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NOTE

From:	Presidency
To:	Working Party on External Aspects of Asylum and Migration (EMWP)
Subject:	Human rights-based approach to migration cooperation

Introduction

In line with Article 2 of the Treaty on European Union” The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.” These values are closely linked to and guide the EU’s internal and external action.

The EU and Member States are bound by Article 21 of the Treaty on the European Union according to which “The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law”.

The EU Action Plan on Human Rights and Democracy¹ sets the level of ambition and defines the priorities of the EU and its Member States in this field, including in relations with all third countries. It states that the EU will “advocate for a human rights-based approach” focusing on migrants, refugees, asylum seekers and internally displaced persons, in line with international human rights obligations under international law and standards, amongst others with the aim of strengthening the capacity of states, civil society and UN partners to implement this approach.

As such, upholding human rights play a key role in ensuring the legitimacy of the EU’s partnerships with third countries, and thus the EU and Member States are under constant scrutiny when it comes to upholding human rights in its migration cooperation. This Presidency paper aims at taking stock of lessons learned in recent years while recognising the challenging and often fragile contexts where the EU and Member States are engaged in migration cooperation. The Presidency paper highlights the need for concrete and adaptable tools to ensure full implementation of the Human Rights-Based Approach (HRBA) in all aspects of migration cooperation.

HRBA “is a method that applies five key working principles to advance human rights for all: meaningful and inclusive participation and access to decision-making; non-discrimination and equality; accountability and the rule of law for all; transparency and access to information, supported by disaggregated data”.² The focus is on states as duty-bearers and individuals as rights-holders.

The HRBA methodology is set out in a Commission Staff Working Document from 2021, referred to as the HRBA Toolbox.³ The Toolbox provides staff members with practical guidance on application of the five principles at all stages of the intervention cycle. The toolbox is also available online as an internal e-learning course.

¹ [eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf](#)

² [Human Rights Based Approach - EXACT External Wiki - EN - EC Public Wiki](#)

³ [swd-2021-human-right-based-approach_en.pdf](#)

This paper gives a brief overview of recent developments and actions taken by the EU and Member States when it comes to ensuring implementation of the HRBA in migration programming and cooperation and outlines available tools for translating the human rights principles and norms into actionable HRBA in existing and future migration cooperation, including ensuring appropriate safeguards to mitigate human rights risks.

Recent developments and follow-up steps taken by the EU

In September 2024, the **European Court of Auditors (ECA)** published a report on the EU Trust Fund for Africa (EUTF)⁴ criticising the Fund for, among other, not having adequate mechanisms in place to handle allegations of human rights violations. The ECA found that human rights risks were not comprehensively addressed; that the EU had not defined formal procedures for reporting and following up on allegations of human rights violations; and that practical guidance to clarify in which situations EU support may be suspended was not provided. While recognising the steps taken towards putting in place a third-party monitoring in some specific cases, the ECA criticised the lack of follow-up to third party monitoring reports.

The Commission accepted all the recommendations.⁵ By its Conclusions of December 2024⁶, the Council welcomed the ECA report and stated that “The European Union will continue to cooperate in a mutually beneficial way with countries of origin and transit by building comprehensive partnerships. These partnerships should focus on, among other elements, supporting migrants, refugees and host communities in regions of origin, in full compliance with international human rights law.” Further the Council noted with concern the findings of the ECA that, despite an innovative approach to identifying human rights risks in a difficult environment, the assessment of potential risks to human rights was not comprehensive, and that no formal procedure was in place to follow up systematically on allegations of human rights violations in the context of EUTF projects.

⁴ [Special report 17/2024: The EU trust fund for Africa | European Court of Auditors](#)

⁵ [COM-Replies-SR-2024-17_EN.pdf](#)

⁶ [Conclusions of December 2024](#)

The Council called upon the Commission to strengthen and formally document the reporting, monitoring and adequate follow-up of allegations of human rights violations in the context of EU-funded projects, as well as to apply it to ongoing and future EU funded actions on migration. It also urged the Commission to further develop these efforts and to develop a robust procedure of follow-up actions.

In response to findings in the ECA report, the Commission developed a **detailed guidance document** for its staff working on migration and forced displacement interventions with partner countries. This guidance provides practical advice and tools to ensure that international human rights standards are applied throughout the project – from design to closure – and, crucially, that human rights risks are properly identified, assessed and mitigated from the very beginning. This is important to ensure that those in the most vulnerable situations – including children – can be protected at all stages of the migration route. The Commission has already begun to complement this with training for its staff on human rights and migration.

Also in response to the ECA report, the Commission and EEAS **formalised an internal procedure** to be followed by all staff in HQ and EU Delegations when allegations of human rights abuses or violations in EU-funded projects are received. This will ensure that, if allegations are substantiated, funding can be swiftly suspended or terminated to ensure that EU-funded projects are not perpetuating harm to the rights of migrants.

Finally, in January 2025, the Commission released an updated set of **contractual templates**, which strengthen human rights safeguards in all of its grant contracts. Crucially, this includes strengthened human rights safeguards for the transfer of assets – including equipment such as vehicles or boats – to third parties at the end of a project. This has been a source of concern for the migration sector and the Commission is increasing its efforts to ensure that equipment, once procured, can only be used for the intended purpose.

Moreover, the **Memorandum of Understanding signed by the EU and Tunisia** on 16 July 2023 gave rise to criticism by from inter alia the Council of Europe Commissioner for Human Rights⁷ and from UN independent human rights experts (Human Rights Council Special Procedures Joint Communication of 17 August 2023 and joint communication of 14 October 2024⁸). The EU also received remarks concerning its approach to human rights in migration cooperation with Tunisia in the European Ombudsman’s decision⁹ on how the Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding. Similar to the ECA report on the EUTF, the Ombudsman also suggested to set out concrete criteria for when EU funding could be suspended.

The Commission built on the Ombudsman’s suggestions by developing the above-mentioned procedure and guidance. While sensitive risk assessments and partner monitoring reports remain confidential, they continue to inform policy and programme design. The Commission will explore ways to share aggregated insights. When it comes to human rights obligations, their respect is embedded in all contracts, with suspension or termination possible in cases of breaches, and the Commission will maintain close engagement with EU Delegations, implementing partners, and partner countries to ensure effective complaint mechanisms are in place and strengthened where needed.

⁷ [European states’ migration co-operation with Tunisia should be subject to clear human rights safeguards - Commissioner for Human Rights](#)

⁸ [Tunisia: UN experts concerned over safety of migrants, refugees and victims of trafficking | OHCHR](#)

⁹ [Decision on how the European Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding \(OI/2/2024/MHZ\) | Decision | European Ombudsman](#)

Regarding **the situation for migrants in Libya**, the United Nations Independent Fact-Finding Mission on Libya concluded in their report of March 2023 that they had “grounds to believe that the European Union and its Member States, directly or indirectly, provided monetary and technical support and equipment, such as boats, to the Libyan [authorities] that was used in the context of interception and detention of migrants.”¹⁰

The technical dialogue with Libya that was launched since the beginning of 2024 is addressing the human rights dimension in the context of overall improvements in migration governance and border management. The establishment of a mechanism under the Government of National Unity’s Supreme Committee for Migration for monitoring, reporting and communicating on alleged incidents involving migrants during SAR/SARD, in detention centres, and during any other stage of migration management has also been discussed and should be further explored with the Libyan authorities to enable its set-up. In addition, the EU continues to work with the UN Fact Finding Mission, in particular through the EU Delegation in Tripoli, in order to address the concerns raised by their report.

In government-controlled areas, the situation has improved. The EU Delegation is represented in UN-led coordination mechanisms. These dialogues have directly contributed to enhancing migration management through progress in providing meaningful and predictable humanitarian access of UN agencies to disembarkation points and detention centres, as well as to the lifting of the exit visa fees. This latter step is facilitating UN-supported voluntary humanitarian returns of migrants from Libya to countries of origin.

¹⁰ [Decision on how the European Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding \(OI/2/2024/MHZ\) | Decision | European Ombudsman](#)

For the EU and Member States collectively, the challenge of ensuring human rights are upheld concerns both the strategic and operational level. At the strategic level, when entering into partnerships with third countries (cf. the reference to the MoU with Tunisia above), and implementing the external dimension of the Pact on Migration and Asylum, appropriate human rights safeguards are required, and at the operational level, when programming the concrete interventions, ensuring full implementation of the HRBA. It also requires continuous efforts to ensure human rights are upheld in the full programming cycle in migration cooperation by applying the HRBA, including through ex-ante risk assessments, mitigation measures, monitoring during implementation, and mechanisms for follow-up to allegations of human rights violations and abuses. Some Member States have developed national HRBA guidelines while for others, it is still a relatively new approach.

Examples of guidance for implementing the human rights-based approach relevant for migration programming

Many guides and tools have already been created to assist states and other actors in implementing the human rights-based approach, including to migration cooperation. The material covers everything from the principles behind the HRBA, to checklists for the various programming phases (scoping, design, implementation, and evaluation), and tools for specific areas related to migration, e.g. border management, return, trafficking in human beings and migrant smuggling, and forcibly displaced persons. The guides and tools from the Office of the High Commissioner for Human Rights (OHCHR) remain central. **The annex** below lists some key OHCHR publications and concrete tools specifically related to the area of migration. In addition, as an example of another implementing partner of the EU and Member States, the International Organisation for Migration (IOM) also applies a rights-based approach to migration governance¹¹ and has developed a handbook on rights-based approach to programming for all IOM staff¹².

¹¹ [Rights-based approach to migration governance | International Organization for Migration](#)
¹² [Rights-based approach to programming | IOM Publications Platform](#)

The European Commission has developed several specific guidance documents on the HRBA. The 2021 internal staff working document on “**Applying the Human Rights Based Approach to international partnerships**”¹³ was accompanied by the 2021 ‘**Human Rights Based Approach Toolbox**’. Most recently, the Commission has developed the previously mentioned 2025 internal staff guidance on “The Human Rights-Based Approach in Migration and Forced Displacement” programming. This new guidance has been made available for all EU staff in delegations and at headquarters and will soon be complemented by an e-learning course accessible to EU staff members.

In addition, **national development agencies** have also developed HRBA guidelines. One example is the Swedish International Development Cooperation Agency’s (SIDA) substantial toolbox on HRBA¹⁴, which includes an online learning module and a range of thematic technical guidance notes for various sectors, such as migration¹⁵, health, democratic governance and water.

Another example is the Finnish Ministry of Foreign Affairs’ guidance note on the HRBA to development.¹⁶ Yet another example is the German Human Rights Strategy for German Development Policy of 2023¹⁷, which defines human rights, gender equality and disability inclusion as a binding quality criterion for all development cooperation. It emphasises the principles of participation and empowerment, non-discrimination, transparency and accountability as guiding standards for strategies, programmes and projects.

However, more is still to be done to ensure full implementation of the HRBA in migration cooperation. It requires continuous efforts from the EU institutions as well as the Member States at all levels of our migration cooperation, from the strategic and comprehensive partnership agreements and arrangements with third countries to the concrete project implementation at local and national level. The implementation of a HRBA will also be crucial for the success of the Pact for Migration and Asylum.

¹³ [54c77670-4179-49f0-9af3-d1b18ff2d41f_en](#)

¹⁴ [Human Rights Based Approach | Sida](#)

¹⁵ [Human Rights Based Approach and Migration](#)

¹⁶ [Human rights based approach to development - Ministry for Foreign Affairs](#)

¹⁷ [Human Rights Strategy for German Development Policy](#)

Guiding questions

The delegations are invited to consider the following questions for the discussion:

1. What are the key challenges for Member States in applying or enhancing the HRBA in migration cooperation with third countries, including in the context of the external dimension of the Pact on Migration and Asylum?
2. How can the EU and Member States approach dilemmas related to cooperating on migration in challenging contexts while ensuring human rights are upheld? E.g. through dialogue at political level (either jointly or through the EU), a risk-mitigating approach (i.e. mitigating risks and adverse human rights impact on rights of migrants regardless of their status), or increased monitoring of HRBA in migration cooperation.
3. How can the EU and Member States leverage existing instruments to promote full implementation of the HRBA to migration in cooperation with partner countries? What are examples of best practices of the HRBA in this field?
4. What are the lessons learned from existing comprehensive partnerships or bilateral partnerships of relevance for upcoming and new partnerships to ensure human rights are upheld and the HRBA is implemented?
5. Would the delegations find added value in having regular discussions on this topic in the Council, e.g. EMWP or other relevant fora, potentially based on a dedicated action fiche?

EXISTING HRBA GUIDELINES AND TOOLS WITHIN MIGRATION COOPERATION

OHCHR guidelines and tools:

1. Recommended principles and guidelines on human rights at international borders¹⁸: Outlines the human rights standards for treatment of migrants in transit and the borders through three overall principles and concrete standards for e.g. search and rescue (and safe disembarkation), reception facilities, screening and individual assessment, return and reintegration.
2. Principles and guidelines on the human rights protection of migrants in vulnerable situations¹⁹: Conceptualises the vulnerable situations that migrants might experience and, despite not fulfilling the refugee criteria, the subsequent need for protection under international law. An issue of particular importance for the reception by states of mixed movements.
3. Manual on Human Rights Monitoring: Monitoring and protecting human rights in the context of migration²⁰: “Sets out some of the key substantive and methodological issues that need to be considered when designing and carrying out human rights monitoring in the broader context of migration and displacement. It seeks to support monitoring activities that take place on a regular basis or as part of ongoing work, and also monitoring as a single event.”
4. Capacity building tool: Human Rights at International Borders: A Trainer’s Guide²¹: Gives guidance to states with the purpose of translating international law and human rights standards into concrete measures for border governance. This includes ideas and suggestions for how to include the HRBA considerations in national law, rules and practices for border governance.
5. Human rights in the context of return: Key legal standards and policy recommendations²²: Highlights the international human rights law obligations that states and other duty-bearers should uphold in the context of return. It also offers policy recommendations to promote and protect human rights in the context of return.

¹⁸ [Recommened Principles and Guidelines on HRIB_Final.indd](#)

¹⁹ [PrinciplesAndGuidelines.pdf](#)

²⁰ [Chapter26-Monitoring-Protecting-HR-Migration.pdf](#)

²¹ [Human Rights at International Borders | OHCHR](#)

²² [2024-Key-legal-standards-policy-recommendations-en.pdf](#)