approach to asylum and migration and act swiftly to protect the rights of people fleeing war and persecution. Where authorities are committed to supporting refugees, a human rights-

based and protection-sensitive approach to migration and border governance is attainable.

Over the course of several years, NHRIs have [reported](#) on the gradual dismantling of protection-sensitive asylum frameworks. States have relied on rhetoric securitising asylum and migration and the creation of a hostile environment as tools to dissuade and prevent migration into Europe. However, in the aftermath of the conflict, EU and national authorities took serious efforts to register and process protection claims, secure housing for thousands of individuals, and to ensure human rights protection and integration.

The EU and all European states have an opportunity to sustain and expand the good practices resulting from the welcoming reception of people fleeing Ukraine. While the situation is fast evolving, so far authorities have meaningfully engaged with the findings and recommendations of human rights monitors, including NHRIs. ENNHRI calls on authorities to remain dedicated to protecting the rights of people fleeing war, conflict, and persecution, and to implement human rights-based policies and practices at borders – this must not only apply to those fleeing Ukraine, but at all borders and regardless of an individual's country of origin, race, or ethnicity.

ENNHRI's commitment to promoting and protecting migrants' human rights

European NHRIs have been crucial players in protecting and promoting the human rights of migrants in Europe and, individually as well as through ENNHRI, remain committed to ensuring stronger monitoring and reporting on, and accountability for violations of migrants' human rights. NHRIs stand ready to support national and regional authorities in ensuring human-rights based, protection-sensitive and sustainable migration policies and practices, including in the context of the forced displacement from Ukraine. ENNHRI will continue to build on the extensive work and unique role of NHRIs to enhance their strategic advocacy at the regional level.

Finally, as the landscape for migrants' rights protection rapidly evolves, ENNHRI remains committed to building the capacity of NHRIs to work on and respond to emerging human rights issues in the migration context. This includes through strengthening cooperation with human rights defenders and engagement with key regional partners, including the EU and the Council of Europe.

Relevant ENNHRI Publications

[Report on Gaps in Human Rights Accountability at Borders](#) (December 2021)

[Scoping Paper: The role of NHRIs in upholding the human rights of migrants and asylum seekers in the light of recent EU developments](#) (October 2021)

[ENNHRI, UNHCR and OHCHR provide recommendations on establishing a Greek human rights monitoring mechanism at borders](#) (September 2021)

[Regional Report on the Human Rights of Migrants at Borders](#) (July 2021)

National reports on human rights of migrants at borders in: [Croatia](#), [France](#), [Greece](#), [Serbia](#), [Slovenia](#) (July 2021)

[Human rights scrutiny of public funds for migration and asylum: role, opportunities and challenges for NHRIs](#) (July 2021)

[Opinion on Independent Human Rights Monitoring Mechanisms at Borders under the EU Pact on Migration and Asylum](#) (March 2021)

[Stronger human rights monitoring at Europe's borders: why NHRIs are part of the solution](#) (May 2020)

[Migrants' access to information on their rights - Recommendations to bridge theory and practice](#) (October 2017)



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