European Union Agency for Fundamental Rights (FRA)

Contribution to the call for input for the preparation of the Secretary-General’s report on the Human Rights of Migrants – Promotion and protection of human rights of migrants

This contribution relates to the selected recommendations in [***A/RES/76/172***](https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F76%2F172&Language=E&DeviceType=Desktop&LangRequested=False) highlighted in *italics* and **bold**. It is based on existing and upcoming FRA publications which can be consulted for more details.

***(4(a))***

***Strongly condemns acts, manifestations and expressions of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them, including on the basis of religion or belief, and urges States to apply and, where needed, to reinforce existing laws when hate crimes, xenophobic or intolerant acts, manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit those acts and, where appropriate, to provide effective remedy to the victims***

Protection against discrimination and hate crime is key for enhancing the integration of migrants. Ethnic minorities and migrants continue to face racism and discrimination at individual, institutional and structural levels across the EU, as complaints data and a variety of survey findings show (FRA (2022), [Fundamental Rights Report](https://fra.europa.eu/en/publication/2022/fundamental-rights-report-2022#:~:text=FRA%27s%20Fundamental%20Rights%20Report%202022,the%20evidence%20supporting%20these%20opinions.), p. 84). The results of FRA’s second European Union minorities and Discrimination Survey show that four out of 10 respondents (38%) had felt discriminated against in the five years before the survey because of their ethnic or immigrant background in one or more areas of daily life, and one in four (24 %) had experienced this in the 12 months preceding the survey. Overall, respondents with sub-Saharan or North African backgrounds – and in particular second-generation respondents – experience higher rates of discrimination, harassment and violence based on ethnic or immigrant background (FRA (2023), [Asylum and migration: progress achieved and remaining challenges](https://fra.europa.eu/en/publication/2023/migration-progress-challenges), Overview, March 2023, chapter 5, forthcoming, 30 May 2023).

FRA recommended the EU Member States to transpose and apply the Framework Decision on Racism and Xenophobia to criminalise racist hate crime and hate speech fully and correctly. Accordingly, Member States must take the necessary measures to ensure that a racist or xenophobic motive is considered an aggravating circumstance or, alternatively, that the courts may take such a motive into consideration in determining the penalties. In addition to fully transposing and enforcing EU legislation on fighting hate crime, Member States should put measures in place that encourage victims and witnesses to come forward and report hate crime. They should also strengthen the ability of national law enforcement systems to correctly identify and record hate crime (FRA (2021) [Fundamental Rights Report](https://fra.europa.eu/en/publication/2021/fundamental-rights-report-2021), p. 110).

***(4(b))***

***Encourages States to establish or, when appropriate, strengthen mechanisms which allow migrants to report alleged cases of abuse by relevant authorities and employers without fear of reprisal, and which allow for such complaints to be addressed fairly***

Respect for fundamental rights and inherent dignity of migrants and refugees at external borders remains one of the top human rights challenges in the EU. Allegations of pushbacks at land and sea borders, often accompanied by allegations of ill-treatment or excessive use of force by border guards and security forces has been on the rise since 2020. Such actions can violate a range of fundamental rights, including the right to life, the prohibition of refoulement and collective expulsions, the prohibition of torture and inhuman or degrading treatment or punishment, the right to property, and respect for private and family life (FRA (2022), [Fundamental rights report](https://fra.europa.eu/en/publication/2022/fundamental-rights-report-2022#:~:text=FRA%27s%20Fundamental%20Rights%20Report%202022,the%20evidence%20supporting%20these%20opinions.), p. 141).

An effective and independent fundamental rights border-monitoring system is preventative, as it reduces the risk of fundamental rights violations. It also enhances the protection of victims of fundamental rights violations, by strengthening the application of fundamental rights safeguards already in place and providing expert advice when needed. At the same time, it can support domestic investigations of allegations against public authorities by providing objective, evidence-based and unbiased analysis and reporting. This improves transparency and accountability, and thus enhances trust in public authorities. In October 2022, at the request of the European Commission, FRA published guidance to assist Member States in setting up national independent mechanisms to monitor fundamental rights compliance at the EU external borders. (FRA (2022), [Establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders](https://fra.europa.eu/en/publication/2022/border-rights-monitoring), p. 3-4 and p.13). FRA recommends establishing effective and independent national border monitoring mechanisms, along with available complaint mechanisms, as it can help to ensure that allegations of pushbacks and ill-treatment are investigated by the competent authorities promptly and effectively (FRA (2022), [Fundamental rights report](https://fra.europa.eu/en/publication/2022/fundamental-rights-report-2022#:~:text=FRA%27s%20Fundamental%20Rights%20Report%202022,the%20evidence%20supporting%20these%20opinions.), p. 154).

**(5 (a))**

***Calls upon all States to respect the human rights and inherent dignity of migrants, to put an end to arbitrary arrest and detention and, bearing in mind the New York Declaration for Refugees and Migrants, to review policies that deny migrants the full enjoyment of their human rights and fundamental freedoms, to pursue alternatives to detention while assessments of migration status are under way and to take into account measures that have been successfully implemented by some States***

Current efforts to speed up asylum processing and make returns more effective may prompt an increased use of immigration detention, possibly also affecting children. Deprivation of liberty may have significant short- and long-term consequences on the physical, psychological, social, and general development of a child. Factors that result in these physical and psychological effects include inadequate educational activities, lack of physical and mental stimulation, and little opportunity for play, lack of privacy, and an interference with normal family routines. To promote children’s right to protection and care, FRA suggests that the EU and its Member States should develop credible and effective systems that would make it unnecessary to detain children for asylum or return purposes. (FRA (2017), [European legal and policy framework on immigration detention of children](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-immigration-detention-children_en.pdf), p. 50).

**(5 (b))**

***Encourages States to put in place, if they have not yet done so, appropriate systems and procedures in order to ensure that the best interests of the child are a primary consideration in all actions or decisions concerning migrant children, regardless of their migration status, and to work towards ending the detention of migrant children;***

FRA suggests that EU Member States dedicate sufficient EU and national resources to ensure the protection of asylum-seeking and migrant children, whether with their families or unaccompanied. Allocating sufficient resources should ensure that the reception conditions respect the minimum standards set out in the Reception Conditions Directive, especially for providing adequate accommodation, and avoiding detention through the implementation of alternatives to detention. In particular, Member States should strengthen their efforts to swiftly appoint trained and resourced guardians for every child who arrives unaccompanied in the EU and ensure that they attend school (FRA (2023), [Fundamental Rights Report](https://fra.europa.eu/en/publication/2023/fundamental-rights-report-2023-fra-opinions), chapter 8, forthcoming, 8 June 2023).

**(5 (l))**

***Requests all States, in conformity with national legislation and applicable international legal instruments to which they are party, to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers’ labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association;***

To reduce situations of irregularity, FRA suggested that EU Member States are aware of the gap between labour demand and supply and fill labour market shortages through targeted labour migration programmes, especially for those sectors that are particularly at risk of labour exploitation, including domestic work, agriculture, and construction. In this cases, EU Member States must ensure that appropriate, sufficiently specialised support services are available to victims of severe labour exploitation in accordance with Article 8 of the Victims’ Rights Directive. The specialised support services should provide targeted information on worker’s rights and assistance in finding an appropriate employment (FRA (2019), [Protecting migrant workers from exploitation in the EU: workers’ perspectives](https://fra.europa.eu/en/publication/2019/protecting-migrant-workers-exploitation-eu-workers-perspectives#:~:text=Protecting%20migrant%20workers%20from%20exploitation%20in%20the%20EU%3A%20workers%27%20perspectives,-Justice%2C%20victims%27%20rights&text=This%20report%20is%20the%20EU,of%20severe%20exploitation%20and%20abuse.), p.22).

***(6 (b))***

***Calls upon States to cooperate internationally to save lives and prevent migrant deaths and injuries through individual or joint search and rescue operations***

Between 2014 and the end of February 2023, 26,089 people died or went missing while trying to cross the Mediterranean Sea – on average approximately eight people each day. (FRA (2023), [Asylum and migration: progress achieved and remaining challenges](https://fra.europa.eu/en/publication/2023/migration-progress-challenges), Overview, March 2023, chapter 1, forthcoming, 30 May 2023). Since 2018, FRA publishes data on vessels that were not immediately allowed to disembark rescued migrants and had to wait at sea to be assigned a safe port for more than 24 hours (FRA, June 2022 [Update – Search and Rescue (SAR) operations in the Mediterranean and fundamental rights](https://fra.europa.eu/en/publication/2022/june-2022-update-ngo-ships-sar-activities), FRA, Fundamental Rights Report [2020](https://fra.europa.eu/en/publication/2020/fundamental-rights-report-2020), p. 113, FRA, Fundamental Rights Report [2021](https://fra.europa.eu/en/publication/2021/fundamental-rights-report-2021), Annex). Delays in disembarkation put at risk the safety and physical integrity of rescued people.