

INTERNATIONAL LAW ASSOCIATION

Committee on International Migration and International Law

Annex to the Second Interim Report 2026

48 Country Reviews: Right to Stay and Rights while Staying¹

¹ The ILA Committee on International Migration and International Law would like to give special thanks to Mariana Ferolla for her contribution to the country reviews. Mariana Ferolla made comments on all European countries (including EU), China and Australia and undertook the leading role in editing the final country reviews; Sanzhuan Guo made comments on all African, Asia-Pacific and American countries except China and Australia, which she (co)authored. Authors of each country review are responsible for the accuracy of their own review. Please note that each country review was submitted and finalised in a different month/year (see the beginning of each country review) and any updates of law or policy after that month/year may not be included.

Table of Contents

Items		Page Number
Biographies of Country Review Authors		5
Country Reviews	Authors	16
1. Argentina	Ignacio Odriozola	16
2. Australia	Sanzhuan Guo and Mary Anne Kenny	38
3. Austria	Adel-Naim Reyhani	65
4. Brazil	Mariana Ferolla Vallandro do Valle	89
5. Canada	Camille Lefebvre	114
6. China	Sanzhuan Guo	135
7. Colombia	Daniela Gómez Montoya and Diana Cristina Corredor Gil	160
8. Croatia	Iris Goldner Lang, Franka Logarić and Nika Vicković	210
9. Czechia	Věra Honusková	233
10. Democratic Republic of the Congo	Trésor Maheshe Musole	258
11. Ethiopia	Fekade Alemayhu Abebe	271
12. European Union	Andreas Müller	289
13. Finland	Katja Karjalainen	312
14. France	Hélène Raspail	335
15. Germany	Adela Schmidt	358
16. Ghana	Mariam Odunayo Nurudeen- Arole	372
17. Greece	Stefanos Gakis	390
18. Guatemala	Javier Zelada	419
19. Hungary	Tamás Molnár	436

20. India	Malavika Rao	458
21. Indonesia	Hanna Adistyana Hefnin	473
22. Iran	Faezeh Rezazadeh and Arash Esfahani	491
23. Ireland	Mary Catherine Murray	512
24. Italy	Elena Sciso, Elvio Sinopoli and Giulia Ciliberto	544
25. Japan	Kaoru Obata	575
26. Kosovo	Iliriana Islami	585
27. Libya	Canberk Taze	610
28. Mongolia	Ochirbal Ragchaa	628
29. The Netherlands	Marta Petergás Sender, Mayela Celis Aguilar, Leontine Brujinen, and Hester Kroeze	649
30. Aotearoa New Zealand	Marnie Lloyd, Natalie Baird and Lili Song	672
31. Nigeria	Funmi Abioye and Aderomola Adeola	700
32. Pakistan	Mahwish Moazzam	725
33. The Philippines	Tom Temprosa	755
34. Poland	Maja Lysienia	766
35. Portugal	Ana Rita Gil and Emellin Oliveira	789
36. Russia	Anna Bara	831
37. Slovenia	Vasilka Sancin and Sergeja Hrvatic	869
38. South Africa	Cristiano D'Orsi	922
39. South Korea	Jong Hyeok Lee	942
40. Spain	Yago Ferreira Freire	969
41. Switzerland	Giulia Raimondo	980

42. Thailand	Bongkot Napaumporn	1000
43. Türkiye	Sevim Tuba Mert-Gostynski	1025
44. Tuvalu	Logovaka Marilyn Moira Simmons	1051
45. Uganda	Micheal Bwambale Asiimwe	1063
46. United Kingdom	Yago Ferreira Freire	1084
47. United States	Jaya Ramji-Nogales and Geoffrey Scott	1104
48. Vietnam	Huong Nguyen	1138

Biographies of Country Review Authors

Abebe, Fekade Alemayhu holds a PhD in International Law from the Graduate Institute of International and Development Studies. He also holds an LL.M in International Humanitarian Law and Human Rights from the Geneva Academy of International Humanitarian Law and Human Rights, an LL.M in Public International Law from Addis Ababa University, and an LL.B. from Bahir Dar University School of Law, all in Ethiopia. He served as a lecturer of law at Ethiopian universities.

Abioye, Funmilola (Funmi) is an Assistant Professor at the College of Law, University of Saskatchewan (Canada), specializing in international law, good governance and legitimacy of legal systems. She holds a Doctor of Laws (LL. D) degree from the University of Pretoria, South Africa, and has published extensively on topics including, rule of law, good governance, legitimacy of legal systems, environmental law and climate change. She is a member of the International Law Association's Committee on International Migration and International Law, and her current research focuses on international deportation, as well as the right to stay.

Adeola, Aderomola is Chair of the ILA (Nigeria) Migration and International Law. She is the author of various academic works, including *The Internally Displaced Person in International Law* (Edward Elgar, 2020).

Aguilar, Mayela Celis (LL.M. NYU, PhD UNED) is a researcher at Maastricht University. Prior to this position, she worked as a Principal Legal Officer at the Permanent Bureau of the Hague Conference on Private International Law. Her research focuses on Private International Law, as well as its interaction with human rights.

Baird, Natalie is a Professor at Te Kaupeka Ture | Faculty of Law at Te Whare Wānanga o Waitaha | University of Canterbury. Her research interests lie in the areas of refugee law, international human rights, international disaster law and Pacific legal studies. Current research is focused on the domestic application of international human rights norms in New Zealand and the wider Pacific region. Natalie is a part-time member of New Zealand's Human Rights Review Tribunal.

Bara, Anna is a senior migration governance expert with extensive experience leading international policy dialogue, regional cooperation, and evidence-based analysis. Trained in applied research on international migration, she has played strategic roles in major intergovernmental initiatives at ICMPD, including the Africa–EU Migration and Mobility Dialogue (Khartoum Process), the Silk Routes Region Programme, and the Prague Process. At the Migration Policy Centre, she contributed to leading research and policy platforms such as CARIM East and INTERACT. Dr. Bara teaches at graduate and postgraduate levels, focusing on law in international conflict, migration policy, and governance, and serves as an accreditation and evaluation expert for several quality-assurance agencies. She holds a Master of Research and a PhD from the EUI.

Brujinen, Leontine is an assistant professor in private (international) law at Maastricht University (The Netherlands) and a senior researcher in private international law at the University of Antwerp (Belgium). Her research explores the interaction between private international law and other legal domains, including family law, migration law and Islamic law.

Bwambale Asimwe, Micheal is a Ugandan human rights lawyer and migration policy advisor affiliated with the Refugee Law Project (Center for Forced Migrants) at School of Law, Makerere University. He advocates for rights-based migration approaches, ensuring both forced and voluntary migrants benefit from constitutional and international standards. Recently, he was a Research Fellow with the Youth for Policy Migration Fellowship at the Konrad Adenauer Stiftung (Uganda) and supported the development of Uganda's National Migration Policy (2025). He holds a Bachelor of Laws from Uganda Christian University and a Post Graduate Diploma in Legal Practice from the Law Development Centre, Uganda.

Ciliberto, Giulia is Associate Professor of International Law at the Università per Stranieri di Siena (Italy), Associate Editor of Oxford Reports on International Law: International Human Rights Law | UN Treaty Bodies, and UNHCR's appointed Independent Expert on International Protection and Human Rights involved in the Refugee Status Determination (RSD) procedure. She obtained her Law Degree (2017) and PhD (2021) from the University of Napoli Federico II. She was a research fellow in International law at CNR-IRISS (2021) and at the University of Cagliari (2022-2024), and Associate Professor of EU at the Universitas Mercatorum (2024-2025). Professor Ciliberto's research focuses primarily on public international law and EU law, with particular interest in human rights, migration law, socioeconomic rights in contexts of crisis, and international financial institutions. She has published on the principle of *non-refoulement*, the gender dimension in the RSD procedure under EU Law, SAR operations, *non-entrée* tactics at sea and land borders, freedom of belief and the display of religious symbols, the right to housing, the domestic effects of requests for interim measures adopted by UN treaty bodies, and arbitration.

Corredor Gil, Diana Cristina is a Colombian political scientist with experience in humanitarian action and public policy implementation. She has collaborated closely with Colombian public institutions, focusing on the protection of children's and women's rights. Her expertise includes reintegration policies for former child soldiers, migrant children's registration, and family reunification. She holds a Master's in Transitional Justice, Human Rights, and the Rule of Law from the Geneva Academy and a Master's in Democratic Governance and Civil Society from Osnabrück University. Her professional trajectory includes advising international cooperation projects with UNICEF, Geneva Call, and CARE Colombia.

Esfahani, Arash holds a PhD in Sociology from the University of Tehran. His primary field of research is refugees and migration in Iran, with a particular focus on Afghan refugees and their social, legal, and economic conditions. He has conducted research on migration policies, refugee protection, and the experiences of displaced communities in Iranian society. He is the author of the book *In the Brother's House: The Situation of Afghan Refugees in Iran*, which examines the historical evolution of Iran's refugee policies and the everyday lives of Afghan refugees over several decades.

Ferolla Vallandro do Valle, Mariana is a PhD candidate at the Graduate Institute of International and Development Studies, where she researches states' human rights obligations regarding the social inclusion of migrants. She holds a Bachelor's and a Master's degree from the Universidade Federal de Minas Gerais in Brazil. Mariana has integrated various research projects on international migration law, including, most recently, the NCCR on the Move network. She is also a voluntary consultant for the Brazilian Public Defender's Office on migration and refugee law and previously acted as a voluntary lawyer for the Jesuit Service for Migrants and Refugees – Belo Horizonte.

Freire, Yago Ferreira holds a Joint Master of Laws (LL.M.) in International Law of Global Security, Peace and Development from the University of Glasgow and Leuphana Universität Lüneburg, and a Master of Arts (M.A.) in International Security from the Institut Barcelona d'Estudis Internacionals (IBEI). His academic work focuses on International Environmental Law, Human Rights, and Global Climate Governance, with particular emphasis on environmental backsliding, climate migration, sovereignty and unilateral environmental measures.

Gakis, Stefanos is a lecturer at Université Paris Dauphine-PSL and a judge appointed by the United Nations High Commissioner for Refugees at the French National Court of Asylum (CNDA). He also serves as a member of the team of European experts and judges preparing the European Union Agency for Asylum (EUAA) guidance publications for national courts. His research and publications cover a range of issues in public international law and European law, with a particular focus on migration law and policy. He is the author of a monograph on the legal status of asylum seekers in international and European Law, which was awarded the Prize Jacques-Mourgeon 2022 of the French Society for International Law (SFDI) and the Prize Georges-Vedel 2023 of the French Association of Doctors of Law (AFDD).

Gil, Ana Rita is an Assistant Professor at the University of Lisbon School of Law, where she teaches mainly Human Rights Law, Migration and Asylum Law, European and International Law. She holds a PhD from Lisbon Nova School of Law on Fundamental Rights of Immigrants. She has extensive experience as an independent International Consultant for the European Institutions on transposition of legislation regarding immigration and asylum, and also for the IOM and the United Nations High Commissioner for Human Rights. She was legal clerk at the Portuguese Constitutional Court, an advisor to the Portuguese Ombudsman and a member of the National Preventive Mechanism against torture, having worked closely with detention of migrants. She has published four books on Immigration and Asylum Law and has numerous published works in this field.

Goldner Lang, Iris is a Jean Monnet Professor of EU Law, the head of the Department of European Public Law and the Vice Dean at the University of Zagreb, Faculty of Law. She is the coordinator of the Jean Monnet Centre of Excellence “Reinforcing the Rule of Law and EU Values (EUroL)”, a partner in the Horizon project “Protecting Irregular Migrants in Europe: Institutions, Interests and Policies (PRIME)” and in the Volkswagen Foundation project on “Algorithmic Fairness for Asylum Seekers and Refugees (AFAR)”. She is also the holder of the UNESCO Chair on Free Movement of Persons, Migration and Inter-Cultural Dialogue. She has held visiting positions at University College London and at Harvard Law School, where she was a John Harvey Gregory Visiting Professor of Law and World Organization and a Fulbright Visiting Researcher. She did her LL.M. at the London School of Economics (LSE). She is the president of the Croatian Society for European Law (FIDE affiliate); a member of the Odysseus Network for Legal Studies on Immigration and Asylum in Europe; Vice-Chair of the Board of Trustees of the Academy of European Law (ERA) and an ERA Forum Advisory board member. Goldner Lang was the Editor-In-Chief of the Croatian Yearbook of European Law and Policy, and she is now a member of its Editorial Board and a member of the Editorial Board of the European Foreign Affairs Review.

Gómez Montoya, Daniela is a Colombian lawyer specialized in Human Rights and International Humanitarian Law, with professional experience in the public sector and

humanitarian contexts. She currently provides legal and contractual support within the education sector, contributing to the implementation of public policies aimed at guaranteeing the right to education, with particular emphasis on children and adolescents. She has been involved in humanitarian initiatives addressing the needs of vulnerable populations, including migrants and internally displaced persons. Her areas of interest include human rights, migration, public policy, and education in contexts of inequality and social vulnerability.

Guo, Sanzhuan (aka Sandra) is an Associate Professor at Flinders Law School, Australia. She is an accredited immigration law specialist in Australia and has qualified to practise law in China, Australia and USA (New York). She has a PhD from Peking Law School (China), LLM from Northwestern University School of Law (USA), and JD from Melbourne Law School (Australia). Sandra was a Visiting Researcher at the Centre for Studies and Research of the Hague Academy of International Law in 2016, a Visiting Fellow at Harvard Law School Human Rights Program from January to June 2025 and a Visiting Fellow at the European University Institute's Migration Policy Centre from February to July 2026. She is (co)Rapporteur of the International Law Association's Committee on International Migration and International Law (2021 to present).

Hefni, Hanna Adistyana is an Indonesian independent legal researcher who earned her LL.B. from the Law Faculty at Jambi University and her LL.M. from the Law Faculty at Indonesia University, both specializing in international law. She has a strong interest in human rights studies, demonstrated through her various work, including her thesis on blue-collar workers' rights in the era of artificial intelligence (2019). She currently serves as a functional journal editor for *Uti Possidetis: Journal of International Law* at Jambi University's Law Faculty and works as a freelance legal academic proofreader.

Honusková, Věra: Věra works at the Faculty of Law, Charles University in Prague. She is the head of the Centre for Migration and Refugee Law (CeMiReLa) and Deputy Head of the Department of Public International Law. She is the founder of the specialization programme *Refugee and Migration Law*, taught under the umbrella of CeMiReLa, where she and her colleagues explore the teaching in this field not only from a theoretical perspective but also through various experiential methods such as simulations, LARPs, legal clinics. She is also the Czech representative to the Odysseus Academic Network for Legal Studies on Immigration and Asylum in Europe, a member of the European Society of International Law, and a member of the International Law Association, where she actively contributes to the Committee's on International Migration Law work.

Hrvatič, Sergeja is a Junior Research Fellow at the Peace Institute in Ljubljana, as well as a PhD candidate and teaching assistant in public international law at the University of Ljubljana's Faculty of Law. The focus of her doctoral thesis is the economic and social rights of migrants without a (finally determined) legal status in Europe, as reflected in the rulings of the highest national courts and international tribunals. Her professional experience includes working at a law firm, primarily on constitutional and media law, and at a court, practising civil and criminal law.

Islami, Iliriana is Full Time Professor of International Law at the Faculty of Law of the University of Prishtina and Former Judge of the Constitutional Court, the first generation of judges with the establishment of the Constitutional Court in Kosovo, 2009-2012. Prior to joining Constitutional Court, Mrs. Islami has worked for the OSCE as a professional national in the Department of Rule of Law and Human Rights from 2000-2009. Mrs Islami was

Coordinator of the Human Rights Center at the Law Faculty and currently Senator of the University.

Karjalainen, Katja is a Professor of Law and Welfare at the University of Lapland (Finland) and University Lecturer at the University of Eastern Finland. She holds a PhD and the title of Docent in Private International Law from the University of Helsinki. Karjalainen serves as Co-Director of the Nordic Centre for International and Comparative Family Law (NorFam). Her research addresses a wide range of issues related to vulnerability in cross-border contexts. She has examined topics such as adult protection, international child abductions, and assisted fertility treatments, as well as human rights and non-discrimination law within private law frameworks.

Kenny, Mary Anne is an Associate Professor in the School of Law and Criminology at Murdoch University. She teaches and researches in the area of human rights, refugee, and immigration law. She is a legal practitioner and works closely with refugee and migrant non-government organisations and refugee communities. She is a Principal Research Fellow at the Indo-Pacific Research Centre, Murdoch University and an affiliate of the Kaldor Centre for International Refugee Law at the University of NSW.

Kroeze, Hester studied law at the Utrecht Law College in the Netherlands and then obtained her PhD in European migration law at Ghent University in Belgium. Subsequently, she worked at the Dutch administrative appeal court, the Council of State, as a specialist in European and migration law. Most recently, she is working as a senior advisor to the Dutch Advisory Council of Migration in The Hague, which is one of the most prominent advisory bodies of the Dutch government on the topic of migration.

Lee, Jong Hyeok is Associate Professor of Private International Law and Transnational Commercial Law at Seoul National University School of Law. He researches and publishes widely on private international law, including international civil procedure, choice of law, international family law, and cross-border dispute resolution, with an emphasis on comparative law methodology. He has provided legislative consultation to the Korean government, including on legislative reforms relating to intercountry adoption. He is actively involved in various domestic and international academic associations and international organisations, including the European Association of Private International Law, the Hague Conference on Private International Law, UNCITRAL, and UNIDROIT.

Lefebvre, Camille: Camille Lefebvre is a PhD Candidate at the Van Vollenhoven Institute at Leiden University, in a joint programme with the Graduate School of International Studies at Université Laval. She is also a 2026 Fellow at the Lauterpacht Centre for International Law at the University of Cambridge. She works part-time as a legal officer for Canada on International Court of Justice cases and was previously interim legal officer of Canada to the Netherlands, Judicial Fellow at the International Court of Justice and Judicial Clerk to the Federal Court of Appeal of Canada.

Lloyd, Marnie is a Senior Lecturer and Director of Postgraduate Studies at the Faculty of Law, and Co-Director of the New Zealand Centre for Public Law, at Victoria University of Wellington. Her current academic work on international law related to armed conflict, the protection of civilians, and statelessness builds on over fifteen years in the international humanitarian sector, primarily working as a Legal Advisor with the International Red Cross (ICRC) in country deployments and at the Geneva headquarters. Marnie's working experience includes providing expert legal consultation to the UNHCR, the Norwegian Red Cross, NZ

MFAT and the Geneva Academy of IHL and Human Rights. As of 2026, she will chair New Zealand's National IHL Committee.

Logarić, Franka is a final-year student at the University of Zagreb, Faculty of Law. During her studies, she participated in Central and Eastern European Moot Court Competition, where her team achieved the second place, as well as in various projects in student-lead organisations. In 2025, she did her internship at the Youth Initiative for Human Rights.

Lysienia, Maja is an immigration and human rights lawyer holding a doctoral degree from the University of Zurich. She conducts legal research on asylum and migration within and beyond academia. She is a President of the Board of the Swiss Network of young Migration Scholars, a Board Member in the Swiss Association of Migration and Mobility Studies, an expert on international and EU law within the AsyLex Advisory Council and an expert on Poland within the Asylum Information Database run by the European Council on Refugees and Exiles. She regularly collaborates with Polish NGOs like the Association for Legal Intervention.

Mert-Gostynski, Sevim Tuba is an attorney at law based in Ankara, Türkiye, where she practices law independently. She holds an LL.B. from Istanbul University and an M.A. in European Union Law from Marmara University. She is currently a PhD student in Public Law at Turkish-German University.

Moazzam, Dr Mahwish is a Research Scholar at the University of California, Berkeley, and a Pakistani lawyer with over a decade of experience in legal teaching and scholarship. She earned her J.S.D. from the University of California, Berkeley School of Law, where she also completed an LL.M. in International Law. Her research examines comparative and international law, with particular emphasis on human rights, gender justice, and institutional fragmentation in legally plural systems. She also explores how digital technologies and identity infrastructures reshape legal status and gendered representation across borders. Beyond her academic work, she serves on the Board of Directors of the International Action Network for Gender Equity and the Law (IANGEL).

Molnár, Tamás is a senior legal researcher at the European Union Agency for Fundamental Rights in Vienna. He is also a visiting lecturer on international migration law in the Department of International Relations at Corvinus University of Budapest; and an affiliated researcher at the WU Vienna University of Economics and Business, Institute for Law and Governance. He holds an LL.M. in EU law and a PhD and “habilitation” (dr.habil.) in international law and has published widely in the fields of international and EU migration law and the relationship between legal orders. His latest monograph, *The Interplay between the EU's Return Acquis and International Law*, was published by Edward Elgar in 2021. He is also the co-author, with Ramses Wessel, of *Interactions between EU Law and International Law. Juxtaposed Perspectives* (Edward Elgar Publishing 2024).

Murray, Mary Catherine, trained as a human rights lawyer and did a Masters in International Law and International Relations. She worked in a private law firm before working in the Irish Refugee Council, and is now in the Political Division of the Irish Foreign Ministry, known as Department of Foreign Affairs, in Dublin. She became a member of the ILA's International Migration Committee in 2024, and will complete an Irish Diploma in Immigration and Asylum Law in 2027.

Musole, Trésor Maheshe is a professor of international law at the Catholic University of Bukavu, in the east of the Democratic Republic of Congo (DRC). He specialises in issues of peace, human rights, security and migration in the Great Lakes region, as well as freedom of expression and the right to asylum. As such, he is a member of the Law and Migration Team at the Catholic University of Louvain, where he teaches as a visiting professor. He has experience in the legal and human rights fields, having worked as a barrister in South Kivu in the DRC. He recently completed a study on digital surveillance and privacy in the DRC: balancing national security and personal data protection.

Müller, Andreas, Professor Dr, LL.M. (Yale) holds the Chair of European Law, Public International Law and Human Rights at the University of Basel, Switzerland. Before 2023, he was Professor of European Law and Public International Law at the University of Innsbruck, Austria. Among his major fields of research are international and European asylum and migration law as well as international and European human rights law.

Napaumporn, Bongkot is a PhD researcher at the Peter McMullin Centre on Statelessness, University of Melbourne and a Legal Identity Visiting Scholar at Macquarie Law School, Macquarie University. Since 2006 her work has been dedicated to addressing statelessness in Thailand and beyond. Prior to commencing her PhD, she worked at the Thammasat University's legal clinic to provide pro bono legal assistance to stateless and displaced persons, and for the UNHCR Regional Bureau for Asia and the Pacific with a focus on statelessness. Her current research focuses on statelessness and nationality problems among migrants from Thailand living overseas.

Nguyen, Huong holds a PhD in Law and Gender and Women's Studies, a Master of International Development and Social Justice, and a Master of Law. She is a Lecturer in Sustainable Development and Social Justice at Flinders University and a researcher at Centre for Social Impact with extensive experience across Vietnam and the Mekong region. Her work examines migration governance, labour mobility, and migrant inclusion through a human rights and inclusive development lens. She integrates legal analysis with policy research and regional engagement, focusing on how migration intersects with gender equality, social protection, and equitable development within evolving national and regional frameworks.

Nurudeen-Arole, Mariam Odunayo is an academic researcher with experience in doctrinal, socio-legal, and policy-oriented human rights research. She holds an LL.M in International Law majoring in Human Rights. She is a PhD student at the University of Lagos (Nigeria), where she examines the intersection of human rights, disability, and technology. She serves as the Programme Director at The Pro Bono Centre and Senior Legal Officer at the Lagos State Local Government Civil Service Commission, and engages in rights-based advocacy with the Human Rights Advocacy Initiative.

Obata, Kaoru is a Professor of International Law, Kansai University (visiting) and Nagoya University (emeritus). He studied law at the Kyoto University (LL.B. and LL.M.) and was received a LL.D. (Kyoto) in 2016. His publication includes: "Facing an inconvenient truth in the age of international migration: difficulties in enforcement of expulsion and Japanese practice", 34(3) *Griffith Law Review* 2025, 344-359; "Beyond the Concept of 'Human Rights of Permanently Domiciled Foreigners' in Japanese Public Law Theory: Taking Seriously of Ambiguity in Nationality in the Age of International Migration", 66 *Japanese Yearbook of International Law* 2023, 272-294.

Odriozola, Ignacio is a PhD candidate in International Law at the Geneva Graduate Institute. He holds a law degree with a concentration in International Law from the University of Buenos Aires and a Master's degree in Migration and Mobility Studies from the University of Bristol. He has served as a specialist with the IACHR's Rapporteurship on Human Mobility, as a legal advisor to the UN International Law Commission, and as a legal officer at the Migrants Commission of Argentina's Office of the Public Defender, alongside other positions as a consultant for international and regional organisations.

de Oliveira, Emellin is a Researcher at CEDIS (Research & Development Centre on Law and Society) – Universidade Nova de Lisboa (NOVA) School of Law, Co-Coordinator and Lecturer of the Postgraduate Programme in Immigration and Nationality Law at NOVA School of Law Executive Education, Co-Founder and Executive Coordinator of the NOVA Asylum Policy Lab, and a PhD Candidate at NOVA School of Law. Emellin is also a Managing Associate at Paxlegal, focusing on Immigration, Portuguese Nationality, Asylum, and Human Rights litigation. She serves as a National Expert for Portugal within the MoveS Network on intra-EU mobility and is a member of the Council of Europe's Network of specialised lawyers and NGOs assisting women victims of violence.

d'Orsi, Cristiano is a Senior Consultant in Asylum and Human Rights Law in Africa at Witness Expert in London and at East African Centre for Forced Migration & Displacement (EACFMD) as well as a former Lecturer and Senior Research Fellow in Public International Law at the Faculty of Law, University of Johannesburg. Cristiano holds a two-year Diplôme d'Etudes Approfondies (Master of Advanced Studies equivalent, International Law, Graduate Institute for International and Development Studies, Geneva); and a Ph.D. in International Law from the same institution. Additionally, Cristiano has done post-doctoral studies at the University of Michigan Law School (Grotius Scholar) and at the Centre for Human Rights, University of Pretoria. His research interests mainly focus on African Refugee Law, Migration Law, Human Rights Law and Humanitarian Law and, more broadly, on the development of Public International Law in Africa and on African Governance.

Petergás Sender, Marta (*Lic. Iur.* Barcelona; LL.M. and Ph.D. Leuven; Dr. h.c. Lund) holds professorial positions at the Faculties of Law of Maastricht University (The Netherlands) and the University of Antwerp (Belgium). At Maastricht University, she is the Chairholder of Private International Law and Transnational Law. She has extensively researched, lectured, and published on international dispute resolution, the private International Law of the European Union, and the work of the Hague Conference on Private International Law.

Ragchaa, Ochirbal is a Mongolian legal scholar and human rights advocate, currently a PhD candidate at Flinders University in Australia. He holds a Bachelor of Law and a Master of Law from Otgontenger University in Mongolia, as well as an LLM from Monash University in Australia. He has served as a Lecturer at Otgontenger University since 2005 and is a member of the Mongolian Bar Association. Ragchaa previously served as Chair of Amnesty International Mongolia (2023–2025) and has held advisory roles with the National Human Rights Commission and the Government of Mongolia. His research focuses on human rights, constitutional and environmental law, and business and human rights.

Raimondo, Giulia is a Senior Researcher and Lecturer at the University of Fribourg, Chair for EU Law and Migration Law and Institute for European Law. Before joining the University of

Fribourg, she conducted postdoctoral research at the University of Luxembourg. She completed her PhD in International Law at the Geneva Graduate Institute. Dr Raimondo's first monograph, *The European Integrated Border Management: Frontex, Human Rights, and International Responsibility*, was published by Hart Publishing in 2024. In addition to her PhD, Dr Raimondo holds a Master of Laws from McGill University and a law degree from the Catholic University of Milan.

Ramji-Nogales, Jaya is the Sheller Family Professor in Public Interest Law at Temple Law School, where she teaches Refugee Law and Policy and supervises the Temple Law Asylum Project. Among other topics, her scholarship explores the concept of global migration law and studies the US asylum adjudication system using quantitative and qualitative methods. She sits on the Board of Editors of the American Journal of International Law and is a Permanent Visiting Professor at MOBILE at the University of Copenhagen Faculty of Law and a Senior Research Associate at the Refugee Law Initiative of the University of London.

Rao, Malavika is a Postdoctoral Research Fellow in international law at the Cambridge Centre for Environment, Energy and Natural Resource Governance (CEENRG), supported by the Swiss National Science Foundation, and a Fellow of the Lauterpacht Centre for International Law at the University of Cambridge. Her research interests include international migration law, environmental law, and human rights law.

Raspail, Hélène is a Professor of International Law in France (Le Mans Université), where she has co-directed a research laboratory and has been responsible of a Master's degree in Public Law – specialising in the law of foreigners, refugees and stateless persons. She wrote an award-winning thesis entitled *The Conflict between National Law and States' International Obligations* (Dalloz, 2013). Since 2012, she has also been appointed by the UNHCR as a judge at the French National Court of Asylum (CNDA). Her research spans general public international law – particularly the relationship between domestic and international law – to international human rights law, with a focus on asylum law. She has written numerous articles on these topics and also directed a collective volume entitled *Human Rights and the Sea* (Pedone, 2021).

Reyhani, Adel-Naim is a senior researcher in international refugee law at the Ludwig Boltzmann Institute of Fundamental and Human Rights in Vienna/Austria. His work focuses, amongst others, on access to asylum, externalization, and the Arendtian concept of rightlessness. Prior to his scholarly engagement, he worked for the Austrian Asylum Court, the International Organization for Migration, and as a legal advisor for refugees.

Rezazadeh, Faezeh holds a Master's degree in International Law from the University of Tehran. She is a human rights lawyer and protection specialist with experience in both national and international NGOs. Her work includes training, advocacy, capacity building, and nonprofit program management, with a focus on refugee protection and the rights of marginalized communities in Iran. Her research and professional experience address challenges and opportunities in advancing humanitarian protection, social inclusion, and access to services for refugees, displaced people, and other vulnerable populations.

Sancin, Vasilka is Full Professor of International Law at the University of Ljubljana, Faculty of Law (Slovenia) and a judge of the European Court of Human Rights (ECtHR) in Strasbourg (2025-2034). She previously served as a member of the United Nations Human Rights Council Advisory Committee (2022-2025); as a member (2019-2022) and Vice-Chair of the United

Nations Human Rights Committee; an arbitrator and a Bureau member of the Court of Conciliation and Arbitration within OSCE; an expert of the OSCE Moscow mechanism on Human Rights; a member of the UNODC Anti-Corruption Academic (ACAD) Initiative; and as a Vice-President of the Slovenian Red Cross. She (co)authored and (co)edited numerous articles/books in the field of international law, and, among other professional affiliations, acts as the President of the Slovene Branch of the International Law Association (ILA).

Schmidt, Adela is an Attorney with Fragomen Global LLP in Frankfurt am Main. Additionally, she is a lecturer at University of Frankfurt/Main where she teaches immigration law, refugee law and citizenship law. Previously, she worked as a legal advisor at the Hessian Ministry of Social Affairs and Integration and prior to that as a researcher at the University of Frankfurt/Main. She obtained her Dr. iur. on the subject of EU's readmission agreements with refugees' and migrants' countries of origin and so called safe third countries. Her primary research interests are European and German refugee law as well as immigration law.

Sciso, Elena is Full Professor of International Law at the Department of Political Science and International Relations of Luiss University in Rome and President of the Research Center for International and Strategic Studies. She is legal counsel of the Italian Ministry for Foreign Affairs and International Cooperation, arbitrator appointed by the Italian Government at the Permanent Court of Arbitration for the settlement of Antarctic environmental disputes. She was a member of the Legal and Technical Commission of the International Seabed Authority and Director of Seminars in Public International Law at the International Law Academy in The Hague. She has been visiting professor at various universities in Europe, United States, Australia. She has been a member of the ILA since 1995, and participated as representative of the ILA Italian Branch in several Committees, including the one on Regional Economic Development Law, the one on Human Rights Law and Practice, the one on Human Rights in Time of Emergency, and the one on International Migration and International Law. She has authored several publications, monographs and articles, in International Law, European Law and International Economic Law.

Scott, Geoffrey is currently a J.D. Candidate for 2027 at the Temple Beasley School of Law. He graduated from the University of Richmond in 2017 with a Bachelor of Science in Biochemistry. Prior to attending law school, he worked as a pharmacy technician and took classes as a non-degree seeking student at the University of Delaware.

Simmons, Logovaka Marilyn Moira holds a master's degree in National Security Policy with research from the Australian National University, focusing on the connections between climate, oceans, and human resilience in the Pacific. Marilyn has served in senior government and regional roles, including as Deputy Secretary in the Government of Tuvalu, where she helped shape policies on women, peace and security, trade, and climate change. She continues to champion Pacific-led approaches to security, ocean governance, and sustainable development through collective regional action.

Sinopoli, Elvio Anthony is a criminology and legal scholar specialising in the intersection of law, technology, and social harm. His research focuses on the gig economy, algorithmic control, and state-corporate responsibility, with particular attention to how digital platforms shape labour conditions and produce structural harms for vulnerable workers. He holds qualifications in law from Italy and Australia, a PhD in criminology and law from Flinders University (South Australia), and a Masters Degree in Cybercrime, Cybersecurity, and International law from UPEACE (Costa Rica). Alongside research, he is an experienced law and criminology lecturer.

Song, Lili is a Senior Lecturer in Law at the University of Otago. Her research and teaching focus on refugee law, with a particular emphasis on the Asia–Pacific region. She has published extensively in leading journals and edited collections in this area. She previously served on the editorial board of the *International Journal of Refugee Law* (2014–2021) and is currently the Book Review Co-Editor of *Refuge: Canada’s Journal on Refugees* (2024–present).

Taze, Canberk is a Turkish attorney and founding partner of Thazepl Law Firm, advising domestic and international clients on corporate and commercial law, regulatory compliance, employment, technology, data protection, intellectual property, real estate, migration, and dispute resolution matters. A Bilkent University Law graduate, Mr. Taze previously worked at one of Türkiye's top-tier law firms. He has received the Jean Monnet Scholarship, funded by the European Union through the Ministry of Foreign Affairs of Türkiye, and will pursue an LL.M. in Intellectual Property and Information Technology Law at Trinity College Dublin during the 2026–2027 academic year.

Temprosa, Francis Tom F. received his SJD from the University of Michigan at Ann Arbor in 2026. He has written on international law, human security, rule of law, judicial training, statelessness, forced migration, and campaign finance. He holds a BA (cum laude) from the University of the Philippines under college and university scholarships, and a JD (Honors) from the Ateneo de Manila Law School as a Saint Thomas More Merit Scholar.

Vicković, Nika is a fifth-year student at the University of Zagreb, Faculty of Law. During her studies she took interest in various youth-oriented organisations and participated in Central Eastern European Moot Court Competition, where her team achieved the second place. Currently she is finishing her traineeship at the Law Department of University of Torino.

Zelada, Javier is a legal professional with over twelve years of experience in public law, international law, and migration governance. He currently serves as Legal Advisor to the U.S. Department of Homeland Security, supporting the implementation of United States return policy and intergovernmental coordination with Guatemalan public institutions. A Chevening Scholar, he holds an LL.M. in International Law and International Relations. He has previously advised the U.S. Department of State on consular and protection matters and teaches administrative law, migration law, and consular law at both undergraduate and graduate levels.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

May 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Argentina

Author: Ignacio Odriozola

Author's note:

On 28 May 2025, while Argentina's review was in progress, Migration Law No. 25.871, Citizenship Law No. 346, the Higher Education Law No. 24.521, and the National Education Law No. 26.206 were amended by Emergency Decree No. 366/2025 ("Decree No. 366/2025").²

The Judiciary is currently reviewing several aspects of this decree. To date, some of its provisions have already been declared unconstitutional.³ In the National Congress, a group of parliamentarians has introduced a bill to nullify its application.⁴ In addition, another group of parliamentarians has voiced its rejection of Decree No. 366/2025 on the grounds that the reform "has a direct impact on the rights of migrants."⁵

The present report will address the proposed questions on the basis of the original text of the laws amended by Decree No. 366/2025. This approach is adopted for practical reasons and also in light of past experience. In 2017, Emergency Decree No. 70/2017 substantially modified Migration Law No. 25.871 and Citizenship Law No. 346,⁶ yet it was later declared unconstitutional in whole or in part,⁷ and was ultimately repealed by Decree No. 138/2021, which restored both laws to their original form.⁸

² <https://www.boletinoficial.gob.ar/detalleAviso/primera/326096/2025-05-29>

³ See, for example: <https://drive.google.com/file/d/1trAjVj7HFfiRpL3ET6KPyZAoydHcRRiq/view>

⁴ <https://www4.hcdn.gob.ar/dependencias/dsecretaria/Periodo2025/PDF2025/TP2025/3176-D-2025.pdf>

⁵ <https://www4.hcdn.gob.ar/dependencias/dsecretaria/Periodo2025/PDF2025/TP2025/4025-D-2025.pdf>

⁶ <https://www.boletinoficial.gob.ar/detalleAviso/primera/158336/20170130>

⁷ See, for example: <https://www.cels.org.ar/web/wp-content/uploads/2018/03/fallo-camara-migrantes.pdf>

⁸ <https://www.boletinoficial.gob.ar/detalleAviso/primera/241471/20210305>

Where the information provided is substantially affected by Decree No. 366/2025, the relevant question will be marked with double asterisks (**), and a translation of the modified legal provision will be included as the final paragraph.

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons		X
1961 Convention on the Reduction of Statelessness		X
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		X
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		X
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X

Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		X
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		X
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		X
ILO Migration for Employment Convention (Revised) (No. 97)	-	-
ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	-	-

Regional treaties:

Treaty	Signed	Ratified
American Convention on Human Rights (ACHR)		X
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		X
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		X

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		X
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	X	
Inter-American Convention against All Forms of Discrimination and Intolerance	X	
Inter-American Convention Protecting the Human Rights of Older Persons		X

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Multilateral treaties:

- **International treaties:**

- International Convention for the Protection of all Persons from Enforced Disappearance (2006)⁹

- **Regional treaties:**

- Agreement on Residence for MERCOSUR Member States' Nationals, Bolivia and Chile (2002)¹⁰

- Multilateral Social Security Agreement and Administrative Regulations of the MERCOSUR (1997)¹¹

- Cartagena Declaration on Refugees (1984)¹² – Although it is not a binding instrument, it provides a broader, complementary definition of refugee that was incorporated into Argentina's Refugee Law No. 26.165.

- Convention on Diplomatic Asylum (1954)¹³

⁹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

¹⁰ <https://www.mercosur.int/documento/acuerdo-residencia-nacionales-estados-partes-mercosur/>

¹¹ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/78719/norma.htm>

¹² <https://acnur.org/fileadmin/Documentos/BDL/2001/0008.pdf?file=fileadmin/Documentos/BDL/2001/0008>

¹³ <https://treaties.un.org/doc/Publication/UNTS/Volume%201438/volume-1438-I-24377-English.pdf>

- **Bilateral treaties:**

- Migration Covenant between the Republic of Argentina and the Republic of Bolivia (1998)¹⁴
- Agreement between the Republic of Argentina and the Federal Republic of Brazil for the concession of permanent residence to holders of transitory or temporary residence (2005)¹⁵
- Agreement on Residence for Nationals of the Republic of Argentina and the Republic of Peru (2007)¹⁶

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

In Argentina, the general structure of the system combines visa regulations and migratory permits.

Visas are issued for entry purposes under specific circumstances. Where applicable, visas are required for non-South American nationals wishing to enter Argentina as permanent, temporary, or transitory residents (Article 3, Annex II, Decree 616/10).¹⁷ Applicants for a visa must submit various documents—ranging from criminal records to family certificates—before the consular agency, demonstrating that they meet the requirements for one of these three categories, in accordance with Migration Law No. 25.871 (Articles 22, 23, and 24 of Migration Law No. 25.871).¹⁸ These migrants will also be interviewed by a member of the consular agency before their application is either approved or rejected (Article 6, Annex II, Decree 616/10).¹⁹

The migratory permits regime applies to those who have already been admitted to enter the country. Two different pathways exist in this regard. Once in Argentine territory, individuals who enter with a visa seeking permanent or temporary residence must submit to the immigration authority the documents endorsed by the Argentine consular authority to obtain the migratory

¹⁴ https://www.freemovehub.com/media/filer_public/9c/6c/9c6ce34e-9550-447c-988b-4f11e47e88e7/1_argentina-bolivia_1998_migration_covenant.pdf

¹⁵ https://www.freemovehub.com/media/filer_public/bd/c2/bdc21775-595c-4303-b4ae-2df270bc7840/16_argentina-brazil_2005_agreement_permanent_residence.pdf

¹⁶ https://www.freemovehub.com/media/filer_public/ec/b3/ecb30b71-7db3-48d6-8be5-dca2cdbcb7b/11_argentina-peru_2007_agreement_on_residence.pdf

¹⁷ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/165000-169999/167004/norma.htm>

¹⁸ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/92016/texact.htm>

¹⁹ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/165000-169999/167004/norma.htm>

permit previously approved [Article 8, Annex II, Decree 616/10].²⁰ Meanwhile, those who do not require a visa to enter the country – such as South American nationals – have a legal avenue to change the category or subcategory under which they were originally admitted, regardless of the reason for admission [Article 20, Decree 616/10].²¹ To give an example, a person who does not require a visa to enter may be admitted under the tourist subcategory [Article 24.a, Migration Law No. 25.871] and subsequently apply for temporary residence under the "Mercosur nationality" subcategory [Article 23.l, Migration Law No. 25.871].²²

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Three categories of migratory status allow a non-national to reside for more than three months. Instead, the “transitory residence,” extended for short-period visits, has one exception. These four categories are explained below.

Precarious residence

This category is extended to the non-national who applies for a residence permit. It is a sole ‘transition migratory category’ that allows the applicant to reside in the country for up to 180 days, renewable for the time demanded to resolve his/her application and guarantees the individual several rights, such as studying, working, leaving the country and re-entry [Art. 20, Migration Law No. 25.871 and Art. 20, Decree 616/10].²³

Transitory residence

As a rule, this category is directed to people spending some time in the country with no intention of residing. Indeed, it is expressly provided for a maximum period of three months. The categories range from tourists to passengers with connecting flights to seasonal workers. However, academics are the exception: they can stay under this residence category for up to one year following the purpose that brings them to Argentina [Art. 24, Migration Law No. 25.871 and Art. 24, Decree 616/10].²⁴

²⁰ Ibidem.

²¹ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/165000-169999/167004/norma.htm>

²² <https://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/92016/texact.htm>

²³ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/92016/texact.htm>;
<https://servicios.infoleg.gob.ar/infolegInternet/anexos/165000-169999/167004/norma.htm>

²⁴ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/92016/texact.htm>;
<https://servicios.infoleg.gob.ar/infolegInternet/anexos/165000-169999/167004/norma.htm>

Temporary residence

This medium-term residence is based on a variety of subcategories, all of them enshrined in Article 23 of Migration Law No. 25.871: a) Migrant workers; b) Annuitants; c) Pensioners; d) Investors; e) Scientists; f) Sportsmen and artists; g) Religious of officially recognized cults; and h) Patients under medical treatment. All are allowed to stay in Argentina for up to three (3) years if they are admitted.

The list of Article 23 continues with other subcategories allowed to stay for a term of up to two (2) years: j) Secondary, tertiary, university or specialized students; k) Asylum seekers and refugees; l) Mercosur nationals; and m) Foreigners who invoke humanitarian reasons. There is a last subcategory in paragraph n) referred to as “Special” that encompasses those who enter the country for reasons not contemplated in the previous subcategories and allows stay up to three (3) years.

Temporary residence is also extended for “family reunification” purposes to those relatives of non-nationals previously admitted as temporary residents. While Migration Law No. 25.871 does not refer to this circumstance, Decree 616/10 states that “whoever proves to be spouse, parent or unmarried child under eighteen (18) years of age not emancipated or adult with different capacities” can apply for a temporary residence.

All the previously mentioned subcategories' periods of stay are extendable and permit multiple entries and exits. These subcategories also enable the obtainment of a temporary ID, and all of this may lead to a permanent residence.

A final note should be made regarding the criteria for “Mercosur nationality.” The Agreement on Residence for MERCOSUR Member States Nationals, Bolivia, and Chile (Residence Agreement), signed in 2002, was initially intended to benefit with a temporary residence - upon the presentation of identity documents and proof of absence of criminal records [art. 4, Residence Agreement] to nationals of Argentina, Brazil, Paraguay, and Uruguay (Member States), as well as Bolivians and Chileans (Associate States). The Residence Agreement was open to accession by all other South American countries. At present, Colombia, Ecuador, and Peru are state parties, meaning that 9 out of 12 South American countries are bound by this treaty.²⁵

In 2003, Argentina incorporated this subcategory into the newly enacted Migration Law No. 25.871. Subsequently, in 2004, the National Directorate of Migration approved Provision No. 29.929/2004, which stated that “the list of countries included in the present subsection [referring to Art. 23(l), Migration Law No. 25.871] is merely indicative, and all MERCOSUR Member and Associate States must be considered included.”²⁶ From that point onwards, any Mercosur citizen has been entitled to obtain temporary residence, even though the Residence Agreement only came into force in 2009 and even though Guyana, Suriname and Venezuela did not ratify this instrument. Indeed, while Guyana and Suriname are Mercosur Associate States, Venezuela was suspended in 2017, but Argentina still applies the “Mercosur nationality” criteria to its

²⁵ https://www.mre.gov.py/tratados/public_web/ConsultaMercosur.aspx

²⁶ <https://www.acnur.org/fileadmin/Documentos/BDL/2004/2900.pdf>

nationals. Hence, all South American nationals can access a temporary residence in Argentina through this means.

Permanent residence

This residence has no expiration date. The migratory subcategories that can benefit from this residence vary. In the first place, Decree 616/10 highlights family reunification as a vehicle to get permanent residence. The beneficiaries can be: a) the spouse, parent or child of a native, naturalized or by option Argentinean; and b) the spouse, parent, unmarried child under 18 years of age not emancipated or above 18 years of age with certain disability of a permanent resident [Art. 22(a) and (b), Decree 616/10].

In addition, in 2017, the National Directorate of Migration approved Provision No. 6.206/2017, through which it stated that a coexistence union (*unión convivencial*) with an Argentine national or with a non-national permanently or temporarily residing in the country, complying with local jurisdiction regulation, have identical legal effects to marriage, enabling access to temporary or permanent residence.²⁷

In the second place, the Decree refers to those who have settled in the country as eligible for permanent residence. It distinguishes between nationals of a Mercosur Member State – or Associate State – who enjoyed temporary residence for two continuous years and those other cases of migrants who have more or three continuous years residing in Argentina [Art. 22(c), Decree 616/10]. Migrants who served as diplomatic or consular officials or who worked for an international organization and have remained in their functions in the Argentine territory for the time provided for each case in the previous example can also apply for permanent residence [Art. 22(d), Decree 616/10].

Lastly, those refugees and asylum seekers that comply with any of the aforementioned criteria i.e. family reunification or spending more than two or three years in Argentine territory, can obtain the authorization of the competent authority in the matter [Art. 22(d), Decree 616/10].

Permanent residence allows free entry and stay in the territory and enables the obtainment of a permanent ID.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Argentina has five main avenues for granting international protection: (i) refugee status, (ii) humanitarian protection, (iii) recognition as a stateless person, (iv) diplomatic asylum and (v) political asylum.

²⁷ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/285000-289999/287287/norma.htm>

Refugee Status

Argentina is a party to the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol. In 2006, Argentina adopted its General Law for the Recognition and Protection of Refugees (Law No. 26.165),²⁸ which is the main legal instrument regulating the recognition of refugee status in the country.

Refugees are defined following Article 1(A)(2) of the Refugee Convention [Art. 4 (a), Law No. 26.165]. Additionally, Article 4(b) complements the previous definition by expanding the grounds for being recognized as a refugee by incorporating the above-mentioned Cartagena Declaration: life, safety or freedom must have been threatened by “generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”

The National Committee for Refugees (*Comisión Nacional para los Refugiados* – CONARE) is responsible for evaluating refugee status requests [Arts. 18 and 25, Law No. 26.165]. This administrative body consists of five commissioners (*comisionados*), each representing a different government entity: the Ministry of the Interior, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Human Capital, and the Ministry of Security. The members are chosen based on their high morality and knowledge on the matter, although the CONARE choose its authorities and designs its own rules [Arts. 18 and 24, Law 26.165].

Notably, the Ministry of Security was not originally part of CONARE; its seat was previously held by the National Institute against Discrimination, Xenophobia, and Racism (*Instituto Nacional contra la Discriminación, Xenofobia y Racismo* – INADI), which was dissolved in August 2024. Through Decree 819/2024, the government included the Ministry of Security, citing the need for a “specialized perspective on national security and public order.”²⁹ Later that year, Decree 942/2024 broadened the grounds for exclusion from refugee protection, reduced the appeal period from 30 to 5 days, and eliminated two levels of review.³⁰

Humanitarian protection

In addition to refugee status, a temporary residence permit may be granted based on humanitarian reasons (*razones humanitarias*) [Arts. 23(m) and 29, Migration Law No. 25.871; Arts. 23 and 24, Decree 616/10]. Two subcategories refer implicitly to “complementary protection”, since they are directed to persons in need of international protection who were not recognised as refugees or asylum seekers under Law No. 26.165 but are covered by the principle of *non-refoulement* and to people that presumably will suffer violations to their human rights in case of being forcibly returned to their country of origin [Art. 23(m)(1) and (2), Decree 616/10]. They should not have a possibility to regularise their migratory situation through any other criteria.

The third subcategory focuses on persons who were victims of human trafficking or other forms of slave exploitation and/or victims of smuggling [Art. 23(m)(3), Decree 616/10]. People with a health issue and a presumed risk of death due to a lack of medical treatment at their country

²⁸ <https://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=122609>

²⁹ <https://www.argentina.gob.ar/normativa/nacional/decreto-819-2024-403985/texto>

³⁰ <https://www.boletinoficial.gov.ar/detalleAviso/primera/315871/20241022>

of origin might be considered for a residence permit, as well as stateless and refugees who have resided in the country for more than three years and their condition has ceased [Art. 23(m)(4) and (5), Decree 616/10].

It is worth noting that the National Directorate of Migration has the discretion to determine when these permits may be granted: these situations should, in its view, "justify (...) special treatment." [Art. 23(m), Migration Law No. 25.871]. There is no reference to the temporality of these residence permits.

Moreover, a humanitarian protection transitory residence permit may be granted in cases that "require special treatment" [Art. 24(h), Migration Law No. 25.871]. In this regard, the Decree states that special consideration will be given to non-nationals who are temporarily unable to return to their countries of origin "due to prevailing humanitarian conditions" or "as a result of natural or human-induced environmental disasters," but who do not require international protection [Art. 24(h), Decree 616/10].

Argentina has introduced several noteworthy measures to address migration resulting from "natural or human-induced environmental disasters." In 2017, the Executive signed Resolution No. 1143, a regularisation programme designed to grant legal status to Haitians displaced by the 2010 earthquake and Hurricane Matthew in 2016.³¹ In 2022, the National Directorate of Migration issued two further measures. Firstly, Provision No. 891, a programme aimed at sponsoring the arrival of nationals and residents of Mexico, Central America, and the Caribbean affected by a "socio-environmental disaster."³² Later, Provision No. 2641, sought to facilitate the large-scale arrival of nationals from neighbouring countries, specifically Mercosur residents, who were fleeing disasters.³³

Stateless persons

Argentina is also a party to the 1954 Convention on the Status of Stateless Persons. In 2019, it enacted the General Law for the Recognition and Protection of Stateless Persons (Law No. 27.512).³⁴ This legislation aims to ensure that both stateless persons and applicants for recognition can fully exercise their human rights and to establish provisions for determining their status, protection, assistance, and access to naturalisation [Art. 3, Law No. 27.512].

While the procedure is ongoing, applicants are granted a residence permit valid for 90 days, which can be renewed for the duration of the process [Art. 21, Law No. 27.512]. Once recognised as stateless, individuals are entitled to temporary residence for two years, following Article 23(m) of Law No. 25.871, with the option to apply for permanent residence thereafter [Art. 22, Law No. 27.512]. The CONARE is the administrative body responsible for deciding on applications [Art. 26, Law No. 27.512] and access to naturalization is guaranteed following Citizenship Law (Law No. 346) – See answer to question 5.

Diplomatic asylum

³¹ <https://www.argentina.gob.ar/normativa/nacional/disposici%C3%B3n-1143-2017-272890/texto>

³² <https://www.argentina.gob.ar/normativa/nacional/disposici%C3%B3n-891-2022-364999>

³³ <https://www.argentina.gob.ar/normativa/nacional/disposici%C3%B3n-2641-2022-373774>

³⁴ <https://www.boletinoficial.gob.ar/detalleAviso/primera/214533/20190828>

International protection in Argentina may also take place through diplomatic asylum. The granting of diplomatic asylum is regulated under Law No. 24.056, which incorporates at the domestic level the 1954 Convention on Diplomatic Asylum (Caracas Convention).³⁵ Granted extraterritorially, under Argentina's legations (diplomatic residences or embassies, for instance), warships, and military camps or aircrafts, diplomatic asylum requires the territorial State to grant the *laissez-passer (salvoconducto)* for Argentina's officials to transfer the asylee to national territory [Art. 11, Caracas Convention]. Argentina has not ratified the 1954 Convention on Territorial Asylum.³⁶

Political asylum

International protection in the form of political asylum warrants a final comment. Argentina's legal framework makes no explicit reference to this matter. However, it is regarded as a presidential prerogative, applicable when an individual faces political persecution in another country. The procedure, which is limited to a simple notification, is conducted through the Ministry of Foreign Affairs.

In 2019, former Argentine President Alberto Fernández granted political asylum to former Bolivian President Evo Morales.³⁷ Interestingly, the Ministry of Foreign Affairs "requested" that CONARE determine Morales' refugee status, despite the presidential decision. The status was swiftly granted but later revoked by President Milei's administration.³⁸ By then, Morales was not in the country anymore.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

In Argentina, family reunification is primarily regulated by Migration Law No. 25.871. One of its key objectives is "to guarantee the exercise of the right to family reunification" [Art. 3(d), Migration Law No. 25.871], and the law specifically extends this right to "parents, spouses, minor unmarried children, or adult children with different capacities" of non-nationals [Art. 10, Migration Law No. 25.871; Art. 10, Decree 616/10].³⁹

As outlined in the second response of this report, temporary or permanent residence will be granted to those who can prove such a relationship with a temporary or permanent resident [Arts. 22(b) and 23 *in fine* Decree 616/10]. Similarly, individuals who can demonstrate a family relationship with an Argentine national may be granted permanent residency [Art. 22(a), Decree 616/10].⁴⁰

It is important to recall that a coexistence union (*union convivencial*) with an Argentine national or with a non-national permanently or temporarily residing in the country, complying with local

³⁵ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/455/norma.htm>

³⁶ <https://www.oas.org/juridico/spanish/firmas/a-47.html>

³⁷ <https://www.cancilleria.gob.ar/en/announcements/news/evo-morales-request-asylum>

³⁸ <https://en.mercopress.com/2024/10/03/evo-s-refugee-status-revoked-in-argentina>

³⁹ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/92016/texact.htm>;
<https://servicios.infoleg.gob.ar/infolegInternet/anexos/165000-169999/167004/norma.htm>

⁴⁰ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/92016/texact.htm>;
<https://servicios.infoleg.gob.ar/infolegInternet/anexos/165000-169999/167004/norma.htm>

jurisdiction regulation, have identical legal effects to marriage, enabling access to temporary or permanent residence.⁴¹

On another note, Refugee Law No. 26.165 ensures family reunification and extends the condition of refugee – is needed - to “the spouse or the person with whom the refugee is linked by reason of affection and cohabitation, ascendants, descendants, and collateral relatives in the first degree who are economically dependent on them.” As such, this right provides a broader understanding of “family” compared to Migration Law No. 25.871, as it includes collateral relatives in the first degree who are economically dependent on the person previously recognised as a refugee [Art. 6, Law No. 26.165].

CONARE is the authority responsible for deciding on these applications on a case-by-case basis and in a reasoned manner, taking into account the law in force, the needs invoked by the applicants, and the cultural values of their country of origin [Art. 6, Law No. 26.165].

Lastly, Stateless persons and the applicants for that condition are granted family reunification similarly as refugees: “with his/her spouse or person with whom he/she is linked in reason of affectivity and cohabitation, his/her descendants, ascendants, and siblings who depend on him/her economically shall be preserved” [Art. 12, Law No. 27.512]. Interestingly, the Stateless person law is more inclusive than Refugee Law, since the former grants the right to family reunification to applicants and the latter just refers to those previously recognized as a refugee.

5. What are the conditions for naturalization in the reviewed state? **

In Argentina, the conditions for naturalisation are established in Article 20 of the National Constitution: Foreigners (...) obtain nationalization residing two continuous years in the Nation; but the authority can shorten this term in favor of the one who requests it, alleging and proving services to the Republic.”⁴²

The Citizenship Law No. 346, enacted in 1869, and Decree 3.213/1984 provide more details in this regard. The requirements for naturalisation are threefold: (1) being over 18 years of age, (2) residing in the Republic for two consecutive years, and (3) formally expressing the intention to become a citizen before the federal judges of section [Art. 2(1), Citizenship Law No. 346].⁴³

However, non-nationals may also be naturalised regardless of their period of residence under certain circumstances. These include demonstrating that they have provided specific services, such as honourably holding public office for the nation or provinces, serving in the army or navy, participating in a war in defence of the country, establishing a new industry or introducing a useful invention, being entrepreneurs or railway builders in any of the provinces, being part of colonies established in national or provincial territories while owning real estate, residing or settling in national territories along frontier lines, marrying an Argentine citizen or having an

⁴¹ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/285000-289999/287287/norma.htm>

⁴² https://www.argentina.gob.ar/sites/default/files/constitucion_de_la_nacion_argentina.pdf

⁴³ https://www.argentina.gob.ar/sites/default/files/ley_346_ley_de_ciudadania.pdf

Argentine child, or working as a teacher in any branch of education or industry within the provinces [Art. 2(2), Citizenship Law No. 346; Art. 3, Decree 3.213/1984].⁴⁴

It is worth noting that the circumstances allowing for an expedited path to naturalisation reflect the historical nature of Argentina's Citizenship Law.

Access to Argentine citizenship is further reflected in two additional situations that permit naturalisation. If the child of a naturalised citizen is born in a foreign country and is still a minor at the time of their parent's naturalisation, they may obtain a letter of citizenship from the Federal Judge by enlisting in the National Guard within the period stipulated by law. Similarly, the child of a citizen who has been naturalised in a foreign country may obtain their letter of citizenship if, upon arriving in the Republic, they enlist in the National Guard at the age prescribed by law [Arts. 3 and 4, Citizenship Law No. 346].

In the landmark ruling *Ni I-Hsing* (2009), the National Supreme Court concluded that the requirement of two continuous years of residence under Article 20 of the National Constitution for acquiring Argentine citizenship through naturalisation does not necessitate a regular migratory status. The Court stated: "Decree 3213/84 (...) makes no mention of the condition of legality. On the contrary, such regulation merely requires—just as the aforementioned law does—the fulfilment of the condition of residence in the Republic for two continuous years" (Parag. 4).⁴⁵

Finally, nationality acquired through naturalisation may only be annulled in cases where "fraud was involved because the facts invoked to obtain it were false" [Arts. 8 and 15, Citizenship Law No. 346].

****Article 2 Citizenship Law No. 346, modified by Article 37, Decree No. 366/2025:**

1°. Foreign nationals over the age of EIGHTEEN (18) who can prove that they have resided in the ARGENTINE REPUBLIC continuously and lawfully during the TWO (2) years prior to the application and who express their will to do so before the NATIONAL DIRECTORATE OF MIGRATION, a decentralised body operating within the framework of the DEPUTY CHIEF OF STAFF FOR THE INTERIOR of the CHIEF OF THE CABINET OF MINISTERS.

It shall be understood that a foreign national has resided continuously in the country when they have remained in the territory for the entire period referred to in the previous paragraph, without having made any departure abroad.

2°. Foreign nationals who, regardless of the length of their residence, can prove before the NATIONAL DIRECTORATE OF MIGRATION that they have made a significant investment in the country.

⁴⁴ https://www.argentina.gob.ar/sites/default/files/ley_346_ley_de_ciudadania.pdf; <https://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/25471/norma.htm>

⁴⁵ <https://repositorio.mpd.gov.ar/documentos/Ni%20I-Hsing.pdf>

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Article 75(22) of the National Constitution incorporates the international legal framework against discrimination into national law.⁴⁶ Article 13 of Migration Law No. 25.871 further provides that any acts or omissions “based on reasons such as ethnicity, religion, nationality, ideology, political or trade union opinion, sex, gender, economic position or physical characteristics” that arbitrarily prevent, obstruct, restrict, or otherwise impair the full and equal exercise of fundamental rights and guarantees recognised in the Constitution, international treaties, and laws shall be deemed discriminatory.

⁴⁶ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Political participation is protected through Article 37 of the National Constitution, which guarantees the full exercise of political rights in accordance with the principle of popular sovereignty and the legislation enacted pursuant to it. It further establishes that suffrage shall be universal, equal, secret, and compulsory.⁴⁷

Nonetheless, the Constitution entrusts each province with the authority to determine its own electoral regime and rules. As a result, non-nationals are entitled to vote only in local elections, such as those for governors and provincial legislatures. In practice, 23 of Argentina's 24 provinces permit non-nationals to participate in local or regional elections, with Formosa being the sole exception.⁴⁸ While conditions vary slightly among provinces, the general requirements include being of legal age, holding "permanent" residence (two years for MERCOSUR nationals and three for non-MERCOSUR nationals), possessing a valid identity document, and registering on the electoral roll.

Non-nationals are also permitted to engage in politics in a broader sense, through demonstrations, associations, and trade unions. In this regard, Article 14 of the National Constitution recognises that "every inhabitant" of the territory has the right "to associate with useful purposes," a category that implicitly includes non-nationals.⁴⁹

Furthermore, Migration Law No. 25.871 ensures in Article 11 the consultation or participation of foreigners in decisions relating to public life and the administration of the local communities where they reside, while recognizing and promoting the cultural, recreational, social, economic, and religious expressions of immigrants.⁵⁰

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Aside from the right to vote, Argentine law does not restrict non-nationals in the exercise of civil rights. Article 20 of the National Constitution expressly provides that "foreigners enjoy all the civil rights of citizens within the territory [...] they may engage in industry, commerce, and professional activities; own, purchase, and dispose of real estate; navigate rivers and coasts; freely practise their religion; and make wills and marry in accordance with the law."⁵¹ This

⁴⁷ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>

⁴⁸ <https://www.argentina.gob.ar/interior/observatorioelectoral/normativa-electoral/voto-de-extranjeros-residentes-en-argentina>

⁴⁹ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>

⁵⁰ https://www.oas.org/dil/esp/ley_de_migraciones_argentina.pdf

⁵¹ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>

guarantee is reinforced by Article 6 of Migration Law No. 25.871, which states that “the State, in all its jurisdictions, shall ensure equal access for immigrants and their families to the same conditions of protection, shelter and rights enjoyed by nationals.”⁵² Refugee Law No. 26.165 and Stateless Persons Law No. 27.512 follow the same logic.

When it comes to political rights, however, non-nationals are generally barred from standing for elected office, even if they are lawfully resident. The National Constitution requires that all political offices at the national level be held by native-born or, in certain cases, naturalised Argentines. A similar requirement applies at the provincial level. The notable exception is the Province of Buenos Aires, whose Constitution [Article 191(3)] allows non-nationals to be elected as councilors, after five years of residence.⁵³ Moreover, certain municipal laws also recognise migrants’ right to stand for office at the local level.

4. Are there any limitations to non-nationals’ right to buy and own property within the reviewed state?

In Argentina, as a rule, non-nationals’ right to buy and own property has no restrictions. Exceptionally, is limited under specific circumstances.

The Rural Land Ownership Law No. 26.737 limits foreign ownership or possession of rural land. According to Articles 8 and 9, they may not own or possess more than 15% of the national territory, a ceiling that also applies within each province, municipality, or equivalent administrative unit, and no more than 30% of that quota may be concentrated in individuals or entities of the same foreign nationality. In addition, Article 10 indicates that a single foreign owner may not hold more than 1,000 hectares in the core agricultural area—or the equivalent elsewhere depending on location, proportion within the relevant district, and land quality, as determined by the Interministerial Council on Rural Land—and authorities must verify compliance before granting authorisation. Foreigners are also expressly prohibited from owning or possessing land containing or bordering major and permanent bodies of water, as well as land located within designated border security zones, except in the circumstances foreseen by applicable law.⁵⁴

Moreover, according to Article 4 of Decree 15.385/44, “it is declared to be in the national interest that the property located in the security zone belongs to native Argentine citizens.”⁵⁵

Besides complying with certain formalities, there are no legal restrictions on the ownership of urban property by non-nationals in Argentina.

⁵² https://www.oas.org/dil/esp/ley_de_migraciones_argentina.pdf

⁵³ https://www.infoleg.gob.ar/?page_id=173

⁵⁴ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/190000-194999/192150/texact.htm>

⁵⁵ https://www.argentina.gob.ar/normativa/nacional/decreto_ley-15385-1944-294940/actualizacion

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Argentine legislation concerning the capacity of non-nationals to engage in formal employment is clear. As a general rule, non-nationals must hold a regular migratory status in Argentina—whether permanent, temporary, or precarious residence—in order to access formal employment [Articles 20, 23 and 51, Migration Law]. Conversely, the legislation expressly provides that transitory and irregular migrants are not permitted to enter into an employment relationship.

In order to begin working, any individual wishing to work as an employee must, once their migratory status has been verified, obtain a CUIL (Unique Labour Identification Code) from the National Social Security Administration (ANSeS). Foreign nationals who do not yet possess an Argentine National Identity Card (*Documento Nacional de Identidad*, DNI) may obtain a provisional CUIL on the basis of the certificate issued by the National Immigration Office.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

In Argentina, there are no quotas or limitations for businesses to hire non-nationals.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

In Argentina, several professions and sectors are restricted to nationals or naturalised Argentines. Political office is particularly limited. To be elected President, a person must be born in Argentina or be the child of Argentine parents, having the right to access to citizenship by option. Furthermore, Articles 48 and 55 of the National Constitution restrict access to the National Congress to native or naturalised Argentines with between four and six years of citizenship, depending on the chamber. The same requirement applies to candidates for the National Supreme Court [Article 111].

Some professions considered strategic for sovereignty purposes, public order, and national defence or interests follow the same line. For instance, access to the Army,⁵⁶ to the National Gendarmerie,⁵⁷ to the National Coast Guard,⁵⁸ to the Airport Security Police,⁵⁹ to the Federal

⁵⁶ See: <https://www.argentina.gob.ar/normativa/nacional/ley-19101-19875/texto> (Army)

⁵⁷ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/45000-49999/45954/texact.htm>

⁵⁸ <https://www.argentina.gob.ar/normativa/nacional/46324/actualizacion>

⁵⁹ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/115000-119999/117238/norma.htm>

Police,⁶⁰ and to the Diplomatic body⁶¹ is restricted solely to native Argentines or Argentines by option.

On another note, Public Employment Framework Law No. 25.164 limits the access to the National Public Administration to “native Argentine, by choice or naturalised.”⁶² However, some rulings have controverted the need to prove nationality for certain positions.

For example, in 2004, the National Supreme Court ruled in the landmark *Hooft* case. The proceedings arose from a claim brought by Pedro Cornelio Federico Hooft against a provincial constitutional provision that unlawfully restricted his right to serve as a Chamber Judge. Born in the Netherlands in 1942, he acquired Argentine nationality in 1965 and completed his primary, secondary, and university studies in Argentina. The Court held that the provincial requirement discriminated against naturalised citizens, thereby violating constitutional principles of equality and non-discrimination. In doing so, it also elaborated on the concept of a “suspect category” (*categoría sospechosa*).⁶³ Other decisions of the National Supreme Court addressing access to public employment and discrimination on the basis of nationality include *Repetto* (1988),⁶⁴ *Calvo y Pesini* (1998),⁶⁵ *Gottschau* (2006)⁶⁶ and *Mantecón Valdés* (2008).⁶⁷

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

According to Article 14bis of the National Constitution, Articles 6 of the Migration Law No. 25.871, Article 51 of Refugee Law No. 26.165, Article 21 of Stateless Persons Law No. 27.512, and Arts. 62 and ff of the Labour Law No. 20.744, non-nationals are entitled to virtually the same labour protections as Argentine nationals, regardless of their migratory status.

Migration Law also states in Article 16 that the State will adopt “all necessary and effective measures to eliminate the employment of immigrants in an irregular situation within the national territory, including the imposition of sanctions on employers, shall not undermine migrant workers’ rights vis-à-vis their employers in relation to their employment.”

⁶⁰ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/45000-49999/45954/texact.htm>

⁶¹ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/18795/texact.htm>

⁶² <https://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60458/norma.htm>

⁶³

<https://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verDocumentoByIdLinksJSP.html?idDocumento=5702171>

⁶⁴ <https://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-repetto-ines-maria-bs-as-prov-inconstitucionalidad-normas-legales-fa88000654-1988-11-08/123456789-456-0008-8ots-eupmocsollaf>

⁶⁵ <https://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-calvo-pesini-rocio-cordoba-provincia-amparo-fa98000022-1998-02-24/123456789-220-0008-9ots-eupmocsollaf>

⁶⁶ <https://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-gottschau-evelyn-patrizia-consejo-magistratura-ciudad-autonoma-buenos-aires-amparo-fa06000696-2006-08-08/123456789-696-0006-0ots-eupmocsollaf>

⁶⁷ <https://concursostransparentes.wordpress.com/wp-content/uploads/2010/11/csjn-mantec3b3n.pdf>

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services? **

In Argentina, Migration Law No. 25.871 grants non-nationals full access to public health services without additional requirements or conditions. Article 8 expressly provides that “[u]nder no circumstances may access to the right to health, social assistance or healthcare be denied or restricted to any foreigner who requires it, regardless of their immigration status.”⁶⁸ Refugee Law No. 26.615 [Art. 51] and Stateless Persons Law No. 27.512 [Art. 21] follow the same line.

However, as the management of the public health system is shared between the national and provincial governments, some provinces have introduced measures that restrict this broad entitlement. In particular, certain border provinces have enacted regulations limiting access for specific categories of migrants. For instance, Law No. 8.421 of the Province of Salta guarantees full access to healthcare for non-nationals holding “permanent” or “temporary” residence, but restricts “transitory” and “precarious” residents to emergency care only, while also imposing treatment costs upon them.⁶⁹ Other provinces, such as Jujuy,⁷⁰ Mendoza,⁷¹ and Santa Cruz,⁷² have adopted similar or even more restrictive provisions. None of these provincial regulations distinguishes between migrants, refugees, and stateless persons, yet one might assume that these categories are considered within “permanente” or “temporary” residents.

In practice, significant gaps persist between the legal framework and its implementation. These are often linked to demands for additional documentation or other administrative requirements which, contrary to the spirit of the law, ultimately curtail access to healthcare in certain provincial or local jurisdictions, or within particular medical facilities. Moreover, such limitations are compounded by instances of discrimination and xenophobia, which have historically emerged within healthcare contexts across the country, as well as in other public and private spheres of social interaction.⁷³

**** ARTICLE 8 —** *In cases of emergency, no foreign national who requires it may be denied or restricted access to social assistance or healthcare, regardless of their migration status.*

Foreign nationals with permanent residence shall have access to the public health system on equal terms with Argentine citizens.

Outside the circumstances set out in the preceding paragraphs, in healthcare facilities administered by the NATIONAL STATE, ordinary medical treatment or healthcare shall only be

⁶⁸ https://www.oas.org/dil/esp/ley_de_migraciones_argentina.pdf

⁶⁹ <https://boletinoficialsalta.gob.ar/instrumento.php?cXdlcnR5dGFibGE9THw4NDIxcXdlcnR5>

⁷⁰ <https://boletinoficial.jujuy.gob.ar/?p=296402>

⁷¹ https://www.saij.gob.ar/M20240001266?utm_source=newsletter-semanal&utm_medium=email&utm_term=semanal&utm_campaign=decreto-provincial#:~:text=Se%20aprueba%20la%20reglamentaci%C3%B3n%20de,Sistema%20de%20Salud%20de%20Mendoza.

⁷² <https://boletinoficial.santacruz.gob.ar/legislacion/resoluciones-completas/33959>

⁷³ See: https://www.encuestamigrante.ar/wp-content/uploads/documentos/anuario_enma_2023_vf.pdf

provided upon presentation of health insurance or prior payment for the service, in accordance with the conditions established by the MINISTRY OF HEALTH.”

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.**

Article 14 of the National Constitution guarantees “every inhabitant” the right to “teach and learn”.⁷⁴ In the same vein, Article 7 of Migration Law No. 25.871 ensures that non-nationals may access any “educational establishment, whether public or private; national, provincial or municipal; primary, secondary, tertiary or university,” expressly providing that irregular immigration status shall under no circumstances prevent their admission as students.⁷⁵ Refugee Law No. 26.615 [Art. 51] and Stateless Persons Law No. 27.512 [Art. 21] extend these rights as well. Furthermore, National Education Law No. 26.206 reaffirms that education is a right for all inhabitants —citizens and foreigners alike— by establishing that “the National State, the Provinces and the Autonomous City of Buenos Aires bear the primary and non-delegable responsibility of providing comprehensive, permanent and quality education for all the inhabitants of the Nation, guaranteeing equality, gratuity and equity in the exercise of this right, with the participation of social organisations and families”.⁷⁶

Nevertheless, access to education is hindered by a range of obstacles. These include jurisdictional variations in school enrolment systems; the requirement in some provinces of a National Identity Card (*Documento Nacional de Identidad*, DNI) or Unique Labour Identification Code (*Código Único de Identificación Laboral*, CUIL) for enrolment; differences in whether registration must be completed in person or online; and the absence of clear, accessible information. Other barriers arise from the validation of qualifications, equivalencies, and academic levels obtained abroad, as well as from missing documentation, stamps, or clerical errors, which are sometimes invoked as grounds to deny or delay enrolment.⁷⁷

****ARTICLE 7 —** *Foreigners shall have the right, even if their immigration status is irregular, to be admitted as students in an early childhood, primary or secondary educational establishment, whether public or private, national, provincial or municipal, for which their immigration status shall not be grounds for discrimination of any kind. The authorities of educational establishments shall provide guidance and advice regarding the procedures for rectifying irregular immigration status.*

⁷⁴ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm>

⁷⁵ https://www.oas.org/dil/esp/ley_de_migraciones_argentina.pdf

⁷⁶ <https://www.argentina.gob.ar/sites/default/files/ley-de-educ-nac-58ac89392ea4c.pdf>

⁷⁷ See: https://www.encuestamigrante.ar/wp-content/uploads/documentos/anuario_enma_2023_vf.pdf

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.**

In Argentina, Article 14 of the National Constitution states that social security benefits “shall be comprehensive and inalienable.” In addition, Article 6 of Migration Law No. 25.871 guarantees non-nationals equal access to social security regardless of whether they hold a work permit. Refugee Law No. 26.165 and Stateless Persons Law No. 27.512 follow the same approach.

However, depending on the specific social security programme, migrants may be required to demonstrate a certain period of legal residence in Argentina. The Integrated System of Retirement and Pensions, regulated by Law No. 24.241, establishes in Article 19 that entitlement to an Ordinary Retirement Pension, Disability Pension, Survivor’s Pension, Universal Basic Benefit (*Prestación Básica Universal*, PBU), Compensatory Benefit (*Prestación Compensatoria*, PC), and Additional Benefit for Continuity (*Prestación Adicional por Permanencia*, PAP) requires proof of thirty (30) years of service with computable contributions in one or more of the systems included in the reciprocity regime.

Notably, Argentina has ratified the 1997 MERCOSUR Multilateral Social Security Agreement and Administrative Regulations, which allow workers who have contributed in different Member States to accumulate their periods of service in order to access retirement pensions, pensions and health benefits, as well as to transfer payments.⁷⁸

With regard to non-contributory social security schemes, the Disability Pension—regulated by Decree No. 432/1997, as amended by Decree No. 843/2024, and targeted at persons with health problems or in situations of social vulnerability—requires non-nationals to prove ten (10) years of continuous residence in order to access the benefit [Art. 1(e)]. It is worth noting that, prior to its amendment, Decree 432/1997 required twenty (20) years of continuous residence.

In its landmark 2007 ruling in *Reyes Aguilera*, the National Supreme Court found that imposing such a long residency requirement on a disabled child in need was unreasonable and disproportionate. The Court held that the requirement violated the principle of non-discrimination on the basis of nationality and breached both constitutional and international norms concerning social rights and the protection of vulnerable persons. The case concerned a Bolivian girl with a severe disability who had applied for a non-contributory disability pension.⁷⁹

****ARTICLE 6 —** *The State, in all its jurisdictions, shall ensure that immigrants have equal access to the same conditions of protection, shelter, and rights enjoyed by nationals, in accordance with the rights and obligations corresponding to each immigration category, particularly with regard to social services, public goods, health, education, justice, work, employment, and social security.*

⁷⁸ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/78719/norma.htm>

⁷⁹ https://www.cels.org.ar/common/documentos/Reyes_Aguilera.pdf

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.**

Article 14bis of the National Constitution implicitly ensures the right to an adequate standard of living. In addition, Migration Law No. 25.871 protects the access to “social services” and “public goods” on the same basis as nationals. Refugee Law No. 26.165 [Article 51] and Stateless Persons Law No. 27.512 [Article 21] ensuring access to “services and basic social benefits.”

Certain welfare programmes specifically include migrants. For example, the Universal Child Allowance (*Asignación Universal por Hijo*, AUH)—a monthly payment for each child under the age of 18 whose parents are unemployed, employed informally, or employed as domestic workers—is available to non-nationals who can demonstrate at least two years of regular residence in Argentina [Article 14 ter (a)].⁸⁰ Similarly, eligibility for the Pregnancy Allowance (*Asignación por Embarazo*) requires a minimum of three years of regular residence [Article 14 quinquies (a)].⁸¹

Non-nationals are also eligible for housing programmes, provided they can demonstrate a certain period of residence. A landmark 2012 ruling of the National Supreme Court addressed the relationship between access to housing and non-nationals. The *Quisbert Castro* case concerned a Bolivian woman and her young son, who has a motor disability. They became homeless when their housing subsidy (under Decree 690/06) from the City of Buenos Aires—normally granted for a maximum of ten months—expired. Based on the National Constitution and international treaties, the Supreme Court held that the claimant must be guaranteed accommodation in suitable conditions, taking into account the child’s disability, and that she be included in a housing programme to provide a permanent solution to her situation. The Court also ordered the intervention of social welfare and health services to ensure the child received the care required by his condition.⁸²

****ARTICLE 6 —** *The State, in all its jurisdictions, shall ensure that immigrants have equal access to the same conditions of protection, shelter, and rights enjoyed by nationals, in accordance with the rights and obligations corresponding to each immigration category, particularly with regard to social services, public goods, health, education, justice, work, employment, and social security.*

Are there any final observations you would like to make? Please write below.

⁸⁰ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/35000-39999/39880/texact.htm>

⁸¹ <https://servicios.infoleg.gob.ar/infolegInternet/anexos/35000-39999/39880/texact.htm>

⁸² <https://drive.google.com/file/d/1hQT3j7CsOWp4yesEwNz0o-GdcaQtG6du/view>

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

January 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Australia

Authors: Sanzhuan Guo and Mary Anne Kenny⁸³

Please indicate the treaties to which the country under review is a party.

*UN system treaties:*⁸⁴

Treaty	Signed	Ratified /Accession
Convention relating to the Status of Refugees		Yes
1967 Protocol to the Convention relating to the Status of Refugees		Yes
1954 Convention relating to the Status of Stateless Persons		Yes (1973)
1961 Convention on the Reduction of Statelessness		Yes (1973)
International Covenant on Civil and Political Rights (ICCPR)	Yes (1972)	Yes (1980)

⁸³ Author note: The two authors contributed to this country review equally and their names are given in alphabetical order.

⁸⁴ <https://humanrights.gov.au/our-work/education/human-rights-explained-australia-and-human-rights-treaties>. See also: <https://indicators.ohchr.org/>; <http://hrlibrary.umn.edu/research/ratification-australia.html> (some information might not be fully accurate at UMN website). https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:12001 (ILO conventions)

Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	n/a	Yes (1991)
Second Optional Protocol to ICCPR (death penalty)	n/a	Yes (1990)
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Yes (1972)	Yes (1975)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) – individual complaint procedure	No	No
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	No	No
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Yes (1985)	Yes (1989)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Yes (2009)	Yes (2017)
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	Yes (1966)	Yes (1975)
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes (1980)	Yes (1983)
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	n/a	Yes (2008)
Convention on the Rights of the Child (CRC)	Yes (1990)	Yes (1990)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	Yes (2001)	Yes (2007)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	Yes (2002)	Yes (2006)
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	NO	NO

Convention on the Rights of Persons with Disabilities (CRPD)	Yes (2007)	Yes (2008)
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	n/a	Yes (2009)
ILO Forced Labour Convention (No. 29)		Yes (1932)
2014 Protocol to the ILO Forced Labour Convention (No. 29)		Yes (2022)
ILO Migration for Employment Convention (Revised) (No. 97) – 54 ratifications		NO
ILO Equal Remuneration Convention (No. 100)		Yes (1974)
ILO Discrimination (Employment and Occupation) Convention (No. 111)		Yes (1973)
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) – 30 ratifications		NO

Regional treaties: - Not applicable to Australia, so the answer is N/A to all questions.

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	n/a	n/a
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	n/a	n/a
Convention governing the Specific Aspects of Refugee Problems in Africa	n/a	n/a
African Charter on the Rights and Welfare of the Child	n/a	n/a
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	n/a	n/a
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	n/a	n/a
European Convention on Human Rights (ECHR)	n/a	n/a

Protocols to the European Convention on Human Rights (list which ones):	n/a	n/a
European Social Charter (ESC)	n/a	n/a
European Convention on the Legal Status of Migrant Workers	n/a	n/a
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	n/a	n/a
American Convention on Human Rights (ACHR)	n/a	n/a
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	n/a	n/a
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	n/a	n/a
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	n/a	n/a
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	n/a	n/a
Inter-American Convention against All Forms of Discrimination and Intolerance	n/a	n/a
Inter-American Convention Protecting the Human Rights of Older Persons	n/a	n/a

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Bilateral Agreements:

A. Free Trade Agreements: Australia has a free trade agreement with the following 18 countries/regions, which is relevant to human mobility, especially on employer sponsored visas. See DFAT, <https://www.dfat.gov.au/trade/agreements/trade-agreements>.

- (1).New Zealand
- (2).Japan
- (3).China

- (4).Hong Kong
- (5).South Korea
- (6).India
- (7).ASEAN
- (8).Singapore
- (9).Thailand
- (10).Malaysia
- (11).Indonesia
- (12).UK
- (13).USA
- (14).Chile
- (15).Peru
- (16).Trans-Pacific
- (17).Pacific
- (18).RCEP – Regional Comprehensive Economic Partnership Agreement

B. Australia entered into the world's first bilateral agreement on climate migration: *Australia-Tuvalu Falepili Union Treaty*, entered into force on 28 August 2024. You may find some relevant information in DFAT's official website: <https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union>, and some references here.⁸⁵

In 2025, the Falepili Union Treaty has been implemented through a new pathway under Subclass 192 Pacific Engagement Visa (PEV) - Treaty Stream. This new stream opens only to Tuvaluans, under which up to 280 visas will be granted annually. It should be noted that PEV's general stream offers up to 3,000 visas annually to eligible nationals from Timor-Leste and participating Pacific Island states including Tuvalu in 2024 (but not in 2025 as Tuvaluans will be subject to PEV Treaty Stream).⁸⁶

⁸⁵ Alex Green and Douglas Guilfoyle, 2024. 'The Australia-Tuvalu Falepili Union Treaty' *American Journal of International Law*, vol 118, no 4, pp 684-703; Jon Barnett et al, 2025. 'Migration as Adaptation? The Falepili Union Between Australia and Tuvalu' *Wiley Interdisciplinary Reviews: Climate Change*, vol 16, issue 1, pp 1-10.

⁸⁶ Sanzhuan Guo and Jessica Genauer, 'The Australia-Tuvalu Falepili Union Treaty: Climate-Induced Migration and Human Security' (2025) 41 *Revue Européenne des Migrations Internationales* (accepted).

Part I – Right to stay

Under the Constitution of Australia, the Commonwealth or Federal Parliament has the power to make laws with respect to ‘immigration and emigration’⁸⁷ and ‘naturalisation and aliens’⁸⁸. Australia’s immigration and nationality law include the following key legislations:

- *Migration Act 1958* (Cth)⁸⁹
- *Migration Regulations 1994* (Cth)⁹⁰
- *Australian Citizenship Act 2007* (Cth)⁹¹

The best way to search on relevant immigration laws and policy guidelines in Australia is through the Department of Home Affairs’ database: **LegendCom**. Some universities’ library has access to this database and immigration lawyers in Australia should all have access to the database.

There is extensive policy which guides decision makers in the application of the law. Under legislation the executive (the Minister) has the power to also issue Ministerial Directions which are binding on decision makers and direct them on certain functions such as cancellations and the order in which to process visa applications.

It is important to remember that citizens have the right to return and/or stay in Australia indefinitely even though they may have left country for a significant period of time. People may automatically acquire citizenship through birth. Otherwise, people may obtain citizenship by descent or conferral. A child who is born in Australia may acquire citizenship if they are stateless⁹² or if they are ‘ordinarily resident’ in Australia for 10 years.⁹³

Who is citizen can be complicated. For example, Australia passed laws allow courts to order a cessation of citizenship if they hold a dual citizenship/nationality and they have committed certain crimes (such as terrorist crimes).⁹⁴

For the right to stay of non-citizens including stateless persons, this depends on their visa status in Australia. See below.

⁸⁷ *Australian Constitution*, s 51(xxvii)

⁸⁸ *Australian Constitution*, s 51(xix)

⁸⁹ <https://www.legislation.gov.au/C1958A00062/latest/versions>.

⁹⁰ <https://www.legislation.gov.au/F1996B03551/latest/versions>.

⁹¹ <https://www.legislation.gov.au/C2007A00020/2020-09-18/text>.

⁹² *Australian Citizenship Act 2007* (Cth), s 21(7)

⁹³ *Australian Citizenship Act 2007* (Cth), s 12(1)(b)

⁹⁴ *Australian Citizenship Act 2007* (Cth) s 36B. Regarding cessation of citizenship, please see: <https://www.homeaffairs.gov.au/reports-and-publications/reports/reports-to-parliament/citizenship-cessation>.

1. What is the general structure of the visa and migratory permits system in the reviewed state? For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Australia operates a universal visa system, meaning that every non-citizen must hold a valid visa to enter and remain in Australia. There are no exemptions to this rule. A visa is the grant of permission by the government to either travel to and enter, or to remain in, Australia, or both. A visa can give permission for a single journey only or can specify that multiple entries are permitted. It can also state that a limited or unlimited period of stay is authorised.

All criteria for visas are set out in some detail in legislation in a kind of ‘codified scheme’. A decision to grant a visa can only be made if a person meets all of the prescribed criteria. The *Migration Act 1958* (Cth) combined with Schedule 1 of the *Migration Regulations 1994* (Cth) (the Regulations) sets up the requirements for submitting a valid visa application for each visa while Schedule 2 of the Regulations provides substantive requirements for each visa.

There are two main categories of visas: (1) temporary: for visitors, students and temporary workers; and (2) permanent visas: for skilled migrants, family, refugee and humanitarian entrants.

All temporary visas will have some visa conditions, such as work and study rights and whether they are permitted to apply for other visas when they are onshore. All visa conditions are listed under Schedule 8 of the *Migration Regulations 1994* (Cth).

Access to Medicare (Australia's public health insurance) for visa holders is governed by the *Health Insurance Act 1973* (Cth) and depends on the visa subclass and whether the person is eligible for reciprocal health care agreements.⁹⁵ Permanent resident visa holders, refugees, and humanitarian entrants generally have immediate access, while temporary migrants may need private health insurance.⁹⁶ Students holding temporary visas may be required to pay full school fees for public schooling. Certain temporary visa holders can access free primary and secondary education.⁹⁷

Nationals of some countries (many) may be eligible for ETA (Electronic Travel Authority), which is Subclass 601 visa. The ETA visa is basically a visitor visa and permits up to three months stay in Australia (within 12 months period). ETA costs AUD20.

Most visas are applied for and granted electronically. Australia no longer stamps a visa on passports; visas are linked digitally to passport details. The visa grant will specify the length of the visa and any visa conditions. To understand visa conditions, please check Schedule 8 of the Regulations. There is an online system, VEVO, where people can check their visa status in Australia.⁹⁸

⁹⁵ <https://www.servicessaustralia.gov.au/when-reciprocal-health-care-agreements-apply-and-you-visit-australia>

⁹⁶ <https://immi.homeaffairs.gov.au/supporting/Pages/Adequate-health-insurance.aspx>

⁹⁷ <https://immi.homeaffairs.gov.au/settling-in-australia/settle-in-australia/key-settlement-topics/education-and-training>

⁹⁸ <https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/check-conditions-online>.

All non-citizens must have a visa to enter and remain Australia. Otherwise they are classified ‘unlawful non-citizens’, who will be subject to mandatory detention and removal. Visas can also be refused or cancelled for character or security reasons.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

In Australia, all visas are given a three-digit number subclass. For example, a student visa is called Subclass 500 visa, and a tourist visa is generally Subclass 600 visa (as ETA is also a tourist visa but Subclass 601).

There are three types of visas in Australia: temporary visas, permanent visas, and bridging visas.

You may find a visa list here (which is not exhaustive but indicative): <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing>

Temporary visas permit visa holders to stay in Australia temporarily, which can be three months or several years. Common temporary visas include:

- **Tourist visa:** Subclass 600 visa, this can be more than 3 months to 1 year (especially for foreign parents of Australian citizens and permanent residents). It should be noted that Subclass 651 (eVisitor; free of charge) and Subclass 601 (ETA; application fees \$20) visas permit up to three months stay. If someone wants to stay in Australia for more than three months as a visitor, they should apply for a Subclass 600 visa.
- **Working holiday (or work and holiday) visas:** Subclass 462 and Subclass 417 visas, depending on country of passport. The initial visa is valid for 12 months. It is possible to apply for subsequent visas which allow a person to stay for up to three years.
- **Student visa:** Subclass 500 visa, with a period of stay matching their study period. For example, an undergraduate study can be 3-5 years. Generally, they will be given several months more than their study period, and 15 March is a common student visa's expiry date.
- **Graduate Visa:** Subclass 485. It is very common for international students to apply for this graduate visa once they complete their studies in Australia (generally higher education but not limited to higher education). This visa permits graduates to work in Australia for 1.5 - 3 years, or even longer in some circumstances (such as second Subclass 485 visa in relation to a regional area).

- **Training Visa:** Subclass 407.
- **Partner visa:** Subclass 820 (onshore); Subclass 309 (offshore). Partner visas can be temporary as partner visas are generally two steps (temporary visa for 2 years and then becoming permanent). There is also a Subclass 300 Prospective Marriage visa (fiancée).
- **Sponsored Parents:** Subclass 870 permits a parent of an Australian citizen or permanent resident to visit and stay in Australia for up to 5 years (can be extended to 10 years)
- **Skilled Visa:** Subclass 491 visa.
- **Employer sponsored visa:** Subclass 482 and Subclass 494 visas, which can be 1-4 years (for Hong Kong passport holders, these visas may be 5 years).
- **Business visas:** this used to be Subclass 188 visa (no new visa application is accepted), closed on 31 July 2024.
- **Temporary activity visa:** Subclass 408. During COVID, Subclass 408 was granted to many people as they could not leave Australia. COVID was treated as an Australian government sponsored activity to facilitate relevant visa applications. Subclass 408 – COVID stream is closed now. Subclass 408 may include many activities such as sporting, research, religion, entertainment activities.
- **Refugee/Protection visas:** Subclass 790 (Safe Haven Enterprise) (SHEV) and Subclass 785 (Temporary Protection Visa) (TPV). These are temporary visas granted to refugees who arrived in Australia without a valid visa.
- **Temporary Humanitarian Stay visa Subclass 449 and Temporary humanitarian concern visa Subclass 786** – these are short term visas up to 3 years granted in situations of humanitarian emergency.
- **Subclass 444 visa:** a visa for New Zealand passport holder. This is called special category visa.

Permanent visas allow visa holders to stay in Australia permanently or indefinitely, but most permanent visas have a five-year travel facility, or sometimes it can be one year travel facility. Travel facility means that how long they can travel outside Australia and then return without applying for a further visa.

Common permanent visas fall within the skilled, family and refugee and humanitarian program:

(1). **Skilled visas** including:

- Subclass 189 Skilled Independent visa
- Subclass 190 Skilled Nominated visa
- Subclass 186 – Employer Nomination Scheme (ENS) visa
- Subclass 191 – Permanent Residence (Skilled Regional) visa
- Subclass 887 – Skilled Regional visa

(2).**Family visas**, including:

- Partner visa: Subclass 801 (onshore) and Subclass 100 (offshore): Please note that partner visas are a paired visa. The visa applicant only needs to submit one application, and this one application will be treated as applications for both temporary and permanent visa applications. Subclass 820 and 801 visas (applying in Australia) are a pair and Subclass 309 and 100 visas are a pair (applying overseas).
- Parent Visa: There are two types of parent visas, one is contributory and one is regular parent visa. They are all permanent visas, but the application fees are different.

	<u>Offshore applications</u>	<u>Onshore applications</u>
<u>Contributory</u>	Subclass 143	Subclass 864
<u>Regular</u>	<u>Subclass 103</u>	<u>Subclass 804</u>

- Child Visa: Subclass 101 (offshore) and Subclass 802 (onshore).
- Other family related visas such as remaining relative Subclass 835 visa and Subclass 115 visa.
- Note: If you see a visa starting with '8', it generally means that this visa is applied in Australia, and it is a permanent visa.

(3).Australia's **Refugee and Humanitarian visa program** provides protection to people facing persecution, violence, or significant human rights violations. It includes offshore visas (such as Subclass 200 – Refugee Visa and Subclass 201 – In-Country Special Humanitarian Visa) for those outside Australia seeking resettlement through the UNHCR or sponsorship and Subclass 204 – Woman at Risk Visa. The Subclass 202 – Global Special Humanitarian Visa is for people sponsored by Australian residents, while the Subclass 203 – Emergency Rescue Visa address urgent cases.

For those already in Australia, onshore protection visas such as Subclass 866 – Protection Visa grant permanent residency to asylum seekers who meet the Refugee Convention or complementary protection criteria.

(4).A special mention should be given to **Resident Return visas (RRVs)**: Subclass 155 and Subclass 157. This is also a permanent visa, and it is granted to someone who is or was a permanent resident. For example, if someone was granted a permanent skilled visa, then this person can live and work in Australia permanently, but they can travel outside Australia and return to Australia within 5 years from the date of visa grant. Five years later, if the individual still needs/wants to travel outside Australia, this person may apply

for a Subclass 155 or 157 (depending how long they have physically stayed in Australia in the past five years).

Bridging visas: A bridging visa law allows a non-citizen to lawfully stay in Australia while their immigration status is resolved, such as during the processing of a visa application or an appeal. Bridging visas are not substantive visas. The significance of a Bridging Visa not being a substantive visa is that it does not provide a long-term immigration status or pathway to permanent residence, and holders may face restrictions on work, travel, and eligibility for other rights or visas. All the above-mentioned temporary and permanent visas are substantive visas. Common Bridging visas are Bridging Visa A (Subclass 010), B (Subclass 020), C (Subclass 030) and E (Subclass 050). Bridging Visas A (BVA) and B (BVB) are generally considered better because they are granted to people who have held valid substantive visas, often come with work rights, and allow for lawful stay while a new visa is processed—with BVB even permitting limited travel. In contrast, Bridging Visas C (BVC) and E (BVE) are seen as “not so good” because they are typically granted to people who overstayed or were unlawful, usually come with stricter conditions (like no work rights), and signal a more precarious immigration status that may negatively affect future visa applications.

BVA is generally granted to those who submit a visa application in Australia before their current visa expires, and then a BVA is granted to give them a legal right to stay in Australia until a visa decision is made for their new application. BVB permits its visa holder to travel outside Australia before a decision is made to their new visa application.

BVE is generally granted to unlawful non-citizens, which means BVE visa holders have generally are granted to those who either arrived without a visa, overstayed their visa or at some time did not hold a valid visa in Australia. Once someone holds a BVE visa, they are lawfully in Australia as BVE is a valid visa.

Not all Bridging Visa C (BVC) holders have been unlawful. While the BVC is often associated with people who did not hold a substantive visa when applying for a new one, this doesn't always mean they were unlawful. For example, someone on a Bridging Visa A (BVA) might apply for another visa but no longer meets the criteria for a BVA, so they are granted a BVC instead. In this case, they have never been unlawful but are still given a BVC because of the technicalities of the visa process.

BVE has two subclasses: one is Subclass 500 and the other is Subclass 501. Subclass 501 is granted when a protection visa application has been lodged onshore and the applicant is waiting for a decision.

Bridging visas permit visa holders to stay in Australia lawfully and this may be more than one year and sometimes can be more than 20 years, such as in the context of parents' visas. The point is that Bridging visas will permit visa holders to stay in Australia to wait for a decision of their new visa application.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Please see above refugee/humanitarian visas. Basically, there are two types of pathways: one is offshore applications, and the other is onshore applications. There is also difference between temporary visas and permanent resident visas. Here is the basic table for reference:

	Offshore	Onshore
Permanent visas ⁹⁹	- Refugee visa (subclass 200) - In-country Special Humanitarian visa (subclass 201) - Global Special Humanitarian visa (subclass 202) - Emergency Rescue visa (subclass 203) - Woman at Risk visa (subclass 204)	- Subclass 866 Protection visa - Subclass 851 Resolution of Status visa
Temporary visas	Subclass 449	- Subclass 449 - Subclass 786 - Subclass 785 TPV - Subclass 790 SHEV

Please note: Australia applies strict border policies, and asylum seekers arriving by boat after 2013 are barred from applying for visas in Australia and will be sent to a regional processing centre (currently Nauru) for processing under the laws of that country.

3.1. The onshore component of Australia's Refugee and Humanitarian Program grants protection visas to asylum seekers who are already in Australia and meet the definition of a refugee under the 1951 Refugee Convention or are eligible for complementary protection, which under Australian law refers to protection for individuals who are at risk of significant harm – such as torture, cruel or inhuman treatment, or the death penalty – if returned to their home country. . These visas allow individuals to remain in Australia permanently or temporarily, depending on their visa type and method of arrival. Applicants must pass health, security, and character checks.

⁹⁹ See: <https://immi.homeaffairs.gov.au/settling-in-australia/sets-program/eligibility/eligible-permanent-visa-subclasses>.

Subclass 866 – Protection Visa (Permanent): Granted to asylum seekers in Australia who meet the definition of a refugee or are eligible for complementary protection. This visa's applicants are generally holding a valid visa (e.g., student or tourist visa) and then found to be refugees.

Subclass 785 – Temporary Protection Visa (TPV) and Subclass 790 – Safe Haven Enterprise Visa (SHEV): Previously granted to unauthorised maritime arrivals (UMAs) until 2023 but still applies to anyone arriving in Australia (by plane mostly) who does not have a valid visa. Those that were previously granted a 785 and 790 are being transitioned to a permanent Subclass 851 Resolution of Status visa.

3.2. Subclass 449 – Temporary Humanitarian Stay Visa and Subclass 786 – Temporary Humanitarian Concern Visa are issued in response to specific humanitarian crises. These visas are granted to individuals facing urgent threats to their safety due to war, political persecution, or other crises. These visas cannot be applied for, rather they are offered by the government according to policy determinations. They can be granted to people offshore (such as has happened in the case of Afghanistan during the 2021 Taliban take over¹⁰⁰ or Ukrainians in 2022¹⁰¹) **or onshore** (such as the case of Palestinians and others in 2024 who had arrived on visitor visas from Israel¹⁰²).

Subclass 449 only permits the visa holder to stay in Australia for a short period of time (temporary visa), either 3 months or 6 months. After that, they may apply for a Subclass 786 visa or other visas. For Afghan evacuees who hold a Subclass 499 in Australia, they may be eligible for a permanent resident visa.¹⁰³ For those under Hamas-Israel conflict holding a Subclass 449 visa, they may be eligible for a Subclass 786 visa. It should be noted that people who are 'offered a humanitarian stay cannot meet the criteria for a Protection visa'.¹⁰⁴ Ukrainians holding a Subclass 449 visa are also eligible for a Subclass 786 visa. Subclass 786 visa is generally granted for three years. People holding a Subclass 449 or 786 visa cannot travel outside and then return to Australia as the visa ceases when they depart from Australia.

3.3. Offshore permanent visa applications: these are set out above.

3.4. Australia has a specific framework for identifying and protecting victims of trafficking in persons through the Support for Trafficked People Program and associated visa options.¹⁰⁵ The key features are:

- Human Trafficking Visa Framework: Victims may be granted a Bridging Visa F, Criminal Justice Stay Visa, or Referred Stay (Permanent) Visa depending on their situation.

¹⁰⁰ Department of Home Affairs, 'A message from the Department of Home Affairs to the Afghan Australian community - 29 March 2022' <<https://www.homeaffairs.gov.au/help-and-support/afghanistan-update/message-to-the-afghan-australian-community>>.

¹⁰¹ The offer is no longer available. See <https://www.homeaffairs.gov.au/help-and-support/ukraine-visa-support/australian-government-offer-for-temporary-humanitarian-stay-in-australia>.

¹⁰² Department of Home Affairs, <https://www.homeaffairs.gov.au/help-and-support/hamas-israel-conflict/information-for-palestinian-israeli-nationals-temporary-humanitarian-stay>.

¹⁰³ Department of Home Affairs (n 7).

¹⁰⁴ Ibid.

¹⁰⁵ <https://www.antislaverycommissioner.gov.au/find-help-and-support/support-services>; see also Department of Home Affairs, Targeted review of Australia's visa framework to identify and reduce vulnerabilities to human trafficking and modern slavery, <https://www.homeaffairs.gov.au/reports-and-pubs/files/targeted-review-napai20.pdf>

- Cooperation with Authorities: Access to certain visas—especially long-term or permanent ones—is typically conditional on the victim’s willingness to assist with criminal investigations or prosecutions. For example, to obtain the Referred Stay (Temporary) (subclass 787) visa, a person must be assessed as a victim and referred by the Australian Federal Police (AFP), and they must assist in a trafficking investigation or prosecution. There are no visa application charges for trafficking-related visas under this framework.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

In Australia, family unification visa includes partner visa, child visa, parents visa and other family member visa.

4.1 **Partner:** As explained earlier, partner visas have two steps: a temporary visa will be granted first and then 2 years later (from the time of lodgement of the temporary/permanent visa application, not the time of the grant of the temporary partner visa), a permanent visa can be granted. Partner visas are a paired visa. The visa applicant only needs to submit one application, and this one application will be treated as applications for both temporary and permanent visa applications. Subclass 820 (TR) and 801 (PR) visas (applying in Australia) are a pair and Subclass 309 (TR) and 100 (PR) visas are a pair (applying overseas). (TR: temporary resident; PR: permanent resident).

It should be noted that Australia’s visa system recognises *de facto* partners and same sex marriage in terms of partner visa. In addition, it is possible that a permanent visa is granted without the limitation of the above-mentioned 2-year rule.

4.2 **Parents:** As abovementioned, there are two types of parents’ visa, one is contributory and one is regular parents visa (see below).

	<u>Offshore applications</u>	<u>Onshore applications</u>
<u>Contributory</u>	Subclass 143	Subclass 864
<u>Regular</u>	Subclass 103	Subclass 804

In Parent visa program, economic or other dependence on the adult child is *not* a general requirement for reunification. However, there are specific eligibility conditions that parents must meet, including the Balance of Family Test. It is designed to ensure that a parent has close family ties to Australia. To meet this test, the applicant must have at least half of their children living permanently in Australia, or they must have more children living permanently in Australia than in any other single country.

They are all permanent visas, but the application fees are different. Although the first instalment of application fees are similar for both contributory parents visa and the regular parents visa, the second instalment of application fees for contributory parents visa is \$43,600 (for one parent) while the second instalment for Subclass 103 and 804 is nil (zero).

Another important point is that the processing time for parents visa is very long. Contributory parents visa used to take 1-2 years but now it may take about 12 years. The regular parents visa may take more than 30 years.

4.3 Child: It is not difficult for a minor child (less than 18 years old) of an Australian citizen or permanent resident to get a child visa (either Subclass 101 or Subclass 802 visa). The child visa can be applied either in Australia or outside Australia. If the child is over 18 years old, it becomes more difficult. If a child is from 18 to 25 years old and the child is full time studying, they may be eligible for a child visa if they financially depend on their parent more than any other person. It should be noted that the visa must be granted before the child turns into 25 years old. It may take some time (28 months) to get a child visa processed and therefore the time planning is important. Once the child is over 25 years, there is only very limited opportunities for them to apply for a child visa as it requires that the child has disability and cannot work full time. In all circumstances (less than 18 years old; 18-25 years old; or 18 years old with a disability), the child cannot be (ever) married or has a *de facto* partner. Please refer to Schedule 2 of the Regulations for details.

4.4 Other family members: Brothers and sisters generally do not have a pathway under the family visa. Australia does have other family visas such as remaining relative Subclass 835 visa (onshore) and Subclass 115 (offshore) visa. Remaining relative visas requires that the applicant and their partner have no close relatives¹⁰⁶ outside Australia or in Australia with a temporary visa. There is no requirement to prove any economic or other kinds of dependency on the sponsor for this pathway. However the processing time for remaining relative visas is very long, and is currently 27 years according to the Department's guidelines.¹⁰⁷ It is fair to say that other family members (beyond partners, children and parents) are not in the priority category, and it is very hard to migrate to Australia through this pathway.

There are also aged dependent visa (Subclass 114 and 838 visa) and carer (Subclass 116 and Subclass 836 visa; about 8 years processing time)¹⁰⁸ under the other family members. They are equally difficult to get. For carer visas, the sponsor needs to be a relative of the applicant, which includes being close relative (parents, children and siblings) or 'a grandparent, grandchild, aunt, uncle, niece or nephew, or a step-grandparent, step-grandchild, step-aunt, step-uncle, step-niece or step-nephew' (Reg 1.03 of the Regulations).

There is a Subclass 491 which may provide a pathway for siblings to migrate to Australia, but Subclass 491 is a skilled temporary visa, which has more requirements than being a sibling of an Australian citizen or permanent resident.

¹⁰⁶ Close relative means parents (including stepparents), children (including stepchildren), siblings (including stepsiblings).

¹⁰⁷ <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/family-visa-processing-priorities/other-family-visas-queue-release-dates>.

¹⁰⁸ <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/family-visa-processing-priorities/other-family-visas-queue-release-dates>

5. What are the conditions for naturalization in the reviewed state?

Naturalisation in Australia is called ‘citizenship by conferral’. The following three key conditions should be met in order to be naturalised in Australia.

- First, general residence requirements. According to s 22 of the *Citizenship Act 2007* (Cth), the following residence requirements need to be met:
 - (1) Four-year residence in Australia which can be permanent residence and temporary residence, with no more than 12 months overseas absence
 - (2) No less than 12 months as a permanent resident, with no more than 90 days overseas absence
 - (3) New Zealanders who hold a Subclass 444 visa is treated as holding a permanent resident visa for the citizenship application purpose (although Subclass 444 may not be a permanent resident visa for other purposes).
- Second, passing citizenship test (if aged 18-59 years old) and/or interview (s 23A of the *Citizenship Act 2007* (Cth)). The Australian citizenship test requires applicants to demonstrate a basic understanding of Australia’s history, values, institutions, and government, as well as their rights and responsibilities as citizens. It also assesses English language skills through multiple-choice questions based on the official citizenship test resource book.
- Third, attending a citizenship ceremony. This is required in order to be naturalized and before attending the ceremony, the citizenship has not yet been granted even if the citizenship application has been approved.
- There is an application fee associated with a citizenship application. The application fee is zero for someone who is 15 years old or younger and their application is with a responsible parent.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- g. temporary and permanent resident migrants;*
- h. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- i. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- j. refugees;*
- k. asylum seekers;*

l. other beneficiaries of international protection, if applicable.

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Australia has a specific domestic legal framework on non-discrimination, which in many respects does cover non-nationals (or at least persons who are non-citizens / immigrants / of diverse national or ethnic origin), particularly via the *Racial Discrimination Act 1975* (Cth) and other anti-discrimination statutes at both a federal and state level.¹⁰⁹ Non-nationals (including immigrants, visa-holders, ethnic minorities) are generally protected from discrimination on grounds such as race, national origin, ethnic origin, immigrant status, age, sex, disability, etc.

In Australia, even though there is a broad domestic non-discrimination framework, non-citizens or non-permanent residents may still experience differential treatment, in particular regarding access to social benefits and entitlement to certain state supports. Under the federal social security regime, many forms of assistance are subject to a “waiting period” for newly arrived residents (the Newly Arrived Resident's Waiting Period, NARWP), meaning that newly arrived migrants — including many non-permanent residents — do not immediately qualify for social security or welfare payments.

Certain federal anti-discrimination statutes explicitly carve out exemptions for migration law itself. For example, the *Disability Discrimination Act 1992* (DDA) includes, in section 52, a “migration exemption”: the DDA does *not* apply to the *Migration Act 1958* (Cth), any regulations under it, or to actions done in administering it.¹¹⁰ As a result, any discriminatory provisions or practices embedded within the Migration Act or its visa/immigration instruments — for example, visa eligibility criteria, health requirements, or conditions for stay — are insulated from challenge under the DDA on the grounds of disability.

¹⁰⁹ At the federal level, the key laws are the *Age Discrimination Act 2004* (Cth), the *Disability Discrimination Act 1992* (Cth), the *Racial Discrimination Act 1975* (Cth), the *Sex Discrimination Act 1984* (Cth), and the *Australian Human Rights Commission Act 1986* (Cth). Each of these laws prohibits discrimination on specific grounds and is administered by the Attorney-General's Department and enforced through the Australian Human Rights Commission. In addition to these federal laws, every state and territory has its own legislation. The Australian Capital Territory has the *Discrimination Act 1991*, New South Wales the *Anti-Discrimination Act 1977*, and the Northern Territory the *Anti-Discrimination Act 1992*. Queensland operates under the *Anti-Discrimination Act 1991*, while South Australia and Western Australia both have the *Equal Opportunity Act 1984*. Tasmania's legislation is the *Anti-Discrimination Act 1998*, and Victoria has the *Equal Opportunity Act 2010* alongside the *Racial and Religious Tolerance Act 2001*.

¹¹⁰ *Disability Discrimination Act 1992* (Cth), s 52, available at <<https://www.legislation.gov.au/C2004A04426/2018-04-12/text>>.

At the same time, the protection is not absolute: legislation does not automatically guarantee entitlements to someone purely because they are non-citizens. For example, visa status or legal right to work can lawfully affect employment decisions. Therefore, while the legal framework provides important safeguards against non-discrimination, in practice, some categories of non-nationals may face limitations depending on their immigration or visa status.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Non-nationals are not eligible to vote in federal elections and referendums¹¹¹ except for some British subjects who were on the electoral roll on 25 January 1984.¹¹² This same criterion applies to state elections.¹¹³ Local government may allow non-nationals to vote if they own or occupy property in a particular local government area.¹¹⁴

More broadly, political participation is allowed in the sense that migrants can participate in manifestations and associations, including labour unions¹¹⁵ The Australian Multicultural Council is a federal advisory body, appointed by the Minister for Home Affairs, that includes migrant representatives and advises on multicultural affairs, inclusion, and social cohesion.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

Some specific political rights are reserved for nationals, such as the right to run for federal or state parliament. Non-nationals are also excluded from jury service.

Regarding freedom of movement, there may be some restrictions. One example is that, in Australia, regional sponsored visa holders have obligations to live, work and study in a specific Australian state (e.g., SA or Victoria) for at least two years, thus having their movement restricted.¹¹⁶ While non-nationals can leave Australia freely, they cannot re-enter Australia without a valid visa.¹¹⁷ Non-nationals in Australia without a valid visa must be detained until they are granted a visa or removed from the country.¹¹⁸

¹¹¹ *Commonwealth Electoral Act 1918* (Cth), s 93.

¹¹² Only British subjects who were enrolled for a federal electoral division in Australia immediately before 26 January 1984 are eligible to enrol and vote at federal elections and referendums, section 93(1)(b)(ii) of the *Commonwealth Electoral Act 1918* (Cth).

¹¹³ *Electoral Act 2017* (NSW); *Electoral Act 1992* (Qld); *Electoral Act 2002* (Vic); *Electoral Act 2004* (Tas); *Electoral Act 1985* (SA); *Electoral Act 1907* (WA); *Electoral Act 1992* (ACT); *Electoral Act 2004* (NT).

¹¹⁴ *Local Government Act 1993* (NSW); *Local Government Act 1989* (Vic), *Local Government (Elections) Act 1999* (SA); *Local Government Act 1995* (WA).

¹¹⁵ *Fair Work Act 2009* (Cth); *Fair Work (Registered Organisations) Act 2009* (Cth).

¹¹⁶ Skilled Work Regional (Provisional) visa (subclass 491). The person may travel within Australia but must not relocate to a non-regional area.

¹¹⁷ *Migration Act 1958* (Cth), s 4.

¹¹⁸ *Migration Act 1958* (Cth), ss 189 and 198.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Non-nationals, who are not permanent residents, face significant limitations on the right to buy and own property. Under the *Foreign Acquisitions and Takeovers Act 1975* (Cth), non-residents must apply to the Foreign Investment Review Board (FIRB) for approval before purchasing any Australian residential property. New builds, off-the-plan units, vacant land, and redevelopment projects are permitted under conditions. Purchase of existing homes are banned until March 2027, with limited exemptions.¹¹⁹

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Non-nationals who hold a permanent visa enjoy unrestricted work rights except those jobs requiring Australian citizenship. For other non-nationals, rights vary significantly by visa subclass and the specific work-related conditions associated with it.

Student, Working Holiday, Visitor, and other temporary visas may impose limits on the number of work hours, the type of employment, or whether employment is allowed at all.¹²⁰ Some visas (eg Temporary Graduate Visa subclass 485) allow full-time work in any job for the duration of the visa. Skilled employer-sponsored visas like the Subclass 482 Skills in Demand visa allow work only with a sponsoring employer in the approved occupation.¹²¹

A non-national in Australia may also be granted a bridging visa to lawfully remain in Australia while an application for another visa is being processed or while they make arrangements to depart. Bridging visa holders may or may not have work rights depending on the last visa they held. If the previous visa granted work rights, the bridging visa would likely maintain those work rights. Some bridging visas have no work rights unless the person can show a compelling need to work due to financial hardship.¹²²

¹¹⁹ Residential Land Foreign Investment in Australia, available at <<https://foreigninvestment.gov.au/guidance/types-investments/residential-land>>.

¹²⁰ Work restrictions are set out in various conditions imposed on visas which are set out in the *Migration Regulations 1994* (Cth).

¹²¹ Skills in Demand visa (Subclass 482).

¹²² Work restrictions are set out in various conditions imposed on visas which are set out in the *Migration Regulations 1994* (Cth). See also RAILS, Bridging Visas and the Right to Work 24.06.28 Work rights.pdf

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Australian businesses can hire non-nationals, but they must comply with immigration and employment laws, and there are specific legal requirements and limitations on how this is done. There are no absolute statutory “quotas” on how many foreign workers a business may hire, but there are restrictions, eligibility requirements and procedural conditions that effectively limit how businesses employ non-nationals.

Before hiring a non-national, a business must ensure the person has a valid Australian visa with work rights (or is otherwise entitled to work). It's a criminal offence to employ someone who is not entitled to work in Australia (e.g., someone without appropriate visa/work rights) under the *Migration Act 1958*.¹²³ Employers must check eligibility, for example, via the website VEVO.

If a non-national does not have work rights, a business can sponsor them under an employer-sponsored visa (such as Subclass 482 and 186).

- For the temporary 482 Skills in Demand visa, employers must be approved sponsors, perform labour market testing (unless exempted), offer salaries meeting income thresholds, pay the Skilling Australians Fund (SAF) levy, and uphold obligations through nomination and employment, ensuring compliance with Australian labour and immigration regulations.¹²⁴
- For the permanent **Employer Nomination Scheme (ENS, subclass 186)**, there are two streams: Direct Entry Stream and Transition Stream. There is no legal requirement for labour market testing for Subclass 186 visa, but the government expects employers to provide evidence in the Direct Entry Stream to prove there's a genuine need for the overseas work and no suitable Australian is available.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Non-nationals generally cannot hold public service positions at the federal level. In limited cases, an Agency Head may grant a temporary or conditional waiver, but this is exceptional and typically tied to immediate citizenship intent.

Specific jobs that are almost exclusively restricted to Australian citizens (often due to security clearance requirements) include:

- Roles within intelligence and security agencies.

¹²³ <https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/employer-responsibilities/work-related-contraventions>

¹²⁴ Department of Home Affairs, Subclass 482: Skills in Demand: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/skills-in-demand-visa-subclass-482>.

- Defence Force roles.¹²⁵
- Federal government positions that require a high-level security clearance (e.g., Negative Vetting 2 or higher), such as some IT specialists, data engineers, or business analysts for government clients.¹²⁶
- Most ongoing roles in federal public services. Waivers can be made where there is an ‘exceptional business case’.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Non-nationals are entitled to the same labour protections as Australian nationals, regardless of migratory status.¹²⁷ There are specific safeguards against workplace exploitation for non-nationals, including:

- Prohibition against adverse action on the basis of ‘national extraction’ (s 351(1) *Fair Work Act 2009*)¹²⁸
- Even if a person is working in breach of their visa conditions, they are still an ‘employee’ for the purposes of the Fair Work Act and are entitled to minimum wages and protections.
- In July 2024, the Australian Government introduced the Strengthening Reporting Protections Pilot and Workplace Justice Visa Pilot to strengthen protections for eligible visa holders experiencing workplace exploitation.¹²⁹ The aim is to enable visa holders to report and resolve workplace exploitation claims without fear of visa cancellation. The underlying intent of the Pilots is to address migration-related barriers to pursuing and/or resolving issues of workplace exploitation.
 - The Strengthening Reporting Protections (SRP) Pilot will enable temporary migrants to seek protection from visa cancellation under prescribed circumstances outlined in the *Migration Regulations 1994* (Cth) (Migration Regulations):
 - s 2.43B – Circumstances in which the Minister is not to cancel certain temporary visas for breach of restricted work condition (a non-discretionary protection); and

¹²⁵ Generally it requires Australian citizenship, see: <https://www.defence.gov.au/jobs-careers/graduate-program/how-apply/eligibility-requirements>. However, it is possible for some non-nationals (eligible permanent residents) to join the Australian Defence Force in limited situations. See: <https://www.defence.gov.au/news-events/news/2024-06-04/adf-opens-its-ranks-non-citizens>.

¹²⁶ Employment requirements for federal public servants are under the *Public Service Act 1999* (Cth). Citizenship in the APS | Australian Public Service Commission.

¹²⁷ Visa holders and migrant workers – workplace rights and entitlements - Fair Work Ombudsman. There is no citizenship requirement in the definition of ‘employee’ in s 12 of the Fair Work Act 2009 (Cth)

¹²⁸ These grounds are drawn from ILO Convention No 111 and are interpreted broadly to protect migrant and non-citizen workers.

¹²⁹ Strengthening Reporting Protections Pilot.

- s 2.43A – Minister must have regard to certain matters in considering cancellation of certain temporary visas for breach of a visa condition (a discretionary protection).
- The Workplace Justice Visa (WJV) will enable temporary migrants to remain in Australia under a Temporary Activity Visa (Class GG) (Subclass 408) to seek recourse in relation to a workplace exploitation claim, where their claim has been certified by an Accredited Third Party (ATP). It is expected that the ATP will provide appropriate support to the temporary migrant to resolve the workplace issue.¹³⁰ There are some significant limitations in terms of this visa:
 - It excludes individuals who have been unlawful for more than 28 days. Undocumented workers, who are often among the most vulnerable to exploitation, may have overstayed their visas due to coercion or deception by employers.
 - Individuals must meet the Genuine Temporary Entrant (GTE) criteria. This requirement asks applicants to demonstrate a genuine intention to stay in Australia temporarily, which is assessed based on various factors, including their circumstances, immigration history, and adherence to visa conditions. For many undocumented workers, this requirement may pose a challenge. These individuals often remain in Australia out of necessity, whether due to fleeing difficult circumstances or economic hardship in their home countries. Requiring them to prove that their stay in Australia is only temporary, particularly when they are seeking justice and safety, may not fully account for their complex situations. This could make it more difficult for them to qualify for the visa and access the protections it offers.
 - The pilots have contributed to a surge in requests for help. Accredited Third Parties (ATPs) and community legal centres are not funded to perform this additional work, and the gap in the number and range of organisations that can certify claims for the pilots has created access barriers for applicants.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Non-citizens in Australia generally have access to public health services, primarily through Medicare, depending on their visa type and specific legal provisions. Under the *Health Insurance Act 1973* (Cth), to qualify for Medicare, individuals must ordinarily live in Australia and hold one of the following statuses:¹³¹

- Australian citizens, permanent residents, and New Zealand citizens

¹³⁰ This was introduced by amendments to the *Migration Regulations 1994* via the Migration Amendment (Workplace Justice Visa) Regulations 2024 <https://www.legislation.gov.au/F2024L00837/asmade/text>

¹³¹ *Health Insurance Act 1973* (Cth), ss 6 and 6A

- Resident Return visa holders and applicants for permanent residence
- Temporary visa holders covered by specific Ministerial Orders (e.g., Subclass 491, 494, Temporary Protection, Safe Haven visas, certain bridging visas).

The *Health Insurance Act 1973 (Cth)* provides for the reciprocal treatment of visitors under international health agreements.¹³² Australia has Reciprocal Health Care Agreements (RHCAs) with the United Kingdom, New Zealand, the Republic of Ireland, Belgium, Finland, Italy, Malta, the Netherlands, Norway, Slovenia and Sweden. These agreements are made under s 7 of the *Health Insurance Act 1973 (Cth)* and allow visitors from those countries, who are lawfully in Australia, to be treated as “eligible persons” for Medicare purposes for the duration specified in the relevant agreement. In some cases, such as Italy and Malta, access is limited to a maximum of six months from arrival, while other agreements apply for the length of the visitor’s lawful stay.¹³³

Under a Reciprocal Health Care Agreement, eligible visitors are entitled to medically necessary treatment while in Australia. This generally includes treatment as a public patient in a public hospital for conditions that arise during the visit and require care before the person can reasonably return home. Depending on the specific agreement, visitors may also be eligible for Medicare benefits for out-of-hospital medical services, such as consultations with a general practitioner, and access to subsidised medicines under the Pharmaceutical Benefits Scheme.¹³⁴ The treatment provided is intended to ensure that visitors are not left without essential medical care during their stay, rather than to cover all possible health needs.

Migrants still face multiple barriers to equitable healthcare access despite the universal Medicare system. Limited English proficiency and communication barriers hinder the understanding of diagnoses and engagement with services; unfamiliarity with the healthcare system and a lack of migrant-specific health information leads to delayed or inefficient care; and cultural beliefs influence how and when people seek help. Structural and organisational factors, such as inadequate interpreter availability and culturally insensitive care models, further restrict access, while financial costs for non-bulk-billed services deter utilisation. Stigma associated with mental health, experiences of discrimination in clinical settings, and broader social determinants like unemployment and poor housing compound the disadvantage migrants face in achieving timely and appropriate healthcare in Australia.¹³⁵

Asylum seekers on bridging visas can face significant difficulties accessing Medicare despite many being legally eligible. Under the *Health Insurance Act 1973 (Cth)*, Medicare benefits are payable only where services are provided to an “eligible person” (s 10). While asylum seekers may be treated as eligible through regulations or Ministerial determinations made under ss 6 and 6A, this eligibility is not clearly set out in the primary legislation and is closely tied to visa status under the *Migration Act 1958 (Cth)*. Because bridging visas are temporary and frequently

¹³² *Health Insurance Act 1973 (Cth)* , s 7

¹³³ <https://www.servicesaustralia.gov.au/when-reciprocal-health-care-agreements-apply-and-you-visit-australia?context=22481>

¹³⁴ <https://www.health.vic.gov.au/patient-fees-charges/reciprocal-healthcare-agreements>

¹³⁵ Resham B Khatri and Y Assefa. ‘Access to Health Services among Culturally and Linguistically Diverse Populations in the Australian Universal Health Care System: Issues and Challenges’ (2022) 22 *BMC Public Health*, 880. <https://doi.org/10.1186/s12889-022-13256-z>

change during the protection process, Medicare access can be interrupted when visas expire, change, or are not immediately reflected in government systems. Administrative requirements to prove identity and visa status further create barriers, particularly for people without valid passports, with limited English, or experiencing trauma. In practice, asylum seekers may be wrongly refused enrolment, experience delays, or be charged for services despite being lawfully entitled to Medicare.¹³⁶

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

In Australia, access to public education for non-nationals varies significantly by education level and visa status and is not equivalent to access enjoyed by Australian citizens and permanent residents. While Australia generally ensures access to schooling for children regardless of nationality, cost, eligibility and conditions increase substantially at higher levels of education, reflecting a policy distinction between nationals/permanent residents and temporary migrants.

At the primary and secondary school level, Australia provides broad access to public education for non-nationals, but on unequal terms compared to nationals. Australian nationals and non-nationals who are permanent residents are entitled to free public schooling (subject to voluntary fees).

Those on temporary visas are generally permitted to enrol in government schools; however, most states and territories impose international student fees on temporary visa holders.¹³⁷ The amount and exemptions vary by jurisdiction.

Certain groups, such as children of refugees, asylum seekers on specific visas, and some humanitarian entrants, may be exempt from fees, but others (including children of temporary skilled workers, students and bridging visa holders) may be required to pay full tuition fees. As a result, while access exists in principle, financial barriers mean access is not equal to that of nationals. Education is compulsory for all children in Australia, and states typically allow enrollment regardless of migration status; however, cost and uncertainty can affect the continuity of schooling for non-national children.

At the tertiary level, access for non-nationals is substantially more restricted compared to nationals. Australian citizens and most permanent residents are eligible for Commonwealth-Supported Places (CSP).¹³⁸ A CSP is a position in a university course where the Australian Government pays part of the tuition fee on behalf of the student. This government subsidy significantly reduces the cost of study compared to a full-fee-paying place. Students enrolled in

¹³⁶ Refugee Council of Australia, *Access to Health Care for People Seeking Asylum* <https://www.refugeecouncil.org.au/a-safety-net-denied-why-many-people-seeking-protection-are-trapped-in-poverty/>

¹³⁷ Victoria and NSW now offer more fee exemptions or inclusive enrolment policies for families on certain visas.

¹³⁸ *Higher Education Support Act 2003* (Cth), 36-10

a CSP are still required to pay a student contribution amount, which varies depending on the discipline, such as law, medicine, or arts.

HECS-HELP is a loan scheme that allows eligible students in a CSP to defer paying their student contribution amount until they are earning above a certain income threshold. Instead of paying upfront, the debt is recorded and repaid through the tax system once the student's income reaches the required level. The loan is interest-free, but it is indexed annually to keep pace with inflation. The *Higher Education Support Act 2003* provides information on who is eligible for HECS. While Australian permanent residents are eligible for CSP, they are not eligible for HECS-HELP, unless they hold a humanitarian visa, a New Zealand Special Category visa, or a Pacific Island Eligibility visa.¹³⁹

Non-nationals on temporary visas are generally classified as international students and must pay full international fees, which are considerably higher and not subsidised by the government. They are also ineligible for HECS-HELP or other student loan schemes. Vocational education and training (VET) follows a similar pattern, with subsidised places primarily reserved for citizens and permanent residents.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

In Australia, eligibility for social security is primarily governed by the *Social Security Act 1991* (Cth)¹⁴⁰ and is based on residency status, rather than nationality alone, although citizenship and visa status are also considered central.

Non-nationals who hold permanent visas, including permanent humanitarian visa holders (refugees), are treated as Australian residents under section 7(2) and are generally eligible for social security.

Under the *Social Security Act 1991* (Cth), most newly arrived permanent residents are subject to the Newly Arrived Resident's Waiting Period (NARWP) in Part 2.2, which is generally up to 4 years for working-age payments such as JobSeeker Payment, Youth Allowance and Parenting Payment. However, some payments have longer or additional waiting periods. In particular, certain family payments for parents, such as Parenting Payment, are affected by the NARWP, while Age Pension and Disability Support Pension are subject to much longer qualifying residence periods, typically 10 years of Australian residence, under ss 43–44 and related provisions. These rules mean that some permanent residents, especially parents and older migrants, may be lawfully prevented from accessing specific social security payments for extended periods after arrival, even though they hold permanent visas. Refugees are commonly exempt from the Newly Arrived Resident's Waiting Period under section 739A.

¹³⁹ *Higher Education Support Act 2003* (Cth), s 90-1 and s 90-5.

¹⁴⁰ *Social Security Act 1991* (Cth). The link: https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/2008-10/disability_trusts/ss_act_1991.

Temporary visa holders, including students, temporary skilled migrants and most asylum seekers on bridging visas, do not satisfy the definition of Australian resident and are therefore excluded from mainstream Centrelink payments. Asylum seekers may only access very limited assistance, most notably Special Benefit under Part 2.13 of the *Social Security Act 1991 (Cth)*, which is discretionary and restricted to situations of severe financial hardship.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

The answer to this section is basically the same as Question 11 as social security and welfare programmes are more or less interchangeable in Australia.

In Australia, access to welfare programmes is significantly more limited for non-nationals than for Australian citizens, and eligibility is determined primarily by residency and visa status under Commonwealth legislation. Australian citizens who reside in Australia are generally eligible to apply for income support, family payments, rent assistance and other welfare benefits under the *Social Security Act 1991 (Cth)*, subject to income and assets tests.

Non-nationals who hold permanent visas, including permanent humanitarian entrants, may also apply for most welfare programmes because they meet the definition of an “Australian resident” under s 7(2) of the Act, although many are subject to the Newly Arrived Resident’s Waiting Period (NARWP),¹⁴¹ which can delay access to payments such as JobSeeker Payment, Parenting Payment and Youth Allowance for up to four years.

By contrast, temporary visa holders, including international students, temporary workers and most asylum seekers on bridging visas, are generally excluded from mainstream welfare programmes because they do not satisfy the statutory definition of Australian resident. As a result, they cannot access regular financial assistance, food support payments or subsidised housing through Centrelink, and may only be eligible for very limited and discretionary assistance such as Special Benefit under Part 2.13 of the *Social Security Act 1991 (Cth)*, or state- or charity-based emergency relief.

Eligibility for public and social housing is determined by state and territory law, and non-nationals’ access is generally more restricted than that of Australian citizens, with particularly limited access for asylum seekers and other temporary visa holders. Across all states and territories, Australian citizens and permanent residents (including permanent humanitarian entrants) are generally eligible to apply for public or social housing, provided they meet standard criteria such as income limits, residency requirements within the state, and housing need. These eligibility rules are typically outlined in state housing legislation, regulations, and allocation policies, and permanent visa holders are generally treated in the same category as citizens.

Temporary visa holders, including most asylum seekers on bridging visas, are usually ineligible for public housing under state-based schemes. Most state housing authorities require applicants

¹⁴¹ <https://www.servicesaustralia.gov.au/newly-arrived-residents-waiting-period>.

to hold permanent residency or citizenship, and expressly exclude people on temporary or bridging visas. While some jurisdictions allow very limited discretion (for example, short-term crisis accommodation, family violence exceptions, or children at risk), these are policy-based and exceptional, not an entitlement to public housing.

Food banks and other emergency food relief services in Australia are not governed by eligibility rules based on nationality or visa status, because they are run by charities rather than the state. As a result, non-nationals—including temporary migrants and asylum seekers—are generally eligible to access food banks on the same basis as Australian citizens, provided they meet the charity’s own need-based criteria.

Are there any final observations you would like to make? Please write below.

Australia’s country reports to the human rights bodies and their concluding comments/observations might provide further information in this area.¹⁴²

¹⁴² UN Treaty Body Database, please see:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Austria

Author: Adel-Naim Reyhani

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	x	x
1967 Protocol to the Convention relating to the Status of Refugees	x	x
1954 Convention relating to the Status of Stateless Persons	x	x
1961 Convention on the Reduction of Statelessness	x	x
International Covenant on Civil and Political Rights (ICCPR)	x	x
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	x	x
International Covenant on Economic, Social and Cultural Rights (ICESCR)	x	x
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	x	x
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	x	x
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	x	x
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	x	x
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	x	x
Convention on the Rights of the Child (CRC)	x	x
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	x	x
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	x	x
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	x	
Convention on the Rights of Persons with Disabilities (CRPD)	x	x
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	x	x
ILO Forced Labour Convention (No. 29)	x	x
2014 Protocol to the ILO Forced Labour Convention (No. 29)	x	x
ILO Migration for Employment Convention (Revised) (No. 97)		
ILO Equal Remuneration Convention (No. 100)	x	x
ILO Discrimination (Employment and Occupation) Convention (No. 111)	x	x

ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)	x	x
Protocols to the European Convention on Human Rights (Austria is party to all relevant Protocols, incl. Nos. 1, 4, 6, 7, 13, 14, 15). ¹⁴³	x	x
European Social Charter (ESC)	x	x
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	x	x
American Convention on Human Rights (ACHR)		

¹⁴³ Austria has signed but not ratified ECHR Protocol No 12.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Amongst others, Austria is also a party to other relevant instruments, including: the UN Convention against Transnational Organized Crime (Palermo Convention) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, and numerous bilateral agreements on social security coordination and readmission of migrants. Austria participates in all EU legal instruments on migration and asylum (e.g. the Dublin Regulation on asylum responsibility, the Schengen Agreement on border-free travel, and the EU Free Movement Directive for EEA nationals).

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Beyond the asylum-related titles described below, Austria maintains a two-tier system distinguishing short-term visas and longer-term residence permits. For stays up to 6 months, third-country nationals (non-EEA citizens) do not require a residence permit but generally need a visa (a Schengen Visa C for up to 90 days, or a national Visa D, for up to 6 months, according to the Aliens Police Act, FPG). Stays longer than 6 months require a residence permit issued

under the Settlement and Residence Act (NAG). Austria offers a variety of residence permits tailored to a purpose. After 5 years of continuous legal residence, an individual may qualify for a long-term permit, which grants a secure status and equal treatment in many areas.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories. For example, visa/permit for labour reasons, for educational reasons, health reasons, among others. For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Austria's legal framework provides several categories of migratory status (residence permits) that allow non-nationals to reside longer than three months, in addition to visas and asylum-related titles described below. These categories correspond to the purpose of stay. The main residence permit types include:

Work

This category encompasses various permits. A key instrument is the Red-White-Red Card (Rot-Weiß-Rot – Karte) system (Section 41 NAG), based on criteria in the Annexes to the Act Governing the Employment of Foreign Nationals (AuslBG). This includes permits for Particularly Highly Qualified Persons (Section 41(1) NAG), Skilled Workers in Shortage Occupations (Section 41(2)(1) NAG), Other Key Workers (Section 41(2)(2) NAG), Graduates of Austrian higher education institutions (Section 41(2)(3) NAG), Self-employed Key Workers (Section 41(2)(4) NAG, requires assessment under Section 24 AuslBG), Start-up Founders (Section 41(2)(5) NAG, requires assessment under Section 24 AuslBG), and Regular Seasonal Workers (Section 41(2)(3a) NAG, linked to Section 12d AuslBG). Another important permit is the EU Blue Card (Section 42 NAG), which implements EU directives like Directive 2021/1883/EU for highly qualified employment. Under Section 41a(9) NAG, a Red White Red card plus may be issued in defined 'status-change' constellations (including certain holders of Aufenthaltsberechtigung(plus) under Sections 55–56 AsylG or a Niederlassungsbewilligung according to Section 43(3) NAG) after the required prior duration, provided that Module 1 is fulfilled or (alternatively) employment above the marginal threshold is shown; this title is distinct from Daueraufenthalt – EU, which corresponds to an unlimited residence right. Further employment permits exist for Intra-Corporate Transferees ("ICT" - Section 58 NAG and "mobile ICT" - Section 58a NAG, implementing Directive 2014/66/EU), Posted Workers (Section 59 NAG), Researchers (Settlement Permit – Researcher, Section 43c NAG, and Residence Permit – Researcher Mobility, Section 61 NAG, implementing parts of Directive (EU) 2016/801), Artists (Settlement Permit – Artist, Section 43a NAG), Self-Employed Persons under specific contracts (Residence Permit – Self-Employed, Section 60 NAG), and permits for Special Cases of Dependent Employment, as opposed to independent/self-employed work, (e.g., Section 62 NAG for Au-pairs, Section 43b NAG for certain clergy).

Family Reunification

The rules on family reunification depend on the sponsor's residence status. Family members of holders of specified temporary residence permits may obtain an "Aufenthaltsbewilligung – Familiengemeinschaft" under Section 69 NAG. Family members of settled third-country nationals receive the residence title prescribed by Section 46 NAG, depending on the sponsor's title, including a "Rot-Weiß-Rot – Karte plus" or a "Niederlassungsbewilligung"; some routes are subject to quotas under Sections 12–13 NAG. Third-country national family members of Austrian citizens who have not exercised EU free-movement rights generally receive the residence title "Familienangehöriger" under Section 47(2) NAG, without a quota. Family members of EEA citizens exercising free-movement rights are governed by Sections 51–56 NAG, while Section 57 extends the relevant regime to Swiss citizens and to qualifying family members of returning Austrian citizens. Family reunification with beneficiaries of international protection is separately regulated by Section 46a NAG.

Education

Permits are available for individuals pursuing education or training, including Pupils (Section 63 NAG), Students (Section 64 NAG), Social Service Providers (Section 66 NAG), and Volunteers (Section 67 NAG). These are partly based on the EU Researcher and Student Directive (Directive (EU) 2016/801), replacing Directive 2004/114/EC. For third-country national pupils, students, au pairs, volunteers and researchers, access to the general labour market is usually confined to limited hours and specific forms of employment authorised by the labour market service; independent or full-time employment outside these narrow categories requires a separate work-migration title.

Private Purposes

This category primarily caters to financially independent individuals not intending to work. The main permit is the Settlement Permit – excluding gainful employment (Section 44 NAG), often used by "Privatiers", i.e., financially self-sufficient migrants (e.g. persons living from private wealth). Issuance requires proof of substantial independent means and is subject to annual quotas (Section 12 NAG).

EU Free Movement

EEA and Swiss citizens exercising their free movement rights, and their qualifying family members, have rights based on EU secondary law, as regulated under Sections 51 ff NAG, implementing the EU Free Movement Directive (Directive 2004/38/EC). EEA/Swiss citizens initially receive a Registration Certificate (Section 53 NAG) to document their rights. Their third-country national family members receive a Residence Card (Section 54 NAG). After five years, permanent residence is acquired, documented by a Certificate of Permanent Residence (Section 53a NAG) for the EEA/Swiss citizen and a Permanent Residence Card (Section 54a NAG) for family members. UK nationals covered by the Brexit Withdrawal Agreement have

specific rights documented via the Residence Title “Article 50 TEU” (Section 57a NAG, detailed in the Brexit Implementing Regulation).

Humanitarian Reasons

Although primarily granted under the Asylum Act (AsylG), holders can transition to the NAG system after 12 months (e.g., to a Settlement Permit, Section 43 Abs 3 NAG, or Red-White-Red Card plus, Section 41a Abs 9 NAG). Respect for private and family life under Art 8 of the European Convention on Human Rights (ECHR) is also a crucial consideration within NAG procedures, potentially allowing permits despite certain requirements not being fully met (Section 11 Abs 3 NAG).

Long-Term Residents

Third-country nationals who have resided legally and continuously in Austria for five years and meet integration criteria (including B1 German) can obtain the Residence Title “Long-Term Resident – EU” (Section 45 NAG). This title grants permanent residence status and broad rights, implementing the EU Long-Term Residents Directive (Directive 2003/109/EC), as amended by Directive 2011/51/EU.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

The procedure for obtaining international protection involves several distinct stages, beginning with the application itself. Crucially, an application for international protection under the AsylG must generally be lodged either within the territory of Austria or at its borders. There is no general provision for lodging an asylum application from abroad, for instance, at an Austrian embassy (with the specific exception of family reunification procedures outlined below, which, however, are not asylum applications in the technical sense). This territorial requirement often necessitates that individuals seeking protection utilize irregular routes to reach Austrian territory or border points where they can formally state their request for protection to the authorities, typically the police.

Once an application is lodged, the initial phase, known as the admission procedure, commences. This involves registration of the applicant, taking fingerprints for comparison with the EURODAC database to check for previous applications in other participating states, and an initial police interview. A significant part of this admission procedure is determining which state is responsible for examining the asylum application according to the criteria set out in the Dublin III Regulation (Regulation (EU) No 604/2013). If this examination indicates that another state is responsible, Austria will typically initiate a process to transfer the applicant to that state, and the application in Austria may be rejected as inadmissible under Section 5 AsylG.

If Austria is deemed responsible under the Dublin Regulation, or if the regulation is not applicable, the application is admitted to the substantive examination procedure conducted by

the Federal Office for Immigration and Asylum (BFA). This phase focuses on the merits of the protection claim. A central element is the detailed personal interview, where the applicant must present their reasons for fleeing their country of origin. The BFA is bound by the principle of official investigation (based on general administrative law principles reflected in administrative law and adapted in the BFA-VG) and must assess all relevant facts and evidence. This includes evaluating the credibility of the applicant's statements, reviewing submitted documents, and considering up-to-date country of origin information. Following this comprehensive assessment, the BFA issues a formal decision. This decision will either grant refugee status under Section 3 AsylG, grant subsidiary protection status under Section 8 AsylG, or reject the application for international protection. In cases of rejection, the BFA must still assess whether removal would violate fundamental rights, particularly the right to respect for private and family life under Article 8 ECHR, which could potentially lead to the granting of a national residence permit under Section 55 AsylG.

Separate procedures exist for specific situations. Family members residing abroad may apply for an entry visa specifically to join a recognized refugee or beneficiary of subsidiary protection in Austria, a process governed by Section 35 AsylG. Additionally, individuals displaced from Ukraine benefit from a distinct temporary protection regime activated under Section 62 AsylG and implemented by the Displaced Persons Regulation, which provides immediate residence rights largely outside the standard asylum procedure. Special safeguards and representation requirements apply to Unaccompanied Minors throughout all procedures, reflecting their particular vulnerability.

The following categories of international protection and related residence rights are available in Austria:

Refugee Protection

Refugee protection is granted based on the criteria outlined in the Geneva Refugee Convention. Austrian law, specifically Section 3 AsylG, provides for the granting of the “Status of a Person Entitled to Asylum” to individuals who meet the Convention's definition of a refugee. According to Section 3(4) AsylG, this status is initially granted for a limited period of three years before potentially becoming permanent. The grounds and procedures for the revocation of asylum status are detailed in Section 7 AsylG.

Subsidiary Protection

Individuals who do not qualify as refugees under the 1951 Convention but would face a real risk of serious harm if returned to their country of origin may be granted subsidiary protection status under Section 8 AsylG. This status typically relates to risks that would violate Articles 2 or 3 of the European Convention on Human Rights (ECHR) (right to life, prohibition of torture). Similar to refugee status, subsidiary protection is also subject to potential revocation based on the grounds outlined in Section 9 AsylG.

Family Procedures

The Austrian legal system includes provisions to maintain family unity for individuals granted international protection. Section 34 AsylG allows qualifying family members (as defined in Section 2(1)(22) AsylG) already present in Austria to generally receive the same protection status as the primary beneficiary through a joint procedure. However, Section 34(6) AsylG prohibits the subsequent derivation of status from a family member who obtained their status through this procedure. Family members residing outside Austria can apply for an entry title under Section 35 AsylG to join a relative who has been granted protection in Austria. If the application is not filed within three months of the sponsor receiving protection, additional accommodation, health insurance, and income requirements must be met, as outlined in Section 60 AsylG. The right to private and family life under Article 8 ECHR is a key consideration in these proceedings. See also the descriptions below on family reunification.

Temporary Protection

Following the events in Ukraine beginning in February 2022, Austria implemented a temporary protection regime based on the enabling provision in Section 62 AsylG, which transposes the EU's Temporary Protection or Mass Influx Directive (2001/55/EC). This was enacted nationally via the Displaced Persons Regulation. This grants a temporary right of residence to specific groups, including Ukrainian nationals and others displaced from Ukraine after February 24, 2022. This status is formally documented by an ID Card for Displaced Persons, as mandated by Section 62(4) AsylG.

Based on the Right to Private and Family Life

When an application for international protection is refused, Austrian authorities must examine whether removal would violate the right to respect for private and family life under Article 8 ECHR. This is mandated by Section 9 of the BFA Procedures Act (BFA-VG). If removal is deemed a disproportionate interference, a national residence permit, may be granted under Section 55 AsylG. Victims of trafficking and severe labour exploitation can receive a specific residence permit under § 57 AsylG, which is frequently linked in practice to cooperation with criminal investigations but may also be granted where the person's individual situation requires protection, even without testimony. Fees can often be covered or reduced (e.g. via legal aid or NGO support).

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Under the Asylum Act, family reunification procedures cater specifically to relatives of individuals granted asylum or subsidiary protection, as described above, Section 34 AsylG applies when eligible family members (spouses/partners from before entry, minor children, parents of *minor* sponsors) are already present in Austria; the goal is typically to grant them the same protection status as the sponsor. Section 35 AsylG provides a pathway for legal entry for

family members residing outside Austria. They apply at an Austrian embassy for an entry visa, contingent on the asylum authority's assessment of the likelihood they would receive similar protection as their sponsor. Crucially, families of asylum holders face a tight three-month deadline after the sponsor gets status to apply under more lenient conditions (waiving income, housing, insurance proof). In contrast, families of those with subsidiary protection generally face a three-year waiting period and must fulfill these economic requirements.

Beyond the structural distinctions just described, recent legislative amendments have introduced a mechanism allowing the temporary suspension ("pause") of the processing of specified family-reunification applications in the asylum context. The Federal Government has activated this instrument on a time-limited basis, relying on arguments concerning the maintenance of law and order and the protection of internal security under Article 72 TFEU. This adds an additional layer of temporal and procedural uncertainty for sponsors and family members, even where the underlying substantive criteria remain unchanged.

The NAG covers a broader range of family reunification scenarios, primarily for third-country nationals joining Austrians (who haven't exercised free movement rights) or other third-country nationals holding various NAG residence permits. This framework typically requires the sponsor in Austria to demonstrate sufficient financial resources, adequate accommodation, and comprehensive health insurance for the family. Many NAG reunification pathways are subject to annual quotas, and often require proof of basic A1 German language skills before the family member enters Austria. Finally, within the NAG (Section 51ff), specific rules based on EU free movement law apply when family members join EEA or Swiss citizens who are living in Austria, exercising their mobility rights (or Austrians returning after having exercised such rights). These provisions generally offer more favorable conditions compared to standard NAG rules. Outside the nuclear family, reunification possibilities are very limited: parents of adult sponsors and adult children or siblings usually require an ordinary or humanitarian residence title under the NAG, which presupposes strong concrete dependency and high income and housing thresholds on the side of the sponsor.

5. What are the conditions for naturalization in the reviewed state?

Acquiring Austrian citizenship through naturalization generally requires fulfilling several conditions outlined in the Austrian Citizenship Act (StbG). Most applicants must meet general prerequisites defined primarily in Section 10(1) StbG. These include demonstrating good character, which means having no significant criminal convictions (domestic or foreign) or pending proceedings for serious offenses, and no severe administrative violations. Applicants must also show a positive attitude towards the Republic of Austria and its democratic values, ensuring their naturalization doesn't conflict with public interests or international relations, and confirming they pose no threat to public peace, order, or security, including having no close ties to extremist or terrorist groups; ordinary political criticism of government policies is not treated as a refusal ground.

A crucial general condition is proving a sufficiently secure livelihood. This involves demonstrating stable, regular income over an extended period (typically an average over 36

months within the last 6 years, covering the most recent 6 months) that meets specific thresholds based on social security equalization payments, ensuring the applicant is not reliant on social assistance. Exceptions to this income requirement can be made for individuals with significant disabilities preventing them from securing their livelihood. Furthermore, applicants generally must renounce their previous citizenship. However, important exceptions exist, notably for victims of Nazi persecution and their descendants applying under Section 58c, or those naturalized in the special interest of the state, as described below. Sufficient knowledge of the German language (usually B1 level) and a basic understanding of Austria's democratic order and history are also typically required, often proven through integration exams, with exemptions for minors or those with specific health impairments.

The required duration of legal and continuous residence in Austria varies. While discretionary naturalization usually requires at least 10 years of residence (with 5 years on a settlement permit), a legal entitlement to citizenship arises under specific circumstances, often involving longer residence periods (15 or 30 years) or shorter periods (6 years) combined with specific integration achievements (like B2 German) or particular personal circumstances (like marriage to an Austrian, birth in Austria, or being an EEA citizen).

Beyond these positive requirements, general impediments (Section 10 (2) StbG) can prevent naturalization, such as existing entry or residence bans, pending residence termination proceedings, or return decisions from other EEA states.

Special provisions exist for naturalization in the special interest of the Republic (Section 10 (6)), which waives many standard requirements like residence duration, secure livelihood, language/civic knowledge, and renunciation of prior citizenship, based on the applicant's extraordinary past and expected future contributions. Additionally, Section 58c StbG provides a distinct pathway for victims of Nazi persecution and their direct descendants to acquire citizenship by declaration, which also significantly relaxes the standard requirements, notably allowing for dual citizenship.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- m. temporary and permanent resident migrants;*
- n. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- o. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- p. refugees;*
- q. asylum seekers;*

r. *other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Yes, although nationality per se is not a protected ground under ordinary legislation. The Federal Equal Treatment Act (Gleichbehandlungsgesetz) implements EU directives and prohibits unequal treatment in employment on grounds like ethnic origin, religion, age, sex, etc., thereby indirectly encompassing many non-nationals while expressly excluding distinctions predicated upon citizenship status from its scope. This means differences tied to nationality or immigration status are not deemed “discrimination” under that Act. Although higher courts rarely frame it explicitly in these terms, equality bodies, amongst others, have treated certain forms of migration- or nationality-based differentiation as indirect discrimination on grounds of ethnic origin (GBK (Senat III), 29 January 2009, III/34/08). Empirical reports on racism in Austria also describe migration status as functioning in practice as a proxy for racialised exclusion in housing, welfare and policing. At the constitutional level, Article I of the 1973 Federal Constitutional Act implementing the International Convention on the Elimination of All Forms of Racial Discrimination (Bundesverfassungsgesetz BGBl. Nr. 390/1973) as interpreted by the Constitutional Court (e.g., VfGH, 27 February 2023, E 89/2023) guarantees equality of all foreigners before the law and proscribes arbitrary differential treatment *inter se*, permitting distinctions only where objectively justified.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Voting rights are generally restricted to Austrian citizens (Austrian Federal Constitution, Bundes-Verfassungsgesetz). Non-citizens cannot vote or stand for office in national or provincial (*Land*) elections. The sole exception (notwithstanding EU elections) is for EU citizens at the local level: through EU law implemented in Austria, Union citizens with primary residence in Austria may vote in municipal council elections (in Vienna, in district council/representation elections) and run for those offices. This is provided in the municipal election laws of the Länder, e.g., the “*Wiener Gemeindewahlordnung*”.

That said, non-nationals can participate in public life through civil society: they enjoy freedom of expression, assembly, and association on an equal basis. There is no nationality requirement to join or form associations, trade unions, or political parties in Austria (the Association Act,

Vereinsgesetz 2002, contains no citizenship bar). For instance, foreign workers (including EU citizens and those with legal residence) have the right to union membership and to vote or be elected in works councils and other workplace representative bodies (Labour Constitution Act, Arbeitsverfassungsgesetz).

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Most fundamental civil rights apply to non-nationals in Austria. However, freedom of movement and residence is a key difference: Austrian citizens have a right to enter, reside in, and leave Austria (as recognized in constitutional law such as the Basic Law of 1867), whereas non-citizens are subject to immigration control. Third-country nationals must hold a valid visa or residence permit to live in Austria and can be expelled if they lack lawful status. Asylum seekers face residence restrictions during their procedure – once admitted to the Basic Welfare Support system established by federal-provincial agreement, they generally cannot move their main residence to another province without permission. They may also be assigned to specific accommodation (e.g. an initial reception center or provincial quarters), and asylum seekers in the initial stage of the procedure are only allowed to travel within the district of the responsible reception center without special permission (these residence and movement constraints are imposed by the AsylG and the basic care framework).

Access to courts and legal remedies is, in principle, available to everyone, citizens or not. Foreigners can sue or defend their rights in Austrian courts. However, foreign plaintiffs from outside the EU/EEA face an additional requirement in civil litigation: under Section 57 of the Code of Civil Procedure (Zivilprozessordnung, ZPO), a non-EU plaintiff not resident in an EU/EEA state must, upon the defendant's request, post a security deposit for costs (*Aktorische Kaution*). This is triggered when foreigners sue as plaintiffs, unless an exemption applies; the statutory exemptions turn on (inter alia) ordinary residence in Austria, enforceability of a costs award in the state of the plaintiff's ordinary residence, or Austrian immovable/secured assets. Foreign plaintiffs without habitual residence or sufficient attachable assets in Austria may, upon the defendant's request, be required under Section 57 ZPO to provide security for the defendant's costs, unless they are EU/EEA nationals or protected by legal aid or relevant treaties. In practice, indigent migrants can avoid the security by obtaining *Verfahrenshilfe*; courts do not have a legal basis to insist that they first exhaust particular social benefits or NGO funds, although applicants are expected to disclose any available resources. EU citizens and those domiciled in Austria are exempt from this bond by law or treaty, so this mainly affects third-country nationals without assets in Austria or without bilateral enforcement treaties. Apart from such procedural nuances, core civil liberties apply to "everyone" under Austria's constitutional framework (notably through the ECHR in constitutional law status). Historically, some basic rights in Austria's constitution were phrased as citizens' rights (see the Basic Law on the General Rights of Nationals 1867, Staatsgrundgesetz), but today they are interpreted or

overridden by international law to cover non-citizens. Formally citizen-specific equality guarantees have been substantially ‘corrected’ in practice through case law (VfGH, 1 December 2018, G 308/2018-8) under Art. I BVG 390/1973, Art. 14 ECHR/Protocol No. 12 and EU equal-treatment norms, so that many social and welfare rights once restricted to ‘citizens’ are now interpreted to cover long-term legally resident non-citizens (especially EU citizens and, to some extent, third-country nationals). The Constitutional Court’s decision on the Sozialhilfe-Grundsatzgesetz (VfGH (Verfassungsgerichtshof), 12 December 2019, G 164/2019-25 and G 171/2019-24), amongst others, is indicative of this development.

4. Are there any limitations to non-nationals’ right to buy and own property within the reviewed state?

Property acquisition by foreigners often requires an official authorization under provincial land transfer laws (*Grundverkehrsgesetze* of the nine *Bundesländer*). Each *Land* (province) has its own *Grundverkehr* regulations and a commission that must approve purchases by foreigners to ensure no conflict with public interests. “Foreigners” in this context is defined broadly by these laws – not only non-EU individuals, but also foreign companies or trusts, and even Austrian companies controlled by foreign persons are often included. However, citizens of EU/EEA member states are treated the same as Austrians for property purchases. In principle, only nationals of third countries need to undergo the authorization procedure. In practice, some bilateral agreements or local rules allow certain third-country nationals to avoid the permit requirement, but usually a “no-permit-needed” certificate must be obtained to confirm eligibility. Generally, a non-EEA buyer must apply to the provincial authority and demonstrate that the purchase meets the legal conditions (for example, an economic or personal interest and no violation of local land quotas or development restrictions). If approved, a permit is issued allowing the purchase.

The acquisition of real estate by “foreigners” is regulated by provincial land-transfer laws and typically requires prior authorisation by a *Grundverkehr* authority. EU/EEA and Swiss citizens are generally treated in the same way as Austrian citizens and are, as a rule, exempt from this permit requirement. By contrast, third-country nationals – including recognised refugees and subsidiary protection holders – are in principle treated as “foreigners” for these purposes, so that land purchases remain subject to authorisation unless a specific exemption applies under the relevant *Land* legislation. Long-term residence titles under the NAG, such as “Daueraufenthalt – EU”, do not in themselves automatically remove the need for a *Grundverkehr* permit.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

EU/EEA citizens (and Swiss citizens) enjoy freedom of movement for workers and do not need work permits to take up employment in Austria. They may enter with a passport, work immediately, and persons staying longer than three months must request/seek a residence confirmation within four months of arrival/entry (documentation of EU-law residence). In contrast, third-country nationals must have both a legal residence status and a work authorization under the AuslBG. In practice this usually means either: (a) the employer has obtained an individual employment permit (*Beschäftigungsbewilligung*) for the person before they start work; or (b) the individual holds a combined residence-and-work permit (such as a Red-White-Red Card – *Rot-Weiß-Rot Karte*, or an EU Blue Card) that itself grants the right to work for a specified employer or sector. Austria uses a points-based system for some permits, and third-country workers in many cases can be hired only within the quotas and conditions set by law (see Q6 for labor market tests and quotas).

Certain categories are exempt from work permits despite being third-country nationals. Notably, recognized refugees and persons with subsidiary protection have, by law, full access to the labor market without needing any permit. Likewise, family members of Austrians or EEA citizens (and other long-term residents) often receive a Red-White-Red Plus permit or similar status that gives unrestricted work access. By contrast, asylum seekers are not allowed to engage in regular employment when they first apply. During the first three months of the asylum procedure, employment is legally barred. After 3 months, Austrian law technically allows an asylum applicant to get a temporary employment permit for certain jobs, but in practice this is regularly limited to seasonal work and other specified short-term occupations. The Aliens' Employment Act (*Ausländerbeschäftigungsgesetz*) provides that an employer can apply to hire an asylum seeker only after 3 months of the asylum process and only if stringent conditions are met, including a labor market test (see Q6). For many years, government decrees/circulars restricted asylum-seeker work permits to seasonal farm and tourism jobs or to one-off short-duration contracts; these restrictions were invalidated by the courts in 2021 (VfGH, 23 June 2021, V 95-96/2021-12), but asylum applicants still face practical barriers (labor market testing and administrative hurdles) and are not registered as job-seekers by the Public Employment Service. As an alternative, asylum seekers may perform certain charitable or community tasks for a small allowance (e.g. cleaning public spaces, helping in shelters), with a legal cap of often about €110 per month. Finally, undocumented individuals have no lawful access to the labor market – employing someone without a residence/work permit is illegal, and employers can be fined for doing so. Any such employment can only occur informally; while an undocumented worker could later sue for owed wages in court, they have no legal permission to work and are vulnerable to exploitation. The practical ability to pursue claims can be constrained; support structures (e.g. labour-law representation bodies) may assist irrespective of residence status. Asylum seekers may work (with exceptions such as service-voucher (“*Dienstleistungsscheck*”))

employment in private households) only with an employment permit and mainly in seasonal or shortage occupations; access to apprenticeships in shortage occupations has been repeatedly narrowed by ministerial circulars, some of which were partially annulled by the courts for disproportionately disrupting established apprenticeship trajectories (VfGH (Constitutional Court), 23 June 2021, V 95-96/2021-12; VwGH (Supreme Administrative Court), 28 April 2020, Ro 2019/09/0011)). Recognised refugees and subsidiary protection beneficiaries enjoy free access to the labour market; family members under EU law and holders of long-term residence titles have access comparable to Austrian nationals. Other third-country nationals' access depends on the specific NAG title and associated work-permit regime.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Yes, Austrian labor law imposes limitations on hiring non-EEA nationals through both labour market testing and quota systems. Under the Foreigners Employment Act, hiring a third-country national typically requires a labour market test (*Ersatzkraftverfahren*) to ensure there is no suitable job-seeker available from Austria or the EU for the position. The employer must prove to the Public Employment Service that the vacancy cannot be filled by an Austrian citizen, an EU/EEA citizen, or a legally resident third-country national who already has labor access (such as a long-term resident or family member). This "priority of local/EU labor" principle is mandated by the law and means work permits are denied if comparable local workers are available.

In addition, Austria sets quantitative limits (quotas) for certain work categories, especially temporary seasonal jobs. Section 5 of the Foreigners Employment Act expressly authorizes the Minister of Labour to issue a regulation capping the number of seasonal workers and harvest helpers admitted each year. In practice, every year the government promulgates a Seasonal Quota Ordinance (*Saisonkontingent-Verordnung*) that specifies the maximum permits for foreign seasonal farm workers, forestry workers, and tourism industry workers. These sectoral quotas limit how many short-term migrant workers (often from non-EU countries) can be granted permits for seasonal employment in a given year.

Apart from seasonal caps, Austria's immigration system overall is governed by an annual "immigration quota" for certain types of new residence permits. For example, family reunification titles for third countries have annual country-wide quotas set by the government. By contrast, the skilled Red-White-Red Card program is demand-driven and not subject to a fixed numerical cap. The Labour Market Service, when evaluating any work permit application, also considers the current labor market conditions. High unemployment in the relevant occupation or region can be a reason to refuse permission.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Austria reserves certain public-sector jobs and sensitive professions for its citizens, with some exceptions under EU law. At federal level, the *Beamten-Dienstrechtsgesetz 1979* (BDG 1979) provides that appointment as a *Beamter* generally requires Austrian citizenship or unrestricted access to the Austrian labour market. However, functions requiring a special bond of allegiance to Austria that can be expected only of Austrian citizens are reserved to Austrian nationals under section 42a BDG; these include, in particular, functions involving direct or indirect participation in the exercise of public authority and safeguarding the general interests of the state. This covers important areas of the core public service, including police functions, while soldiers must also be Austrian citizens under the *Wehrgesetz 2001*. Judges and prosecutors are likewise subject to an Austrian-citizenship requirement under the Judges and Public Prosecutors Service Act (*Richter- und Staatsanwaltschaftsdienstgesetz*, RStDG). Rules for civil servants at Land level are governed by the respective Land legislation. Besides government service, a few regulated liberal professions historically had nationality requirements, though many have been relaxed due to EU internal market rules. For instance, notaries in Austria were once required to be Austrian nationals, but this nationality requirement was held by the CJEU in *Commission v Austria*, Case C-53/08, judgment of 24 May 2011, to be contrary to Article 43 EC. Lawyers are subject to a nationality requirement: Austrian citizenship is required under the RAO, with EU/EEA and Swiss nationality treated as equivalent. Doctors, architects, and many other regulated professions do not require Austrian citizenship as such, although recognition of foreign qualifications and other licensing requirements may apply.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Once employed legally, foreign workers are entitled to the same labor protections as Austrian nationals. Austrian labor laws cover all “employees” irrespective of citizenship or origin. This includes regulations on working hours, rest periods, overtime pay, minimum paid vacation, workplace health and safety, maternity and parental leave, and protection against unjust dismissal. There is no separate lower statutory minimum wage or inferior statutory standard for non-nationals. In fact, the Equal Treatment Act mandates that employees must not be treated differently in working conditions due to characteristics such as ethnic origin (and EU law prohibits nationality-based discrimination among EU workers).

Foreign workers in Austria who are subject to Austrian social insurance law generally pay into the social insurance system for health, accident, pension, and unemployment just like citizens, and are generally entitled to benefits and coverage on the same terms (see Q11 on social security). Employees are generally mandatorily covered for health, accident, and pension insurance under the General Social Insurance Act (*Allgemeines Sozialversicherungsgesetz*), and for unemployment insurance under the Unemployment Insurance Act (*Arbeitslosenversicherungsgesetz*), subject to exceptions such as marginal employment; these

rules generally make no distinction based on nationality. Undocumented workers are not necessarily excluded: unauthorized or unregistered employment does not in itself remove them from social insurance or labour-law protection. Compulsory social insurance generally arises from the employment itself, even if the employer fails to register the worker, while labour-law protections continue to apply; in practice, however, such rights may be difficult to enforce because of the worker's precarious status.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Austria has a practically universal healthcare system financed through social insurance, and lawful residents, including non-nationals, have access to public health services largely on the same terms as citizens. Almost all paid employment in Austria is mandatorily insured for health care through their employer's contributions, as required by the General Social Insurance Act, which entitles them to visit doctors, receive hospital treatment, and obtain prescriptions with the same co-payments or cost-sharing as Austrian insured persons. Similarly, self-employed people and those receiving unemployment benefits are covered by health insurance. Thus, migrants who are employed or otherwise included in the social insurance system receive equal medical care. Family members of insured persons are usually co-insured regardless of nationality, under the same conditions.

Non-nationals outside the regular insurance scheme also receive healthcare via special programs. During an asylum procedure, for example, the state provides basic medical care as part of the *Grundversorgung* (Basic Welfare Support) system. Asylum seekers who have no resources are enrolled in this system upon lodging their claim. In fact, every asylum applicant in *Grundversorgung* is granted public health insurance coverage similar to an insured resident. In most cases, asylum seekers are issued an "e-card" (yet with varying practices in regions) in the province handling their claim, enabling them to visit doctors and hospitals. Public hospitals may not refuse indispensable first medical aid, and physicians may not refuse first aid in life-threatening situations; separate rules govern who ultimately bears costs where no insurance exists. Necessary treatments are covered; if something falls outside standard coverage, the provincial welfare office or the Ministry of the Interior can approve additional payments. Should an asylum seeker lose entitlement to basic support, they are still entitled to emergency medical care and essential treatment by law. Hospitals in Austria are obliged to provide emergency treatment regardless of a patient's insurance status or ability to pay. Recognized refugees and subsidiary protection beneficiaries, once they receive their status, are transitioned into the normal insurance system – usually they either gain coverage through employment or through registering with the Labour Market Service (which confers health insurance for job-seekers), or they receive needs-based social assistance, including health insurance contributions.

The primary gap in healthcare access is for undocumented migrants, who lack any official insurance coverage. Undocumented persons can still go to Austrian hospitals for emergency

treatment. For non-urgent care, however, those without legal status must rely on a handful of NGOs and charitable clinics. For example, in Vienna, the Amber-Med program (run by NGOs with government support) offers free outpatient health services to uninsured foreigners. Additionally, municipal public health offices will sometimes quietly treat uninsured individuals for communicable diseases to protect overall public health. Overall, though, undocumented migrants face difficulties in accessing routine healthcare. Undocumented migrants have de facto access to emergency health care and some NGO-mediated services, but Austria has no explicit statutory ‘firewall’ insulating health providers from immigration enforcement. Hospitals can be required, upon request, to inform the authority (BFA) of an imminent discharge date where deportation is imminent. Medical confidentiality and data-protection law mean that health staff have no general duty to report irregular residence, yet fear of detection remains a barrier in practice. During the COVID-19 vaccination campaign, several Länder, notably Vienna, set up low-threshold vaccination offers also for uninsured and undocumented persons, but this remained policy-driven rather than a rights-based reform.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Primary and secondary education in Austria is generally accessible to non-nationals on an equal basis with citizens. Education is compulsory for all children living in Austria (regardless of nationality or status) for nine years, from age 6 until about 15. This legal *Schulpflicht* (school duty) is enshrined in the *School Attendance Act (Schulpflichtgesetz)* and applies to every child in the country. Section 1 frames this duty by reference to a child’s “permanent residence” in Austria, rather than citizenship. Accordingly, for children who are deemed to be staying in Austria on a non-temporary basis, access to compulsory schooling is legally structured as a right–duty relationship, even where residence status is insecure. There is no specific legal obligation for schools to report irregular status to immigration authorities. However, the absence of an explicit statutory firewall, combined with general duties of administrative cooperation, means that undocumented families still perceive schooling as a potential site of exposure. Thus, migrant children of compulsory-school age (including children in an asylum context) are generally covered by the right and duty to attend a school. The legal guarantee primarily concerns provision of a school place sufficient to fulfil the duty, rather than an unconditional entitlement to a specific selective school type where no statutory duty to admit applies. After completion of the nine years of general duty, schooling as such is no longer universally mandatory; however, Austrian law generally imposes an *Ausbildungspflicht* up to age 18 (fulfilled via further schooling, apprenticeship, or other qualifying pathways), with carve-outs in practice for some groups in an asylum context. Language proficiency tends to be a principal practical hurdle for newly arrived students. Austrian school law provides structured “Deutschförderklassen” and “Deutschförderkurse”, which are triggered by a formal assessment of German-language competence. Where pupils are not yet ready to participate as ordinary students, admission as “außerordentliche Schüler/innen” is a recognised instrument, including

in connection with the Deutschförder regime. Austria also provides various integration measures, such as transitional classes and a voluntary 10th year of basic schooling, to help non-German-speaking adolescents reach the required level for further education or apprenticeships. There is no nationality bar to attending apprenticeship programs or vocational training; any student who finds an apprenticeship position and meets the age/education criteria can enroll in the part-time vocational school. In the past, asylum seekers were at times restricted by policy from starting apprenticeships, but legally the Vocational Training Act (*Berufsausbildungsgesetz*) does not exclude foreigners – the limitation was due to work permit issues rather than education law. As of now, young asylum seekers under certain conditions are allowed to begin apprenticeships in shortage occupations, reflecting a policy shift to integrate them. While there is a general package of apprenticeship support instruments for all young people (e.g. integrative and supra-company apprenticeships, training obligation up to 18), there are few targeted legal measures that specifically address the structural barriers faced by migrant youth. Past attempts to open apprenticeships to asylum seekers in shortage occupations have been repeatedly narrowed by policy changes and only partially safeguarded through case law.

At the tertiary level, admissions are generally open to non-nationals, but there are some differences in fees and student support. At public universities, the Studienbeitrag regime differentiates not only by EU/EEA nationality but also by the student's legal basis of stay. Many students (including Austrians, EU/EEA citizens, and several third-country categories who are not in Austria on a student residence permit) do not pay Studienbeitrag within the standard study period plus tolerance semesters; after that, a Studienbeitrag becomes payable. By contrast, third-country nationals studying on a dedicated student residence permit generally pay a higher Studienbeitrag from the outset. Separately, an ÖH contribution is typically payable each semester irrespective of tuition status. Even if they exceed the prescribed duration by more than two semesters, the tuition fee for Austrians/EEA is relatively modest (around €363 per semester currently). Non-EEA foreign students, however, are usually required to pay tuition from the start or after a very short grace period. Meanwhile, students from outside the EU who hold another legal status in Austria or who come from certain designated developing countries are often eligible for reduced fees or full waivers. Austrian law and regulations provide for this: a government ordinance known as the *Personengruppenverordnung* (Categories of Persons Ordinance, issued under the University Act) specifies categories of foreign students who are to be treated like domestic/EU students for tuition purposes. For example, students who are refugees or who have an EU long-term residence permit are included in that ordinance, meaning they qualify for the lower tuition rate or an exemption just as Austrians do. In practice, many universities also choose to waive tuition fees for asylum seekers or offer them guest student status.

Admission criteria themselves do not discriminate by nationality: a foreign applicant must provide proof of an equivalent secondary school diploma and the necessary language proficiency for the program. Admission criteria are primarily framed around (i) a recognised university entrance qualification and (ii) programme-level prerequisites (including language requirements and, where applicable, supplementary examinations). Federal guidance indicates that foreign school-leaving qualifications are assessed by reference to whether they provide access to higher education in the issuing state, with further programme-specific

supplementation governed by Austrian admissions rules. There is no explicit legal safeguard for cases where home-country admission rules are themselves discriminatory (e.g. gender-based exclusions); in practice, affected individuals can only circumvent this indirectly, for instance by completing Austrian access examinations or alternative educational pathways. This usually comes in the form of a certification or entrance exam evidence and is mandated by the university regulations under the University Act for certain countries.

Access to scholarships and student aid can differ by nationality and status. The federal need-based study grant (*Studienbeihilfe*) is governed by the Student Support Act (*Studienförderungsgesetz*) and is generally available to Austrian and EU citizens, as well as to other foreigners after five years of legal residence in Austria or to those with a long-term residence/settlement status. Recognized refugees are exempt from the five-year rule and are treated essentially like locals for study aid. Newly arrived third-country students on a study visa, however, usually cannot receive this need-based aid during their initial years. On the other hand, merit-based scholarships offered by universities or research institutions are often open to all students regardless of nationality, as selection is based on academic achievement. Student housing is generally available to international students as well; most public dormitories or university housing programs have no formal citizenship requirement, though some may prioritize those who come from farther away or have certain statuses, and municipal student housing programs might prioritize local low-income residents. Importantly, as noted above, public universities in Austria do not charge higher tuition to EU students, and by statute they exempt a range of other groups from high tuition.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Austria's statutory social insurance (Sozialversicherung: notably health, accident, and pension insurance, and employment-linked cash benefits administered through those branches) is predominantly insurance-status and contribution-based, rather than citizenship-based; accordingly, non-nationals who are compulsorily insured typically accrue entitlements under the same substantive eligibility conditions as nationals. In standard employment, the employer must register the employee with the competent health insurance carrier before work starts, thereby triggering the relevant compulsory insurance coverage for the employment relationship, irrespective of nationality. Accordingly, where a non-national is insured, access to benefits in kind and cash benefits administered within social insurance generally follows the same architecture as for nationals, because the legal gateways are keyed to insured status and insurance periods rather than citizenship.

Unemployment insurance (Arbeitslosenversicherung) illustrates the same general logic while also showing a principal practical constraint for many third-country nationals. The statutory qualifying insurance period (Anwartschaft) is defined by reference to prior periods of unemployment-insurance-liable employment in Austria—for a first claim, typically 52 weeks within the last 24 months, with a reduced rule for first claims before age 25 (notably 26 weeks

within the last 12 months), and further rules for subsequent claims. Receipt of unemployment benefit is, however, tied to availability for job placement, and Austrian law frames this in terms that include an ability to take up employment and (relevantly for non-nationals) being authorised to stay and to take up dependent employment in Austria. For some third-country nationals whose residence right is closely connected to a particular employment situation, the binding constraint therefore tends to arise from residence and labour-market access rules, rather than from a different benefit formula in unemployment insurance law as such.

With respect to old-age pensions and other long-term contributory benefits, nationality is again not the central sorting criterion; what matters is the completion of relevant insurance periods and satisfaction of pension-law conditions, with pensions also being payable abroad subject to administrative requirements (including, for example, documentation in cross-border payment contexts). Where the situation is cross-border within the EU/EEA/Swiss context, EU social-security coordination supports, *inter alia*, aggregation of insurance periods and the continuity of entitlements for mobile persons, while allocating competence between states on coordination principles rather than citizenship.

Family-related cash benefits and certain tax-financed benefits are more legally granular. For family allowance (Familienbeihilfe), the governing statute contains an explicit rule for non-Austrian citizens: they have a claim only if they are lawfully residing in Austria on specified residence-law bases (in particular, residence under NAG §§ 8–9 or under AsylG 2005 § 54). In cross-border EU/EEA/Swiss situations, entitlement and “export” questions are shaped by EU coordination rules allocating which state is competent, rather than by a pure “any lawful residence” test. The earlier indexation episode can be stated more precisely as follows: Austria introduced indexation as of 1 January 2019; the Court of Justice held the mechanism contrary to EU law in *Commission v Austria* (C-328/20), 16 June 2022 (ECLI:EU:C:2022:468); Austria subsequently ceased applying the indexation provisions and enacted legislative “clean-up” measures (including a basis for automatic back-payments).

Finally, maternity-related income replacement and parental benefits are best treated as two partially distinct regimes. Wochengeld (maternity cash benefit) is administered within the health insurance context and is framed around insured status and income replacement during statutory protection periods, rather than nationality as such. By contrast, childcare allowance (Kinderbetreuungsgeld) is primarily residence- and household-based, with differentiated gateways for non-nationals in public guidance, including an explicit statement that subsidiary protection beneficiaries qualify only under narrower circumstances (notably economic activity and non-receipt/non-entitlement to basic provision or minimum-income-type support).

A residual comparative difference *vis-à-vis* nationals therefore tends to arise less from nationality classifications inside contributory schemes, and more from (i) how lawful residence and work authorisation condition benefit gateways that presuppose labour-market attachment (especially unemployment), and (ii) the presence of express lawful-residence filters in several tax-financed family-benefit schemes. (Separately, and outside classical social insurance, Austria’s post-2019 social assistance framework has been subject to constitutional review and partial annulment (VfGH, 12 December 2019, G 164/2019-25 & G 171/2019-24), indicating that differentiation mechanisms in non-contributory schemes can be legally constrained.)

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Access to non-contributory welfare programs is more restricted for non-nationals and often tied to length of stay or legal status. Austria's new "*Sozialhilfe*" (social assistance, which largely replaced the former "*Mindestsicherung*") is a means-tested safety net benefit for individuals with insufficient income. Under the current federal framework legislation and the corresponding provincial laws, Austrian citizens and those with a long-term or permanent residence status have the fullest access, whereas recent immigrants and those with only temporary permission to stay face waiting periods or exclusions.

Specifically, asylum seekers are excluded from *Sozialhilfe* entirely while their claim is pending. By law, asylum applicants are not eligible to receive needs-based minimum income support from the provinces. During that time, they receive separate Grundversorgung support (the Basic Welfare Support system), which covers basic accommodation, food, clothing, and a small monthly allowance; however, they cannot apply for regular social welfare benefits. Once an asylum applicant is recognized as a refugee, they become eligible for *Sozialhilfe*. Austrian law explicitly states that persons granted asylum (Convention refugees) have the same social welfare entitlement as nationals.

Economically inactive EU citizens are not entitled to needs-based social assistance in the first five years of residence, unless they have obtained a right of permanent residence. More concretely, access to "social assistance" turns on (i) whether the person has a right of residence under Directive 2004/38 and (ii) specific derogations (notably, no obligation to grant social assistance during the first three months and a further permitted exclusion for jobseekers). An EU citizen who has worked in Austria or legally resided there for five years or more is treated as a national for social aid purposes. Those who are in Austria for under 5 years and not employed (nor self-sufficient with private means) can be denied *Sozialhilfe*. In practice, such individuals may be advised to rely on their home country's support or could ultimately face removal if they become a burden on public funds. This policy is reflected in Austria's social legislation in line with Directive 2004/38/EC. The *Sozialhilfe* laws and the EU Citizens' Residence Act incorporate the directive's principle that no welfare entitlement arises for short-term EU migrants without work.

For other third-country nationals, the federal Social Assistance Principle Act and the provinces' *Sozialhilfe* framework have used a five-year "permanently established" criterion for broad access, subject to legally required exceptions. In other words, a recent immigrant with only a temporary residence permit is not eligible for this means-tested benefit until they complete five years of continuous residence. However, there can be exceptions in cases of particular hardship or for certain protected groups, but five years is the standard rule. Only after five years can a third-country national receive the same need-based minimum income support as Austrians do.

Access to social benefits in Austria differs significantly based on protection status. While recognized refugees are generally entitled to the needs-based minimum benefit (*bedarfsorientierte Mindestsicherung*, BMS), beneficiaries of subsidiary protection often

receive the significantly lower "Basic Care", pursuant to Article 29 of the Qualification Directive. Several federal provinces, including Lower Austria, Burgenland, and Upper Austria, attempted to restrict access for beneficiaries of international protection through waiting periods, household caps, or lower benefit rates compared to nationals. However, the Constitutional Court has often annulled these measures as violations of the principle of equality, ruling that length of stay or temporary residence status cannot justify insufficient coverage (VfGH G136/2017; VfGH E1277/2018; VfGH G308/2018-8). Additionally, the CJEU confirmed that reducing benefits based on the duration of a refugee's residence permit violates EU law (CJEU *Ayubi*, Case C-713/17).

Federal legislation passed in 2019 sought to further restrict benefits by linking full payments to German or English language proficiency and drastically cutting support for larger families. The Constitutional Court declared these provisions unconstitutional (VfGH G 164/2019-25), though the 2025-2029 coalition government has planned introducing new waiting periods for full benefit eligibility. Currently, while "need" remains the primary condition for assistance, benefits are increasingly tied to compliance with integration measures. Provinces such as Styria, Lower Austria, and Vorarlberg enforce regulations where refusal to participate in mandatory language courses or integration agreements results in benefit reductions.

Beneficiaries of subsidiary protection face unique systemic barriers, often being excluded from Sozialhilfe entirely in provinces like Styria and Salzburg. They are eligible for family and childcare allowances only if they are not receiving Basic Care, and administrative delays in extending their residence permits can lead to interruptions in these payments. Generally, all applicants must exhaust existing assets before claiming benefits, though specific allowances exist to prevent the liquidation of essential assets from causing an emergency situation.

With respect to public or subsidised housing, non-nationals can access some schemes, but eligibility typically turns on local residence duration and a qualifying legal status, so that non-nationals can be systematically disadvantaged even in the absence of an explicit citizenship bar. Vienna's published criteria for municipal housing illustrate this structure: eligibility is tied to at least two years of continuous main residence and inclusion of recognised refugees alongside Austrian and EU/EEA citizens, whereas third-country nationals are required to hold a permanent residence card. Finally, asylum seekers generally remain housed through the reception/basic-care system rather than the ordinary "social housing" channel during the procedure, and persons without lawful residence are typically excluded from standard housing assistance instruments that presuppose registration and legal status, although emergency and charitable support may operate outside those schemes.

Are there any final observations you would like to make? Please write below

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

January 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Brazil

Author: Mariana Ferolla Vallandro do Valle

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons		X
1961 Convention on the Reduction of Statelessness		X
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		X
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		X
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		X
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		X
ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X

ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		
American Convention on Human Rights (ACHR)		X
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		X

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		X
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		X
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		X
Inter-American Convention against All Forms of Discrimination and Intolerance	X	
Inter-American Convention Protecting the Human Rights of Older Persons	X	

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

- MERCOSUR Residence Agreement;¹⁴⁴
- Treaty of Equality of Rights and Duties between Brazil and Portugal (*Tratado de Igualdade de Direitos e Deveres entre Brasil e Portugal*).¹⁴⁵

¹⁴⁴ <https://www.mercosur.int/pt-br/documento/acordo-residencia-nac-mercosul-bolivia-y-chile/>

¹⁴⁵ https://www.planalto.gov.br/ccivil_03/decreto/2001/d3927.htm

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

In Brazil, a visa is the document needed to enter the country (art. 6, Migration Act, Law No 13.445/2017),¹⁴⁶ Whereas a residence permit is the document needed to remain in the country for a period of over 90 days. The expiration dates of the visa and the residence permit are independent from each other (art. 16, single paragraph, Decree No 9.199/2017).¹⁴⁷

A visitor's visa (which is the same as a tourism visa) is valid for one year. It allows a person to remain in Brazil for 90 days, and this stay can be extended for other 90 days (art. 20, Decree No. 9.199/2017).

Persons who wish to establish residence in Brazil for any reason (education, work, family reunification, health treatment, among others) are issued a temporary visa, valid for one year (art. 33, Decree No. 9.199/18). Persons entering Brazil with a temporary visa must register within the Federal Police within 90 days of their arrival, upon which they shall obtain temporary residence (*residência temporária*), valid for 30 days. This is the only reason for which temporary residence can be granted.

Within these 30 days, they must formalize their intention of staying in Brazil for one of the reasons described in Article 30 of the Migration Act by applying for a permanent residence permit (*autorização de residência permanente*). The application is made online, through the *MigranteWeb* platform. The application then is assessed by the Ministry of Justice and Public Security, which is the main body responsible for immigration policy and for deciding on applications to enter and stay in Brazil.

To be granted a residence permit, individuals should essentially prove that they intend to stay in Brazil for the reasons declared. Accordingly, persons seeking residence for study purposes should provide proof of admission in an educational institution in Brazil, those seeking residence for work purposes should produce an employment offer, those seeking family reunification should prove that they have family in Brazil, etc.

In some specific instances, migrants coming to Brazil are required to apply for a residence permit from the Ministry of Labour prior to the issuance of the visa. This is the case of migrants coming for the purposes of: research, teaching, and other academic activities (art. 34(6), Decree No 9.199/2017); work (art. 38(9), Decree No 9.199/2017); investment in a company (art. 42(3), Decree No 9.199/2017); administration of a company (art. 43(3), Decree No 9.199/2017); and artistic or sports activities (art. 46(5), Decree No 9.199/2017).

¹⁴⁶ https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13445.htm

¹⁴⁷ https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/decreto/d9199.htm

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Brazil allows the residence of non-nationals for the following purposes (art. 30(I), Migration Act)¹⁴⁸:

- (a) Research, teaching, or academic projects;
- (b) Health treatment;
- (c) Receiving humanitarian protection;
- (d) Study;
- (e) Work;
- (f) Working holiday;
- (g) Religious activities or voluntary service;
- (h) Investments or activities holding economic, social, scientific, technological, or cultural relevance; and
- (i) Family reunification.

Residence may also be authorized to those who fall within the following categories (art. 30(II) Migration Act):

- (a) Nationals from countries with which Brazil has concluded a treaty of residence and free movement;
- (b) Persons who have received a job offer in Brazil;
- (c) Persons who previously possessed Brazilian nationality but do not wish to or cannot reacquire it;
- (d) Refugees, asylees, or stateless persons benefitting from protection in Brazil;
- (e) Migrant or stateless unaccompanied children found within Brazilian territory or at Brazil's borders;
- (f) Victims of trafficking in persons, forced labour, or a violation of rights aggravated by the person's migratory condition; and
- (g) Persons on parole or serving a sentence in Brazil (this refers to situations where, instead of deporting or extraditing a non-national, Brazil decided to prosecute them, so that, if

¹⁴⁸ https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/113445.htm

convicted, the person will be allowed to remain within Brazilian territory until the end of their sentence).

Additionally, nationals of states parties to the MERCOSUR Residence Agreement may apply for temporary residence of up to two years in Brazil upon the presentation of identity documents and proof of absence of criminal records (art. 4, MERCOSUR Residence Agreement). Temporary residence may be converted into permanent residence upon request filed up to 90 days before the expiration of the temporary residence, as long as the applicant can prove having the financial means for their and their family's survival in the country (art. 5, MERCOSUR Residence Agreement). Through Ordinance No 9 of 14 March 2018,¹⁴⁹ the applicability of provisions of the MERCOSUR Residence Agreement was extended towards nationals of neighbouring countries where the Agreement is not in force. This extension was done mostly to provide additional avenues for the migratory regularization of Venezuelan nationals in Brazil.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Brazil has four main avenues for granting international protection: (i) refugee status; (ii) humanitarian protection; (iii) recognition as a stateless person; and (iv) political asylum.

Brazil is a party to the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol. In 1997, Brazil adopted its Refugee Act (Law No. 9.474/97),¹⁵⁰ which is the main legal instrument regulating the recognition of refugee status in the country. Issues pertaining specifically to refugees are thus regulated under the Refugee Act, whereas other migratory categories are regulated by the Migration Act and Decree No. 9.199/17.

Article 1(I)-(II) of the Refugee Act repeats the grounds for refugee status enounced in Article 1(A)(2) of the Refugee Convention. One further ground is added in Article 1(III) of the Refugee Act: persons who, owing to grave and generalized human rights violations (*grave e generalizada violação de direitos humanos*), are compelled to leave their country of nationality and seek refuge in another country. This additional ground is inspired by the recommendations of the 1984 Cartagena Declaration on Refugees. Initially, the National Committee for Refugees (*Comitê Nacional para Refugiados* – CONARE) assessed the occurrence of grave and generalized human rights violations only on a case-by-case basis. Nevertheless, in 2019, as a response to the displacements resulting from the Venezuelan political, economic, and social crisis, CONARE started classifying these situations beforehand, leading to a simplified and quicker procedure for individuals coming from certain countries to be recognized as refugees, called a *prima facie* procedure. To date, a situation of grave and generalized human rights

¹⁴⁹

<https://portaldeimigracao.mj.gov.br/images/portarias/PORTARIA%20INTERMINISTERIAL%20N%C2%BA%209.%20DE%2014%20DE%20MAR%C3%87O%20DE%202018.pdf>

¹⁵⁰ https://www.planalto.gov.br/ccivil_03/leis/19474.htm

violations has been recognized in relation to Venezuela,¹⁵¹ Mali,¹⁵² Burkina Faso,¹⁵³ Iraq,¹⁵⁴ Afghanistan,¹⁵⁵ and Syria.¹⁵⁶ There are no objective and consistent criteria for this classification, however, and it is not clear why certain situations in other countries have not been classified as such.

Applications for Refugee Status are decided by CONARE (arts. 11-12, Refugee Act). CONARE is an administrative body composed of seven members. Each member must be a representative of one of the following entities:

- the Ministry of Justice;
- the Ministry of Foreign Affairs;
- the Ministry of Labour;
- the Ministry of Health;
- the Ministry of Education and Sports;
- the Federal Police; and
- an NGO dedicated to the assistance and protection of refugees in Brazil (art. 14, Refugee Act).

Neither the Refugee Act nor other legal instruments provide rules on how these representatives to be chosen, leaving absolute discretion to each of the ministries. Nor is there a requirement that the chosen representatives have any experience or training in refugee or human rights law, or even law more broadly. The only requirement is that the President of Brazil must ultimately nominate these members (art. 14(2), Refugee Act). As for the NGO representative, although the Refugee Act does not indicate which NGO shall be chosen, historically, it has always been Caritas, an organization linked to the Catholic Church that has promoted refugee protection in Brazil since before the enactment of the Refugee Act. Article 15 of the Refugee Act also lays down a permanent invitation to the UNHCR to attend CONARE's sessions as a speaking but non-voting member.

Refugee status applications are filed online via the SISCONARE platform,¹⁵⁷ on which the applicant presents the reasons they qualify for refugee status and any supporting documents. An interview is then scheduled with the applicant by asylum officials. The interview is not necessary if the application is analysed under the *prima facie* procedure (art. 6(1)(II), CONARE

¹⁵¹ https://www.gov.br/mj/pt-br/assuntos/seus-direitos/refugio/o-que-e-refugio/anexos/sei_mj8757617estudodepaisdeorigemvenezuela.pdf

¹⁵² https://www.gov.br/mj/pt-br/assuntos/seus-direitos/refugio/anexos/sei_08018-001832_2018_01-nt_mali.pdf

¹⁵³ https://www.gov.br/mj/pt-br/assuntos/seus-direitos/refugio/anexos/sei_08018-001832_2018_01-nt_burkinafaso.pdf

¹⁵⁴ https://www.gov.br/mj/pt-br/assuntos/seus-direitos/refugio/o-que-e-refugio/anexos/NT_Iraque.pdf

¹⁵⁵ https://www.gov.br/mj/pt-br/assuntos/seus-direitos/refugio/o-que-e-refugio/anexos/SEI_08018.001832_2018_01Afeganistao.pdf

¹⁵⁶ https://www.gov.br/mj/pt-br/assuntos/seus-direitos/refugio/o-que-e-refugio/anexos/sei_08018-001832_2018_01-ntsiria.pdf

¹⁵⁷ <https://sisconare.mj.gov.br/conare-web/login;jsessionid=W3a7NWjjJmrxrDVBqkwIL-mo.conare-backend-8578cd47b7-dtsnq?0>

Normative Resolution No 29/2019).¹⁵⁸ Asylum officials transmit their findings about the interview to CONARE's Group of Previous Studies (*Grupo de Estudos Prévios*), which will assess the case and provide their considerations before submitting them to CONARE's plenary body (art. 7, CONARE Normative Resolution No 18/2014).¹⁵⁹ Applicants have a right to an interpreter, if needed (art. 19, Refugee Act). While Brazilian norms do not specify that asylum seekers shall be granted legal assistance, any person staying in Brazil may benefit from such assistance for free, regardless of their migratory status, either from the Public Defender's Office or a lawyer especially designated by a judge for the cause.¹⁶⁰

Decisions within CONARE's plenary body are taken by majority vote and, in case of a tie, the deciding vote is that of the representative of the Ministry of Justice, which also acts as CONARE's president (arts. 14(I), 16, Refugee Act). Decisions recognizing an individual as a refugee have a declaratory nature (art. 26, Refugee Act), and all decisions in the refugee status determination procedure shall be duly reasoned (arts. 26, 29, Refugee Act). If the application is rejected by CONARE, the applicant may file an administrative appeal with suspensive effect to the Minister of Justice (arts. 29-30, Refugee Act). The Minister alone is responsible for deciding on the appeal, and their decision is final and unappealable (art. 31, Refugee Act).

Strictly speaking, judicial remedies against the Minister of Justice's decision are available to asylum seekers, as art. 5(XXXV) of the Brazilian Constitution¹⁶¹ provides that that no act affecting a right may be excluded from judicial review. The Supreme Federal Court of Brazil (STF) also held by majority, in a 2009 judgment (*Extradução 1085/República Italiana*, 16 December 2009),¹⁶² that the merits of decisions from CONARE and the Minister of Justice in refugee status determination procedures are subject to judicial review. Nevertheless, this judgment has been ignored by other Brazilian courts, which have consistently held that the merits of these administrative decisions cannot be re-examined by judicial bodies.¹⁶³

Once a person is recognized as a refugee, they are issued a National Migratory Registry Card (*Carteira Nacional de Registro Migratório*).

In addition to refugee status, visas and residence permits may be granted for humanitarian protection (arts. 14(I)(c), 30(I)(c), Migration Act) in case the migrant comes from a country in a situation of grave or imminent institutional instability, armed conflict, calamity of great proportions, environmental disasters, or grave violation of human rights or international humanitarian law, in accordance with regulations from the Ministries of Justice, Foreign Affairs, and Labour (art. 14(3), Migration Act; art. 145(1) Decree No 9.199/2017). However, to date, no legal instrument has been enacted to regulate the concession of humanitarian visas and residence permits in Brazil. In light of this gap, the granting of such visas and permits has been done in a discretionary manner by the Ministry of Justice. As of March 2025, persons (including

¹⁵⁸ <https://www.in.gov.br/web/dou/-/resolucao-normativa-n-29-de-14-de-junho-de-2019-224224025>

¹⁵⁹ <https://www.gov.br/mj/pt-br/assuntos/seus-direitos/refugio/legislacao/resolucoes>

¹⁶⁰ https://www.planalto.gov.br/ccivil_03/leis/L1060compilada.htm

¹⁶¹ https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

¹⁶² <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=610034>

¹⁶³ See e.g. STJ, REsp 1174235-PR, 4 November 2010: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=200902487335&dt_publicacao=28/02/2012. For further analysis, see Mariana Ferolla Vallandro do Valle, 'Failing Asylum-Seekers: Limited Judicial Review of Refugee Status Determination Decisions in Brazil' (2025) RSQ.

stateless persons) coming to Brazil from the following countries benefit from humanitarian visas: Afghanistan,¹⁶⁴ Haiti,¹⁶⁵ Syria,¹⁶⁶ and Ukraine.¹⁶⁷

The Migration Act also provides for the specific protection of persons recognized as stateless. Article 26(4) reiterates that stateless persons shall be ensured the same rights and guarantees provided in the 1954 Convention on the Status of Stateless Persons, to which Brazil is a party, as well as other rights provided under Brazilian law. Moreover, the particular predicament of stateless persons shall be taken into consideration by federal government authorities when the exercise of any rights and duties requires the presentation of documents issued by the person's country of origin (art. 105, Decree No. 9.199/2017). No similar provision is made in relation to regional or local authorities.

Persons seeking to be recognized as stateless shall file an application in this sense before the Ministry of Justice or the Federal Police (art. 96(2), Decree No 9.199/97). The National Secretary of Justice, a position within the Ministry of Justice, shall decide on the application (art. 12, Ordinance No 5 of 27 February 2018).¹⁶⁸ Negative decisions from the Ministry of Justice may be appealed to the Minister of Justice (art. 101, Decree No 9.199/2017; art. 13, Ordinance No 5 of 27 February 2018).

Once a person is recognized as stateless, they shall be offered to naturalize as Brazilian (art. 26(6), Migration Act). Naturalization may be required as long as the stateless person (art. 16 Ordinance No 5 of 27 February 2018):

- (a) Is legally capable under Brazilian law (in summary, being over 18 years old and not possessing any psychological condition that would render them unable to be held accountable for their actions);
- (b) Has resided in Brazil for at least two years (the starting date being when the person began residing in Brazil for an indefinite term – art. 221, Decree No 9.199/2017);
- (c) Has not been criminally convicted or can prove having been rehabilitated in accordance with Brazilian law; and
- (d) Is able to communicate in Portuguese, as proven by the proficiency certificate issued by the Ministry of Education (Celpe-Bras).

If the stateless person in question does not wish to naturalize, they shall be granted a residence permit for an indefinite period (art. 26(6), Migration Act).

¹⁶⁴ <https://www.in.gov.br/en/web/dou/-/portaria-interministerial-mj-sp/mre-n-42-de-22-de-setembro-de-2023-512139478>

¹⁶⁵ https://portaldeimigracao.mj.gov.br/images/portarias/2023/PORTARIA_INTERMINISTERIAL_MJSP.MRE_N%C2%BA_37_DE_30_DE_MAR%C3%87O_DE_2023.pdf

¹⁶⁶ <https://www.in.gov.br/en/web/dou/-/portaria-interministerial-n-9-de-8-de-outubro-de-2019-220791848>

¹⁶⁷ https://portaldeimigracao.mj.gov.br/images/portarias/2023/PORTARIA_INTERMINISTERIAL_MJSP.MRE_N%C2%BA_36_DE_13_DE_MAR%C3%87O_DE_2023.pdf

¹⁶⁸ https://www.in.gov.br/web/guest/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/4716363/do1-2018-02-28-portaria-interministerial-n-5-de-27-de-fevereiro-de-2018-4716359

Finally, international protection may take place through the granting of political asylum to a person, which refers to a discretionary form of asylum independent from and unrelated to the requirements of refugee status. Political asylum may be territorial (when the individual is admitted into Brazilian territory as an asylee) or diplomatic (when the asylee remains in Brazilian diplomatic premises abroad). The granting of political asylum is one of the guiding principles of Brazil's foreign relations (art. 4(X), Constitution of 1988). Aside from this provision, political asylum is not regulated under Brazilian law. It is rather a discretionary practice that may only be exercised by the President if they deem that the person in question is being persecuted for political reasons abroad.¹⁶⁹ It is entirely up to the President to determine what amounts to 'political reasons'. This form of asylum has been regulated in some treaties among Latin American states, notably the 1954 Convention on Territorial Asylum and the 1954 Convention on Diplomatic Asylum, both to which Brazil is a party. As the Inter-American Court of Human Rights (IACtHR) has clarified in Advisory Opinion OC-25/18 (para. 162),¹⁷⁰ the granting of diplomatic asylum is not part of customary international law.

Though not entailing a specific protection status under Brazilian law, art. 30(II)(g) of the Migration Act provides that residence may be granted to persons who have been victims of trafficking in persons, forced labour, or a violation of rights aggravated by their migratory condition. While there is no requirement that persons in these situations cooperate with domestic authorities as a condition for obtaining residence,¹⁷¹ the very possibility of residence in these cases rests on the discretion of the Federal Police, as indicated by the use of the term 'may' in the Migration Act and art. 158 of Decree No. 9.199/2017, as well as art. 2 of Interministerial Ordinance No. 46/2024.¹⁷² In other words, domestic law does not impose a direct obligation upon the Brazilian state to grant residence to persons in these scenarios – although they may have a successful claim to refugee status and other protections. Nevertheless, if residence under this category is granted, the person must renounce refugee status (art. 11, Interministerial Ordinance No. 46/2024). Given the lack of detailed regulations on the rights of persons who have been victims of trafficking and persons, forced labour, and other violations of rights, particularly in relation to *non-refoulement* and the obtention of travel documents, refugee status is more beneficial to applicants.

If granted, residence in these cases is valid for an indeterminate period of time (art. 158(1), Decree No. 9.199/2017). Victims of these situations are also exempt of fees for migratory regularization (art. 312(5), Decree No. 9.199/18; art. 10(II), Interministerial Ordinance No. 46/2024), and they are entitled to the free exercise of labour activities in Brazil (art. 10(I), Interministerial Ordinance No. 46/2024). If residence is refused, the applicant may appeal to the higher administrative authority (art. 9, Interministerial Ordinance No. 46/2024).

¹⁶⁹ See STF, Petição Avulsa na Extradução 1.085 República Italiana, 8 June 2011: <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=630001>

¹⁷⁰ https://www.corteidh.or.cr/docs/opiniones/seriea_25_ing.pdf

¹⁷¹ However, the migrant must declare that they have no criminal records in Brazil and abroad (art. 5(IV), Interministerial Ordinance No. 46/2024).

¹⁷² <https://www.in.gov.br/en/web/dou/-/portaria-interministerial-mjisp/mte-n-46-de-8-de-abril-de-2024-553021943>

The number of residence permits granted to victims of trafficking in persons in Brazil is still quite marginal. 33 of such permits were granted in 2023 and 91 in 2024, out of which 77 to men and 14 to women.¹⁷³

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Article 14(I)(i) of the Migration Act lists family reunification as one of the categories of visas a person may obtain to enter Brazil.¹⁷⁴ Furthermore, family reunification is laid down as a right of migrants (art. 4(III), Migration Act), stateless persons (art. 26(11), Migration Act), and political asylees (art. 117, Decree No 9.199/2017).

Article 37 of the Migration Act specifies which family members may benefit from a family reunification visa or residence permit:

- (a) spouses or civil partners, without discrimination (in Brazil, civil partnership is in most ways equated to marriage,¹⁷⁵ both for heterosexual and homosexual couples¹⁷⁶);
- (b) children of an immigrant parent who holds a residence permit of any kind. Art. 2(III) of Interministerial Ordinance No. 2/2018¹⁷⁷ further extends the right to reunification to children of the spouse of a Brazilian national or of an immigrant holding a residence permit. If the spouse's child is aged from 18 to 24, reunification depends on proof that the child is currently a student (art. 2(III), Interministerial Ordinance No. 2/2018). If the spouse's child is economically dependent on the sponsor, reunification may be granted regardless of their age (Interministerial Ordinance No. 2/2018);
- (c) children of an immigrant parent who either: has a Brazilian child; or has another immigrant child who, on their own, holds a residence permit;
- (d) ascendants up until second degree of a Brazilian national or of an immigrant who holds a residence permit (namely, parents and grandparents);
- (e) descendants up until second degree of a Brazilian national or of an immigrant who holds a residence permit (namely, children and grandchildren);

¹⁷³ <https://g1.globo.com/politica/noticia/2025/07/04/autorizacoes-de-residencia-a-vitimas-de-trafico-humano-quase-triplicaram-em-2024-diz-governo.ghtml>

¹⁷⁴ https://www.planalto.gov.br/ccivil_03/ato2015-2018/2017/lei/l13445.htm

¹⁷⁵ STF, *Recurso Extraordinário* 878.694 Minas Gerais, 10 May 2017, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=14300644>; STF, *Recurso Extraordinário* 646.721 Rio Grande do Sul, 10 May 2017, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=13579050>.

¹⁷⁶ STF, *Ação Direta de Inconstitucionalidade* 4.277 Distrito Federal, 5 May 2011, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=628635>.

¹⁷⁷

<https://portaldeimigracao.mj.gov.br/images/portarias/PORTARIA%20INTERMINISTERIAL%20N%C2%BA%2012%2c%20DE%2014%20DE%20JUNHO%20DE%202018.pdf>

- (f) siblings of a Brazilian national or of an immigrant who holds a residence permit. If the sibling is aged 18 or older, it is necessary to prove they are economically dependent on the sponsor (art. 153(3), Decree No 9.199/2017). If the sibling is aged from 18 to 24, reunification may be granted upon proof that the sibling is a currently a student (art. 2, Interministerial Ordinance No. 12/2018);
- (g) immigrants who are legal guardians or tutors of Brazilian nationals. Tutors refer to persons who are appointed by a court legally responsible for ensuring the development and education of a child, as well as administering their property (art. 1728, Civil Code).¹⁷⁸

In case an applicant seeks family reunification with immigrant who is residing in Brazil already on the basis of a family reunification permit, then the new applicant may not benefit from family reunification (arts. 45(5), 153(2), Decree No. 9.199/2017). Moreover, family reunification to spouses shall not be granted if the marriage was carried out through a power of attorney (art. 2(4), Interministerial Ordinance No. 12/2018). In case of divorce, Brazilian law does not provide for a specific avenue for the spouse with a family reunification permit to regularize their migratory status; the permit cannot be renewed, and they must seek regularization under the general requirements of the Migration Act.

It is important to highlight that family reunification procedures in Brazil do not require the sponsor to prove sufficient means to support their family or not to have recourse to public funds. However, in the Ministry of Justice's webpage with guidance for family reunification for Haitians, there is information in the sense that, if the sponsor is not currently working, they must have presented a declaration committing to provide for the family members benefiting from reunification. This requirement has no basis in Brazilian laws and it is not clear whether and how it is applied.

Brazilian courts, as a general rule, do not authorize family reunification in cases where visa applications were not properly made and processed, given the understanding that the granting of such visas is a sovereign and discretionary prerogative of the Executive Branch.¹⁷⁹ However, in late 2024 the STF started issuing judgments in the sense that, in cases where there is delay in the processing of family reunification visa applications of children, reunification should be authorized in Brazil regardless of the prior obtention of a visa, highlighting the best interests of the child principle.¹⁸⁰

¹⁷⁸ https://www.planalto.gov.br/ccivil_03/leis/2002/110406compilada.htm

¹⁷⁹ See e.g. TRF-4, AI 5040034-45.2021.4.04.0000, 7 December 2021; TRF-3, AI 5010425-43.2022.4.03.6100, 3 May 2024. For an exception to this understanding, see TRF-5, AC 8111071020224050000, 25 September 2023.

¹⁸⁰ STF, *Ag Reg no Recurso Extraordinário com Agravo 1.489.789 Santa Catarina*, 30 September 2024, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=780878354>; STF, *Ag Reg no Recurso Extraordinário com Agravo 1.499.199 Santa Catarina*, 30 September 2024, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=781216153>; STF, *Ag Reg no Recurso Extraordinário cmo Agravo 1.509.186 Santa Catarina*, 2 December 2024, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=782780151>; STF, *Ag Reg no Recurso Extraordinário com Agravo 1.511.194 Rio Grande do Sul*, 16 December 2024, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=785239320>; STF, *AG Reg no Recurso Extraordinário 1.523.745 Paraná*, 12 March 2025, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=785020624>; STF, *Ag Reg no Recurso*

5. What are the conditions for naturalization in the reviewed state?

Naturalization procedures are essentially divided into four categories: (1) ordinary; (2) extraordinary; (3) special; and (4) provisory.

Ordinary naturalization is granted to a migrant who (art. 65, Migration Act):¹⁸¹

- (a) Is legally capable under Brazilian law (in summary, being over 18 years old and not possessing any psychological condition that would render them unable to be held accountable for their actions);
- (b) Has resided in Brazil for at least four years (the starting date being when the person began residing in Brazil for an indefinite term – art. 221, Decree No 9.199/2017);
- (c) Has not been criminally convicted or can prove having been rehabilitated in accordance with Brazilian law; and
- (d) Is able to communicate in Portuguese.¹⁸²

No proof of integration into Brazilian society or knowledge of Brazilian culture or history is required from the migrant.

The term of four years of residence may be reduced to one year if the migrant in question: has a Brazilian child; has a Brazilian spouse or civil partner, provided they are not separated, legally or factually, at the time of the naturalization; has performed or may perform a relevant service to Brazil; is recommended due to their professional, scientific, or artistic capabilities (art. 66, Migration Act); or is from a Portuguese-speaking country (art. 12(II)(a), Constitution of 1988).¹⁸³

Extraordinary naturalization shall be granted to any person who has resided in Brazil for over 15 years uninterruptedly and without criminal convictions, provided they request naturalization (art. 67, Migration Act). The starting date for this period is the date when the person began residing in Brazil for an indefinite term (art. 221, Decree No 9.199/2017).

Special naturalization may be granted to persons who: are spouses or civil partners of members of the Brazilian Foreign Service or other persons in service of the Brazilian state abroad; or have been employed in Brazilian diplomatic or consular missions for more than 10 years uninterruptedly (art. 68, Migration Act). In these cases, the person must also be legally capable under Brazilian law, be able to communicate in Portuguese,¹⁸⁴ and not have been criminally convicted, or have been rehabilitated according to Brazilian law (art. 69, Migration Act).

Provisory naturalization may be granted to minors who have established residence in Brazil before completing 10 years of age (art. 70, Migration Act). These persons may, within two years after completing 18 years of age, require the conversion of their Brazilian nationality from provisory into definitive (art. 70, single paragraph, Migration Act).

Extraordinário com Agravo 1.546.773 Paraná, 16 June 2025,
<https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=788258925>.

¹⁸¹ https://www.planalto.gov.br/ccivil_03/ato2015-2018/2017/Lei/L13445.htm#art65

¹⁸² Generally, a proficiency certificate issued by the Ministry of Education (Celpe-Bras) is required.

¹⁸³ https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

¹⁸⁴ Generally, a proficiency certificate issued by the Ministry of Education (Celpe-Bras) is required.

No distinctions between naturalized and natural-born Brazilians (art. 12(2), Constitution of 1988), except for two cases provided in the Brazilian Constitution: certain public offices (like President and Vice-President of the Republic and Supreme Court Justices) can only be held by natural-born Brazilians (art. 12(3), Constitution of 1988); and, whereas natural-born Brazilians cannot be extradited under any circumstances, naturalized Brazilians may be extradited for common crimes (as opposed to political crimes) committed before naturalization or in case of proven involvement with illegal drug trafficking (art. 5(LI), Constitution of 1988).

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- s. temporary and permanent resident migrants;*
- t. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- u. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- v. refugees;*
- w. asylum seekers;*
- x. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Article 5 of the Brazilian Constitution of 1988 provides that all persons are equal before the law, without distinctions of any kind, and then details the rights ensured to Brazilian nationals and non-nationals residing in Brazil. Article 5(XLI) of the Brazilian Constitution of 1988 further provides that the law shall punish any discrimination that violates fundamental rights and freedoms. Brazil does not have a general law regulating discrimination. The main legal

instrument in this field is Law No. 7.716/1989,¹⁸⁵ which sets out crimes linked to discrimination on the basis of race, colour, ethnicity, religion, or national origin.

More specific non-discrimination guarantees regarding migrants are found in the Migration Act, which ensures that migrants shall not be discriminated on the grounds of nationality or migratory condition in relation to: access to public health services, social assistance, and social security (art. 4(VIII)); access to public education (art. 4(X)); and labour protection (art. 4(XI)).

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Non-nationals are not allowed to vote in any kind of elections to public office in Brazil, regardless of whether they are local, regional, or national (art. 14(2), Constitution of 1988). Nevertheless, art. 12(1) of the Constitution of 1988 (which is based on the Treaty of Equality of Rights and Duties between Brazil and Portugal)¹⁸⁶ establishes that Portuguese nationals permanently residing in Brazil shall have the same rights as those inherent to Brazilian nationals, as long as there is reciprocity in favour of Brazilians in Portugal. As of July 2025, this reciprocity exists regarding the right to vote. Portuguese nationals permanently residing in Brazil may thus make an application to the Brazilian Ministry of Justice requiring the recognition of their rights and duties in the same manner as Brazilian nationals, including the right to vote.

More broadly, political participation is allowed in the sense that migrants can participate in manifestations and associations, including labour unions (art. 4(VI) and (VII), Migration Act). Accordingly, nothing prohibits migrants from participating in public consultations and audiences, which are sometimes held by government actors when seeking to gauge the population's views about a potential law or policy. The city of São Paulo has sought to enhance migrants' voices in political issues by creating a Municipal Council of Immigrants,¹⁸⁷ where local government representatives, migrants, and civil society can debate public policies affecting migrants. However, no initiative in this sense has been undertaken by other Brazilian cities, and inclusion of migrants in political discussions in the country remains marginal.

¹⁸⁵ https://www.planalto.gov.br/ccivil_03/leis/17716.htm

¹⁸⁶ https://www.planalto.gov.br/ccivil_03/decreto/2001/d3927.htm

¹⁸⁷ https://prefeitura.sp.gov.br/web/imigrantes_e_trabalho_decente/conselho_municipal_de_imigrantes

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Aside from the right to vote and the right to be voted for office, Brazilian law places no restriction upon non-nationals' exercise of civil and political rights. In fact, art. 4 of the Migration Act provides that non-nationals shall be entitled, in equal conditions in relation to nationals, to civil rights and freedoms (art. 4(I)), freedom of movement in national territory (art. 4(II)), protective measures for victims and witnesses of crimes (art. 4(IV)), send remittances abroad (art. 4(V)), freedom of association (art. 4(VI) and (VII)), free legal assistance and access to justice (art. 4(IX)),¹⁸⁸ access to information (art. 4(XIII) and (XVI)), and open a bank account (art. 4(XIV)).

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

The property of companies dedicated to journalism or the broadcasting of sounds and images can only be held by Brazilians by birth, Brazilians naturalized for over 10 years, and corporate entities constituted under Brazilian law and that have legal residence in Brazil (art. 222, Constitution of 1988).

Furthermore, rural property can only be owned by non-nationals residing in Brazil or foreign companies with legal residence therein. This ownership is regulated by Law No 5.709/71¹⁸⁹ and Decree No. 74.965/74,¹⁹⁰ which establish limits as to the property size non-nationals are allowed to own and the property sizes that require prior governmental approval. These sizes vary across Brazilian states, and the largest rural properties that can be owned by non-nationals without prior governmental approval measure 15 hectares. The total of rural land belonging to non-nationals cannot be greater than 25% of the total area of a municipality (art. 12, Law No 5709/71). Moreover, persons and companies of the same foreign nationality cannot own more than 10% of the municipality's total area (art. 6(1), Regulatory Instruction (*Instrução Normativa*) No. 94/2018).¹⁹¹ Acquisition of rural property close to the national borders or in areas deemed strategic requires prior approval of the National Defence Council (art. 2(VI), Regulatory Instruction No. 94/2018).

There are no restrictions on the ownership of urban property by non-nationals in Brazil.

¹⁸⁸ Free legal assistance and representation is regulated by Law No. 1.060/1950, https://www.planalto.gov.br/ccivil_03/leis/11060.htm.

¹⁸⁹ https://www.planalto.gov.br/ccivil_03/leis/L5709.htm

¹⁹⁰ https://www.planalto.gov.br/ccivil_03/decreto/1970-1979/D74965.htm

¹⁹¹ https://www.gov.br/incra/pt-br/centrais-de-conteudos/legislacao/in_94_2018.pdf

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

As a general rule, non-nationals seeking to work in Brazil, either independently or under an employer, need a temporary work visa or work residence permit, which is obtained through an application to the Labour Ministry (art. 38(9), Decree No. 9.199/17).

Applicants seeking to work under an employer must prove to the Ministry that they have a job offer, which is done through the presentation of a work contract or a contract for the provision of services (art. 38(1), Decree No. 9.199/17). While art. 38(5) of Decree No. 9.199/17 provides that this requirement can be waived if the applicant has a higher education and equivalent degree and performs a professional activity that is considered strategic to Brazil, as established through a normative act of the relevant Ministries, no such act has been enacted as of July 2025.

Applicants seeking to work independently must prove that they have a job offer only in specific cases listed under art. 38(2) of Decree No. 9.199/17, namely when the applicant will engage in: the provision of services to the Brazilian government, due to an international cooperation agreement, or in the fields of technical assistance or transfer of technology; the representation of a financial institution or similar headquartered abroad; the representation of a non-profit corporate entity; professional training under a branch of a company in Brazil; work as a seafarer; professional internship or exchange; the exercise of a post that requires residence for an indefinite period; activities of a correspondent journalist; the conduction of auditing or consulting work that requires stay in Brazil for more than 90 days.

There are, however, several migrant statuses that allow a person to engage in employed or independent work without a temporary work visa or work residence permit, including:

- Asylum seekers, as soon as the asylum application is submitted and the corresponding protocol number is issued (art. 21(1), Refugee Act);
- Refugees (art. 6, Refugee Act);
- Victims of trafficking in persons, forced labour, or violations of rights that have been granted a residence permit on this basis (art. 10(I), Interministerial Ordinance No. 46/2024);
- Persons benefitting from a humanitarian visa or permit (arts. 36(3) and 145(2), Decree No. 9.199/17);
- Stateless persons (art. 156(5), Decree No. 9.199/17);
- Border workers (only at the border municipality – art. 89, Decree No. 9.199/17);
- Mercosur nationals (art. 9(1), Mercosur Residency Agreement);¹⁹² and

¹⁹² https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decreto/d6975.htm

- Persons benefitting from family reunification (arts. 45(3) and 153(10), Decree No. 9.199/17).

All persons having a right to work under an employer in Brazil are able to request the issuance of a Labour Card (*Carteira de trabalho e Previdência Social*) to the Labour Ministry. The annotation of the Labour Card is needed to formalize an employment relationship. The absence of an annotation does not prevent an employee from proving the existence of a relationship through other means, however, and does not take away from applicable legal labour protections; rather, it subjects the employer to penalties for irregular hiring.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Brazilian law provides that private companies performing industrial or commercial activities, as well as those providing public services in a concession agreement with government authorities, must maintain at least 2/3 of Brazilian workers in its staff (arts. 352 and 354 of the Consolidation of Labour Laws (*Consolidação das Leis Trabalhistas*, CLT)).¹⁹³ This quota can be decreased by an act of the Executive branch of government in light of the particular circumstances of each economic sector (art. 354, CLT). This limitation does not apply, however, to rural companies that are dedicated to the melioration or transformation of regional products, or to industrial activities of extraction, except for mining (art. 352(2), CLT). Moreover, non-nationals residing in Brazil for more than 10 years who have either a Brazilian spouse or child, and Portuguese nationals are exempted from the quota (art. 353, CLT).

Additionally, any company seeking to hire a non-national must justify this choice to the Ministry of Labour by showing there exists a need to hire the foreign worker, while respecting the interests of Brazilian workers (art. 6(1)(I), Normative Resolution CNIg No. 99/2012).¹⁹⁴

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Art. 37(I) of the Constitution of 1988 provides that public positions shall be open to non-nationals according to requirements established under law. However, as of July 2025, no such law has been enacted. In this context, the Superior Labour Court (*Tribunal Superior do Trabalho*, TST) decided in 2017 that a Haitian refugee who had been selected in a public tender for garbage collectors could not take up the post.¹⁹⁵ The TST's understanding was that the absence of legislation regulating non-nationals' work in public positions effectively prevented them from being hired to these positions, regardless of their specific situation or migratory status. Even in the event this legislation is adopted, only Brazilians by birth are allowed to work

¹⁹³ https://www.planalto.gov.br/ccivil_03/decreto-lei/del5452.htm

¹⁹⁴ <https://www.legisweb.com.br/legislacao/?id=248530>

¹⁹⁵ TST, *Recurso de Revista* 1406-71.2015.5.12.0034, 21 June 2017, <https://www.tst.jus.br/processos-do-tst>.

as Supreme Court judges, diplomats, and officials of the armed forces (art. 12(3)(IV), (V), and (VI), Constitution of 1988).

The exception to this rule is the hiring, by federal universities, of foreign professors, technicians, and scientists, which is authorized by art. 207(1) of the Constitution of 1988 and regulated by Law No. 9.515/97. The STF has found that, unless the public tender notice to these positions expressly prohibits the participation of foreigners, such participation is allowed.¹⁹⁶

Editorial activities in journalistic and broadcasting companies are also restricted to Brazilians by birth or those who have been naturalized Brazilians for more than 10 years (art. 222(2), Constitution of 1988).

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Non-nationals are entitled to the same labour protections as Brazilian nationals, regardless of migratory status (art. 4, XI, Migration Act). This legal provision is in conformity with the IACtHR's conclusions in Advisory Opinion OC 18-03 on the Juridical Condition and Rights of Undocumented Migrants (paras. 136, 148-153). Moreover, the applicability of labour protections to undocumented migrants in Brazil had been recognized by the TST even before the enactment of the Migration Act.¹⁹⁷

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Non-nationals are entitled to the same access and treatment in relation to public health services as Brazilian nationals, regardless of migratory status (art. 4(VIII), Migration Act). Brazil's public health system covers all levels of health care and, from a legal standpoint, is open to all persons without any additional conditions, such as affiliation with health insurance providers or national systems, proof of residence, or identity documents.¹⁹⁸ The responsibility for managing the public health system is shared between the national, regional, and local governments.

Despite the absence of legal impediments, undocumented migrants' access to public health care is often hindered due to a matter of administrative organization: providers of non-emergency health care usually require the patient to present a National Health Card (*Cartão Nacional de Saúde*), which contains basic identification information about the patient and enables follow-

¹⁹⁶ STF, *Recurso Extraordinário 1.177.699 Santa Catarina*, 27 March 2023, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=767421430>.

¹⁹⁷ TST, *Recurso de Revista 49800-44.2003.5.04.0005*, 3 November 2010, <https://jurisprudencia.tst.jus.br/#8e88a25e9f40b1e5e2199ac0e3dd8c43>; TST, *Recurso de Revista 711200-83.2005.5.09.0010*, 13 October 2010, <https://jurisprudencia.tst.jus.br/#3ae88b394c98cca66b9b906ed5ebcb2e>.

¹⁹⁸ Generally regulated by Law No. 8.080/90, https://www.planalto.gov.br/ccivil_03/leis/18080.htm.

up on treatment by health care providers. The obtention of a National Health Card can be done either online or in person, at any public primary health care centre, through the presentation of identity documents.

In acknowledgement of the difficulties facing migrants in the obtention of a National Health Card, particularly due to the lack of knowledge of health providers about valid identification documents for non-nationals, the Ministry of Health issued Technical Note No. 8/2024-CAEQ/CGESCO/DESCO/SAPS/MS.¹⁹⁹ This is a non-binding document that contains recommendations on how public health providers should treat migrant patients. This Technical Note (para. 8.3) recommended that, for the issuance of National Health Cards, health providers should accept as identity documents passports, the National Migratory Registry Card (*Carteira de Registro Nacional Migratório*) – which is the main identity document of migrants regularly residing in Brazil –, the protocol proving that the person has applied for asylum, the Labour Card, and the social security card (*Cadastro de Pessoa Física*). Accordingly, if a migrant is undocumented, they should still be able to obtain the National Health Card by presenting their passport; however, if they do not have one, it is unlikely that health providers will accept other identity documents from the migrant's country of origin. In any event, the Technical Note (para. 8.1) recalls that presentation of an identity document or proof of residence is not a condition to access the public health system, thus underscoring that undocumented migrants cannot be denied public health treatment in any way.

The openness of Brazil's public health system to migrants regardless of migratory status has been affirmed by domestic courts, which have held that non-nationals not residing in Brazil were entitled to free health treatment as soon as they found themselves in Brazilian territory, including for organ transplants.²⁰⁰

While the legal framework is quite favourable to migrants' enjoyment of their right to health, challenges in this area remain, especially regarding language barriers, cultural sensitivity, access to information, and xenophobia.²⁰¹

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Non-nationals, regardless of age and migratory status, are entitled to the same access to public education as Brazilians (art. 4(VIII), Migration Act).

¹⁹⁹ <https://www.gov.br/saude/pt-br/centrais-de-conteudo/publicacoes/notas-tecnicas/2024/nota-tecnica-no-8-2024.pdf/view>

²⁰⁰ TRF-4, *Agravo de Instrumento* 2005.04.01.032610-6/PR, 5 October 2006, https://consulta.trf4.jus.br/trf4/processos/visualizar_documento_gedpro.php?local=trf4&documento=1428508&hash=0489e46014fa2f4750c3ec29f3409f8c; TRF-1, *Reexame Necessário* 0003614-18.2009.4.01.3400, 6 July 2015, <https://arquivo.trf1.jus.br/PesquisaMenuArquivo.asp?p1=00036141820094013400>.

²⁰¹ See notably: <https://www.scielo.br/j/physis/a/wwSC9nmy7NJQvyGgR65Bf8r/?lang=pt>

School enrolment in Brazil is compulsory for all persons between 4 and 17 years of age, and the state provides free public primary and secondary education (art. 4(I), Law No. 9.394/96).²⁰² In light of the difficulties some migrant children might face in accessing education due to lack of identity documents, the Ministry of Education adopted a binding Resolution (No. 1/2020)²⁰³ providing that absence of such documentation shall not constitute a bar to the school enrolment of migrant, refugee, stateless, and asylum-seeking children.²⁰⁴ These determinations were also transposed into a local law in the city of Brasília in 2024.²⁰⁵

Regarding tertiary education, public universities in Brazil are prohibited from charging tuition fees to any students, regardless of their nationality, migratory status, and financial condition (art. 206(IV), Constitution of 1988). These universities are required to admit any persons who have been approved in the corresponding admittance exams, and there exists no legal ground in Brazilian law that allows the limitation of these exams to nationals. Some universities have also adopted policies to facilitate the admittance of refugees, including by reserving a given number of spots in bachelor's degree programmes to refugee students.²⁰⁶

Most policies seeking to improve the educational inclusion of migrants have taken place at the local level, and challenges unfortunately remain especially in relation to language barriers, lack of cultural sensitivity, and, for migrants pursuing higher education, the revalidation of degrees and qualifications. In this latter situation, refugees benefit from a more favourable treatment, as art. 44 of the Refugee Act establishes a duty to facilitate the recognition of certifications and diplomas and admittance of refugees in academic institutions at all levels, 'taking into consideration the unfavourable situation of refugees' (*levando-se em consideração a situação desfavorável vivenciada pelos refugiados*). As such, documental proof of a refugee's qualifications can be replaced by an exam to test their knowledge and skills regarding the study programme sought (art. 8(3), Ministry of Education Resolution 1/2022).²⁰⁷ Higher education institutions can extend this facilitation to other non-nationals who do not have the required revalidated documentation and undocumented migrants (art. 8(3), Ministry of Education Resolution 1/2022), although there is no legal obligation to do so.

²⁰² https://www.planalto.gov.br/ccivil_03/LEIS/L9394.htm

²⁰³ https://portal.mec.gov.br/index.php?option=com_docman&view=download&alias=165271-rceb001-20&category_slug=novembro-2020-pdf&Itemid=30192.

²⁰⁴ https://portal.mec.gov.br/index.php?option=com_docman&view=download&alias=165271-rceb001-20&category_slug=novembro-2020-pdf&Itemid=30192.

²⁰⁵ Law No. 7.395/24, <https://bancoeleis.unale.org.br/Arquivo/Documents/27/legislacao/image/DF/L/L73952024.pdf>

²⁰⁶ <https://www.gov.br/mj/pt-br/assuntos/noticias/universidades-colaboram-com-a-insercao-de-refugiados-no-ensino-superior>

²⁰⁷ <https://portal.mec.gov.br/docman/julho-2022-pdf/239261-rces001-22/file>

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Article 4(VIII) of the Migration Act provides that non-nationals, regardless of migratory status, are entitled to the same access to social security as Brazilians. However, this right has not been observed in relation to undocumented migrants.

Naturally, lack of regular migratory status prevents a person from participating in contributory social security schemes, but they should still be able to access non-contributory ones. In Brazil, the non-contributory social security scheme consists of the monthly payment of minimum wage to persons with disabilities and elderly persons over 65 years of age, provided that they prove that they are unable to provide for themselves and that their family is unable to provide for them (art. 203(V), Constitution of 1988; art. 2(I)(e), Law No. 8.742/93).²⁰⁸ This provision makes no distinction between nationals and non-nationals. Nevertheless, the STF, in a judgment rendered less than one month *before* the enactment of the Migration Act, held that non-nationals are entitled to this benefit *if they are regularly residing in Brazil*.²⁰⁹ With the Migration Act's entry into force in November 2017, this judgment should have been deemed no longer applicable. However, lower courts so far have continued to apply the STF's judgment and limit access to non-contributory benefits to migrants regularly residing in Brazil.²¹⁰

Non-nationals who have participated in the contributory scheme (and are therefore in a regular migratory situation) and fulfil the requirements under Law No. 8.213/91²¹¹ may benefit from it under the same conditions as Brazilians.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Non-nationals, regardless of migratory status, are entitled to the same access to social assistance as Brazilians (art. 4(VIII), Migration Act), which includes welfare programmes.

Brazil's *Bolsa Família* programme is the largest of such initiatives and provides direct and indirect cash transfers to low-income households.²¹² Additional transfers are available for households with children aged up to three years or pregnant or breastfeeding women, or which

²⁰⁸ https://www.planalto.gov.br/ccivil_03/leis/18742.htm

²⁰⁹ STF, *Recurso Extraordinário* 587.970 *São Paulo*, 20 April 2017, <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=13649377>.

²¹⁰ E.g. TRF-1, *Apelação Cível* 0006972-83.2012.4.01.3400, 05 December 2019, <https://arquivo.trf1.jus.br/PesquisaMenuArquivo.asp?p1=00069728320124013400>; TRF-3, *Apelação Cível* 5002729-93.2022.4.03.9999, 8 November 2022, <https://web.trf3.jus.br/jurisprudencia/Home/ListaColecao/9?np=1>; TRF-4, *Apelação Cível* 5009523-40.2021.4.04.9999/RS, 13 August 2022, https://eproc.trf4.jus.br/eproc2trf4/controlador.php?acao=acessar_documento_publico&doc=41660426921218221928393666196&evento=40400188&key=c10c3a6ae97461a96eccee91b86da74faddffaa870a7eb1141c883d8bd09f76&hash=8c5a1d2db7389a5f91ebf015222d487a.

²¹¹ https://www.planalto.gov.br/ccivil_03/leis/18213cons.htm

²¹² <https://www.gov.br/mds/pt-br/acoes-e-programas/bolsa-familia>

are classified as being in extreme poverty.²¹³ To access it, migrants must register before the Single Registry for Social Programmes (*Cadastro Único*). Government websites reiterate that registration before the *Cadastro Único* can be done regardless of migratory status and even by undocumented migrants,²¹⁴ requiring only the presentation of a Brazilian social security number (*Cadastro de Pessoa Física*, CPF). The CPF can be requested by any non-national, residing or not in Brazil, regardless of migratory status.²¹⁵

Furthermore, temporary welfare programmes in Brazil usually do not distinguish between nationals and non-nationals. This was for instance the case with the *Auxílio Emergencial* programme, established during the COVID-19 pandemic. This programme provided low-income households whose members were unemployed, worked in the informal market, or worked autonomously and who were registered before the *Cadastro Único* with cash transfers. A subsidized housing programme (*Minha Casa Minha Vida*) is also available for non-nationals who reside regularly in Brazil, as long as they fulfil the conditions set out under Law No 14.620/23.²¹⁶

Are there any final observations you would like to make? Please write below.

Brazil's legal framework generally provides for migrants' enjoyment of civil, economic, social, and cultural rights under the same conditions as nationals and regardless of migratory status. Some distortions exist through the requirement of administrative documents that are not readily available to migrants in an irregular migratory situation. While these practices should be adjusted as to ensure that migrants in these cases are not denied the enjoyment of their rights, it is important to note that Brazil provides a series of avenues for regularization and that most migrants in the country are covered by some kind of legal status.

Political rights for migrants are still quite insipient, given the inexistence of a right to vote and the absence of consistent public policies (with the exception of the city of São Paulo) that promote migrants' voices in political debates.

Most of the challenges facing migrants in Brazil today relate not to the absence of an adequate legal framework, but to its insufficient implementation. In this vein, public authorities and service providers are often not aware of migrants' rights and fail to accept their documentation, even when it is proof of regular status. Racism is also a general and structural problem in Brazil

²¹³ Brazil, Ministério do Desenvolvimento e Assistência Social, Família e Combate à Fome, "Get to know Auxílio-Brasil, the new programme replacing the Bolsa FAMília. Information for refugees, asylum seekers, and migrants" <<http://blog.mds.gov.br/redesuas/wp-content/uploads/2022/06/Informativo-Auxilio-Brasil-Ingles.pdf>> accessed 15 October 2023.

²¹⁴

https://www.mds.gov.br/webarquivos/sala_de_imprensa/boletins/boletim_auxilio_brasil/2022/marco/Boletim_P_AB_Informa_826.html

²¹⁵ On 25 June 2021, the Federal Service adopted Normative Regulation 2034, which limited the issuance of a CPF to non-nationals with a regular migratory status in Brazil (<https://normasinternet2.receita.fazenda.gov.br/#/consulta/externa/118645>). However, this Regulation was revoked by Normative Regulation 2172 of 10 January 2024, which reestablished the previous practice of allowing the issuance of a CPF even to migrants in an irregular migratory situation (<https://normasinternet2.receita.fazenda.gov.br/#/consulta/externa/135611>).

²¹⁶ https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/lei/114620.htm

that affects certain groups of migrants more heavily than others. Finally, the accommodation of migrants' needs, including the elimination of language barriers and the promotion of cultural and religious sensitivity among authorities and service providers, has been addressed only sparsely in public policies, usually by local authorities. There has been growing awareness and mobilization about migrants' rights in the country, especially with initiatives from civil society, academia, UNHCR, IOM, and the Brazilian Public Defender's Office, which have resulted in significant developments, including the 2017 Migration Act. Further engagement from state authorities is still needed, however.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

August 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Canada

Author: Camille Lefebvre

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X (accession)
1967 Protocol to the Convention relating to the Status of Refugees		X (accession)
1954 Convention relating to the Status of Stateless Persons	-	-
1961 Convention on the Reduction of Statelessness		X (accession)
International Covenant on Civil and Political Rights (ICCPR)		X (accession)
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		X (accession)

International Covenant on Economic, Social and Cultural Rights (ICESCR)		X (accession)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	-	-
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	-	-
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	-	-
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	X	X
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X (accession)
Convention on the Rights of the Child (CRC)	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	-	-
Convention on the Rights of Persons with Disabilities (CRPD)	X	X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		X (accession)
ILO Forced Labour Convention (No. 29)		X

2014 Protocol to the ILO Forced Labour Convention (No. 29)		X
ILO Migration for Employment Convention (Revised) (No. 97)	-	-
ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	-	-

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	-	-
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	-	-
Convention governing the Specific Aspects of Refugee Problems in Africa	-	-
African Charter on the Rights and Welfare of the Child	-	-
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	-	-
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	-	-
European Convention on Human Rights (ECHR)	-	-
Protocols to the European Convention on Human Rights (list which ones):	-	-
European Social Charter (ESC)	-	-
European Convention on the Legal Status of Migrant Workers	-	-
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	-	-

American Convention on Human Rights (ACHR)	-	-
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	-	-
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	X (2025)	-
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	-	-
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	-	-
Inter-American Convention against All Forms of Discrimination and Intolerance	-	-
Inter-American Convention Protecting the Human Rights of Older Persons	-	-

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Maybe relevant:

Vienna Convention on Diplomatic Relations	X	X
Vienna Convention on Consular Relations		X (accession)
Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption		X

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

In Canada, the framework law is the *Immigration and Refugee Protection Act* (IRPA)²¹⁷ and its regulations, the *Immigration and Refugee Protection Regulations* (IRPR).²¹⁸ Naturalization is regulated by the *Citizenship Act*.²¹⁹ Every Canadian citizen has the right to enter and remain in Canada, in accordance with section 19 of the IRPA and section 6 of the *Canadian Charter of Rights and Freedoms*.²²⁰ However, non-citizens do not benefit from this unqualified right to enter or remain in the country.²²¹

The Canadian migration framework provides for both visa and permit requirements, depending on the situation. For admission as a visitor, only a visa is required, and only for some categories of individuals, described below. For authorization to work or study as a temporary resident, both a visa and a permit can be required (see arts. 8(1) and 9(1) IRPR).

Visitors are divided into two (2) categories: those who need a visa and those who are exempt from this requirement.

Visitors who are required to obtain a visa need to request a Temporary Residence Visa (TRV) before traveling to Canada. A TRV is most known as a ‘visitor visa’. It is an official document attached to the passport of citizens of visa-required countries, which is required in order to travel and enter Canada as a visitor, as stipulated in article 7(1) of the IRPR. A TRV normally provides visitors to stay in Canada for up to six months (art. 183(2) IRPR).

Visa-exempt visitors, in other words, foreign nationals that are exempt from the requirement to obtain a TRV according to article 190 of the IRPR, must present an Electronic Travel Authorization (ETA) before travelling to Canada by air (arts. 11(1.01) IRPA and 7.1 (1) IRPR). This is only required for travelers arriving in or transiting through Canada by air and an ETA is not required if they enter Canada by land or sea - for example, if they arrive by car, bus, train or ship. The ETA is a document that is linked electronically to the traveler's passport. Visitors can then stay for up to six (6) months from the day they enter Canada, or until the expiry of their passport, whichever comes first. Some persons are also exempt from the requirement to obtain an ETA, like United States nationals (art. 7.1(3)(b) IRPR).

A Visitor Record is a document that a border services officer can issue to extend or limit a visitor's stay in Canada. It is thus possible to extend a stay for more than 6 months, as a visitor, by submitting an online application of extension (art. 183(5) IRPR). Normally, the application needs to be submitted at least 30 days before the authorized stay in Canada expires.

²¹⁷ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. See online: <https://laws.justice.gc.ca/eng/acts/i-2.5/>

²¹⁸ *Immigration and Refugee Protection Regulations*, SOR/2002-227. See online: <https://laws-lois.justice.gc.ca/eng/regulations/sor-2002-227/>

²¹⁹ *Citizenship Act*, R.S.C., 1985, c. C-29. See online: <https://laws-lois.justice.gc.ca/ENG/ACTS/C-29/index.html>

²²⁰ *Canadian Charter of Rights and Freedoms*, Enacted as Schedule B to the Canada Act 1982, 1982, c. 11 (U.K.), which came into force on April 17, 1982. See online: <https://laws-lois.justice.gc.ca/eng/const/page-12.html>

²²¹ *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711. See online: <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/855/index.do>

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

The Canadian migratory framework provides for two main statuses, which are divided into two categories: temporary residence and permanent residence.

a. Temporary Residence

Temporary residence is an immigration category that includes visitors, students and workers. As visitors have been discussed above, the two other categories of temporary residence that will be discussed below are comprised of foreign nationals who obtain work or study permits, which enables them to stay on the territory for a short period of time (usually more than six months).

Work permits

Some foreign nationals are allowed to work in Canada with or without a work permit (art. 186 IRPR). Individuals who do not need a work permit include certain business visitors (art. 187 IRPR), full-time students that work on campus of their university or college at which they are a full-time student, for the period for which they hold a study permit (art. 186(f) IRPR), certain artists (art. 186(g) IRPR), and others.

Work permits can be employer-specific (employer sponsored permits) or open (not linked to any specific employer).

For open working permits, different categories exist, namely:

- Skilled workers or highly trained individuals, researchers or individuals starting a business in Canada may be eligible (art. 205 IRPR);
- Permanent residence applicants may also work for any employer while awaiting a decision on their permanent residence status;²²²
- Post-graduate international students, and their spouses, can also access open work permits after their graduation (art. 87.3(5) IRPR);²²³
- Youth (aged 18 to 35) traveling to come work during holidays in Canada can also request an open work permit by applying to the International Experience Canada (IEC) program (art. 204(d) IRPR).

As for employer-specific work permits, they provide specific conditions that need to be respected to work, namely working for one specific employer, during a certain period of time, at a particular location, etc. Some employers need to go obtain a Labour Market Impact

²²² Work permits for permanent residence applicants. See online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/pr-work-permits.html>

²²³ Post-graduation work permit. See online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/work/after-graduation/about.html>

Assessment from the Department of Employment and Social Development in order to hire a temporary worker. This assessment confirms the need to hire a foreign national, meaning that it proves there are no Canadians or permanent residents available to do the job (art. 203(3) IRPR). The employer will also need to respect the specific conditions associated to the chosen program through which the work permit request will be assessed. The Temporary Foreign Worker Program (TFWP) is one such example.²²⁴

Study permits

Pursuant to article 216(1) of the IRPR, international students may be issued a study permit if an examination establishes that they meet the basic criteria applicable to all applicants for temporary residence, in addition to the criteria specific to students, namely that they have been accepted to undertake a course or program of study at a designated learning institution (art. 216(e) IRPR) and that they have sufficient financial resources to do so (art. 220 IRPR).

There are exceptions to the requirement of obtaining a study permit for certain classes of people, namely when the duration of a course or program of studies is six months or less and would be completed within the period for their authorized stay (art. 188(1)(c) IRPR).

b. Permanent Residence

Under article 6 of the IRPA, all foreign nationals wishing to obtain permanent residence must apply for and obtain a permanent resident visa. There are three ways to be selected as a permanent resident (art. 12 IRPA):

- Family reunification: As a member of the family class, on the basis of their relationship as the spouse, common-law partner, a dependent child, parent or other prescribed family member of a Canadian citizen or permanent resident (art. 12(1) IRPA). These other family members include *inter alia* a person whose parents are deceased, who is under 18 years of age, who is not a spouse or common-law partner and who is a child of the sponsor's mother or father, a child of a child of the sponsor's mother or father, or a child of the sponsor's child; a person under 18 years of age whom the sponsor intends to adopt in Canada respective of certain conditions; and a relative of a sponsor that has no family left (art. 117 IRPR).
- Economic Immigration: As a member of the economic class on the basis of their ability to become economically established in Canada (art. 12(2) IRPA).
- Refugees: As a person who is considered a Convention refugee or a person in similar circumstances (art. 12(3) IRPA).

The foreign national must apply under one of these three immigration programs to obtain a permanent residence visa (art. 70(1) and (2) IRPR).

²²⁴ Temporary Foreign Worker. See online: <https://www.canada.ca/en/employment-social-development/programs/temporary-foreign-worker.html>

Moreover, a residency requirement must be respected, meaning that, based on a five-year period, the applicant has, for of a total of at least 730 days in that five-year period, to be physically present in Canada (art. 28(1) IRPA), or fall under an exception encompassed at article 28(2)(a) of the IRPA.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

In Canada, there two categories of international protection: Convention refugees and persons in need of protection.

A “Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.” (art. 96 IRPA)

A person in need of protection “is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country, (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.” (art. 97 IRPA)

In other words, a protected person can include a person who may not meet the 1951 Convention definition (and thus art. 96 of the IRPA) but is still deserving of some protection, for example, to avoid torture if sent back.

It is possible to claim refugee protection (asylum) from within Canada, or at the border. The Immigration and Refugee Board of Canada (IRB) is the independent administrative tribunal that is responsible for deciding immigration and refugee matters. It is the IRB which will determine if a refugee (asylum) claim is well-founded and if protection in Canada should be granted.

Finally, some individuals are ineligible to seek asylum, if have been convicted of serious criminal offences or had previous refugee claims denied by Canada.

a. From within Canada

The claim can be submitted online, through the Immigration, Refugees and Citizenship Canada (IRCC) portal. If the claim is considered complete, the claimant will receive instructions for an interview. If the claimant passes this interview – meaning that the claim is considered to be eligible – the claim will then be heard by the IRB. In other words, the IRB will decide if the claimant meets the definition of a Convention refugee or a person in need of protection.

b. At the border

If the claim is filed at the border, the Canada Border Services Agency (CBSA) officer will be responsible for the verification of eligibility requirements.

The claimant will have to prove their identity, undertake biometrics, and complete an interview. If the eligibility requirements are met, the claim will then be transferred to the IRB for determination. If the eligibility requirements are not met, the claim is not transferred to the IRB and the claimant is referred for removal from Canada.

In some cases, some claimants that meet the eligibility requirements at the border can be requested by a CBSA officer to complete their claim online, through the IRCC Portal.

c. Outside of Canada

Refugees resettled from outside of Canada can be admitted to Canada, but under specific conditions. The Refugee resettlement program is the pathway available in such situations, as it has been put in place for people who are outside of Canada. However, the program only applies to individuals who have been referred as refugees by the United Nations Refugee Agency, by a designated referral organization or by a private sponsor.²²⁵

As such, individuals are unable to apply directly to this program to come to Canada.

d. Special situation pertaining to the United States

The *Canada-U.S. Safe Third Country Agreement (STCA)*²²⁶ is an agreement that exists between Canada and the United States. It has the effect of rendering a claim ineligible if the claimant has entered Canada from the United States “at an official land border crossing” or “anywhere along the border, including rivers, lakes and other waterways, and made a refugee claim less than 14 days after the day [they] entered”.²²⁷

²²⁵ Government of Canada, ‘How to sponsor a refugee’. See online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/sponsor-refugee/private-sponsorship-program.html>

²²⁶ *Agreement between the Government of Canada and the Government of the United States of America For cooperation in the examination of refugee status claims from nationals of third countries*. See online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement/final-text.html>

²²⁷ Canada-US Safe Third Country Agreement, see online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html>

If a claimant is in such a situation, they can be returned to the United States when they file for refugee status in Canada, unless they meet an exception or exemption to the Agreement. These include family member exceptions, unaccompanied minors exceptions, document holder exceptions and public interest exceptions.

In March 2023, both countries have confirmed the expansion of the STCA.²²⁸

e. Humanitarian and Compassionate Considerations

Humanitarian and Compassionate Considerations is also a potential pathway that leads to permanent residency. Articles 25 and 25.1 of the IRPA provide that certain foreign nationals that are deemed inadmissible to Canada, or who do not meet immigration requirements, can still apply for permanent residence if there are exceptional circumstances pertaining to their case. These can include significant hardship, family separation, or adverse conditions in the applicant's home country. The best interest of the child is specifically considered in these cases.

f. Victims of trafficking

Canada has also implemented special protections for victims of trafficking domestically. In 2002, Canada ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) and incorporated its obligations towards victims of human trafficking in national laws.

Protections for victims of trafficking are made available, namely through a special temporary resident permit (TRP) which enables them to legally remain in Canada for up to 12 months,²²⁹ in addition to being eligible for health care, trauma counselling, emergency housing, and obtaining work permits.²³⁰ Victims are not required to cooperate, for example, forced to testify against their trafficker to obtain the TRP.²³¹

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Article 3(1)(d) of the IRPA provides that one of the objectives of the act is to ensure family reunification in Canada. Article 12(1) of the IRPA further stipulates that family reunification is

²²⁸ 'Changes to the Safe Third Country Agreement' see online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html>

²²⁹ IRCC, 'Better Support for Foreign Nationals Facing Human Trafficking and Family Violence in Canada' (Notices, Ottawa, February 4, 2025) <<https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/better-support-foreign-nationals-facing-human-trafficking-family-violence-canada.html>> accessed 24 June 2025.

²³⁰ Public Safety Canada, 'Support for victims and survivors' (Human Trafficking) <https://www.publicsafety.gc.ca/cnt/cntrng-crm/hmn-trffckng/spprt-vctms-srvvrs-en.aspx> accessed 24 June 2025.

²³¹ IRCC, 'Protection and assistance for victims of human trafficking' <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/protection-assistance-victims-human-trafficking.html>, accessed 25 August 2025.

based on the relationship of a foreign national with a Canadian citizen or permanent resident. The rules that apply are encompassed in part 7 of the IRPR (articles 116 to 137.1).

Features of the family class sponsorship program include a definition of family that incorporates common-law partners, spouses and same-sex partners; the possibility to sponsor from the age of 18 years old; the possibility to sponsor parents and grandparents; and the adoption process that leads directly to citizenship. Article 117 of the IRPR presents the eligible categories for family class:

117 (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is

- (a) the sponsor's spouse, common-law partner or conjugal partner;
- (b) a dependent child of the sponsor;
- (c) the sponsor's mother or father;
- (d) the mother or father of the sponsor's mother or father;
- (e) [Repealed, SOR/2005-61, s. 3]
- (f) a person whose parents are deceased, who is under 18 years of age, who is not a spouse or common-law partner and who is
 - (i) a child of the sponsor's mother or father,
 - (ii) a child of a child of the sponsor's mother or father, or
 - (iii) a child of the sponsor's child;
- (g) a person under 18 years of age whom the sponsor intends to adopt in Canada if
 - (i) the adoption is not being entered into primarily for the purpose of acquiring any status or privilege under the Act,
 - (ii) where the adoption is an international adoption, the country in which the person resides is a party to the Hague Convention on Adoption and the Convention applies to their province of intended destination, the competent authority of the country and of the province have approved the adoption in writing as conforming to that Convention, and
 - (iii) where the adoption is an international adoption and the country in which the person resides is not a party to the Hague Convention on Adoption or the Convention does not apply to the person's province of intended destination
- (A) the person has been placed for adoption in the country in which they reside or is otherwise legally available in that country for adoption and there is no evidence that the intended adoption is for the purpose of child trafficking or undue gain within the meaning of the Hague Convention on Adoption, and
- (B) the competent authority of the person's province of intended destination has stated in writing that it does not object to the adoption; or

(h) a relative of the sponsor, regardless of age, if the sponsor does not have a spouse, a common-law partner, a conjugal partner, a child, a mother or father, a relative who is a child of that mother or father, a relative who is a child of a child of that mother or father, a mother or father of that mother or father or a relative who is a child of the mother or father of that mother or father

(i) who is a Canadian citizen, Indian or permanent resident, or

(ii) whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor.

Obligations of sponsors

Since there are two applicants in a sponsorship application, immigration officials assess and render a decision on both the sponsor and the principal applicant. The duration of a sponsorship requirement varies from three to twenty years, depending on the foreign national's relationship with the sponsor and the province of residency (arts. 131(b) and 132 IRPR).

By agreeing to enter into a sponsorship relationship, the sponsor makes a legal commitment to cover the basic living expenses of the sponsored family member. This is known as an undertaking, which is a fixed-term commitment that is legally binding between the sponsor and the government. As such, the sponsor must be able to financially support the family member and ensure that they do not have to apply to the government for social assistance (arts. 131 and 132 IRPR).

The sponsor must also respect certain eligibility requirements, namely be at least 18 years of age, reside in Canada (section 130 of the IRPR), intend to fulfil the obligations in the sponsorship undertaking, not be subject to a removal order and not be detained in any penitentiary, jail, reformatory or prison (art. 133 IRPR). The sponsor also must demonstrate a certain income (art. 133 IRPR).

5. What are the conditions for naturalization in the reviewed state?

Pursuant to the Canadian *Citizenship Act*,²³² there are four methods to obtain citizenship: (1) being born outside Canada to a Canadian citizen; (2) being born in Canada; (3) being born outside Canada and adopted by at least one parent who is a Canadian citizen; and (4) by naturalization.

a. Birth in Canada

Pursuant to *jus soli*, article 3(1)(a) of the Citizenship Act provides that anyone born in Canada is automatically a Canadian citizen, which follows the principle of citizenship by place of birth. The rule applies even if neither parent is a Canadian citizen, and even if one or both parents are in Canada without any legal authorization.

²³² *Citizenship Act*, R.S.C., 1985, c. C-29, see online: <https://laws-lois.justice.gc.ca/eng/acts/c-29/index.html>

One exception to this general rule pertains to a person who, at the time of birth, is the child of a foreign national who is in Canada as a representative of a foreign government, an employee of a foreign representative, an official or employee in Canada of a specialized agency of the United Nations, or a representative of an international agency (art. 3(2) Citizenship Act).

b. Birth outside of Canada

Pursuant to *jus sanguinis*, article 3(1)(b) of the Citizenship Act provides that a person born outside Canada is a Canadian citizen if one of the parents is a Canadian citizen at the time of birth, and the parent is either a Canadian citizen by birth or a naturalized citizen (first-generation rule), based on the principle of citizenship by blood.

The first-generation rule limits citizenship by descent. It was adopted following legislative amendments in April 2009. An individual born abroad after 2009 to a parent who obtained his or her citizenship from a Canadian parent who was also born abroad will no longer automatically become a Canadian citizen, in accordance with article 3(3) of the Citizenship Act.

An exception is provided for in article 3(5) of the Act, which states that for persons born to a Canadian parent working abroad in or with the Canadian Armed Forces, the federal public administration or the public service of a province, citizenship will be automatic at birth, even if the person born abroad and of second generation.

c. Adoption

The Citizenship Act treats foreign-born children adopted by Canadian citizens in the same way as foreign-born biological children of Canadian citizens. Article 3(1)(c.1) and 5.1 of the Citizenship Act permit the granting of citizenship to a minor child adopted by a Canadian citizen after January 1947 without having first obtained permanent residence. Adoption of adults is also possible, if the adoption meets the general criteria for adoption and if there was a genuine relationship of parent and child between the person and the adoptive parent before the person attained the age of 18 years, pursuant to article 5.1(2).

d. Naturalization

In Canada, naturalization is understood as the process that transforms a permanent resident into a Canadian citizen. To be naturalized, the permanent resident must apply for a grant of citizenship. Most applications are decided by a citizenship officer, based on a review of the facts on file. However, when an officer feels that more information is needed to make a decision (for example, because of concerns about the calculation of the residence requirement, see point 2 – Permanent residence, above), the officer refers the case to a citizenship judge, who may require the applicant to appear at a hearing.

The main requirements for naturalization are set out in section 5 of the *Citizenship Act*:

- Having demonstrated a permanent resident status and satisfied any condition attached to this status;

- Having kept permanent resident status (i.e. respecting the residency obligation and not having being determined inadmissible);
- Having been physically present in Canada for at least three years (one thousand and ninety-five days) during a five-year calculation period preceding the date of the citizenship application. The Act provides that days spent as a temporary resident or protected person can be included in this calculation, as half days, and up to a total of 365 days (see art. 5(1.001) or (4) of the Citizenship Act);
- If between 18 years and 55 years of age at the date of the application, demonstrate an adequate knowledge of one of the official languages of Canada (English or French), in addition to an adequate knowledge of Canada and of the responsibilities and privileges of citizenship.

A citizenship test is required, which asks 20 questions on the rights and responsibilities of Canadian citizens Canada's history, geography, economy, government, laws and symbols.²³³ There are certain exceptions, namely for applicants who are mentally or physically unable to comply. In these cases, they may, on compassionate grounds, be exempted from certain requirements (for example, demonstrating an adequate knowledge of one of the official languages). Instead, they can submit a medical opinion attesting to their inability to meet these requirements due to a medical condition or disability (act. 5(3) of the Citizenship Act).

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

²³³ IRCC, 'Prepare for the citizenship test' <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-citizenship/become-canadian-citizen/citizenship-test.html> accessed 25 August 2025.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Yes. All non-nationals are protected under the Canadian Charter of Rights and Freedoms. Section 15(1) of the Charter provides that:

“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

‘Every individual’ means that the Charter provides fundamental rights to everyone in Canada, which includes **permanent and temporary residents, asylum seekers** and any other **undocumented individuals**. The Supreme Court of Canada has confirmed that the Charter applies to all persons physically present in Canada, irrespective of their status.²³⁴

The IRPA also provides that the Act “is to be construed and applied in a manner that [...] ensures that decisions taken under this Act are consistent with the Canadian Charter of Rights and Freedoms, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada”²³⁵.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Non-nationals cannot vote, nor run for political office. The *Canada Elections Act* and other provincial and territorial election laws allow only Canadian citizens that are aged 18 and older to vote in federal, provincial, and territorial elections.²³⁶

However, more generally, political participation, freedom of expression and rights of association are protected by the Canadian Charter at sections 2(b), (c), and (d), and are applicable to everyone:

“2. Everyone has the following fundamental freedoms:

a) freedom of conscience and religion;

²³⁴ *Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/407/index.do>

²³⁵ IRPA, section 3(3)(d).

²³⁶ Canada Elections Act (S.C. 2000, c. 9), section 3.

- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- c) freedom of peaceful assembly; and
- d) freedom of association.”

As such, all non-nationals can join political parties, protest, campaign, fundraise, etc., but they can neither run for office nor vote.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

First, only Canadian citizens have the right to enter, remain in and leave Canada.²³⁷

Second, temporary residents are tied to their province of acceptance, where their work or study permit was issued. Section 6(2) of the Charter provides that:

“[e]very citizen of Canada and every person who has the status of a permanent resident of Canada has the right (a) to move to and take up residence in any province; and (b) to pursue the gaining of a livelihood in any province.”²³⁸

Temporary residents are thus limited in movement and cannot change province to work or study.²³⁹ Their authorized stay is tied to a specific province, until they obtain the status of permanent resident.

Third, everyone has legal rights as provided in the Canadian charter, meaning that every individual has the right to life, liberty and security of person (s. 7); the right to be secure against unreasonable search or seizure (s. 8); the right not to be arbitrarily detained or imprisoned (s. 9); rights when detained and arrested (s. 10); the right to a fair trial (s. 11); the right not to be subjected to any cruel and unusual treatment or punishment (s. 12); the right to be protected against self-incrimination (s. 13); and the right to an interpreter in court (s. 14).

4. Are there any limitations to non-nationals’ right to buy and own property within the reviewed state?

Since January 1, 2023, the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* has been enacted, and will remain in force until 2027. This new legislation bars non-citizens from buying residential property in Canada. There are some exceptions to this general rule, mainly for temporary residents that meet certain conditions, refugee claimants, protected persons, and diplomatic staff.²⁴⁰

²³⁷ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982" or "Schedule B to the Canada Act 1982, section 6(1).

²³⁸ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982" or "Schedule B to the Canada Act 1982, section 6(2).

²³⁹ Immigration and Refugee Protection Act SC 2001, c 27 (IRPA), s. 30.

²⁴⁰ *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, S.C. 2022, c. 10, s. 235, s. 4.

Some provinces have also provided for certain conditions limiting ownership of property by non-citizens and non-permanent residents. For example, in the province of Ontario, non-citizens are required to pay a Non-Resident Speculation Tax (NRST):

“The NRST applies on the purchase or acquisition of an interest in residential property located anywhere in Ontario by individuals who are foreign nationals (individuals who are not Canadian citizens or permanent residents of Canada) or by foreign corporations or taxable trustees. Effective October 25, 2022, the NRST rate is 25%.”²⁴¹

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Temporary residents can work in Canada only if they have been authorized to do so through the obtention of a work permit.²⁴² Their stay will usually be tied to the province where they are authorized to stay.

Temporary workers will usually obtain a work permit *after* their future employer obtains a Labour Market Impact Assessment (LMIA), which is issued by Employment and Social Development Canada.²⁴³ A LMIA will be delivered when it is shown there is a need to hire a temporary worker, as no Canadian worker or permanent resident are available to do the job.

There are exceptions to obtaining an LMIA, namely based on international agreements, intra-company transfers, post-graduation work permits for international students, and for refugee claimants.²⁴⁴

Finally, some individuals such as spouses of certain categories of workers or of students, and vulnerable workers escaping abusive employers, are allowed to obtain an open work permit, which allows them to work for any employer in Canada.

Permanent residents have the right to stay and work anywhere in Canada, for any employer, without a permit. However, they must have been physically in Canada for at least 730 days during a period of five years to maintain their status.²⁴⁵

Individuals who have submitted a refugee claim have certain rights during the treatment of their asylum application. Namely, they have the right to request an open work permit, without having to pay fees.

²⁴¹ Government of Ontario, ‘Non-Resident Speculation Tax’, <https://www.ontario.ca/document/non-resident-speculation-tax>, accessed 25 August 2025.

²⁴² Immigration and Refugee Protection Act SC 2001, c 27 (IRPA), s. 30.

²⁴³ Employment and Social Development Canada, ‘Hire a temporary foreign worker with a Labour Market Impact Assessment’, <https://www.canada.ca/en/employment-social-development/services/foreign-workers.html> accessed 26 August 2025.

²⁴⁴ IRPA, ss. 204-208

²⁴⁵ Immigration and Refugee Protection Act SC 2001, c 27, s. 28.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

The federal government sets targets for the total number of temporary foreign workers through its *Immigration Levels Plan*; in 2025, the target number of temporary foreign workers was 367,750.²⁴⁶ However, as these are national ceilings, they do not impact per-employer quotas.

While Canada does not have a cap on the number of non-nationals who can be hired by businesses, there are some limitations based on certain specific programs. For example, employers with a total workforce size of fewer than 10 people across Canada can only hire one temporary worker (for industries with a 10% cap) or 2 (for industries with a 20% cap).²⁴⁷

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Yes, in certain entities of the government, where the worker would have access to intelligence. For example, employees of the Communications Security Establishment (CSE) are required to have enhanced security clearance, and as such, must be Canadian citizens.²⁴⁸

The Royal Canadian Mounted Police (RCMP) also only hires Canadian citizens and permanent residents.²⁴⁹

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Labour standards apply to employees (workers), and are not dependent on immigration status. As such, non-nationals that are authorized to work are entitled to the same protections and benefits as citizens.

However, some practical obstacles exist for temporary foreign workers, depending on the moment of expiry of their work permit. For example, a temporary worker would not be able to take maternity leave, if their permit expired beforehand.

²⁴⁶ IRCC, 'Notice – Supplementary Information for the 2025-2027 Immigration Levels Plan', <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/supplementary-immigration-levels-2025-2027.html>, accessed 26 August 2025.

²⁴⁷ Employment and Social Development Canada, 'Program requirements for low-wage positions', <https://www.canada.ca/en/employment-social-development/services/foreign-workers/median-wage/low/requirements.html>, accessed on 26 August 2025.

²⁴⁸ Communications Security Establishment Canada, 'Hiring process and security', <https://www.cse-cst.gc.ca/en/careers/hiring-process-and-security>

²⁴⁹ Royal Canadian Mounted Police, 'Become an RCMP officer: Before you apply', <https://rcmp.ca/en/careers-rcmp/police-officer-careers/become-rcmp-officer-before-you-apply>, accessed 25 August 2025.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Permanent residents are fully eligible for provincial and territorial health insurance.

Eligible temporary residents have access to their province or territory's public health insurance plan. This eligibility may vary depending on the province or territory.²⁵⁰

Refugee claimants can also qualify to short-term health programs.²⁵¹

Undocumented workers have precarious access to social services, such as health care, education, social services, and legal rights. Some cities in Canada, such as Toronto, offer basic services for undocumented migrants, without requesting information regarding immigration status.²⁵²

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

A temporary resident is authorized to study in Canada on a temporary basis as a visitor or if they hold a temporary resident permit.²⁵³ They must leave by the end of the period authorized for their stay and must comply with any conditions imposed during their stay.²⁵⁴ If a child arrives to Canada and is accompanied by a parent with a study or work permit, they are required to apply for a study permit.²⁵⁵

Children of temporary residents have access to free primary and secondary education in most provinces, and some do not require proof of their immigration status. For example, in Ontario, public schools allow all children to attend freely, regardless of their immigration status. However, this is not the case everywhere in Canada: for example, Alberta requires proof of immigration status before enrollment, which disadvantages undocumented children.²⁵⁶

Permanent residents have the right to stay and study anywhere in Canada, and have access to free public schooling at the primary and secondary levels. However, they must have been

²⁵⁰ Employment and Social Development Canada, 'Temporary foreign workers: Your rights are protected' <https://www.canada.ca/en/employment-social-development/services/foreign-workers/protected-rights.html>

²⁵¹ See Interim Federal Health Program (IFHP).

²⁵² Toronto City Council, 'Access to City Services for Undocumented Torontonians: Progress of the Access T.O. Initiative', <https://www.toronto.ca/wp-content/uploads/2017/11/97ea-Access-to-City-Services-for-Undocumented-Torontonians-Progress-Report-2015-backgroundfile-85779.pdf>, p.3.

²⁵³ Immigration and Refugee Protection Act SC 2001, c 27 (IRPA), s. 29.

²⁵⁴ Immigration and Refugee Protection Act SC 2001, c 27 (IRPA), s. 29(2).

²⁵⁵ IRCC, 'Studying in Canada as a minor', <https://www.canada.ca/en/immigration-refugees-citizenship/services/study-canada/study-permit/prepare/minor-children.html>, accessed 25 August 2025.

²⁵⁶ Kids Education Franchise, 'Edmonton School Trustees Urge Province to Allow Undocumented Children to Enrol', <https://www.kidseducationfranchise.com/archives/12628> accessed 26 August 2025.

physically in Canada for at least 730 days during a period of five years to maintain their status.²⁵⁷

Individuals who have submitted a refugee claim have certain rights during the treatment of their asylum application. Namely, they have the right to submit a study permit for themselves, and their children have free access to public schooling for kindergarten, elementary and secondary, without the need to get a study permit.²⁵⁸

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Permanent residents receive a social insurance number, and have access to most social benefits, in addition to healthcare.²⁵⁹ Temporary residents with a work permit or study permit are eligible for a temporary social insurance number, which expires when their permit expires. Refugee claimants can also get a social insurance number once they have a valid work permit. Undocumented persons are not eligible.

For employment insurance (including maternity leave and parental leave, sick days and unemployment benefits), eligibility does not depend on the immigration status, but on the number of insurable hours worked.

For retirement pensions (Canada Pension Plan, and disability, and survivor benefits), eligibility does not depend on the immigration status, but on the contributions through payroll deductions.

For refugees abroad who have been admitted to Canada as government-assisted refugees with special needs, they can also benefit from the Resettlement Assistance Program, which means that some funds can be used to find a temporary place to live or help with basic household items, for example.²⁶⁰

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

For provincial social assistance (welfare), permanent residents are eligible if they meet the financial criteria. Refugee claimants are also eligible in most provinces. Temporary residents are usually ineligible, as are undocumented migrants.

²⁵⁷ Immigration and Refugee Protection Act SC 2001, c 27 (IRPA), s. 28.

²⁵⁸ IRCC, 'Claiming refugee protection (asylum) from within Canada', <https://www.canada.ca/en/immigration-refugees-citizenship/services/asylum/in-canada/while-you-wait.html> accessed on 26 August 2025.

²⁵⁹ IRCC, 'Understand permanent residence status', <https://www.canada.ca/en/immigration-refugees-citizenship/services/permanent-residents/status.html>

²⁶⁰ IRCC, 'Financial help – Refugees', <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-within-canada/financial.html>

Food Banks and NGO are opened to everyone, regardless of immigration status, as they are usually run by charities (Food Banks Canada, Daily Bread Toronto) which do not require proof of citizenship.

For subsidized housing, permanent residents are eligible, as are refugee claimants in most provinces, as long as they are legally residing in Canada. The federal government also provides funding to provinces and municipalities for interim housing costs for refugee claimants. Temporary residents are usually excluded from these benefits, but some municipalities allow it in exceptional cases. Undocumented migrants are also excluded but may access emergency shelters.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

January 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: PR China

Author: Sanzhuan Guo

Author's Notes: The relevant information here includes only mainland China, not Hong Kong, Macau and Taiwan as they may adopt different laws.

Please indicate the treaties to which the country under review is a party.

*UN system treaties:*²⁶¹

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	n/a	Yes (1982)
1967 Protocol to the Convention relating to the Status of Refugees	n/a	Yes (1982)

²⁶¹ Regarding the UN human rights conventions, please see: UN Human Rights Treaty Bodies, *View the Ratification Status by Country or by Treaty*, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN, and also: UN Multilateral Treaties Deposited with the Secretary-General: Chapter IV: Human Rights, available at <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=en> and Chapter V: Refugees and Stateless Persons, available at <https://treaties.un.org/Pages/Treaties.aspx?id=5&subid=A&clang=en>. Regarding the conventions with International Labour Organization (ILO), please see: https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103404.

1954 Convention relating to the Status of Stateless Persons	No	No
1961 Convention on the Reduction of Statelessness	No	No
International Covenant on Civil and Political Rights (ICCPR)	Yes (1998)	Not
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	No	No
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Yes (1997)	Yes (2001)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	No	No
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	No	No
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Yes (1986)	Yes (1988)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	No	No
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	n/a	Yes (1981)
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	n/a	No
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes (1980)	Yes (1980)
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	No	No
Convention on the Rights of the Child (CRC)	Yes (1990)	Yes (1992)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	Yes (2000)	Yes (2002)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	Yes (2001)	Yes (2008)

Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	No	No
Convention on the Rights of Persons with Disabilities (CRPD)	Yes (2007)	Yes (2008)
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	No	No
ILO Forced Labour Convention (No. 29)		Yes (2022)
2014 Protocol to the ILO Forced Labour Convention (No. 29)		No
ILO Migration for Employment Convention (Revised) (No. 97)		No
ILO Equal Remuneration Convention (No. 100)		Yes (1990)
ILO Discrimination (Employment and Occupation) Convention (No. 111)		Yes (2006)
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		No

Regional treaties: - Not applicable to China, so the answer is N/A to all questions.

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	n/a	n/a
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	n/a	n/a
Convention governing the Specific Aspects of Refugee Problems in Africa	n/a	n/a
African Charter on the Rights and Welfare of the Child	n/a	n/a
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	n/a	n/a
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	n/a	n/a

European Convention on Human Rights (ECHR)	n/a	n/a
Protocols to the European Convention on Human Rights (list which ones):	n/a	n/a
European Social Charter (ESC)	n/a	n/a
European Convention on the Legal Status of Migrant Workers	n/a	n/a
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	n/a	n/a
American Convention on Human Rights (ACHR)	n/a	n/a
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	n/a	n/a
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	n/a	n/a
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	n/a	n/a
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	n/a	n/a
Inter-American Convention against All Forms of Discrimination and Intolerance	n/a	n/a
Inter-American Convention Protecting the Human Rights of Older Persons	n/a	n/a

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Bilateral Agreements:

China has entered into 22 free trade agreements (FTA) with 29 countries/districts,²⁶² which include relevant provisions as to free movement. Such FTA include, in alphabetical order except Hong Kong and Macau:

²⁶² Please see details at: China Central Government, ‘中国已与 29 个国家和地区签署 22 个自贸协定——以高水平开放促进互利共赢’, 人民日报海外版[China Daily Overseas] (11 April 2024), available at <https://www.gov.cn/yaowen/liebiao/202404/content_6944500.htm> and <<http://fta.mofcom.gov.cn/>>.

1. Hong Kong	10. Georgia	18. Regional Comprehensive Economic Partnership (RCEP), including 15 Asia-Pacific Countries
2. Macau	11. Iceland	
3. ASEAN	12. Maldives	
4. Australia	13. Mauritius	
5. Belarus	14. New Zealand	19. Serbia
6. Cambodia	15. Nicaragua	20. Singapore
7. Chile	16. Pakistan	21. South Korea
8. Costa Rica	17. Peru	22. Switzerland
9. Ecuador		

In addition, since 2024, citizens holding a passport from 55 countries may enter China without a visa for no more than 30 days for tourist, business, family visit, exchange or transit purposes.²⁶³

Part I – Rights to stay

The most **relevant laws** include the following two legislations:

- 1) 1980 Nationality Law of the People's Republic of China, adopted by the National People's Congress on 10 September 1980.²⁶⁴
- 2) 2012 Exit and Entry Administration Law (effective on 1 July 2013, hereinafter referred to as '2012 Exit and Entry Law')²⁶⁵ and its Regulations 2013 (hereinafter referred to as '2013 Regulation').²⁶⁶

It should be noted that the legal office of China's National People's Congress (NPC) and its Standing Committee may issue some 'guide to interpretation and application' of relevant laws, which can become very important in practice even though such guide is not 'law' itself. For example, in 2012, the Legislative Affairs Commission of the Standing Committee of the NPC,

²⁶³ Chinese Visa Application Centre, 'Visa-Free Entry Policies for Foreign Nationals', available at <https://www.visaforchina.cn/SGP3_EN/qianzhengywu/jichuzhishi/changjianwenti/220323827614355469.html>.

²⁶⁴ An English version of this law can be found: <<https://en.nia.gov.cn/n147418/n147458/index.html>> (accessed on 29 December 2025).

²⁶⁵ 《中华人民共和国出境入境管理法》 *Exit and Entry Administration Law of the People's Republic of China*, adopted by the Standing Committee of NPC on 30 June 2012 and effective from 1 July 2013, available at <<https://en.nia.gov.cn/n147418/n147458/c155978/content.html>> (accessed on 2 January 2026).

²⁶⁶ 《中华人民共和国外国人入境出境管理条例》 *Regulations of the People's Republic of China on Administration of the Entry and Exit of Foreigners*, adopted by the State Council on 3 July 2013 and effective from 1 September 2013 (State Council Decree No 637), available at <<https://en.nia.gov.cn/n147418/n147458/index.html>> (accessed on 2 January 2026). It should be noted that the 2013 Regulations have been revised in 2025, effective from 1 October 2025 (State Council Decree No 814). The Chinese version of the revised 2013 Regulations can be found: <https://www.gov.cn/zhengce/zhengceku/202508/content_7036508.htm>.

published the Guide to Interpretation and Application of the ‘Exit-Entry Administration Law of the PRC’ (hereinafter referred to ‘NPC’s 2012 Guide’).²⁶⁷

To avoid repeating what I have said before, this report has referred to my recent book chapter regarding China’s nationality and immigration law for some details.²⁶⁸

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

According to China’s last population census (2020), 845,697 foreigners were residing in China’s 31 provinces by 1 November 2020.²⁶⁹

Generally speaking, China adopts a visa system and a residence permit system to regulate on non-nationals’ entry and stay in China. Here is some information I have recently written in a book chapter on the issue:²⁷⁰

China has adopted visas, residence permits and work permits (if applicable) to administer foreign nationals in China, creating a system which is relatively complicated compared to many other countries.

Visas are commonly used by most, if not all, countries for border control. According to the 2012 Exit and Entry Law, there are four types of Chinese visas (emphasis added for this report): (1) Diplomatic Visa; (2) Courtesy Visa; (3) Official Visa; and (4) Ordinary Visa (art 16). Diplomatic Visas, Courtesy Visas and Official Visas are administered in accordance with measures passed by the Ministry of Foreign Affairs, while the administration of Ordinary Visas falls under the measures passed by the State Council (2012 Exit and Entry Law, art 16; 2013 Regulations, art 5). There are currently 16 categories of Ordinary Visas, including transit visas (G), permanent residence visas (D), student visas (X1 and X2), activity visitor visas (F), tourist visas (L) and family reunion visas (Q1 and Q2) (2013 Regulations, art 6).

Chinese visas specify a period of stay in China. If the period of stay is 180 days or more, a visa holder should also apply for a residence permit within 30 days of their arrival in China.

²⁶⁷ 全国人大法工委[Legislative Affairs Commission of the Standing Committee of NPC], 《<中华人民共和国出境入境管理法>释义及实用指南》 [Interpretation and Application Guide of the *Exit-Entry Administration Law of the PRC*], 中国民主法制出版社[China Democracy and Law Press], 2012. See also 信春鹰[Chunying Xin] and 黄薇[Wei Huang] (eds), 《中华人民共和国出境入境管理法释义》 [Interpretation of the Exit-Entry Administration Law of the PRC] (法律出版社[Law Press], 2012).

²⁶⁸ Sanzhuan Guo, ‘China: Citizenship (Nationality) and Immigration Law’, in Sarah Biddulph and Kathryn Taylor (eds) *Elgar Concise Encyclopedia of Asian Law* (Elgar, 2026) (forthcoming). Please note that the book chapter was finalised before August 2025 and therefore the new revision to the 2013 Regulation was not included.

²⁶⁹ China Population Census, 2020 年第七次全国人口普查主要数据 [Major Figures on 2020 Population Census of China], (July 2021), available at <<https://www.stats.gov.cn/sj/pcsj/rkpc/d7c/202303/P020230301403217959330.pdf>>, 87. It should be noted that the number does not include those from Hong Kong, Macau and Taiwan.

²⁷⁰ Guo (n 268).

According to the 2013 Regulations, there are five categories of residence permits: (1) work residence permit; (2) student residence permit; (3) journalist residence permit; (4) family reunion residence permit; and (5) private matters residence permit.

Additionally, a work permit is required for aliens who want to work in China (2012 Exit and Entry Law, art 41). In 2017, the State Administration of Foreign Experts Affairs issued the *Service Guide to the Foreigner's Work Permit in China (for Trial Implementation)*, which provides some policy guidance on work permits in China.

It should be noted that each province or provincial-level city may issue their own residence and/or work permit policies, which may lead to some unnecessary inconsistency in the operation of immigration law in China. Beijing and Shanghai's practice attracts more attention as they host most aliens working, living or studying in China. Applying for a residence permit in China (especially a work residence permit) and a work permit can be onerous as these permits are issued by different agencies, and the permits may be valid for one year only, which means a visa holder might need to apply for such permits every year (Ministry of Science and Technology [n.d.]).

It should be clarified that the 2013 Regulations was revised in August 2025 and one more category of visa – K – has been added into the visa list. Visa K was created for young talents in technology. After adding Visa K, China currently has 17 categories of visa or 13 types of visa if we put J1 and J2 as one type, Q1 and Q2 as one type, S1 and S2 as one type, and X1 and X2 as one type).²⁷¹ China's visa system adopts a letter (first letter of Chinese pronunciation for certain area) to represent the category of the visa. For example, Visa D is permanent resident visa, which should be from Chinese 'Ding Ju' (定居); Visa J is for journalists – Ji Zhe (记者) in Chinese; Visa X is for students – Xue Sheng (学生). In accordance with Article 6 of the Revised 2013 Regulations (2025), the detailed of these visas are:²⁷²

- (1). **Visa C:** issued to 'crew members performing duties on board an international train, aircraft or vessel, and the accompanying family members of vessel crew members, and vehicle drivers engaged in international transportation services'.
- (2). **Visa D:** issued to persons who come to China for permanent residence.
- (3). **Visa F:** issued to 'persons who come to China for exchanges, visits, study tours or other relevant activities'.
- (4). **Visa G:** issued to 'persons who transit through China'.
- (5). **Visa J1 and J2:** issued to foreign journalists. The J1 visa is for those resident foreign journalists of permanent offices of foreign news agencies in China while the J2 visa is for foreign journalists who come to China for short-term news coverage.
- (6). **Visa K:** issued to young talents in the area of technology. This is a new visa added in 2025.

²⁷¹ The Revised 2013 Regulations, Article 6, stating 13 types of visas.

²⁷² The details have adopted the English version of the 2013 Regulations which can be found at <<https://en.nia.gov.cn/n147418/n147458/index.html>>.

- (7). **Visa L**: issued to persons who come to China for travel.
- (8). **Visa M**: issued to ‘persons who come to China for commercial trade activities’.
- (9). **Visa Q**: issued to family members or relatives of Chinese nationals or those foreigners with permanent residence status in China. The Visa Q1 is issued to those family members who apply for a long-term stay while the Visa Q2 is for short-term visit. Visa Q2 applies to relatives while Visa Q1 applies to family members.
- (10). **Visa R**: issued to ‘foreigners of high talent who are needed, or specialists who are urgently needed, by the State’.
- (11). **Visa S**: issued to family members of visa holders. The Visa S1 is issued to ‘spouses, parents, children under the age of 18 or parents-in-law of foreigners residing in China for work, study or other purposes who apply for a long-term visit to China, as well as for persons who need to reside in China for other personal matters’ while the Visa S2 is ‘for family members of foreigners staying or residing in China for work, study or other purposes who apply for a short-term visit to China, as well as for persons who need to stay in China for other personal matters’.
- Comparing with Visa Q who is more for family members or relatives of Chinese nationals, Visa S is for family members of foreigners who live in China but do not have a permanent resident status.
- (12). **Visa X**: issued to foreign students. Visa X1 is for long-term study while Visa X2 is for shorter term studies.
- (13). **Visa Z**: issued to those who apply for work in China.

It should also be noted the following aspects:

First, China immigration law distinguishes between ‘short stay’ (停留) and ‘residence’ (居留). The longest duration of short stay is 180 days (Article 34(2) of the 2012 Exit and Entry Law, while the duration under a residence permit is from 90 days to five years for a work residence permit and 180 days to five years for a non-work-related residence permit (Article 30 of 2012 Exit and Entry Law).

Second, residence permit (including work residence permit) and work permit are two different types of permits in China’s immigration law system.

Third, residents from Hong Kong, Macau and Taiwan are not treated as ‘aliens’ or ‘non-Chinese citizens’ in China’s immigration law system, although they are not ‘free’ to enter and stay in mainland China either but need to apply for a special permit which is specially created for them. This is due to the special circumstance of their status in China as a special region. This report does not include rules in relation to these special regions.²⁷³

²⁷³ Some relevant information may be found: 翁里[Li Weng], 国际移民法学[Science of International Migration Law] (Zhejiang University Press, 2010), 100-106; 140-171 (please note that the book was published in 2010 and some laws might be outdated); Sanzhuan Guo, ‘Unblocking Access to Citizenship in China: Is Decentralisation Even Possible?’, in EUI Global Citizenship Observatory, *Unblocking Access to Citizenship in the Global South: Should the Process be Decentralised?* (GlobalCIT Blog, 16 November 2020), <https://globalcit.eu/unblocking-access-to-citizenship-in-the-global-south-should-the-process-be-decentralised/5/%3e.%20>

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

As discussed in Question 1, China's immigration law includes 17 categories of visa, which may permit non-nationals to stay in China for more than three months. 180 days rather than 3 months are the threshold to trigger the requirement to apply for a residence permit. For work resident permit, the threshold requirement is 90 days rather than 180 days.

There are five different types of residence permit, as mentioned earlier and under Article 15 of the 2013 Revised Regulation:

- (1). **Residence Permit for Work** (or alternatively translated as 'Work Residence Permit'): issued to those who work in China. To apply for a Resident Permit for Work, the applicant must submit various documents including their work permit (Article 16 of the 2013 Revised Regulations).
- (2). **Residence Permit for Study** (or Student Residence Permit): issued to those for long term studies in China.
- (3). **Residence Permit for Journalists** (or Journalist Residence Permit): issued to those 'resident foreign journalists of permanent offices of foreign news agencies in China'.
- (4). **Residence Permit for Family Reunion** (or Family Reunion Residence Permit): issued to 'family members of Chinese citizens and family members of foreigners with permanent residence status in China who need to reside in China for family reunion, and to persons who need to reside in China for fosterage or other purposes'.
- (5). **Residence Permit for Private Matters** (or Private Matter Residence Permit): issued to 'spouses, parents, children under the age of 18 or parents-in-law of foreigners residing in China for work, study or other purposes, who apply for long-term visit to China, as well as for persons who need to reside in China for other personal matters'.

It is possible but difficult for foreigners to obtain a permanent residence status in China. The relevant law is the *Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China*, promulgated jointly by the Ministry of Public Security and the Ministry of Foreign Affairs on 15 August 2004 ('2004 Permanent Residence Measures'),²⁷⁴ the so-called 'China green card policy'.

²⁷⁴ 《外国人在中国永久居留审批管理办法》 [*Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China*] ('2004 Permanent Residence Measures'), , approved by the State Council on 13 December 2003, and came into effect on 15 August 2004 under the Decree No 74 of Ministry of Public Security and Ministry of Foreign Affairs. The English version can be found: <<https://en.nia.gov.cn/n147418/n147458/c155972/content.html>>.

Unlike temporary residence permit holders, permanent residents would hold a Foreign Permanent Residence Card (《外国人永久居留证》) or Foreign Permanent Resident ID Card (《外国人永久居留身份证》).²⁷⁵ The Permanent Residence Card or Permanent Resident ID Card does not require regular check and renewal. The current version of Foreign Permanent Resident ID card was adopted on 1 December 2023 and commonly called Five-Star Card. It was reported that 50 Five-Star Cards were issued on the first day of the adoption 1 December 2023.²⁷⁶ Permanent residents in China do not need to obtain a work permit in order to work in China.

According to Article 6 of the 2004 Permanent Residence Measures, three types of people may be eligible to apply for permanent residency in China:

- (1).investors;
- (2).high level employees or talents needed; and
- (3).spouses or children or direct relatives over 60 years old of Chinese citizens or permanent residents.

It was reported that by 2022 approximately 12,000 ‘green cards’ had been issued since 2004 when China adopted the ‘green card’ policy.²⁷⁷ It is also noted that on 27 February 2020, the Ministry of Justice published the *Rules on Permanent Residence of Foreign Nationals (Draft for Comments)*, which has triggered serious debate on the issue of permanent residence in China, but it has not yet been passed.²⁷⁸

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

I have included the following in my recent book chapter:²⁷⁹

China has ratified the 1951 UN Convention on the Status of Refugees and its 1967 Protocol, and China has had at least four mass influxes of refugees (Song, 2018 at [140];

²⁷⁵ 《〈外国人在中国永久居留审批管理办法〉实施规定》 [Implementation of the 2004 Permanent Residence Measures], available at <<http://www.mofcom.gov.cn/article/b/g/200501/20050100329253.shtml>>.

²⁷⁶ Xinhua News, ‘新版外国人永久居留身份证“五星卡”签发启用’ [The New Version of the “Five-Star Card” Foreign Permanent Resident ID Card Issued and Put into Use], 1 December 2023, available at <https://www.news.cn/politics/2023-12/01/c_1130002829.htm>.

²⁷⁷ See National Immigration Administration (2022), ‘成立国家移民局:中国强势加入全球人才争夺战’ [The Establishment of the National Immigration Administration: China Joins Global Talents Race Strongly], <<https://www.nia.gov.cn/n794014/n1050176/n1050508/c766294/content.html>> accessed 31 October 2022.

²⁷⁸ 《中华人民共和国外国人永久居留管理条例（征求意见稿）》 [Regulations of PRC on the Administration of Permanent Residence of Foreigners (Draft for Comment)] announced by the Ministry of Justice on 27 February 2020.

²⁷⁹ Relevant reference in the paragraph includes: Lili Song, ‘China and the International Refugee Protection Regime: Past, Present, and Potentials’ (2018) 37(2) *Refugee Survey Quarterly* 139; Sanzhuan Guo, ‘Unblocking Access to Citizenship in China: Is Decentralisation Even Possible?’ – EUI Working Paper: Unblocking Access to Citizenship in the Global South: Should the Process be Decentralised? (Global Citizen Observatory, 2020), available at <<https://globalcit.eu/unblocking-access-to-citizenship-in-the-global-south-should-the-process-be-decentralised/5/>>.

Guo, 2020). However, China does not have a clear refugee status determination procedure under the current legal system (Song, 2018 at [147]; Guo, 2020). Asylum seekers are dealt with in China through policies rather than the rule of law (Guo, 2020). With the establishment of the NIA, it may be expected that China will see significant developments in this area, as evidenced by the recent consideration of establishing nine repatriation centres in China.

Article 32(2) of China's Constitution states that 'The People's Republic of China may grant asylum to foreigners who request it on political grounds'. The problem lies in the lack of clear procedures. It is noted that refugees and asylum seekers registered with UN High Commissioner for Refugees (UNHCR) are permitted to stay in China, but they should follow Chinese laws (2012 Exit and Entry Law) to get registered.²⁸⁰

A balanced view is that, even though China may not have a national legal framework in terms of refugee status determination and protection, China may contribute to the area through other channels, such as the Belt and Road Initiative and the South-South Cooperation Assistance Fund (SSCAF), or at least it shows its willingness to contribute further in this area.²⁸¹

In addition to the *UN Refugee Convention*, China has ratified (adopted) the CAT (*UN Convention against Torture*). Under Article 3 of CAT, China has obligations of not returning or expelling a person to a State where they would be 'in danger of being subjected to torture'. According to China's report to the UN Committee against Torture (due 2012), the relevant procedure includes the following:²⁸²

A Higher People's Court shall, in accordance with the relevant provisions regarding conditions for extradition of that Law and of extradition treaties which China has concluded with foreign States, convene a collegial panel composed of three judges to conduct an examination of the request for extradition made by the requesting State. When examining an extradition case, the Higher People's Court shall hear the pleadings of the person sought and the opinions of the Chinese lawyers entrusted by that person, including a determination as to whether or not torture exists in the requesting State. After the Higher People's Court has completed its examination and decided whether or not to grant the extradition request, the Supreme People's Court shall review the decision to determine whether it conforms to the provisions of the Extradition Law and extradition treaties. Crimes of torture are included among extraditable offences under the provisions of all extradition treaties which China has concluded with foreign States.

The UN Committee against Torture made comments in its most recent Concluding Observations on China's 'repatriating all nationals of the Democratic People's Republic of Korea on the ground that they have illegally crossed the border solely for economic reason'.²⁸³

²⁸⁰ UNHCR, Help China: Rights and Duties, available at <<https://help.unhcr.org/china/asylum/rights/>>.

²⁸¹ Regarding details, please see: Emily Venturi, 'China's Overseas Humanitarian Action to Assist Refugees', Chatham House Research Paper (June 2022), available at <<https://www.chathamhouse.org/sites/default/files/2022-06/2022-06-01-china-humanitarian-action-venturi.pdf>>, 6.

²⁸² UN Committee against Torture, CAT/C/CHN/5 (3 April 2014) (https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/FollowUp.aspx?Treaty=CAT&Lang=en), [35].

²⁸³ UN Committee against Torture, Concluding Observations on the Fifth Period Report of China, [46]. In China's recent report (2025, unedited), China emphasised cases on extraditing people from overseas to China rather than

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

In China, family unification is mainly regulated through Visa Q and Visa S, and Residence Permit for Family Reunion, as mentioned briefly under Questions 1 and 2. Visa Q is for those family members or relative of Chinese nationals or foreign permanent residents while Visa S is for family members of other visa holders.

Family members in Chinese immigration law may refer to spouse, child, parents or other family members such as siblings.

Regarding spouses, China does not recognize *de facto* partner relationship nor same sex marriage. Thus, even if people may have been married under other country's same sex marriage law, they may not be treated as 'spouse' under China's immigration law to get a Resident Permit for Family Reunion. Similarly, the Chinese law does not recognise polygamous marriage (only recognising one wife one husband) and therefore people who are in the situation of polygamous marriage would find it difficult to prove their spousal relationship, especially for the 'second' wife/husband.

Regarding children, three points should be noted.

First, under Article 40 of the 2012 Exit and Entry Law, within 60 days after a foreign child was born in China, the child's parents or guardian should register such birth with the local authority and accordingly get relevant stay or residence permit for the child.²⁸⁴

Second, 'less than 18 years old' and 'unmarried' are two conditions for foreign children to apply for permanent residence permit in China based on the relationship with their parents, who are either Chinese nationals or non-nationals with Chinese permanent residence status.²⁸⁵ As recognized, it is important to first confirm the nationality of the child before processing their applications.²⁸⁶ For example, if a child is born in China to a Chinese national, even if the child's parents may have obtained a foreign passport for this child (e.g. due to another parent's nationality), this child should still be a Chinese national unless their nationality has been expressly renounced.

Third, for those foreign children of a Chinese national who is settled overseas or ethnic Chinese with a foreign passport, they may receive a Residence Permit for with a duration of less than two years and may be renewed upon expiry, if they are less than 18 years old and live in China.²⁸⁷

China's deportation practice. See China's Annual Report, dated 3 February 2025, unedited Chinese version, regarding Article 3, [15] and [16].

²⁸⁴ 2012 Exit and Entry Law, Article 40, stating that 'For foreign infants born in China, their parents or agents shall, within 60 days after they are born, on the strength of the birth certificates, go through the formalities for stay or residence registration for them with the exit/entry administrations of public security organs under people's governments at or above the county level in the places of their parents' stay or residence'.

²⁸⁵ 2004 Permanent Residence Measures, Article 6(1)(vi).

²⁸⁶ 《<外国人在中国永久居留审批管理办法>实施规定》 [Provisions of Implementing the 2004 Permanent Residence Measures], Section 1(2)(vi).

²⁸⁷ 外籍人士在华可获五类居留许可 [Foreigners May Be Eligible for Five Residence Permits in China], available at <https://frankfurt.china-consulate.gov.cn/zgyw/201005/t20100526_3509433.htm>.

Regarding parents, the *2004 Permanent Resident Measures* do not expressly include ‘parents’ of migrants or Chinese nationals to be eligible for a permanent residence status, although ‘spouse’ and ‘unmarried children (younger than 18 years old)’ are included.²⁸⁸ The exception is that if a person is over 60 years old and they do not have any direct relatives abroad and enter China to live with their adult child, and additionally if they live in China in a row for five years, they may apply for permanent residence in China.²⁸⁹ This exception applies probably only to ethnic Chinese as indicated in the *Provisions of Implementing the 2004 Permanent Residence Measures*.²⁹⁰

In terms of other family members, the category of ‘a person who is over 60 years old entering China’ under *2004 Permanent Resident Measures* may include brothers/sisters. Again, this category may only apply to ethnic Chinese who returns to China.²⁹¹

Without a surprise, returned overseas Chinese is a special category in Chinese immigration law and more beneficial treatment may be available to them other than other foreigners. For example, for those Chinese returnees who are over 60 years old, they may get a residence permit²⁹² or even a permanent residence permit,²⁹³ if certain conditions are met.

5. What are the conditions for naturalization in the reviewed state?

Naturalization in China is noticeably difficult. According to the Six National Population Census undertaken in 2010, 1,448 foreigners have obtained Chinese nationality by 2010.²⁹⁴

I have written the following in my recent book chapter on China: Citizenship (Nationality) and Immigration Law:²⁹⁵

Pursuant to Article 7 of the 1980 Nationality Law, there are three criteria: (1) being close relatives of Chinese nationals; (2) having settled in China; or (3) having other legitimate reasons. Under the first criterium, ‘close relative’ is not defined in the 1980 Nationality Law, but this term has been used in several other laws, which may provide some understanding (Lu and Hao [2017] at 412). Based on the definition of ‘close relative’ in other Chinese laws, it can be assumed that at least ‘children, parents, spouse’ are included,

²⁸⁸ *2004 Permanent Residence Measures*, Article 6(1)(iv).

²⁸⁹ *2004 Permanent Residence Measures*, Article 6(1)(vii).

²⁹⁰ 《〈外国人中国永久居留审批管理办法〉实施规定》 [Provisions of Implementing the *2004 Permanent Residence Measures*], Section 1(2)(vii).

²⁹¹ Ibid.

²⁹² 外籍人士在华可获五类居留许可 [Foreigners May Be Eligible for Five Residence Permits in China], available at <https://frankfurt.china-consulate.gov.cn/zgyw/201005/t20100526_3509433.htm>.

²⁹³ *2004 Permanent Residence Measures*, Article 6(1)(vii).

²⁹⁴ 中国 2010 年人口普查资料 [2010 Population Census of China] (中国统计出版社 [China Statistic Press], 2011), available at <<https://www.stats.gov.cn/sj/pcsj/rkpc/6rp/indexch.htm>>, section 2.1. I could not find the relevant information in the recent 2020 Population Census. See 2020 年第七次全国人口普查主要数据 [Major Figures on 2020 Population Census of China], (July 2021), available at <<https://www.stats.gov.cn/sj/pcsj/rkpc/d7c/202303/P020230301403217959330.pdf>>. See also: <https://www.stats.gov.cn/hd/lyzx/zxgk/202405/t20240524_1953531.html>.

²⁹⁵ Guo (n 268). See also Lu, H and Hao, W, ‘Protection of Stateless Persons in China: A Human Rights Perspective’ (2017) 12(3) *Frontiers of Law in China* 404.

and possibly also siblings and grandparents. Regarding the second criterium, there is, again, no legal definition of ‘having settled in China’. As discussed above, scholars have suggested referring to the definition of ‘having settled abroad’ in the definition of overseas Chinese, but the practice may not follow such an understanding. The third criterium, which includes ‘other legitimate reasons’, is vague and lacks judicial interpretation. It should be noted that in practice, ethnicity plays an important role in acquiring Chinese nationality. It has been said that ‘any newborn having a Chinese parent has the *de facto* right to apply for the Chinese nationality’ (Lu and Hao [2017] at 410). If a child is born outside China to a Chinese parent who has already settled in a foreign country, this child is not a Chinese national by birth, but they may apply for Chinese nationality due to being a close relative of a Chinese national.

Please also refer to the writing of Dingren Wei and Xianlei Long in a Chinese encyclopedia entry: in addition to the above three criteria, the applicant needs to meet the following two preliminary conditions: (1) willing to comply with Chinese Constitution and laws; and (2) apply for it voluntarily.²⁹⁶

A more important issue is that, since China does not recognize dual nationality (Article 3 of the 1980 Nationality Law), which means when a non-national seeks naturalization in China, those who apply for naturalization in China would not be able to retain their other nationality/citizenship upon the naturalization approval of China’s nationality (Article 8 of the 1980 Nationality Law).

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*

²⁹⁶ 魏定仁 (Dingren Wei) and 龙显雷 (Xianlei Long), in 《北京大学法学百科全书：宪法学行政法学》 [Peking University Law Encyclopedia: Constitution and Administrative Law] (Peking University Press, 1999), 168.

f. *other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

Regarding the categories of migrants in China, Professor Guofu Liu specified four particular groups: (1) workers; (2) students; (3) overseas returnees and (4) illegal migrants.²⁹⁷

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Unlike specific anti-discrimination legislations adopted by some countries such as Australia,²⁹⁸ China does not have specific legislation on anti-discrimination. However, equality and anti-discrimination are included in various laws and regulations. For example, Article 33 of China's Constitution states that 'all citizens of the PRC are equal before the law'.²⁹⁹ Article 4 of China's Constitution provides that 'all ethnic groups of the People's Republic of China are equal'.

Another important law is the *Employment Promotion Law of the PRC*, which was adopted in 2007 after China ratified in 2006 the ILO Convention No 111 on Discrimination (Employment and Occupation).³⁰⁰ This legislation was revised on 24 April 2015. Article 3 of the Employment Promotion Law states that

The workers shall have the right to equal employment and to choose jobs on their own initiative in accordance with law.

The workers seeking employment shall not be subject to discrimination on the basis of ethnicity, race, gender, religious belief, etc.

In addition, China protects rights of women, children, older persons and disabled persons through, respectively, the *Law of the PRC on the Protection of Rights and Interests of Women*,³⁰¹

²⁹⁷ 刘国福[Guofu Liu], 移民法[Migration Law] (中国经济出版社[China Economic Press], 2010), 21-26.

²⁹⁸ Australia has four anti-discrimination law at the federal level: *Sex Discrimination Act 1984* (Cth); *Age Discrimination Act 2004* (Cth), *Racial Discrimination Act 1975* (Cth) and *Disability Discrimination Act 1992* (Cth).

²⁹⁹ China's current Constitution was adopted in 1982 and most recently revised on 11 March 2018. The English version of China's Constitution can be found: <https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0b3f0e9499913.html>.

³⁰⁰ 《就业促进法》[Employment Promotion Law], adopted on 30 August 2007 by the Standing Committee of the NPC and came into effect on 1 January 2008. The law was revised on 24 April 2015. The English version of China's Employment Promotion Law can be found: <<https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/76984/76984.pdf>> (this is the 2007 version).

³⁰¹ 《中华人民共和国妇女权益保障法》[Law of the PRC on Protection of Rights and Interests of Women], adopted by the National People's Congress (NPC) on 3 April 1982 and then revised several times including the most recent one on 30 October 2022. The English version of this law can be found: <http://en.npc.gov.cn.cdurl.cn/2022-10/30/c_891562.htm>.

the *Law of the PRC on the Protection of Minors*,³⁰² the the Law of the PRC on the Protection of Rights and Interests of Older Persons,³⁰³ and the *Law of the PRC on the Protection of Rights and Interests of Disabled Persons*.³⁰⁴ These laws include and go beyond anti-discrimination.³⁰⁵

Whether the above laws apply to non-nationals requires case by case analysis. For example, the *Employment Promotion Law* does not limit its application to Chinese nationals. However, in the Law of PRC on the Protection of Minors, the definition of Minors is limited to Chinese nationals,³⁰⁶ and the same as the Law on Protection of Rights and Interests of Older Persons (limited to Chinese nationals).³⁰⁷

For migrants, several laws and regulations are relevant.

First, Article 32 of China's Constitution states that China protects the lawful rights and interests of non-nationals in China.³⁰⁸ This means that the rights of non-nationals in China has solid constitutional foundation.

Second, in accordance with the *Measures for Foreigners to Enjoy Relevant Benefits upon Permanent Residence in China* (2012 Permanent Residence Treatment Measures), non-nationals who are permanent residents in China should enjoy the same rights and bear same obligations as Chinese citizens except political rights and other rights provided by law.³⁰⁹ It should be noted that the 2012 Permanent Residence Treatment Measures is relatively a low-level law (not a law passed by the NPC's Standing Committee nor administrative regulation), but it provides some legal basis.

³⁰² 《中华人民共和国未成年人保护法》[Law of the PRC on Protection of Minors], adopted by the Standing Committee of NPC on 4 September 1991 and then revised several times including the most recent one on 26 October 2012 (effective on 1 January 2013). The English version of this law can be found: <http://en.npc.gov.cn.cdurl.cn/2020-10/17/c_674690.htm>.

³⁰³ 《中华人民共和国老年人权益保障法》[Law of the PRC on the Protection of Rights and Interests of Older Persons], adopted by the NPC on 29 August 1996 and then revised most recently on 29 December 2018. The English version of this law can be found: <<https://www.chinalawtranslate.com/en/prc-law-on-protection-of-the-rights-of-the-elderly/>> (2012 version only, partly translated).

³⁰⁴ 《中华人民共和国残疾人权益保障法》[Law of the PRC on the Protection of Rights and Interests of Disabled Persons], adopted by the NPC on 28 December 1990 and then revised most recently on 26 October 2018. The English version of this law can be found: <https://www.lawinfochina.com/display.aspx?lib=law&id=7015&CGid=> (2008 version only).

³⁰⁵ Regarding human rights legislations in China, please see: Sanzhuan Guo, 'Implementation of Human Rights Treaties in Chinese Courts: Problems and Prospects', (2009) 8(1) *Chinese Journal of International Law* 161, 167-171.

³⁰⁶ Law of PRC on Protection of Minors, Article 2.

³⁰⁷ Law of PRC on Protection of Rights and Interests of Older Persons, Article 2.

³⁰⁸ Article 31 of China's Constitution states that

³⁰⁹ 《中共中央组织部人力资源社会保障部公安部等 25 部门关于印发〈外国人在中国永久居留享有相关待遇的办法〉的通知》[Notice on Issuing 'Measures for foreigners to enjoy relevant benefits Permanent Residence in China' jointly by 25 Departments including the Department of Organisation of the CPC's Central Committee, the Ministry of Human Resources and Social Security and the Ministry of Public Security], adopted on 25 September 2012, Ren She Bu Fa [2012] 53 Hao, available at <https://www.mohrss.gov.cn/SYrlzyhshbzb/rencairenshe/zcwj/zhuanyejishuren/202002/t20200211_359470.html>, [1].

Third, the Employment Protection Law plays some significant roles in the protection of rights and interests of non-nationals as it can apply to all workers, including foreign workers in China.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

As demonstrated by the *2012 Permanent Residence Treatment Measures*, political rights are expressly excluded to be enjoyed by non-nationals in China. It should be noted that, even for Chinese nationals, they vote only at a local level, as the Chinese political system is based on indirect election in terms of national and provincial leaders and people's representatives. This means that people may elect local representatives and then local representatives elect higher level of representatives, and people's representatives decide the appointment of executive leaders at their equivalent levels.

However, it should be noted that, even though foreigners are not allowed to vote in China in principle, ethnic Chinese who settle overseas (even with foreign nationality) may participate in China's political system, especially through the arrangement and structure of Chinese People's Political Consultative Conference (中国人民政治协商会议, CPPCC) at each level.³¹⁰ CPPCC is an important and unique component of Chinese political structure.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Article 32 of *China's Constitution* provides the legal foundation for the protection of the lawful rights and interests of non-nationals in China.³¹¹ However, it is not fully clear what rights and interests are included and to what extent they are protected. General speaking, migrants or non-nationals do not enjoy political rights, which are more than the right to vote, such as the right to be elected or the right to work in the government. Like most countries, Chinese nationality is generally required to work in the government. Some areas of law may include distinct limitations for non-nationals. For example, regarding free movement, non-nationals may not be permitted to travel to certain areas in China without prior approval.³¹²

³¹⁰ Please see the official website of National Committee of the Chinese People's Political Consultative Conference (CPPCC), <<http://www.cppcc.gov.cn/zxww/2025/11/10/ARTI1762741025253349.shtml>>.

³¹¹ Article 31 of China's Constitution states that

³¹² 《关于外国人在我国旅行管理的规定》 [Regulations on the Administration of Travel of Foreigners in China], jointly adopted by the Ministry of Public Security, Central Department of Staff, Ministry of Foreign Affairs and State Bureau of Tourism, on 9 October 1982.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

In accordance with *Jian Zhu Fang [2006] 171 Hao: Opinions on Regulating Foreign Investment Access and Management in the Real Estate Market*, it is possible for non-nationals to buy and own a property in China if they meet relevant requirements.³¹³ Basically, they need to study or work in China for more than one year, and generally they can only buy properties for their own residence purpose, which means that non-nationals may not own rental properties.³¹⁴

Each province or provincial city may have its own further requirements. For example, in Beijing, *Jing Jian Fa [2015] 207* provides some relevant procedures and requirements for non-nationals to buy a property in Beijing,³¹⁵ under which an approval is required and the non-nationals may need to hold either a work visa or a journalist visa.³¹⁶ Please see a link for some details in a relatively small city in China, which is not authoritative, but informative for the requirements: https://rsj. Weihai.gov.cn/art/2025/7/11/art_45707_5641325.html. It can be seen that having an employment contract is important for a non-national to buy a property in China (otherwise they may not be able to provide social security and tax payment evidence).

For permanent residents, the limitation in the *Opinions on Regulating Foreign Investment Access and Management in the Real Estate Market*, does not apply.³¹⁷

It should also be noted that in many cases, non-nationals may have already owned a property in China before they lost their Chinese citizenship/nationality or before China changed its policy to permit non-nationals to buy and own properties.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

³¹³ 建住房〔2006〕171号 [Jian Zhu Fang [2006] 171 Hao]: 《关于规范房地产市场外资准入和管理的意见》 [Opinions on Regulating Foreign Investment Access and Management in the Real Estate Market], adopted jointly by six departments on 11 July 2006.

³¹⁴ Ibid [10].

³¹⁵ 京建发〔2015〕207 [Jing Jian Fa [2015] 207], 《北京市住房和城乡建设委员会 北京市公安局关于进一步规范境外个人购买商品住房有关问题的通知》 [Notice of Beijing Municipal Housing and Urban-Rural Development Commission and Beijing Municipal Public Security Bureau on Further Regulating Issues relating to Overseas Individuals Purchasing Commercial Housing], available at <<https://zjw.beijing.gov.cn/bjjs/xxgk/zcwj2024/qtzcwj/xxyx13/543431469/index.shtml>>.

³¹⁶ Ibid.

³¹⁷ 2012 Permanent Residence Treatment Measures, [11].

Article 32 of *China's Constitution* and the *Regulations on the Administration of Employment of Non-Nationals* (Non-Nationals Employment Regulations)³¹⁸ provide legal basis for the right of non-nationals to work in China.

First of all, non-national permanent residents enjoy the same rights as Chinese citizens in terms of employment, unless provided otherwise (such as Chinese nationality required for most governmental jobs).³¹⁹ Article 2 of the *Non-Nationals Employment Regulations* made it clear that the Regulations also apply to non-nationals who have not yet obtained permanent residence.

Second, under Article 5 of the *Non-Nationals Employment Regulations*, employers in China must apply for work permission (就业许可) before they can employ a non-national, unless exempted under Article 9.

Third, non-nationals must meet the following requirements in order to work in China:³²⁰

- (1) Having reached the age of 18 and being in good health. It is common in China to have 'health examination' before commencing employment (even for nationals) and good health generally means no serious disease. For example, in accordance with Shanghai's decree 沪劳外发 (1998) 25 号 [Hu Lao Wai Fa (1998) 25 Hao] implementing the *Non-Nationals Employment Regulations*, good health means no 'mental illness, leprosy, AIDS, sexually transmitted diseases, open pulmonary tuberculosis, or other infectious diseases, nor diseases that are prohibited by their job'.³²¹
- (2) Possessing the professional skills needed for and corresponding work experience in the work.
- (3) Free from criminal records.
- (4) Having specific employers.
- (5) Possessing a valid passport or other international travel documents that can substitute a passport.

Fourth, non-nationals should enter China with a Z Visa (unless permitted under a treaty obligations) in order to work in China, and they can work only after they obtain a residence permit and a work permit (就业证) in China, unless exempted under Article 9.³²²

Fifth, non-nationals who have not obtained residence permits (namely, those holding, F (exchange), L (travel), C (crews), and G (transit) visas), non-nationals studying or under

³¹⁸ 《外国人在中国就业管理规定》[Regulations on the Administration of Employment of Non-nationals], adopted on 22 January 1996, and then revised by the Ministry of Human Resources and Social Protection on 12 November 2010 (Decree No 7) and 13 March 2017 (Decree No 32) respectively. The English version can be found: <<https://www.laodongfa.com/hot/284.html>>.

³¹⁹ *Non-Nationals Employment Regulations*, Article 2.

³²⁰ *Non-Nationals Employment Regulations*, Article 7.

³²¹ 沪劳外发 (1998) 25 号 [Hu Lao Wai Fa (1998) 25 Hao], 上海市劳动局关于印发《关于贯彻〈外国人在中国就业管理规定〉的若干意见》的通知 [Notice of Shanghai Labour Bureau on "Issuing 'Several Opinions on Implementing the Regulations on the Administration of Employment of Non-nationals'"], available at <<https://www.sh-italent.com/Article/201606/201606080002.shtml>>.

³²² *Non-Nationals Employment Regulations*, Article 8.

internship in China, and the family members of non-nationals holding Z visas shall not be employed in China.³²³

Sixth, one common exemption from work permission and work permit under Article 9 is ‘Foreign experts and management personnel’ as they would have a ‘Foreign Expert Certificate’ (外国专家证) issued by the Bureau of Foreign Experts.³²⁴ It should be pointed out that China recognises the refugee status determined by the UNHCR so refugees can stay in China; however, unfortunately, these refugees do not have the right to work in China unless they obtain a work permit through other channels.³²⁵

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies’ employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

There is no general prohibition for a governmental agency or public institutions like a hospital or school to employ a non-national as long as the required procedures are followed such as obtaining work permission.

However, under Article 33 of the *Non-Nationals Employment Regulations*, individual businesses (个体经济组织 in Chinese), such as a sole trader (个体户), and private citizens, are prohibited from employing foreigners.³²⁶ It should be pointed out that ‘individual businesses’ or ‘private citizens’ are not private companies or enterprises as those businesses are recognised as a legal person different from natural persons under Chinese law.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Interestingly, under Article 6 of the *Non-Nationals Employment Regulations*, it is prohibited to engage non-nationals to engage in cultural performances for business purposes, unless exempted in accordance with relevant laws.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

³²³ *Non-Nationals Employment Regulations*, Article 8.

³²⁴ *Non-Nationals Employment Regulations*, Article 9.

³²⁵ Lili Song, ‘Shedding light on RSD in China’, 65 (2020) *Forced Migration Review* 10, available at <<https://www.fmreview.org/recognising-refugees/song/>>; Elena Soboleva, ‘Refugee migration to the People's Republic of China’, in Heidi Østbø Haugen and Bingyu Wang (eds) *Handbook on Migration to China* (Elgar, 2025), available at <<https://www.elgaronline.com/edcollchap-oa/book/9781035332700/chapter22.xml>>.

³²⁶ *Non-Nationals Employment Regulations*, Article 33.

In accordance with the *Non-Nationals Employment Regulations*, non-nationals are entitled to the same labour protections as Chinese nationals in terms of minimum wage, working hours, right to rest and leaves, work safety and hygiene, and social security.³²⁷

Details on the rights in work can be found in the *Law of the PRC on Labour*,³²⁸ including non-discrimination under Article 12, working hours and rest under Chapter 4, the right to join trade union under Article 7, work safety under Chapter 6.

However, the duration of labour contract for non-nationals cannot be more than five years.³²⁹ The labour contract can be renewed if it meets relevant requirements.³³⁰ There is no such limitation for Chinese nationals.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

There is no prohibition for non-nationals to get access to public health services, but it is recommended that they should go to the international department of a hospital or a private hospital (probably more due to the language considerations).³³¹ Access to public health services does not mean free access or application of the same price as the one applied to Chinese nationals, as non-nationals may not have the same health insurance as Chinese nationals. Even different Chinese nationals may have different access to public health services due to their social status and insurance policies.

Non-nationals need to bring their passport or their Residence Permit to verify their legal stay in China in order to get access to health services. Chinese nationals would have their Chinese National Identity Card or Social Security Card (社会保障卡) to access health services. This may make it difficult, if not impossible, for irregular migrants to get access to health services.³³²

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

³²⁷ *Non-Nationals Employment Regulations*, Articles 21 and 22.

³²⁸ 《中华人民共和国劳动法》[Law of PRC on Labour], adopted by the Standing Committee of NPC on 5 July 1994 and most recently amended on 29 December 2018.

³²⁹ *Non-Nationals Employment Regulations*, Articles 17.

³³⁰ *Non-Nationals Employment Regulations*, Article 18.

³³¹ https://yiqifu.baidu.com/cknowledge_17901478756.

³³² Irregular migrants in China are generally called ‘San Fei’ (三非) non-nationals or ‘Three Irregularities’, referring to those non-nationals ‘overstayed, entered China illegally, worked illegally’.

China adopts a nine-year compulsory education system.³³³ Under Article 4 of China's Compulsory Education Law, the compulsory education system applies to Chinese nationals, and compulsory education should not charge tuition and miscellaneous fees.³³⁴

There is no prohibition for non-nationals to get access to China's public education services. However, this does not mean the primary and secondary school education (nine-year education) is free to non-nationals as it is for Chinese nationals. For minor irregular migrants, it would be very hard, if ever possible (openly), to access to public education.

In July 1999, China adopted the *Interim Measures for the Administration of Foreign Students in Primary and Secondary Schools*, under which some schools which have better education facilities and better management may be permitted to accept foreign students.³³⁵ For those who study in the primary and secondary schools in China for more than six months, they should get a X Visa (student visa).³³⁶

Regarding tertiary education, China adopted the Measures on Administration of School Enrolment and international Students Training on 1 July 2017, under while non-nationals may apply for admission to study in the higher education in China and the university will decide on admission.³³⁷ The tuition for international students is generally different from the tuition for domestic students.³³⁸

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

As discussed earlier, in accordance with the *Non-Nationals Employment Regulations*, non-nationals are entitled to the same labour protections as Chinese nationals in terms of social security.³³⁹ This means that the non-national workers in China should be eligible for the Five Insurance and One Housing Fund system (五险一金) as Chinese nationals.

Article 2 of the *PRC Social Insurance Law* refers to the following five social insurances (commonly referred to as 'Five Insurances'):³⁴⁰

³³³ 《中华人民共和国义务教育法》[*Law of the PRC on Compulsory Education*], adopted on 12 April 1986 by the National People's Congress, and amended most recently on 29 December 2018. The English version of this law can be found: <https://media.unesco.org/sites/default/files/webform/r2e002/8ee4856180419d764873e28d0b7faec1cdcd853e.pdf>.

³³⁴ *Law of the PRC on Compulsory Education*, Article 2.

³³⁵ 教育部令第4号 [Ministry of Education Decree No 4]: 《中小学接受外国学生管理暂行办法》[*Interim Measures for the Administration of Foreign Students in Primary and Secondary Schools*], adopted by the Ministry of Education in 21 July 1999, Article 4.

³³⁶ *Interim Measures for the Administration of Foreign Students in Primary and Secondary Schools*, Article 7.

³³⁷ 《学校招收和培养国际学生管理办法》[*Measures on Administration of School Enrolment and international Students Training*], adopted on 1 July 2017 jointly by the Ministry of Education, Ministry of Foreign Affairs and the Ministry of Public Security, Article 12.

³³⁸ *Ibid* Article 14.

³³⁹ *Non-Nationals Employment Regulations*, Articles 22.

³⁴⁰ 《中华人民共和国社会保险法》[*Law of the People's Republic of China on Social Insurance*, passed on 28 October 2010 by the Standing Committee of the National People's Congress, and then amended in 2018.

- a. Basic Age Pension Insurance (基本养老保险)
- b. Basic Medical Insurance (基本医疗保险)
- c. Work Injury Insurance (工伤保险)
- d. Unemployment Insurance (失业保险)
- e. Maternity Insurance (生育保险)

The relevant legal framework regarding ‘five social insurances and one housing fund’ includes the following key national legislation/regulations/provisions:

- (1).Law of the PRC on Social Insurance 2018 《中华人民共和国社会保险法》
- (2).Decision of the State Council on Establishing Unified Basic Age Pension Insurance of Enterprise Employees 《国务院关于建立统一的企业职工基本养老保险制度的决定》³⁴¹
- (3).Notice on Adjusting the Percentage of Individual Contribution to the Basic Age Pension Insurance 2003 《关于调整基本养老保险个人缴费比例的通知》³⁴²
- (4).Decision of the State Council on Improving Basic Age Pension Insurance of Enterprise Employees 2005 《国务院关于完善企业职工基本养老保险制度的决定》³⁴³
- (5).Notice of Issues Concerning the Collection of Individual Superannuation 2024 《关于领取个人养老金有关问题的通知》³⁴⁴
- (6).Notice from the General Office of the State Council on the Issuance of the Comprehensive Plan of Reducing Social Insurance Contributions 《国务院办公厅关于印发降低社会保险费综合方案的通知》 (hereinafter referred to ‘State Council’s 2019 Notice’)³⁴⁵

³⁴¹ 《国务院关于建立统一的企业职工基本养老保险制度的决定》 [Decision of the State Council on Establishing Unified Basic Age Pension Insurance of Enterprise Employees], adopted by the State Council on 16 July 1997, 国发[1997]26号[Guo Fa [1997] 26 Hao].

³⁴² 《关于调整基本养老保险个人缴费比例的通知》 [Notice on Adjusting the Percentage of Individual Contribution to the Basic Age Pension Insurance], 劳社部发[2003]6号[Lao She Bu Fa [2003] 6 Hao].

³⁴³ 《国务院关于完善企业职工基本养老保险制度的决定》 [Decision of the State Council on Improving Basic Age Pension Insurance of Enterprise Employees], adopted by the State Council on 3 December 2005, came into effect on 3 December 2005, 国发[2005]38号[Guo Fa [2005] 38 Hao].

³⁴⁴ 《关于领取个人养老金有关问题的通知》 [Notice of Issues Concerning the Collection of Individual Superannuation], adopted jointly by the Ministry of Human Resources and Social Security, the Ministry of Finance, the State Taxation Administration, the National Financial Regulatory Administration and the China Securities Regulatory Commission in 2024.

³⁴⁵ 《国务院办公厅关于印发降低社会保险费综合方案的通知》 [Notice from the General Office of the State Council on the Issuance of the Comprehensive Plan of Reducing Social Insurance Contributions], adopted by the General Office of the State Council on 1 April 2019, 国办发[2019] 13号[Guo Ban Fa [2019] 13 Hao].

- (7).Decisions of the State Council on Establishing Basic Medical Insurance of Urban Employee 《国务院关于建立城镇职工基本医疗保险制度的决定》³⁴⁶
- (8).Unemployment Insurance Regulations 1998 《失业保险条例》³⁴⁷
- (9).Work Injury Insurance Regulations 《工伤保险条例》³⁴⁸
- (10).Housing Provident Fund Administration Regulations 2019 《住房公积金管理条例》³⁴⁹

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

China is currently in the process of adopting the Social Assistance Law.³⁵⁰ According to the current draft law, this law is to protect citizens' basic rights rather than non-nationals'.³⁵¹ It is unclear how this law would apply to non-national permanent residents. In principle, permanent residents should enjoy the same rights as Chinese nationals in terms of economic, social and cultural rights, as demonstrated in the *2012 Permanent Residence Treatment Measures*.³⁵²

Even though the formal Social Assistance Law has not yet been adopted, China has an *Interim Regulations on Social Assistance* to govern relevant matters.³⁵³ Social assistance in China may include minimum living allowance,³⁵⁴ housing assistance,³⁵⁵ medical assistance³⁵⁶ and assistance to special groups such as older persons, minors less than 16 years old, and disabled persons.³⁵⁷

In terms of irregular migrants, due to their lack of required legal documents, they would not have legal rights in China to enjoy social assistance. However, general humanitarian treatment may/should apply.

³⁴⁶ 《国务院关于建立城镇职工基本医疗保险制度的决定》 [Decisions of the State Council on Establishing Basic Medical Insurance of Urban Employee], adopted by the State Council on 14 December 1998, 国发[1998] 44 号[Guo Fa [1998] 44 Hao].

³⁴⁷ 《失业保险条例》 [Unemployment Insurance Regulations 1998], adopted by the Standing Meeting of the State Council on 26 December 1998 and issued under the State Council Order No 258 on 22 January 1999.

³⁴⁸ 《工伤保险条例》 [Work Injury Insurance Regulations], adopted by the Standing Meeting of the State Council on 16 April 2003 (came into effect on 1 April 2004) and amended on 20 December 2010 (came into effect on 1 January 2011).

³⁴⁹ 《住房公积金管理条例》 [Housing Provident Fund Administration Regulations 2019], adopted by the State Council first in 1999, and then Amended in 2019.

³⁵⁰ 《中华人民共和国社会救助法(草案)》 [Law of the PRC on Social Assistance (Draft)], to be considered by the NPC. The draft law can be found: <<https://npcobserver.com/wp-content/uploads/2025/06/Social-Assistance-Law-Draft.pdf>> (Chinese version).

³⁵¹ Ibid Article 1.

³⁵² 2012 Permanent Residence Treatment Measures, [1].

³⁵³ 《社会救助暂行办法》 [Interim Regulations of Social Assistance], adopted by the State Council in 2014 (Decree No 649), effective from 1 May 2014.

³⁵⁴ Ibid Chapter 2.

³⁵⁵ Ibid Chapter 7.

³⁵⁶ Ibid Chapter 5.

³⁵⁷ Ibid Article 14.

Are there any final observations you would like to make? Please write below.

N/A

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

March 2026

For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including legislative proposals for amendments that are being discussed in the country under review.

Country under review: Colombia

Authors: Daniela Gómez Montoya and Diana Cristina Corredor Gil

Please indicate the treaties to which the country under review is a party.

UN system treaties:³⁵⁸

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	28 Jul 1951	10 Oct 1961
1967 Protocol to the Convention relating to the Status of Refugees		4 Mar 1980 (accession)
1954 Convention relating to the Status of Stateless Persons	30 Dec 1954	7 Oct 2019
1961 Convention on the Reduction of Statelessness		15 Aug 2014 (accession)
International Covenant on Civil and Political Rights (ICCPR)	21 Dec 1966	29 Oct 1969

³⁵⁸ Ministry of Foreign Affairs (Cancillería de Colombia), *Colombia frente a los instrumentos internacionales de derechos humanos y DIH* (February 2014), retrieved from: https://www.cancilleria.gov.co/sites/default/files/colombia_frente_a_los_instrumentos_internacionales_de_derechos_humanos_y_dih-feb2014_3.pdf. United Nations. Treaty Collection, retrieved from: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en

First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	21 Dec 1966	29 Oct 1969
International Covenant on Economic, Social and Cultural Rights (ICESCR)	21 Dec 1966	29 Oct 1969
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	NA	24 May 1995
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	10 Apr 1985	8 Dec 1987
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	23 Mar 1967	2 Sept 1981
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	17 Jul 1980	19 Jan 1982
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	10 Dec 1999	23 Jan 2007
Convention on the Rights of the Child (CRC)	26 Jan 1990	28 Jan 1991
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	06 Sep 2000	11 Nov 2003
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	06 Sep 2000	25 May 2005

Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)	30 Mar 2007	10 May 2011
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		4 Mar 1969
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		
ILO Equal Remuneration Convention (No. 100)		7 Jul 1963
ILO Discrimination (Employment and Occupation) Convention (No. 111)		4 Mar 1969
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
American Convention on Human Rights (ACHR)	22 Nov 1969	28 May 1973
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		23 Dic 1997
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		15 Nov 1996 (accession)

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		02 Nov 2004
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	08 Sept 2014	
Inter-American Convention against All Forms of Discrimination and Intolerance	09 Aug 2014	
Inter-American Convention Protecting the Human Rights of Older Persons	13 Sept 2022	27 Sept 2022 (accession)

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Treaty	Signed	Ratified
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty		05 Aug 1997
International Convention for the Protection of all Persons from Enforced Disappearance	2007	23 Dec 2010
Inter-American convention to prevent and punish torture		02 Dec 1998
Convention on the Prevention and Punishment of the Crime of Genocide		27 Oct 1959
Inter-American Convention on Forced Disappearance of Persons		12 Apr 2005
Inter-American Convention on the Nationality of Women	26 Dec 1933	22 Jul 1936
Convention of 25 October 1980 on the Civil Aspects of International Child Abduction		13 Dec 1995
Inter-American Convention on International Traffic in minors		23 Aug 2000

Convention on the Political Rights of Women's Political Rights		05 Aug 1986
Convention 138 concerning Minimum Age for Admission to Employment		02 Feb 2001
Inter-American Convention on Maintenance Obligations		28 Jul 2010
Convention (N. 169) concerning indigenous and tribal peoples in independent countries		04 Mar 1991
International Convention on the Suppression and Punishment of the Crime of Apartheid		23 May 1988
ILO Convention No. 87 concerning Freedom of Association freedom of association and protection of the right to organize		16 Jun 1976
ILO Convention No.98 Right to Organize and Collective Bargaining		16 Nov 1976
ILO Convention No. 105 concerning the Abolition of Forced Labor		07 Jun 1963
ILO Convention No. 182 Concerning the Prohibition of the Worst Forms of Child Labour Convention		28 Jan 2005
United Nations Convention against Transnational Organized Crime	12 Dec 2000	04 Aug 2004
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	12 Dec 2000	04 Aug 2004
Convention on Political Asylum	26 Dec 1933	22 Jun 1936
Convention on Territorial Asylum	28 Mar 1954	13 Nov 1968

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Colombia has both visa and residence permit (cédula de extranjería):

- **The Colombian visa** is an official permit that allows a foreign citizen to enter and stay in the Colombian territory temporarily or permanently and develop different activities and/or occupations in the country. This authorization is issued by the Colombian Ministry of Foreign Affairs, either in Bogotá or through the Colombian embassies abroad.³⁵⁹ Under the current visa regime, there are three main types of visas: Visitor Visa (type V), Migrant Visa (type M) and Resident Visa (type R). In addition, dependents of the principal visa holder may obtain a visa as beneficiaries.³⁶⁰
- **The residence permit and cédula de extranjería** is an identity document issued to foreigners who have held a visa for more than 3 months or to their beneficiaries, for identification purposes only.³⁶¹ Hence, if someone is planning to stay in Colombia for more than three months, she/he must request a visa depending on the purpose of the stay and after getting the visa, adult foreigners and children over 7 years of age must process, before the offices of the migration authorities (Migration Colombia,) the residence permit at the latest within fifteen (15) calendar days from the date the visa is granted or when they reach the age indicated above.³⁶² The issuance of this document constitutes a separate administrative procedure from the visa process and requires the payment of a corresponding fee. Failure to obtain this document within the established timeframe constitutes a breach of migration regulations and may result in administrative sanctions, including monetary fines.³⁶³

In the event that the visa is issued at a consulate abroad, the foreigner will have 15 days from the date of entry into the national territory to request the residence permit. In the case of foreign children who reach the age of majority, they must apply for the residence permit for adult foreigners.³⁶⁴

³⁵⁹ COLVISA, *¿Qué es la visa colombiana en 2025?* (2025), retrieved from: <https://visacolombianaparaextranjeros.com/>

³⁶⁰ Ministry of Foreign Affairs (Cancillería de Colombia), *Tipos de visa en Colombia* (2026), retrieved from: https://www.cancilleria.gov.co/tt_ss/1-tipos-visas-colombia

³⁶¹ Ministry of Justice (Ministerio de Justicia), *¿Qué es la Cédula de Extranjería y cómo obtenerla?* (2020), retrieved from: <https://www.minjusticia.gov.co/programas-co/LegalApp/Paginas/Que-es-la-Cedula-de-Extranjeria-y-como-obtenerla.aspx>

³⁶² COLVISA, *Cédula de extranjería* (2025), retrieved from: [https://visacolombianaparaextranjeros.com/servicios/cedula-de-extranjeria-en-colombia/#:~:text=Para%20que%20usted%20pueda%20solicitar,a%20tres%20\(3\)%20meses](https://visacolombianaparaextranjeros.com/servicios/cedula-de-extranjeria-en-colombia/#:~:text=Para%20que%20usted%20pueda%20solicitar,a%20tres%20(3)%20meses)

³⁶³ Decree 1067 of 2015 – Single Regulatory Decree of the Administrative Sector of Foreign Affairs, retrieved from: https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/decreto_1067_2015.htm

³⁶⁴ Ibid.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, etc. There are also bridging visas in addition to PR and TR.

In Colombia, the visa categories are as follows:³⁶⁵

I.Visitor visa		
Intended for short to medium-stay activities in the country and do not grant temporary or permanent resident status. Some of them authorize to work in the country for a specific activity and with a specific entity or company. The vacation and work visa, by its nature, grants an open work permit, subject to the principle of reciprocity. Visitor visas that allow a non-national to reside for more than three months are:		
Name	Purpose	Validity
V/ Tourism	Exclusively for leisure activities, tourism or cultural interest. Beneficiaries: This visa does not allow applications as a beneficiary. Restrictions: The V Tourist visa does not allow working in Colombian territory.	Up to one (1) year. The authorized stay in the national territory will be 90 days, extendable for another 90 calendar days. The permanence will be non-extendable when completing 180 days, within each 365 calendar days, counted from the issuance of the visa. ³⁶⁶
V/ Business	To carry out business, market studies,	Up to two (2) years. The

³⁶⁵ Ministry of Foreign Affairs (Cancillería de Colombia), *Tipos de visa* (2025), retrieved from: <https://www.cancilleria.gov.co/visas/larga-estancia>

³⁶⁶ Ministry of Foreign Affairs of Colombia, Resolution No. 5477 of 2022, “Whereby provisions relating to visas are established and other provisions on immigration matters are issued”, Art. 34, retrieved from: https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion_minrelaciones_5477_2022.htm

	direct investment plans or procedures, incorporation of commercial companies, negotiation, conclusion of contracts or commercial representation. It is intended for foreigners of nationalities who are not exempted from visas for short visits, established by Resolution 5488 of 2022 <i>“Whereby provisions are established regarding visa exemptions and transit visas, other provisions on immigration matters are enacted, and Resolution 10535 of 2018 is repealed.”</i>³⁶⁷ or those who, being exempted from short-term visas, require a longer stay in the country.	stay in the national territory will be a maximum of 180 calendar days, continuous or discontinuous, non-extendable in each three hundred and sixty-five (365) calendar days from the issuance of the visa.³⁶⁸
V/ Student	To carry out face-to-face, virtual or distance studies in arts, preschool, primary, secondary, middle school, technical education and human development, and higher education; or to carry out student internships, and academic exchange by agreement between education institutions.	Up to two (2) years. Except for virtual or distance training, absence from the country for more than ninety (90) calendar days will result in automatic termination of the visa.
V/Medical treatment	To attend as a patient or accompanying a patient to a consultation, intervention or medical and dental treatment. This visa will be granted for specific treatments, prioritizing those of specific duration, which are part of the exportable offer of medical services for foreigners.	Up to one (1) year and will not be extendable in the national territory. The stay in Colombian territory may not exceed one hundred and eighty (180) continuous or discontinuous calendar days.³⁶⁹
V/Administrative and/or judicial procedures	To carry out administrative or judicial procedures before entities or authorities in Colombia.	Up to one (1) year.

³⁶⁷ Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), Resolution 5488 of 2022, retrieved from: https://www.cancilleria.gov.co/sites/default/files/2022-12/resolucion_minrelaciones_5488_2022.pdf

³⁶⁸ Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), Resolution 5477 of July 22, Art. 35.

³⁶⁹ Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), Resolution 5477 of July 22, Art. 37.

V/ Crewmember	To work in Colombian jurisdictional waters as a crew member of a vessel, dredge or offshore platform.	Up to one (1) year.
V/Seasonal agricultural worker	To develop seasonal agricultural work under programs established by the Ministry of Agriculture and Rural Development, or the Governors' Offices in agreement with the agricultural sector, the Ministry of Labor and the Ministry of Health and Social Protection, which will indicate the estimated quotas available and the work in which labor support is required.	Up to one hundred eighty (180) days.
V/ Events	To attend conventions and business, cultural or academic activities as a speaker, exhibitor, participant, artist, athlete, juror, contestant, organizer or logistic personnel. It does not allow working in Colombian territory.	Up to one (1) year. The stay in the national territory will be of a maximum of one hundred and eighty (180) calendar days, continuous or discontinuous, non-extendable in each three hundred and sixty-five (365) calendar days from the issuance of the visa. ³⁷⁰
V/ Religious	To work in the exercise of religious ministry or to work as a missionary of a religious entity, duly recognized by the Colombian State.	Up to two (2) years.
V/Religious Student/ Religious volunteer	To enter and remain in the country as a volunteer or student in religious training or to carry out theological studies in an institute or organization of a church or religious denomination, duly recognized by the Colombian State.	Up to one (1) year.

³⁷⁰Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), Resolution 5477 of July 22, Art. 41.

V/ Volunteers or cooperators	To carry out volunteer work of a social or development cooperation nature.	Up to two (2) years. Absence from the country for ninety (90) calendar days or more will lead to early termination of the visa.
V/ Film productions or large format documentaries.	To participate in film productions or large format documentaries.	Up to one (1) year.
V/ Digital Nomad	To provide remote work or telecommuting services, from Colombia, through digital media and internet, exclusively for foreign companies, as independent or linked to work, or to start an enterprise of digital content or technology of interest to the country.	Up to two (2) years.
V/ Journalistic Coverage	To carry out short-term journalistic coverage in the country.	Up to one (1) year.
V/ Permanent Correspondent	To work in Colombia as a permanent-press correspondent for a foreign media.	Up to two (2) years.
V/ Technical Assistance	To provide technical assistance to a legal entity in Colombia.	Up to two (2) years. The stay in the national territory will be of a maximum of one hundred and eighty (180) calendar days, continuous or discontinuous, non-extendable in each three hundred and sixty-five (365) calendar days from the issuance visa. ³⁷¹

³⁷¹ Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), Resolution 5477 of July 22, Art. 49.

V/ Businessmen FTA (TLC for its acronym in Spanish)	To facilitate the mobility of entrepreneurs or businesspeople, in application of commitments acquired by Colombia in the framework of Free Trade Agreements signed and in force with other States.	Up to two (2) years.
V/ Vacation and Work	To visit the national territory under Vacation and Work Agreements signed by Colombia that are in force. This visa grants an open work permit.	Up to one (1) year, and the holder may remain in Colombian territory for the entire duration of the visa.
V/ Internship	For internship activities in companies established in Colombia	Up to one (1) year.
V/ Service Provider-work or labor	To work temporarily in Colombia under a contract for the provision of services, work or labour.	Up to two (2) years.
V/ Internationalization Promotion	For productive, innovation or research activities aimed at the adoption or adaptation of technologies that complement or develop products, processes or services that contribute to strengthening the country's competitiveness; for activities that contribute to incorporating knowledge into the priorities of national, regional and territorial development plans; or for activities or professions pre-established by the Directorate of Migration, Consular Affairs and Citizen Services that contribute to the internationalization of the country.	Up to two (2) years. The authorization to stay in the country will be equal to the validity of the visa.
V/ Annuitant	For foreigners receiving a regular and variable income from a creditable legal source.	Up to two (2) years.

II.Visitor's visa (type V) complimentary		
Name	Purpose	Validity
Visa V Courtesy Diplomats	In application of the principle of diplomatic reciprocity, for the holder of a diplomatic or official passport of a State recognized by Colombia, who enters the country temporarily to carry out activities other than diplomatic activities and which do not imply economic remuneration in the country; or for the spouse or permanent partner of an active official of the Diplomatic and Consular Career of Colombia.	Up to two (2) years.
Visa V ICETEX Program	To participate in academic programs or events of the Instituto Colombiano de Crédito Educativo y Estudios Técnicos en el Exterior 'Mariano Ospina Pérez' ICETEX.	Up to two (2) years. The authorized stay in the country would be equal to the validity of the visa.
Visa V Courtesy International commitments	For cases contemplated by law, or in compliance with international cooperation agreements or treaties in force, which provide for the issuance of this type of visa.	Up to two (2) years. The authorized stay in the country will be equal to the validity of the visa.
Visa V Courtesy of Ley de Cine	For foreign artistic, technical and production personnel entering the country to carry out or participate in audiovisual production projects or filming of foreign cinematographic works under Cinema Law.	Up to two (2) years. The authorized stay in the country will be equal to the validity of the visa.
Visa V Refuge Complementa ry Measure	For foreigners for whom the Advisory Commission for the Determination of Refugee Status (CONARE) requests a complementary measure to the Refugee.	Up to one (1) year
III.Migrant Visa (type M)		
For the foreigner who aspires to settle. It is valid for up to three (3) years.		

Name	Purpose	Validity
M Visa Spouse	For foreigners who are married to a Colombian citizen and aspire to live effectively with their Colombian spouse in the country. This visa allows to accumulate time for the Resident Visa, after a minimum time of permanence as a holder of 5 years.	Up to three (3) years
M Visa Permanent partner of a Colombian national	For foreigners who have a de facto union with Colombian nationals. This visa allows accumulating time for the Resident Visa.	Up to one (1) year
M visa Mother or Father or child of Colombian national by adoption	For foreigners who are parents or children of a citizen who is Colombian by adoption. This visa allows accumulating time for the Resident Visa, after a minimum stay of 2 years as a holder.	Up to three (3) years
M visa for parents of Colombian nationals by birth	For foreigners who are parents of a citizen who is Colombian by birth. This visa allows the accumulation of time for the Resident Visa, after a minimum stay of 2 years as a holder.	Up to three (3) years
M Migrant Mercosur Visa	For nationals of the States Parties to the 'Agreement on Residence for nationals of the States Parties to the Mercosur, Bolivia and Chile', in application of the principle of reciprocity. This visa is equivalent to the Temporary Resident Visa established in that instrument. This visa allows accumulating time for the Resident Visa, after a minimum stay of 2 years as holder.	Up to two (2) years.

M Visa for Andean Migrant	For nationals of any of the States Parties to the ‘Andean Migratory Statute’, in application of the principle of reciprocity. This visa allows the accumulation of time for the Resident Visa, after a minimum stay of 2 years as a holder.	Up to two (2) years. This visa is granted for one time only.
M refugee visa	For foreigners who have been recognized by the Colombian State as refugees. This visa allows the accumulation of time for the Resident Visa, after a minimum stay of 5 years as holder.	Up to three (3) years
M Visa worker	For foreigners who aspire to work in Colombia with a legal entity by means of an employment contract. This visa allows the accumulation of time for the Resident Visa, after a minimum stay of 5 years as holder.	Up to three (3) years
M Visa for Partner or Owner	For foreigners who have incorporated a company or have acquired a share in the share capital of a commercial company in operation. This visa allows the accumulation of time for the Resident Visa, after a minimum stay of 5 years as holder.	up to three (3) years. The validity of the visa will be conditional upon the amount of shareholding being maintained for the duration of the visa.
M Visa for Self-employed professional	For foreigners who aspire to exercise a regulated profession or, exceptionally, an unregulated activity, provided that the activity is of interest to the country. This visa allows the accumulation of time for the Resident Visa, after a minimum stay of 5 years as holder.	Up to three (3) years.
M Visa for Pensioners	For foreigners who have a constant monthly income derived from a pension granted by a State or a private pension fund. This visa allows the accumulation of time for the Resident Visa, after a minimum stay of 5 years as holder.	This visa will be valid for up to three (3) years and does not allow the holder to work in national territory. This visa will not allow its holder to be

		affiliated to the Colombian Social Security System, except as provided for in bilateral or multilateral agreements.
M Visa Promotion of internationalization	For foreigners with a master's degree, doctorate or post-doctorate in basic or applied sciences, engineering, mathematics and related subjects, whose profiles are in line with the priorities required by the country in its public and private internationalization plans; or for professionals in areas pre-established by the Directorate of Migration, Consular Affairs and Citizen Services, whose practice contributes to the adoption and/or adaptation of technologies that strengthen the country's competitiveness. This visa allows accumulating time for the Resident Visa, after a minimum time of permanence as a holder of 5 years has elapsed.	Up to three (3) years.
M Investor Visa	A foreigner who has made a Foreign Direct Investment or has acquired real estate in his/her name and maintains such investment or acquisition during the validity of his visa. This visa allows accumulating time for the Resident Visa, after a minimum time of permanence as holder of 5 years	Up to three (3) years.
IV. Resident Visa (type R) For foreigners seeking to settle permanently in Colombia. The main holder or beneficiary of a Permanent Resident (R) visa must apply for its renewal every five (5) years. The R-type visa grants an open work permit and allows its main holder to carry out any lawful activity in the national territory, without prejudice to compliance with the rules established to exercise a profession or regulated activity.		
Name	Purpose	Validity

R Visa Renunciation of Colombian nationality	For foreigners who, having been Colombians by birth or adoption, renounced Colombian nationality.	Five (5) years.
Visa R for cumulative time	For foreigners who have stayed in the national territory as holders of valid Migrant (M) visas, accumulating between 2 and 5 years in the country.	Five (5) years.
Visa R for Venezuelans under ETPV	For Venezuelan citizens under the Temporary Protection Status for Venezuelan Migrants (ETPV in its Spanish acronym) and who have completed 5 years of accumulated time with the ETPV.	Five (5) years.
Special resident peace visa	In compliance with Decree Law 831 of 2017 “ <i>Whereby the Special Peace Resident Visa is established</i> ”, ³⁷² this visa may be requested by the foreigner former member of the FARC-EP, who has completed the process of laying down arms, has submitted to the Final Agreement for the Termination of the Conflict, and has made the transition to legality.	Five (5) years.
V.Beneficiary Visa		
Name	Purpose	Validity
Beneficiary Visa	Beneficiaries of a foreigner are the spouse, permanent partner and children under twenty-five (25) years of age who are economically dependent on the principal visa holder (with a M, R o V visa), or who, being over 25 years of age, present some type of duly qualified disability that	The visa granted as beneficiary shall in no case be longer than the duration of the visa granted to the principal holder (M, R or V visa)

³⁷² Decree 813 of 2017, <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=85242>

retrieved from:

	prevents them from being economically independent The visa as beneficiary does not allow work.	

In addition to the aforementioned types of visas, in Colombia it is possible to stay in the national territory for more than three months with the following authorizations:

(i) Temporary Protection Permit (PPT in its Spanish acronym)³⁷³:

The Temporary Protection Permit (PPT) is an identification document issued to Venezuelan migrants who are beneficiaries of the Temporary Protection Status for Venezuelan Migrants (ETPV). It constitutes a migration regularization mechanism that authorizes its holders to remain in Colombia under conditions of temporary migration regularity for a specific period.

The PPT allows Venezuelan migrants to obtain an educational degree in Colombia, apply for university scholarships offered by private or governmental entities, validate professional degrees before the Ministry of Education, access the Colombian health system and exercise any legal labour activity in the country through valid contracts³⁷⁴.

The Temporary Protection Status for Venezuelan Migrants (ETPV), established by Decree 216 of 2021³⁷⁵, constitutes the legal protection framework under which the PPT is granted. Resolution 0971 of 2021³⁷⁶ regulates its implementation as part of the Temporary Protection Regime.

Currently, the Single Registry of Venezuelan Migrants (RUMV) remains open until 30 May 2031 only for specific categories, including:

- Children and adolescents are linked to an Administrative Process for the Restoration of Rights (PARD) or to the System of Criminal Responsibility for Adolescents (SRPA).
- Venezuelan minors and young people enrolled in educational institutions at pre-school, preschool, elementary and middle school levels.

³⁷³ Ministry of Justice and Law of Colombia (Ministerio de Justicia y del Derecho de Colombia), *¿Cómo puedo hacer para obtener el permiso de protección temporal en Colombia?* (2023), retrieved from: <https://www.minjusticia.gov.co/programas-co/LegalApp/Paginas/--%C2%BFC%C3%B3mo-puedo-hacer-para-obtener-el-permiso-de-protecci%C3%B3n-temporal-en-Colombia-.aspx>

³⁷⁴ Some legal instruments related to ETPV are: (i) Decree 216 of 2021 'Whereby the Temporary Statute of Protection for Venezuelan Migrants under Temporary Protection Regime is adopted and other provisions on migration issues are issued'. (ii) Resolution 971 of 2021 (Special Administrative Unit Migration Colombia) 'By which is implemented the Temporary Statute of Protection for Venezuelan Migrants adopted by means of Decree 216 of 2021'.

³⁷⁵ Decree 216 of 2021 – Temporary Protection Statute for Venezuelan Migrants under the Temporary Protection Regime, retrieved from: https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/decreto_0216_2021.htm

³⁷⁶ Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), Resolution 0971 of 2021, retrieved from: https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion_uaemc_0971_2021.htm

Validity and loss of the PPT

- The PPT will be valid until the last day of validity of the Temporary Protection Status for Venezuelans (ETPV). Upon expiry, the document will be destroyed.
- The issuance of any type of visa in Colombia will generate the loss of the PPT.

ii) The Entry and Stay Permit (PIP in its Spanish acronym³⁷⁷):

According to Resolution 3167 of 2019³⁷⁸, the Entry and Stay Permit (PIP) allow foreigners who do not require a visa to enter Colombia for short stays and non-profit activities. This permit is granted by the migration authority at the port of entry and authorizes an initial stay of up to 90 consecutive days, extendable for another 90 days, with a maximum of 180 calendar days per year. The Special Administrative Unit of Migration Colombia keeps a record of the number of days of stay of each foreigner holding PIP and the Temporary Stay Permit - PTP (*Permiso Temporal de Permanencia*) permits, in order to ensure that they do not exceed the 180 calendar days allowed.

Within this framework, different subcategories of PIP exist depending on the authorized activity. Currently, the PIP that previously enabled certain academic activities has been replaced by the Integration and Development Permit (PID), a short-term entry permit granted by Migration Colombia at the port of entry for foreigners participating in cooperation agreements or treaties, non-formal academic programs, student internships, conferences, teaching or research activities.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

International protection is granted when a person is outside their country of origin and cannot return due to a risk to their life.

By ratifying several international legal instruments, Colombia has become a guarantor of international protection for individuals entitled to such protection, including:

Refugees: *person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*³⁷⁹

³⁷⁷ Permiso de Ingreso y Permanencia (PIP).

³⁷⁸ Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), Resolution 3167 of 2019, retrieved from: https://www.cancilleria.gov.co/normograma/compilacion/docs/resolucion_uaemc_3167_2019.htm

³⁷⁹ Convention Relating to the Status of Refugees. Article 1.

As defined, refugees do not receive protection from the countries of which they are nationals. For this reason, the international community must intervene to ensure their safety and protection, particularly the countries that are parties to the 1951 Convention.

In Colombia, the rules governing the refugee status determination procedure are as follows:³⁸⁰:

- Convention Relating to the Status of Refugees.
- Protocol Relating to the Status of Refugees.
- Cartagena Declaration on Refugees.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Decree 1598 of 1995: *"By which the statute for the determination of refugee status is established, Decree 2817 of 1984 is repealed, and provisions concerning the Advisory Commission and other matters are issued."*³⁸¹
- Decree 2840 of 2013. *"By which the procedure for the recognition of refugee status is established, provisions concerning the Advisory Commission for the Determination of Refugee Status are set, and other related matters are regulated."*³⁸²
- Decree 1067 of 2015 *"Whereby the Single Regulatory Decree for the Administrative Sector of Foreign Affairs is issued. "Title 3 of Part 2 of Book 2 entitled Matters Relating to Refugee Status."*³⁸³
- Law 2136 of 2021 *"Whereby the definitions, principles, and guidelines for the regulation and orientation of the Comprehensive Migration Policy of the Colombian State are established."*³⁸⁴

In Colombia, the procedure for requesting recognition of refugee status is characterized as follows:

- It is a free procedure.
- It does not require intermediaries or third parties.
- It is not an immigration regularization procedure.

³⁸⁰ International Organization for Migration, *Los derechos de las personas migrantes. Herramienta pedagógica de formación autodirigida sobre migración* (2017), p. 69, retrieved from: <https://colombia.iom.int/sites/g/files/tmzbd11011/files/documents/Los%20derechos%20de%20las%20personas%20migrantes.pdf>

³⁸¹ Decree 1598 of 1995, retrieved from: <https://www.suin-juriscal.gov.co/viewDocument.asp?id=1746497>

³⁸² Decree 2840 of 2013, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=76610>

³⁸³ Decree 1067 of 2015– Single Regulatory Decree of the Administrative Sector of Foreign Affairs, retrieved from: https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/decreto_1067_2015.htm

³⁸⁴ Law 2136 of 2021, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=168067>

Decree 1067 of 2015 does not set specific timeframes for processing applications for refugee status recognition. These applications are assessed based on international instruments and domestic regulations.

The Ministry of Foreign Affairs is the responsible entity for this process, through the Internal Working Group for the Determination of Refugee Status (GIT-Determination of Refugee Status). This group will interview the applicant, analyze the case, and present it to the National Commission for Refugees (CONARE), which will recommend to the Ministry of Foreign Affairs whether or not to recognize the applicant and their family members as refugees.³⁸⁵

If the person is entering the country, they must apply at a Migration Colombia office. All information provided in the application is confidential, and the authorities of the country of origin will not be notified of the application.

If the person is already within the country, they must apply to the Ministry of Foreign Affairs, explaining the reasons for leaving their country and why they cannot return. If the person has been in Colombian territory for more than two months, they must also explain why the application was not submitted upon entry.

1. The applicant will receive notification confirming the issuance of a safe-conduct (Salvoconducto SC-2) for a period of three months, which may be renewed while the refugee status determination procedure is ongoing. The safe-conduct must be collected from the Migration Colombia office where the application was submitted.

2. CONARE will summon the applicant to an interview to gather more information about the situation and the reasons for requesting refugee status. If the applicant fails to attend the interview, it will be understood that they are no longer interested in continuing the process, and the application will be archived, and the laissez-passer cancelled. The applicant may request the reactivation of their application within the following month, provided the absence is justified by force majeure.

3. If the application is approved, the Ministry of Foreign Affairs will issue a resolution recognizing the refugee status and the corresponding visa: Migrant Visa (Type M – Refugee). With these documents, the recognized refugee may apply to Migration Colombia for the issuance of a cédula de extranjería. The Visitor Visa (Type V – Refugee Complementary Measures) may be granted in cases where refugee status is not formally recognized but complementary protection is considered necessary. If the application is rejected, the applicant may lodge an appeal within ten (10) working days.

Children, whether unaccompanied or unable to prove their relationship with their parents, may request recognition of refugee status in Colombia. The Internal Working Group for Refugee Status Determination will refer the case to the Administrative Authorities Directorate of the Colombian Institute of Family Welfare (ICBF), which ensures the representation of the minor

³⁸⁵Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), *Procedimiento de determinación de la condición de refugiado: Guía de información para solicitantes de refugio y personas reconocidas como refugiadas en Colombia* (2023), retrieved from: [https://www.cancilleria.gov.co/sites/default/files/FOTOS2024/Guia%20Refugio%20en%20Colombia%2024.11.2023%20\(1\).pdf](https://www.cancilleria.gov.co/sites/default/files/FOTOS2024/Guia%20Refugio%20en%20Colombia%2024.11.2023%20(1).pdf)

through a defender, family commissioner, or police inspector. The latter may also request refugee status on behalf of a minor when they identify a person in need of international protection.³⁸⁶

Asylum seekers: are individuals who have applied for refugee status but have not yet been recognized as refugees. Not all asylum seekers will be recognized as refugees; however, all refugees were once asylum seekers.

In Colombia, the right to seek asylum is recognized as a fundamental human right, available to all individuals fleeing conflict or persecution. As a result, no person should be expelled or returned to a place where their life would be in danger. This principle is upheld by Colombia's ratification of the 1951 Convention Relating to the Status of Refugees, guiding actions in accordance with the principle of "*non-refoulement*".

Statelessness: *a person who is not considered a national by any State under the operation of its law.*³⁸⁷

In Colombia, the norms regulating the condition and cases of statelessness are as follows:

- Law 1588 of 2012. "*Whereby the 'Convention Relating to the Status of Stateless Persons,' adopted in New York on September 28, 1954, and the 'Convention on the Reduction of Statelessness,' adopted in New York on August 30, 1961, are approved.*"³⁸⁸
- Decree 330 of 2016. "*Whereby the 'Convention on the Reduction of Statelessness,' adopted in New York on August 30, 1961, is promulgated.*"³⁸⁹
- Law 2136 of 2021 "*Whereby the definitions, principles, and guidelines for the regulation and orientation of the Comprehensive Migration Policy of the Colombian State are established.*"³⁹⁰
- Resolution 10434 of 2023. "*Whereby Articles 65, 66, and 67 of Law 2136 of August 4, 2021, regarding the procedure for the recognition of stateless persons within Colombian territory and the provisions for their naturalization, are regulated. Furthermore, Resolution 5477 of July 22, 2022, is amended and supplemented as appropriate.*"³⁹¹

³⁸⁶ Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), *Guía para presentar solicitudes de reconocimiento de la condición de refugiado de niñas, niños y/o adolescentes (NNA) en Colombia*, retrieved from: <https://www.cancilleria.gov.co/sites/default/files/FOTOS2024/GUIA%20NI%C3%91OS%20EN%20CONDICI%20REFUGIADOS.pdf>

³⁸⁷ Convention Relating to the Status of Stateless Persons. Article 1.

³⁸⁸ Law 1588 of 2012, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=50500>

³⁸⁹ Decree 330 of 2016, retrieved from: <https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/30021767>

³⁹⁰ Law 2136 of 2021.

³⁹¹ Ministry of Foreign Affairs of Colombia, Resolution No. 10434 of 2023, retrieved from: https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/resolucion_minrelaciones_10434_2023.htm

The Ministry of Foreign Affairs is responsible for managing applications for the recognition of statelessness, through the Internal Working Group for the Determination of Statelessness, which is part of the Vice Ministry of Multilateral Affairs.³⁹²

1. The applicant must apply to the Ministry of Foreign Affairs through the virtual and in-person channels provided for this purpose. If the family group includes children or adolescents in the same situation, the applicant must inform the authorities and request an extension of such recognition. In the same application, the applicant must declare whether or not they are currently receiving protection or assistance from a United Nations body or agency other than UNHCR.
2. Once the application is received, the applicant will be informed of the date and time for an interview, during which they may provide statements and submit any evidence they deem pertinent to the procedure.
3. If the application is accepted, it will be admitted for review, and a case file will be opened to begin the process of recognizing statelessness.
4. The Ministry of Foreign Affairs will issue a reasoned resolution on the application within a period not exceeding eighteen (18) months.

An applicant with an open case file will be issued a travel document and a courtesy visa. The recognized stateless person will be granted a travel document and a Resident visa.

Any child or adolescent born abroad and residing in Colombian territory has the right to apply to the Ministry of Foreign Affairs for recognition of statelessness, represented by their parents, relatives, guardians, custodians, or legal representatives, as appropriate.

In the case of unaccompanied children or adolescents whose representatives or guardians are the agents of the threat or violation of rights, or when it is not possible to prove the relationship by any means, the representation will be assumed by the family defender, family commissioner, or competent police inspector, or their designated representative, to ensure the protection of their rights.

The stateless status, recognized by Colombia shall cease when:

- The stateless person is naturalized as a Colombian national.
- The stateless person is recognized as a national by another state.

Regarding humanitarian considerations in visa policy, Colombia's current immigration regulations do not establish a specific visa category formally designated as “*humanitarian*”. Instead, under Resolution 5477 of 2022³⁹³, visas may be granted under the existing categories (V, M and R) depending on the purpose and circumstances of the stay. In certain situations, humanitarian considerations may be considered, particularly within the Visitor Visa (Type V) category.

³⁹² Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), *Apatridia*, retrieved from: https://www.cancilleria.gov.co/tramites_servicios/apatridia

³⁹³ Ministry of Foreign Affairs of Colombia, Resolution No. 5477 of 2022.

The Ministry of the Interior, as the coordinator of the Interinstitutional Committee for the Fight against Trafficking in Persons, has among its functions the coordination of actions for prevention, protection, assistance, and cooperation related to this phenomenon.

In Colombia, Law 985 of 2005 “*Whereby measures are adopted to combat human trafficking and establish standards for the care and protection of its victims*”³⁹⁴ includes specific provisions for the care and protection of victims. Additionally, Decree 1069 of 2014 “*Whereby Law 985 of 2005 is partially regulated*”³⁹⁵ regulates the assistance and protection of individuals affected by this crime. The Colombian Criminal Code (Law 599 of 2000” *Whereby the Penal Code is enacted*”³⁹⁶) also provides penalties for the crime of human trafficking, specifically in Article 141B (*Trafficking in protected persons for the purpose of sexual exploitation*) and Article 188-A (*Human trafficking*).

Law 985 of 2005, states in Chapter IV, “*Protection and Assistance to Victims of Human Trafficking*” that the National Strategy against Human Trafficking must include physical, psychological, and social recovery programs based on a Human Rights approach, ensuring the privacy and identity of the victims. Three levels of assistance are established:

1. **Immediate assistance:** Return to the place of origin (if requested by the victim); provision of security, lodging, psychological and medical care, as well as legal information and advice.
2. **Intermediate assistance** (requires a formal complaint): Training and support to access employment, and legal assistance throughout the judicial process, including reparation measures.
3. **Assistance at Colombian consulates abroad:** Provision of information, protection measures, support before local authorities, and promotion of awareness among foreign media and authorities.

On the other hand, when a risk is identified, the Attorney General's Office may include victims, witnesses, and their close relatives in the Protection and Assistance Program during the criminal proceedings or for as long as the risk persists. In the case of minors, the Colombian Institute of Family Welfare (ICBF) is responsible for their care, ensuring access to specialized medical and psychological services, temporary housing, educational reintegration, legal advice for the minor and their family, and family reunification.

Decree 1069 of 2014 “*Whereby Law 985 of 2005 is partially regulated.*”³⁹⁷, defines the responsibilities, benefits, procedures, and formalities to be followed by the entities tasked with implementing protection and assistance measures for victims of human trafficking. Title V, “*Duration and Termination of Assistance Measures,*” establishes that the Ministry of Foreign Affairs is responsible for the repatriation of Colombian victims, unless the victim does not wish

³⁹⁴ Law 985 of 2005, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=17416>

³⁹⁵ Decree 1069 of 2014, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=57693>

³⁹⁶ Law 599 of 2000, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=6388>

³⁹⁷ Decree 1069 of 2014, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=57693>

to return or returning poses an extreme risk. In such cases, guidance is provided while respecting the immigration policies of the receiving country.

When the victim is a foreign national residing in Colombia, the authorities will coordinate his/her protection and repatriation with the consulate of his/her country. If she/he wishes to remain legally in Colombia, she/he will be provided with appropriate immigration guidance.

Likewise, victims must be guaranteed safe and adequate lodging, without this implying any form of deprivation of liberty. Such lodging must include basic services and, if necessary, specialized personnel. The Ministry of the Interior coordinates this measure with local authorities and finances the transportation required for victims to access immediate or intermediate assistance services, using resources from the National Fund for the Fight Against Human Trafficking.

It is important to note that immediate and intermediate assistance programs may be terminated for the following reasons:

- a) Fulfillment of the objectives established in the stages of the program.
- b) Voluntary resignation of the victim, at any time, except in cases in which the law establishes that the programs cannot be waived.
- c) Judicial determination that the facts do not constitute trafficking in persons or that the person is not a victim of the crime.
- d) Non-compliance by the victim of the commitments acquired in the mediate program, after evaluation and concept of the corresponding territorial committee.

If the victim decides not to join any state program, he/she must sign a document stating, as far as possible, the reasons for his/her decision.

In cases involving Venezuelan citizens who are victims of human trafficking in Colombia, and for reasons of humanitarian assistance, the assistance phase may be extended under the framework of exceptional migration regulations.

Accordingly, the primary authority in Colombia for the comprehensive care of victims of human trafficking is the Ministry of the Interior, in its role as Technical Secretariat of the Inter-Institutional Committee to Combat Trafficking in Persons, pursuant to Law 985 of 2005. In accordance with this law, and Decree 1067 of 2015 “*Whereby the Single Regulatory Decree for the Administrative Sector of Foreign Affairs is issued*”³⁹⁸, when the victim is a foreign national or requires consular assistance or support abroad, the Ministry of Foreign Affairs assumes specific responsibilities, particularly in matters of migratory guidance, documentation, repatriation, asylum, or international protection.

Colombia does not grant a specific stay permit for victims of human trafficking, but welcomes them in the immediate reparation measures, while the return or migration decision of the person is being evaluated. These measures are not conditioned to the victim's cooperation with the authorities or the payment of any fee.

³⁹⁸ Decree 1067 of 2015.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

In Colombia, the family holds special importance, as recognized in Articles 5 and 42 of the Political Constitution³⁹⁹. Article 5 establishes that the State protects the family as the basic institution of society, while Article 42 recognizes the family as the fundamental unit of society formed through natural or legal ties.

Migration for purposes of family reunification is primarily regulated through the national migration regime. The main legal instrument governing these procedures is Decree 1067 of 2015 - Single Regulatory Decree of the Administrative Sector of Foreign Affairs,⁴⁰⁰ which establishes the conditions for the entry and stay of foreigners in Colombia. This decree also sets out the procedures through which migrants and refugees may request family reunification, including the categories of family members eligible for reunification and the corresponding visa types granted when the request is approved.

In addition, Decree 216 of 2021 “*Whereby the Temporary Statute of Protection for Venezuelan Migrants under the Temporary Protection Regime is adopted, and other provisions on immigration matters are issued.*”⁴⁰¹. In response to the Venezuelan migration crisis, Colombia implemented the Temporary Protection Status for Venezuelan Migrants. This statute allows Venezuelan migrants to regularize their status and access various rights, including family reunification.

Overall, Colombia recognizes family unity as an important principle within its migration framework. In practice, family reunification is mainly implemented through visa mechanisms and migration status regularization procedures that allow migrants and refugees to reside in the country together with their close family members.

Reunification with extended family members is primarily carried out when a child or adolescent has been separated from their parents or caregivers and requires a protective environment and family bond. The Colombian Institute of Family Welfare (ICBF) is the entity responsible for managing this process, which includes the search for and location of extended family members such as grandparents, aunts, uncles, cousins, great-grandparents, and other blood relatives.

The Code of Childhood and Adolescence provides that family reunification may be adopted as a measure to restore the rights of the child when relatives are able to guarantee an adequate protective environment. These procedures must follow the principles of the best interests of the child, non-refoulement, and the active participation of minors, and may involve locating relatives in Colombia, the country of origin, or a third country.⁴⁰²

³⁹⁹ Political Constitution of Colombia (1991), retrieved from: <https://www.constitucioncolombia.com>

⁴⁰⁰ Decree 1067 of 2015.

⁴⁰¹ Decree 216 of 2021.

⁴⁰² Colombian Institute of Family Welfare (Instituto Colombiano de Bienestar Familiar - ICBF), *Abecé sobre protección, retorno seguro e identificación de niñas, niños y adolescentes* (2023), retrieved from: https://www.icbf.gov.co/system/files/abc_de_participacion_0.pdf

Bilateral cooperation mechanisms may also facilitate family reunification. For example, the Memorandum of Understanding signed between Colombia and Venezuela on November 18, 2023, involving the Ministry of Popular Power for Foreign Affairs of the Republic of Venezuela, the Ministry of Foreign Affairs, and the Colombian Institute of Family Welfare (ICBF) of the Republic of Colombia, aims to support the identification of family members, the restoration of rights, and the safe return of children and adolescents of Colombian and Venezuelan nationality when family reunification is considered to be in their best interests.⁴⁰³

Family reunification is also allowed for partners who are not formally married. Colombian law recognizes *de facto* marital unions (*union marital de hecho*), which allow cohabiting couples to access migration benefits similar to those granted to married couples. This recognition applies equally to opposite-sex and same-sex couples. Foreign nationals who are the spouse or permanent partner of a Colombian citizen may apply for a Migrant Visa (Type M – spouse or permanent partner of a Colombian national). It is important to note that, in order to officially declare the existence of a *de facto* marital union, at least one of the partners must be either a Colombian citizen or a foreign national with legal residency in the country.⁴⁰⁴

Likewise, a foreign national who is the parent of a Colombian citizen may apply for residence in Colombia. When the Colombian child is a minor, parents may apply directly for a Resident Visa (Type R). When the Colombian child is an adult, parents may instead apply for a Migrant Visa (Type M – parent of a Colombian national), which may later lead to eligibility for a Resident Visa once the residence requirements are met. Both visas allow the holder to work and study in the country.⁴⁰⁵

Additionally, certain family members of a holder of a Migrant Visa (Type M) or Resident Visa (Type R) may apply for a beneficiary visa. This visa category is available for the spouse or permanent partner of the main visa holder, as well as for their children who are economically dependent, including children under 25 years of age or children with disabilities who are unable to achieve economic independence.

It should be noted that the beneficiary visa does not authorize the holder to work in Colombia, although it allows them to study in the country.

5. What are the conditions for naturalization in the reviewed state?

According to Article 96 of the Political Constitution of Colombia⁴⁰⁶ and Chapter II of Law 2332 of 2023 “*Whereby the requirements and procedures necessary for the acquisition, loss, and*

⁴⁰³ Ministry of Popular Power for Foreign Affairs of the Bolivarian Republic of Venezuela (Ministerio del Poder Popular para Relaciones Exteriores de la República Bolivariana de Venezuela), Ministry of Foreign Affairs of Colombia (Ministerio de Relaciones Exteriores de Colombia), Colombian Institute of Family Welfare (Instituto Colombiano de Bienestar Familiar - ICBF). (2023, November 18). *Memorandum de entendimiento entre el Ministerio del Poder Popular para Relaciones Exteriores de la República Bolivariana de Venezuela y el Ministerio de Relaciones Exteriores y el Instituto Colombiano de Bienestar Familiar (ICBF) de la República de Colombia*.

⁴⁰⁴ Law 54 of 1990 “*Whereby common-law marriages and the property regime between domestic partners are defined*” retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=30896>

⁴⁰⁵ Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), Resolution 5477 of July 22.

⁴⁰⁶ Political Constitution of Colombia (1991).

*recovery of Colombian nationality are established, and other provisions are enacted*⁴⁰⁷, there are two ways of acquiring Colombian nationality: by birth and by adoption.

Nationality by birth

Colombians by birth are:

- a) Persons born in Colombia, provided that at least one of their parents is a Colombian national or a foreigner legally domiciled in the country at the time of birth. This may be understood as a form of conditional *jus soli*.
- b) Children of a Colombian father or mother born abroad, provided that they subsequently become domiciled in Colombia or register their birth at a Colombian consular office. This reflects the principle of *jus sanguinis*.

Nationality by naturalization

Colombian nationality may be acquired by naturalization in the following cases:

- a) Foreign nationals who apply for and obtain a letter of naturalization in accordance with the law.
- b) Latin Americans and Caribbean nationals by birth who are domiciled in Colombia and, with the authorization of the National Government and in accordance with the principle of reciprocity, apply for registration as Colombians before the municipality where they reside.
- c) Members of indigenous peoples who share border territories, in accordance with the principle of reciprocity established in international treaties.

Once the aforementioned conditions are fulfilled, to obtain naturalization by adoption in Colombia, the applicant must⁴⁰⁸:

1. **Submit the online application** for Colombian nationality through adoption via the following link:
<https://tramitesmre.cancilleria.gov.co/tramites/enlinea/solicitarNacionalidad.xhtml>
2. **Hold a resident visa** and have continuously lived in Colombia for five (5) years, starting from the date the Resident Visa was issued. However, the required residence period is reduced to two (2) years if the applicant meets any of the following:
 - i. Is married to or in a permanent partnership with a Colombian citizen
 - ii. Has Colombian children
 - iii. Is a Spanish national

⁴⁰⁷ Law 2332 of 2023, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=220390>

⁴⁰⁸ This information was obtained by a right of petition submitted on May 2025 to the Colombian Ministry of foreign affairs through the website: <https://tramites.cancilleria.gov.co/ciudadano/pqr/BuzonVirtual.aspx>

To prove any of these conditions, the applicant must submit appropriate documents such as a birth certificate or public deed.

Note: The required period of residence must be continuous; therefore, remaining outside Colombia for 1 year or more before applying interrupts the required period of residence. Applicants holding a Temporary, Migrant, or Visitor Visa, or a Special Permit issued by Migration Colombia, are not eligible to apply for nationality.

3. **Submit a formal letter** requesting Colombian nationality, including:
 - i. Full name, foreign ID number (cédula de extranjería), occupation, country of origin, and current nationality.
 - ii. City of residence in Colombia, home address, mobile number, and email.
 - iii. Description of professional or economic activity.
 - iv. Reasons for requesting Colombian nationality.
 - v. Explicit authorization for the Ministry to request confidential or tax information from relevant authorities.

The letter must be signed (but not passed or scanned) by the applicant.

Supporting documents

- a. Copy of valid foreign ID card (cédula de extranjería).
 - b. Copy of valid passport (with official Spanish translation if it's in another language).
 - c. Birth certificate showing exact date and place of birth, duly apostilled/legalized and officially translated into Spanish if needed.
4. Submit proof of economic activity or occupation. Depending on the applicant's situation, submit one of the following:
 - i. Employment certificate (not older than 6 months)
 - ii. RUT (Tax Identification Document) – Required for independent workers or as a complementary document
 - iii. Chamber of Commerce certificate. If the applicant owns or is a partner in a business (dated within 6 months and showing the business's purpose and tax ID)
 - iv. Pension resolution/document – For pensioners
 - v. Economic dependents must submit: (i) A signed declaration from the person providing financial support (spouse, partner, or relative) (ii) One of the documents listed above (employment certificate, etc.) from that person.
5. Other requirements
 - a. One passport-type photo (4x5 cm, white background, recent, full face, JPG format)

- b. If part of an Indigenous community, submit a document from the community's authority
- c. If the applicant has a cognitive disability, submit a certificate issued by a qualified professional
- d. If the applicant completed studies in Colombia (high school, undergraduate, master's, or PhD), submit a diploma or graduation certificate

Note: Documents submitted after starting the application process will not be accepted.

6. Missing documents

If any required document cannot be provided, the applicant must submit a letter addressed to the Minister of Foreign Affairs explaining and justifying why the requirement could not be met.

7. Applicants must take a knowledge accreditation exam covering four areas⁴⁰⁹:

Component	Topics
1. Political Constitution	* Fundamental principles and rights * Mechanisms for protecting rights * Democratic culture and citizen participation * Structure of State institutions
2. National History	* Early human settlements * Arrival of the Spanish and New Granada * Independence movements * Gran Colombia and New Granada * 19th-century liberal revolution * Regeneration and 20th-century transition * Coffee economy and Liberal Republic * The era of "<i>The Violence</i>" * The National Front

⁴⁰⁹ Ministry of Foreign Affairs of Colombia (Cancillería de Colombia), *Instructivo Exámenes de Conocimiento* (2024), retrieved from: <https://www.cancilleria.gov.co/sites/default/files/FOTOS2024/Instructivo%20Ex%C3%A1menes%20de%20Conocimiento%20-%20I%20Semestre%202024.pdf>

	* 1991 Constitution and economic reforms * Victims and peace process era
3. Geography	* Colombian territory * Population * Economic conditions by region * Natural diversity
4. Spanish Language	* Word syllable division * Word categories * Sentence structure * Orthographic accents * Language evolution

Exemptions from the knowledge exam

Applicants are not required to take the exam if they meet any of the following conditions at the time of submitting the application:

- Hold a Colombian high school diploma
- Completed a university degree (undergraduate, postgraduate, master's, or PhD) in Colombia
- Are over 60 years old
- Having a cognitive disability
- Belong to an Indigenous community

Note: Applicants whose native language is Spanish are exempt only from the Spanish Language section.

Required documentation for exemption

To be exempted, applicants must submit at the time of application one of the following:

- Copy of diploma or graduation certificate
- Medical certificate (for cognitive disability)
- Official document issued by the Indigenous authority

Important: Foreign university degrees, even if officially recognized in Colombia, do not exempt the applicant from the Knowledge Exam.

Part II - Rights while staying

In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:

- a. temporary and permanent resident migrants.
- b. regular migrants benefiting from more favorable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.).
- c. undocumented migrants.

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees.
- e. asylum seekers.
- f. other beneficiaries of international protection, if applicable.

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The Political Constitution of Colombia establishes fundamental principles of equality and non-discrimination; Article 13 of the Constitution states:

“All individuals are born free and equal before the law, shall receive the same protection and treatment from the authorities, and shall enjoy the same rights, freedoms, and opportunities without any discrimination for reasons of sex, race, national or family origin, language, religion, political or philosophical opinion. The State shall promote the conditions so that equality may be real and effective and adopt measures in favor of groups discriminated against or marginalized. (...)”

In addition, Chapter 3, titled “Foreigners”, states the following in Article 100:

“Foreigners enjoy in Colombia the same civil rights as Colombian citizens. However, the law may, for reasons of public order, restrict the exercise of certain civil rights by foreigners or subject them to special conditions. Political rights are reserved to Colombian citizens, but the

*law may grant foreigners the right to vote in municipal or district elections. Foreigners may be expelled from the country for reasons provided by law”.*⁴¹⁰

The legislative and executive branches of the country have issued pronouncements on the subject of non-discrimination, also covering non-nationals, through the following norms:

Law 22 of 1967: “Whereby the International Labour Convention concerning Discrimination in Respect of Employment and Occupation, adopted by the 42nd Session of the General Conference of the International Labour Organization (Geneva, 1958), is hereby approved.”⁴¹¹

Law 22 of 1981: “Whereby the “International Convention on the Elimination of All Forms of Racial Discrimination,” adopted by the United Nations General Assembly in Resolution 2106 (XX) of December 21, 1965, and opened for signature on March 7, 1966, is approved.”⁴¹²

Law 1752 of 2015: “Whereby Law 1482 of 2011 is amended to establish criminal penalties for discrimination against persons with disabilities.”⁴¹³ The purpose of this law is to criminally punish acts of discrimination based on race, ethnicity, religion, nationality, political or philosophical ideology, sex or sexual orientation, disability, and other grounds of discrimination.

Accordingly, Article 3 establishes the following: The Penal Code shall include Article 134A with the following wording:

Acts of Discrimination provides that: (...) Whoever arbitrarily prevents, obstructs, or restricts the full exercise of the rights of persons on the grounds of their race, nationality, sex or sexual orientation, disability, or other reasons of discrimination, shall incur imprisonment of twelve (12) to thirty-six (36) months and a fine of ten (10) to fifteen (15) legal monthly minimum wages in force.

Article 4 states: The Penal Code shall include Article 134B with the following wording: Article 134B.

Harassment. Whoever promotes or instigates acts, conduct, or behaviors constituting harassment, aimed at causing physical or moral harm to a person, group of persons, community, or people, on the grounds of their race, ethnicity, religion, nationality, political or philosophical ideology, sex or sexual orientation, disability, or other reasons of discrimination, shall incur a prison term of twelve (12) to thirty-six (36) months and a fine of ten (10) to fifteen (15) legal monthly minimum wages in force, unless the conduct constitutes a crime punishable by a heavier penalty.

Law 2136 of 2021: “Whereby the definitions, principles and guidelines for the regulation and orientation of the Comprehensive Migration Policy of the Colombian State - PIM, and other provisions are established.”⁴¹⁴

⁴¹⁰ Political Constitution of Colombia (1991).

⁴¹¹ Law 22 of 1967, retrieved from: <https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=154350>

⁴¹² Law 22 of 1981, retrieved from: <https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1578189>

⁴¹³ Law 1752 of 2015, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=61858>

⁴¹⁴ Law 2136 of 2021.

The Comprehensive Migration Policy is the framework that integrates the objectives, definitions, guidelines, strategies, and actions related to the care, guidance, integration, development, participation, organization, and regulation of migration to and from Colombia.⁴¹⁵ Guideline number 4 refers to “*adopting the necessary measures to prevent and eliminate all forms of discrimination against migrants, including racism, xenophobia, intolerance, and others.*”

Is based on twenty fundamental principles, the nineteenth being the principle of non-discrimination, which states:⁴¹⁶

“The provisions of this law shall be applied without discrimination on the grounds of race, color, sex, age, marital status, religion or belief, nationality or national ancestry, language, social or cultural origin, illness or disability, appearance, political opinions, or any other situation.”

Decree 216 of 2021: “*Whereby the Temporary Statute of Protection for Venezuelan Migrants under the Temporary Protection Regime is adopted, and other provisions regarding immigration matters are issued.*”⁴¹⁷

In the considerations of this decree, it is emphasized that most State entities have made efforts to guarantee the provision of their services and, consequently, the protection of the rights of people coming from Venezuela. An example of this is the Colombian Institute of Family Welfare (ICBF), which, continuously and in application of the principle of non-discrimination contained in Article 2 of the International Convention on the Rights of the Child and Article 4 of Law 1098 of 2006 “*Whereby the Code on Children and Adolescents is hereby enacted*”⁴¹⁸, has been providing care to children, adolescents, and young people coming from Venezuela.⁴¹⁹

Regarding the aforementioned instrument, in Ruling T-166/24, the Constitutional Court states that the Presidency of the Republic explained that the Temporary Protection Statute for Venezuelan Migrants (ETPV) incorporates a differential approach, which is reflected in the following elements:

- i. Resolution 971 of 2021, in its preamble, states that the discretionary power of immigration authorities shall be exercised based on the principles of equality and non-discrimination and shall address the particular needs of groups in manifest vulnerability such as indigenous peoples, LGBTI+ individuals, children and adolescents, persons with disabilities, victims of human trafficking, and others requiring special treatment.
- ii. Article 36 of the aforementioned resolution establishes differential treatment for trans persons, facilitating the issuance of their migratory documents with the identity elements they specify.⁴²⁰

⁴¹⁵ Ibid, Article 7, numeral 1.

⁴¹⁶ Ibid, Article 4, numeral 19.

⁴¹⁷ Decree 216 of 2021.

⁴¹⁸ Law 1098 of 2006, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=22106>

⁴¹⁹ Decree 216 of 2021.

⁴²⁰ Corte Constitucional de Colombia (Constitutional Court of Colombia), Judgement T-166/24, retrieved from: <https://www.corteconstitucional.gov.co/relatoria/2024/t-166-24.htm>

In this regard, Colombia has a legal framework that promotes equality and non-discrimination, extending its protection to non-nationals, including migrants, refugees, and other beneficiaries of international protection.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

The Colombian Comprehensive Migration Policy (Law 2136 of 2021 “*Whereby the definitions, principles, and guidelines for the regulation and implementation of the Colombian government’s comprehensive migration policy (PIM) are established, and other provisions are set forth.*”)⁴²¹ establishes citizen participation as one of its fundamental axes. However, a review of its formulation in relation to migrants reveals important limitations in terms of its real scope within the Colombian democratic system.

a. Participation within the National Migration System

Article 25 of Law 2136 of 2021 modified Law 1465 of 2011 “*Whereby the National Migration System is established, and regulations are issued for the protection of Colombians abroad.*”⁴²² includes the National Civil Society Roundtable for Migration, an open space where **regular migrants** in Colombia can register. This mechanism seeks to facilitate access to information on the Comprehensive Migration Policy and promote participation in discussions on migration issues. However, this space does not guarantee a direct impact on electoral processes or high-level political decision-making. It is a consultative space but not binding in terms of political representation. Additionally, it limits participation to regular migrants, leaving out an important part of the migrant population in Colombia who have not yet been able to regularize their status.

b. Absence of specific regulation in citizen participation laws

Although Law 2136 of 2021 (Colombian Comprehensive Migration Policy Law) refers to Laws 1757 of 2015 “*Whereby provisions are established regarding the promotion and protection of the right to democratic participation*”⁴²³ and 1755 of 2015 “*Whereby the Fundamental Right of Petition is regulated and a title of the Code of Administrative Procedure and Administrative Litigation is replaced.*”⁴²⁴ to define the exercise of citizen participation, neither of them specifically regulates the participation of the migrant population in political or decision-making

⁴²¹ Law 2136 of 2021.
⁴²² Law 1465 of 2011, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=43219>
⁴²³ Law 1757 of 2015, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=65335>
⁴²⁴ Law 1755 of 2015, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=65334>

processes in Colombia. This implies that the migrant population lacks clear mechanisms to exercise their political rights on equal terms with Colombian citizens.

c. Right to participate with a differential approach

Article 84 of the Colombian Comprehensive Migration Policy Law (Law 2136 of 2021) refers to the right to participation with a differential approach, aiming to promote the inclusion of migrants in the formulation of public policies related to migration. However, it does not define specific mechanisms that allow them to vote, be elected or directly influence the formulation of laws or policies of national impact. Although the law emphasizes the need for active participation, in practice, it does not develop instruments that enable migrants to exercise their political rights effectively.

While the legislation recognizes the importance of migrants' participation in migration issues and in the formulation of related public policies, it does not guarantee their political participation in the broad sense. It does not establish clear mechanisms for migrants to meaningfully influence decision-making beyond consultative spaces. Therefore, the political participation of migrants in Colombia remains limited and requires clearer and more specific regulation to be truly effective.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

According to Article 100 of the Political Constitution of Colombia, foreigners are entitled to the same civil rights as Colombian citizens while in the country.⁴²⁵ However, for reasons of public order, the law may impose special conditions or restrictions on the exercise of certain rights by foreigners.

In this regard, foreigners who comply with immigration regulations are generally free to move and reside anywhere within Colombian territory. Although Article 24 of the Political Constitution of Colombia refers expressly to Colombian nationals, the freedom of movement it guarantees—namely the right to circulate freely within the national territory, to enter and leave the country, and to choose one's place of residence—also extends to foreigners by virtue of Article 100 of the Constitution. Accordingly, foreigners who lawfully enter the country are entitled to freedom of movement and residence, subject only to limitations established by immigration regulations, international treaties, or restrictions justified on grounds such as national security, public order, public health, or the protection of the rights of others.⁴²⁶

Political rights are reserved for nationals, but Law 1070 of 2006 “*Whereby the voting rights of foreign nationals residing in Colombia are regulated.*”⁴²⁷ may grant regular migrants with a Resident Visa the right to vote in municipal or district elections, for members of the Local

⁴²⁵ Political Constitution of Colombia (1991).

⁴²⁶ Corte Constitucional de Colombia (Constitutional Court of Colombia), Judgment C-292/2008, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=32531#292>

⁴²⁷ Law 1070 of 2006, retrieved from <https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1673298>

Administrative Boards, and in popular consultations. The popular consultation is a citizen participation mechanism through which the people are called upon to decide on a matter of vital importance to the public, which may be national, departmental, municipal, district, or local in scope.⁴²⁸

In addition, foreigners enjoy other civil liberties recognized by the Constitution, such as freedom of association and the right to join trade unions, as well as the right to peaceful assembly and protest, subject to the same legal limitations applicable to all persons.⁴²⁹

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Considering Article 100 of the Constitution, foreigners enjoy the same civil rights as Colombian citizens. Therefore, the procedures for non-nationals to purchase property in Colombia are similar to those for residents. The main requirements are a valid passport and sufficient funds for the purchase. Regarding the latter, purchasing property in Colombia may qualify a foreigner for a residence visa.

Under the M-Investor Visa, a foreigner who has made a foreign direct investment or acquired real estate in their own name—and maintains such investment or ownership during the validity of the visa—may accumulate time toward a Resident Visa. A minimum continuous stay of five years as a visa holder is required. One of the requirements is to provide a certificate issued by the International Exchange Department of the Bank of the Republic, confirming the registration of foreign direct investment under the applicant's name. The amount of the investment must exceed six hundred and fifty (650) current legal monthly minimum wages at the time of the application.⁴³⁰

Regarding housing leases, a study conducted by the Inter-American Development Bank (IDB) found that, when evaluating applications to lease housing in Colombia, preference is generally given to national applicants over foreign ones. However, in response to the housing crisis affecting Venezuelan migrant households, the National Government amended Decree 1077 of 2015 "*Whereby the Sole Regulatory Decree of the Housing, City, and Territory Sector is issued*"⁴³¹ through Decree 057 of 2021 "*Whereby Chapter 6 of Title 1 of Part 1 of Book 2 of Decree 1077 of 2015 is amended and supplemented, and other provisions are enacted*"⁴³². This amendment introduced provisions for granting a rental subsidy to the Venezuelan migrant population. As established in Article 2.1.1.1.6.9.3, the subsidy may cover up to 0.40 of the current legal monthly minimum wage per monthly rent payment, for a period of up to twelve (12) months. The monthly value of the subsidy may not exceed the agreed rental amount, which

⁴²⁸ National Civil Registry of Colombia (Registraduría Nacional del Estado Civil de Colombia), *¿Qué es una consulta popular?*, retrieved from: <https://www.registraduria.gov.co/Que-es-una-consulta-popular.html>

⁴²⁹ Corte Constitucional de Colombia (Constitutional Court of Colombia), Judgment C-311/2007, retrieved from: https://www.funcionpublica.gov.co/eva/gestornormativo/norma_pdf.php?i=27566

⁴³⁰ Ministry of Foreign Affairs of Colombia, Resolution No. 5477 of 2022.

⁴³¹ Decree 1077 of 2015, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=77216>

⁴³² Decree 057 of 2021, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=155588>

itself must not be higher than 0.40 of the current legal monthly minimum wage.,⁴³³ in any case, Venezuelan migrant households must comply with the following conditions:

- Have an income of up to two (2) current legal monthly minimum wages.
- Not owning a home within the national territory.
- Not have been beneficiaries of a family housing subsidy that has already been applied.
- There have not been beneficiaries, in any capacity, of interest rate subsidies (hedges).
- For adult members of the migrant household, in accordance with the definition established in Article 2.1.1.1.6.9.2 of Decree 1077 of 2015, it is required to hold a valid foreigner's identity card, a Special Permit to Stay, or any other instrument defined by the National Government for this purpose at the time of application to the program. Compliance with the requirements established by the Ministry of Foreign Affairs for the migrant population is also mandatory. In accordance with the provisions of Article 2.1.1.1.6.9.2 of Decree 1077 of 2015, a Migrant Household is defined as:⁴³⁴

“that made up of one or more persons of Venezuelan nationality that integrate the same nuclear family, spouses, de facto marital unions, including same-sex couples, and/or the group of persons united by kinship ties up to the third degree of consanguinity, second degree of affinity and first civil relationship, who share the same living space and whose members of legal age are of the aforementioned nationality, reside in Colombia and have a valid foreigner's identity card, a valid Special Permit to Stay (PEP), or the instrument defined by the National Government, and who meet the access requirements indicated.”

On the other hand, Decree 2413 of 2018 *"Whereby Chapter 6 is added to Title 1 of Part 1 of Book 2 of Decree 1077 of 2015, regarding the implementation of the Leasing and Leasing with Purchase Option Program Semillero de Propietarios, and other provisions are issued"*⁴³⁵ establishes the Semillero de Propietarios program, which offers leasing and leasing with a purchase option. This initiative is part of a broader strategy aimed at supporting the migrant population by expanding institutional offerings within the public housing policy. The program's purpose is to facilitate access to housing for households earning up to two current legal monthly minimum wages (SMLMV), whether formally or informally employed. It targets those who do not own a home and have not previously benefited from any housing subsidy. Through this program, subsidies are allocated for leasing new or used housing, serving as a transitional pathway to homeownership.⁴³⁶

⁴³³ Decree 1104 of 2022 *"Whereby Decree 1077 of 2015 is amended with respect to the conditions for the allocation of the family housing subsidy in the form of rental assistance for the migrant population"* retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=188846>

⁴³⁴ Answer from the Ministry of Housing (Ministerio de Vivienda) to the right of petition submitted for the present report.

⁴³⁵ Decree 2413 of 2018, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=89961>

⁴³⁶ Office of the Attorney General (Procuraduría General de la Nación), *Los derechos de las personas migrantes y la gobernanza migratoria desde un enfoque de derechos*, (2021) p.116, retrieved from:

Thus, it can be concluded that, although there are no explicit restrictions on the right of non-nationals to purchase and own property in Colombia, the process is not necessarily straightforward. While non-nationals may be eligible for certain subsidies, these are primarily directed toward the Venezuelan migrant population, in response to the ongoing migration crisis.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

According to Article 100 of the Political Constitution and international labour standard, including ILO Conventions and Recommendations, foreign workers in Colombia are entitled to employment contracts, wages, enrolment in the Social Security System, the right to join trade unions, and labour benefits such as paid leave, under the principle of non-discrimination⁴³⁷. Likewise, Law 2136 of 2021 (Colombian Comprehensive Migration Policy Law),⁴³⁸ Article 40 establishes some employment promotion policies requiring the Colombian government to promote the labour inclusion of migrants by:

- Strengthening labour intermediation services and skills certification.
- Ensuring access and contributions to the Social Security System.
- Facilitating territorial mobility for migrant workers.
- Engaging the private sector in job creation and local development.
- Combating labour exploitation and forced labour.
- Preventing discrimination and xenophobia in the workplace.

However, the exercise of these rights depends on the migrant's legal status and compliance with national regulations.⁴³⁹

1. Legal and Regulatory Conditions

- Valid visa or work permit: Foreign nationals must obtain a visa authorizing the profession, occupation, or trade they intend to carry out in Colombia.

<https://colombia.iom.int/sites/g/files/tmzbd11011/files/documents/Los%20derechos%20de%20las%20personas%20migrantes.pdf>

⁴³⁷ Rosario University (Universidad del Rosario), *El acceso de los derechos de los migrantes en Colombia. Cartilla práctica e informativa*, p. 64, retrieved from: https://urosario.edu.co/sites/default/files/2022-11/Cartilla-Derechos-Migrantes-FUPAD_compressed_0.pdf

⁴³⁸ Law 2136 of 2021.

⁴³⁹ Ministry of Labor of Colombia (Ministerio del Trabajo de Colombia), *Grupo de Gestión de la Política de Migración Laboral*, retrieved from: <https://www.mintrabajo.gov.co/empleo-y-pensiones/movilidad-y-formacion/grupo-de-gestion-de-la-politica-de-migracion-laboral/ii-poblacion-objetivo/trabajadores-extranjeros-en-colombia>

- Entry as a tourist does not allow for formal employment.
- Venezuelan migrants may access the labour market through the Temporary Protection Permit (PPT), which authorizes only non-regulated occupations.
- Asylum seekers may also access the labour market under certain conditions. In Colombia, recent regulatory developments have improved access to employment for asylum seekers holding the Safe-Conduct (Salvoconducto SC-2), which allows them to engage in lawful employment while their asylum application is being processed, although practical barriers may still limit effective access.⁴⁴⁰
- Foreigners Registry and Foreigner ID Card: Mandatory when the visa is valid for more than three months.

2. Recognition of academic qualifications:

- Recognition of foreign degrees: To practice regulated professions, foreign degrees must be formally recognized (convalidated) by the Ministry of Education (Resolution 6950 of 2015⁴⁴¹).
- Professional licenses and registrations: For regulated professions (medicine, law, engineering, etc.), a temporary permit or professional card issued by the relevant professional council is required.

3. Employer's Obligations

- Verify that the worker holds a valid visa and, when applicable, a Foreigner ID Card.
- Notify Migration Colombia of the hiring or termination of the foreign worker within 15 calendar days.
- Enroll the worker in the Social Security System (health, pensions, occupational risk insurance, and family compensation funds).
- Cover repatriation costs for the worker and dependents when hired abroad (Decree 1067 of 2015 “*Whereby the Single Regulatory Decree for the Administrative Sector of Foreign Affairs is issued.*”⁴⁴²).

4. Barriers in the Absence of Work Permits or Visas⁴⁴³

- Restricted access to formal jobs and social security benefits.
- Greater exposure to labour exploitation, low wages, and instability.

⁴⁴⁰ Ministry of Labour of Colombia, External Circular No. 081 of 2025, concerning labour access and protection measures for migrant workers and asylum seekers, retrieved from: <https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=190013>

⁴⁴¹ Ministry of National Education of Colombia, Resolution No. 6950 of 2015, “*Whereby the procedure for the recognition (convalidation) of foreign higher education degrees is regulated*”, retrieved from: <https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=72060>

⁴⁴² Decree 1067 of 2015.

⁴⁴³ Rosario University (Universidad del Rosario), El acceso de los derechos de los migrantes en Colombia. Cartilla práctica e informativa, p. 66.

- Challenges in degree recognition and certification of professional qualifications.
- Lack of clear information about procedures and legal pathways to work permits.
- Excessive administrative burdens and complex regulations may discourage employers from hiring migrants.

In conclusion, non-nationals may access formal employment in Colombia if they hold a valid visa or work permit, comply with the requirements for degree recognition, and, in the case of regulated professions, obtain the relevant professional license. Employers must ensure compliance with these legal obligations and provide full enrollment in the social protection system. In the absence of proper documentation, migrants are often pushed into informal employment without labour rights or social security, representing one of the main barriers to full labour integration.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Currently, there are no legally established quotas or limitations for companies to hire non-nationals, following Law 1429 of 2010 "*Whereby the Law on Formalization and Job Creation is enacted*"⁴⁴⁴ which repealed Articles 74 and 75 of the Substantive Labour Code⁴⁴⁵ concerning the proportionality between national and foreign workers in companies or by employers⁴⁴⁶.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

According to the Ministry of Labour, there are no restrictions in the Political Constitution of Colombia or the labour legislation regarding the hiring of foreigners, without any distinction based on profession, employment as a public servant or in the communications sector, trade, or type of employment relationship.

Nevertheless, considering that Political rights are reserved for nationals and therefore foreigners cannot fully enjoy them, according to Article 35 of Law 2332 of 2023, "*Whereby the requirements and procedures necessary for the acquisition, loss and recovery of Colombian nationality are established and other provisions are set forth.*",⁴⁴⁷ Colombian citizens by adoption (naturalized citizens) are restricted from accessing certain public offices. They may not serve as: Minister of Foreign Affairs, Minister of National Defense, Officers and non-commissioned officers of the Military Forces or their equivalents in the National Police,

⁴⁴⁴ Law 1429 of 2010, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=39430>

⁴⁴⁵ Substantive Labour Code, adopted by Decree Law 2663 of 1950 and Decree 3743 of 1950, retrieved from: http://www.secretariasenado.gov.co/senado/basedoc/codigo_sustantivo_trabajo.html

⁴⁴⁶ Answer from the Ministry of Labor of Colombia (Ministerio de Trabajo) to the right of petition submitted for the present report.

⁴⁴⁷ Law 2332 of 2023.

Directors of intelligence and security agencies. Likewise, if the naturalized citizen holds dual nationality, they are also prohibited from serving as a Member of Congress, Minister or Director of an Administrative Department.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

According to the Ministry of Labour, Colombia, as a country that respects the principles enshrined in the Political Constitution, the Substantive Labour Code, and international instruments to which it is a party, equally protects the rights and guarantees of all workers without any discrimination. This is in line with the provisions established in the ILO Conventions and Recommendations on Migrant Workers and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was ratified and incorporated into national legislation through Law 146 of 1994.⁴⁴⁸

The relevant provisions related to the respect for, and guarantee of fundamental labour rights are reflected in the Political Constitution of Colombia and the Substantive Labour Code,⁴⁴⁹ which regulates labour rights and obligations arising from employment relationships. These legal instruments enshrine the principles of equality and protection of workers, as well as the right to work, forming the core legal framework governing labour relations in Colombia.

- **Article 13** of the Political Constitution, the right to equality: All individuals are born free and equal before the law, shall receive equal protection and treatment from the authorities, and shall enjoy the same rights, freedoms, and opportunities without any discrimination.

- **Article 100** of the Political Constitution prohibits discrimination based on nationality, stating that foreign workers in Colombia shall enjoy the same civil rights granted to Colombian nationals and shall be entitled to the same guarantees, except for those limitations established by the Constitution or the law.

- **Article 53** sets out the fundamental minimum principles of labour law, such as: equal opportunities for workers; a vital and adjustable minimum wage proportional to the quantity and quality of work; job stability; and the non-waivability of the minimum benefits established by labour regulations, among others.⁴⁵⁰

Additionally, the relevant provisions regarding labour rights are reflected in Articles 8, 9, 10, and 11 of the Substantive Labour Code, which enshrines the principles of freedom, protection, and equality of workers. These articles emphasize that all workers are equal before the law and establish guarantees related to freedom and protection in employment.

⁴⁴⁸ Law 146 of 1994, retrieved from <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=37815>

⁴⁴⁹ Substantive Labour Code, adopted by Decree Law 2663 of 1950 and Decree 3743 of 1950.

⁴⁵⁰ Political Constitution of Colombia (1991).

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

In Colombia, access to public health services is primarily regulated by Law 100 of 1993, *“Whereby the Comprehensive Social Security System is created and other provisions are issued.”*⁴⁵¹ However, there are significant differences in access depending on the migratory status and legal situation of the foreign national.

1. Foreigners with a resident visa or regular status: Non-nationals who are in Colombia with a resident visa, or who have regular migratory status, can access public health services under the same conditions as Colombian citizens. This means they are entitled to be affiliated with either the contributory or subsidized regime of the health system, depending on their economic and employment situation.

- **Contributory regime:** If they have a formal job or a source of income, they can join this regime, which requires a monthly contribution. Individuals with the ability to pay. This includes people with formal employment, pensioners, and their family members, who can join as beneficiaries.
- **Subsidized regime:** If they do not have sufficient income, they can access the subsidized regime, in which the government covers the cost of medical care. Individuals with no ability to pay who are classified in groups A, B, or C of the SISBEN survey may enroll. This also applies to refugees and Venezuelan migrants without the ability to pay, provided they have a valid document to enroll.

2. Foreigners in an irregular situation: Foreigners without a visa or regular migratory status face greater limitations in accessing health services.

Foreigners, regardless of their immigration status, have the right to emergency care in public health institutions. This is guaranteed by Law 1751 of 2015, *“Whereby the fundamental right to health is regulated and other provisions are issued.”*⁴⁵² Therefore, any person in need of urgent medical attention must be treated, regardless of their legal status. Law 1751 of 2015 established that *“the fundamental right to health is autonomous and cannot be waived individually or collectively.”* In addition, it emphasized that the protection of this right includes access to health services in a timely, effective, and equitable manner, ensuring quality care for the preservation, improvement, and promotion of health. The law also underscored the comprehensiveness of the right to health, recognizing its various components: promotion, prevention, palliation, treatment of disease, and rehabilitation.

In this regard, it is worth noting that Law 1438 of 2011, *“Whereby the General System of Social Security in Health is reformed and other provisions are issued,”*⁴⁵³ imposed on the National

⁴⁵¹ Law 100 of 1993, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=5248>

⁴⁵² Law 1751 of 2015, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=60733>

⁴⁵³ Law 1438 of 2011, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=41355>

Government the obligation to establish mechanisms to ensure the affiliation of all residents in Colombia to the Social Security in Health System. It also established that, in cases where a person requiring medical care is not affiliated with the system and lacks the ability to pay, they must be treated by the respective territorial entity, which must then initiate the process for their enrollment in the subsidized regime.⁴⁵⁴

Although foreigners are required to regularize their immigration status—which involves obtaining a valid identification document that allows them to initiate the affiliation process—in exceptional cases of extreme need and urgency, the minimum care to which migrants are entitled (regardless of their immigration status) may include treatment for catastrophic illnesses, such as cancer. Care must be provided when the individual lacks the ability to pay, if the treating physician explicitly indicates that the procedure is urgent.⁴⁵⁵

Given the structure of the health system, it is important to clarify that there are several conditions for the provision of services. Individuals with regular migratory status and/or a Special Permit to Stay (PEP) have the same rights as Colombian citizens.

In the case of migrants in an irregular situation, initial emergency care must always be guaranteed. They are also eligible to benefit from public health programs that serve the general population. Additionally, in Colombia, all children under one year of age have the right to enjoy the highest attainable standard of health, regardless of their nationality or immigration status.⁴⁵⁶

In summary, non-nationals in Colombia can access public health services in a manner similar to that of nationals, although important differences exist depending on their migratory status. Foreigners with regular status have broader access to rights and services, while those in an irregular situation may access certain services, particularly through the subsidized regime, under special conditions. However, all individuals in Colombian territory, regardless of their nationality or immigration status, have the right to emergency medical care.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

The Colombian education system consists of:

- Initial education: the first stage of early childhood education (from birth to three years old).

⁴⁵⁴ Corte Constitucional de Colombia (Constitutional Court of Colombia), Judgement T-274/202, retrieved from: <https://www.corteconstitucional.gov.co/relatoria/2021/t-274-21>

⁴⁵⁵ Corte Constitucional de Colombia (Constitutional Court of Colombia), Judgement T-390/2020, retrieved from: https://www.dejusticia.org/wp-content/uploads/2024/03/Derecho-a-la-atencion-en-salud_Doc88_web.pdf

⁴⁵⁶ International Organization for Migration, IOM, 2021, *Los derechos de las personas migrantes y la gobernanza migratoria desde un enfoque de derechos*, retrieved from: <https://drive.google.com/file/d/1B6VnJY093HZaiLVT7bmj-Z-V-nGurZ9s/view>

- Preschool education: the second stage of early childhood education (from three to six years old), which includes pre-kindergarten, kindergarten, and transition.
- Basic education: primary education (five grades, from first to fifth grade) and lower secondary education (four grades, from sixth to ninth grade).
- Upper secondary education: two grades, tenth and eleventh, culminating in the awarding of a high school diploma.
- Higher education is offered at two levels: undergraduate and postgraduate.

The undergraduate level is further divided into three categories:

- Professional Technical Level
- Technological Level
- Professional Level: university-level professional programs.

Individuals who have completed secondary education and passed the State Examination, a mandatory requirement in Colombia, are eligible to enter undergraduate programs at higher education institutions.

Postgraduate education includes the following levels:

- Specializations (including Professional Technical Specialization, Technological Specialization, and Professional Specialization programs)
- Master's degrees
- Doctorates⁴⁵⁷

The Ministry of National Education undertakes actions aimed at guaranteeing access to education for migrant children, adolescents, youth, and adults, in accordance with the fundamental right and public service that the Political Constitution of Colombia grants to education. This right also extends to the foreign population residing in the country, in line with the provisions of Article 100 of the Constitution.

Regarding the legal framework, Article 67 of the Political Constitution of Colombia recognizes the right to education for all individuals, without distinction based on origin or migratory status, which states:

Article 67. Education is a right of the individual and a public service that has a social function; through it, access to knowledge, science, technology, and other goods and values of culture is sought.

The State, society, and the family are responsible for education, which shall be compulsory between the ages of five and fifteen and shall include at least one year of preschool and nine years of basic education. Education shall be free in State institutions, without prejudice to the collection of academic fees from those who can afford to pay them. It is the responsibility of

⁴⁵⁷ Ministry of National Education of Colombia (Ministerio de Educación Nacional de Colombia), *Niveles de la educación superior*, retrieved from: <https://www.mineducacion.gov.co/portal/Educacion-superior/Sistema-de-Educacion-Superior/231238:Niveles-de-la-Educacion-Superior>

the State to regulate and exercise supreme inspection and supervision of education in order to ensure its quality, the fulfillment of its purposes, and the best moral, intellectual, and physical development of learners; to guarantee adequate coverage of the service and to secure for minors the necessary conditions for their access to and permanence in the education system.

Likewise, the General Education Law (Law 115 of 1994⁴⁵⁸), which establishes the regulatory framework of the Colombian education system, expressly prohibits any form of discrimination in access to education, including discrimination based on origin, migratory status, or other personal circumstances. Therefore, schools in Colombia must educate without discrimination, provide quality education, accommodate all types of students, and ensure their continued enrollment.

To enter the educational system, parents or guardians must go to the school closest to their place of residence and request a spot. If the school has no available places, they should contact the corresponding Secretary of Education, which will assign the student to a school based on available capacity. It is important to note that students who possess a foreign identification card or Temporary Protection Permit (PPT) must be enrolled using that identification number. In cases where children or adolescents do not have a valid document issued by the immigration authority (such as documents from Venezuela or another country), their enrollment will be registered using the Number Established by the Secretary of Education (NES). Parents or guardians are also reminded that it is their responsibility to take the necessary steps to regularize the immigration status of the children under their care.

When the parent or guardian possesses documents or certificates duly legalized and apostilled that certify the completion of preschool, elementary, or high school studies abroad by the student, they must apply for the validation of such studies before the Ministry of National Education within a period not exceeding six (6) months. Validation is the procedure through which the Ministry evaluates and grants legal recognition in Colombia to studies completed abroad. This process is a fundamental requirement for students to enter the Colombian educational system based on their international academic background.⁴⁵⁹

When initial, preschool, elementary, or secondary education studies are not duly legalized, the receiving educational institution is obligated to carry out, free of charge, the validation of such studies by grade level through evaluations or academic activities. This provision applies equally to foreign nationals, including migrant children and adolescents, regardless of their migration status. All migrant students, regardless of their immigration status, have the right to obtain a high school diploma upon completing grade 11 and meeting the graduation requirements.⁴⁶⁰

When a student who has begun university studies abroad wishes to continue their education in Colombia, the decision will depend on the receiving Higher Education Institution, which, in accordance with its statutes and internal regulations, will establish the admission conditions.

⁴⁵⁸ Law 115 of 1994, retrieved from <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=292>

⁴⁵⁹ Ministry of National Education of Colombia, Circular No. 038 of 2023, Guidelines for Educational Assistance for the Migrant Population at the Preschool, Primary, Secondary and Higher Education Levels to Guarantee Access and Permanence: Dissemination of Constitutional Court Judgment T-356 of 2023, retrieved from: https://www.mineducacion.gov.co/1780/articles-422283_recurso_02.pdf

⁴⁶⁰ Ibidem.

The homologation process follows the admission procedures of each institution. Upon completion of this process, the university will determine which credits or courses are recognized and which the student must complete to obtain their degree and finish their academic training. The homologation of partial studies completed abroad is managed directly by the Colombian institution, provided there are specific agreements for this purpose. Therefore, students are advised to consult the institutional regulations to understand the necessary steps and requirements.⁴⁶¹

Although Colombia promotes the right to education for all, including non-nationals who have access to public education services under conditions comparable to those of citizens, such access is subject to specific administrative processes, such as the presentation of documents, validation of prior studies, and institutional homologation.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

At this point, it is pertinent to refer to the provisions of Article 37 of Law 2466 of 2025, “*Whereby labor regulations are partially amended, and a Labor Reform is adopted for decent and dignified work in Colombia*”,⁴⁶² which states:

Article 37. Migrant Workers. Immigration status shall not constitute an impediment to the enforcement of labor and social security rights. Foreign workers, regardless of their immigration status in the country, shall enjoy the same labor protections granted to nationals, except for the limitations established by the Constitution or the law. Once an employment contract has been signed with a natural or legal person, the worker’s immigration status shall be regularized; for this purpose, the Ministry of Foreign Affairs shall regulate the corresponding procedure within six months from the entry into force of this law. In all cases, migrant workers shall be guaranteed access to labor justice.

In this context, employers, as members of the General Social Security System for Health, are responsible for enrolling all individuals with whom they maintain an employment relationship in a Health Promotion Entity (EPS) and for making the corresponding contributions promptly.

Similarly, all people employed under an employment contract must be compulsorily enrolled in the General Pension System. Contributions to the pension schemes within the general system are mandatory throughout the duration of the employment relationship, with the employer responsible for paying both its own contribution and that of its employees. To this end, the employer must deduct from the employee’s salary, at the time of payment, the amount corresponding to mandatory contributions as well as any voluntary contributions expressly authorized in writing by the employee, and transfer these amounts, together with the employer’s

⁴⁶¹ Organization of American States, FUPAD: *Cartilla de derechos. Secretaría para los Asuntos Sociales, Diversidad y Género (SADyE)*, OEA (n.d.), retrieved from: https://www.oas.org/es/sadye/documentos/FUPAD_CartillaDerechos.pdf

⁴⁶² Law 2466 of 2025, retrieved from <https://www.alcaldiabogota.gov.co/sisjur/normas/Normal.jsp?i=181933>

respective contribution, to the administrative entity chosen by the employee within the deadlines established by the government.

Likewise, mandatory affiliation to the General Occupational Risk System is established for all dependent workers, whether national or foreign, who are bound by an employment contract—whether written or verbal—as well as for public servants.

Among the obligations that employers hiring foreign personnel must assume, the duty to register in the RUTEC web application stands out. In Colombia, the Single Registry of Foreign Workers (RUTEC), is an essential tool for the supervision and control of the hiring of foreign workers within the national territory. This registration is mandatory for all public sector entities and private sector companies that hire or employ foreign nationals in Colombia. The mandatory nature of RUTEC arises from the need to ensure that foreign workers are hired under lawful and formal conditions, guaranteeing respect for their labor rights and helping to prevent situations of exploitation or informal employment.

It is pertinent to mention the provisions of Article 3 of Law 797 of 2003, “*Whereby certain provisions of the General Pension System established by Law 100 of 1993 are amended and provisions regarding exempt and special pension schemes are adopted.*”⁴⁶³ This law establishes that foreigners who, by virtue of an employment contract, remain in the country and are not covered by a pension scheme in their country of origin or any other country, must compulsorily enroll in the General Pension System.

Regarding the General Social Security System for Health, Decree 780 of 2016, “*Issuing the Single Regulatory Decree for the Health and Social Protection Sector,*”⁴⁶⁴ establishes specific provisions for the Venezuelan migrant population. Those holding a valid Special Stay Permit (PEP) who lack the ability to pay, as well as their minor children with valid identification documents, must be included in a census list prepared by the municipal or district mayor’s offices.

Subsequently, in accordance with Decree 616 of 2022, “*Amending certain articles and replacing Title 5 of Part 1 of Book 2 of Decree 780 of 2016, in order to incorporate the solidarity contribution as a mechanism for affiliation to the Subsidized Regime of the General Social Security System for Health, and enacting other provisions*”,⁴⁶⁵ the option to affiliate this population to a Health Promotion Entity (EPS) designated by the national government is enabled. Venezuelan migrants enrolled under this modality must demonstrate their continued residence in the country by updating their address information with the corresponding territorial entity every four months.

Regarding newborns born in Colombian territory, when their parents are not affiliated with the system and lack valid documents for registration, the Health Service Provider Institution (IPS), in coordination with the Health Secretariat of the respective municipality, shall proceed to register the newborn in a subsidized EPS based on the live birth certificate. Once the parents

⁴⁶³ Law 797 of 2003, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=7223>

⁴⁶⁴ Decree 780 of 2016, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=77813>

⁴⁶⁵ Decree 616 of 2022, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=185786>

join the General Social Security System for Health (SGSSS), the child will be incorporated into their family unit within the system.

In Ruling T-314 of 2016, the Constitutional Court, in resolving a case concerning a migrant in an irregular migratory situation, reaffirmed that having a valid identity document is a prerequisite to accessing affiliation to the General Social Security System for Health (SGSSS). The court held that, although the right to health is fundamental, its exercise within the formal social security system requires foreigners to prove their identity through valid documentation. Consequently, migrants residing irregularly in Colombian territory must demonstrate due diligence in the process of immigration regularization, as well as in obtaining the corresponding identification document. Only once these requirements are fulfilled can they be formally enrolled in the health system.⁴⁶⁶

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programs? For example, financial aid, food aid, subsidized housing, among others.

In addition to the *Semillero de Propietarios program* ((Homeownership Promotion Program), there are other social assistance mechanisms in Colombia that are accessible to non-nationals. Among these is the System for Identifying Potential Beneficiaries of Social Programs (SISBÉN). Rather than being a social program itself, SISBÉN functions as a targeting tool that enables the socioeconomic classification of the population and determines eligibility for various forms of assistance, such as subsidies, community kitchens, and food.

For the foreign population, access to SISBÉN is contingent upon presenting valid immigration documentation, such as a foreigner's identity card (cédula de extranjería), a Special Stay Permit (PEP), a Temporary Protection Permit (PPT), or an SC-2 type safe-conduct, among others. Once registered, these individuals are classified using the same criteria applied to nationals, which allows them to be considered for social benefits.

Community kitchens: A notable example of social inclusion is found in Bogotá, where the “*Bogotá Sin Hambre 2.0*” program offers community kitchens to vulnerable populations regardless of nationality. Access to this service requires registration in SISBÉN and the presentation of valid documentation, applicable to both nationals and foreigners. Eligible beneficiaries include minors, people with disabilities, vulnerable older adults, victims of armed conflict, members of LGBTI communities, pregnant or nursing mothers, and university students lacking financial support.⁴⁶⁷

The Citizen Income program, implemented since 2024, aims to reduce poverty, promote social mobility, and strengthen the local economy through cash transfers. In addition to

⁴⁶⁶ Corte Constitucional de Colombia (Constitutional Court of Colombia), Judgement T-314/16, retrieved from: <https://www.corteconstitucional.gov.co/relatoria/2016/t-314-16.htm>

⁴⁶⁷ Bogotá Mayor's Office – Secretariat of Economic Development (Alcaldía de Bogotá – Secretaría de Desarrollo Económico), *Bogotá Sin Hambre 2.0: ruta de alimentación regional sostenible y saludable*, July 19, 2024, retrieved from: <https://bogota.gov.co/mi-ciudad/desarrollo-economico/bogota-sin-hambre-20-alimentacion-regional-sostenible-y-saludable>

financial assistance, the program establishes shared responsibilities to foster capacity building and self-management among beneficiaries. It targets households experiencing extreme poverty, poverty, and socioeconomic vulnerability, with special priority given to people with disabilities, young children, and adolescents. The program is also accessible to non-nationals holding valid immigration documentation.⁴⁶⁸

Youth Income (*Renta Joven*) is a social program implemented in 2024 with the aim of promoting the social and economic inclusion of young people in Colombia. Through conditional cash transfers, it seeks to facilitate access to, retention in, and graduation from higher education and complementary training programs, while also promoting opportunities for social mobility through employment, entrepreneurship, and postgraduate education. The program targets young people between the ages of 14 and 28 who are registered in SISBÉN and classified within population groups experiencing extreme poverty, poverty, or vulnerability. Both nationals and non-nationals with valid immigration documentation are eligible to access the program, allowing them to participate on equal terms.⁴⁶⁹

Likewise, the recently created *Ministry of Equality and Equity* seeks to respond to the needs of fourteen population groups under special constitutional protection, including women, LGBTIQ+ persons, persons with disabilities, older persons, ethnic communities (Indigenous, Afro-descendant, Raizal and Palenquero peoples), rural populations, people living in poverty, migrants (regular, irregular, refugees, transit and returned migrants), children and adolescents, youth, and homeless persons, among others.⁴⁷⁰ The Ministry is currently in the early stages of implementing the program **Roots in Movement: Program for Safe Migration and Reception in Dignity** (*Raíces en Movimiento: Programa para la migración segura y la acogida en dignidad*) which aims to advance the care, protection, and social, economic, and cultural integration of the migrant and returnee population, so they can live a dignified life free from discrimination. It acknowledges that previous initiatives focused on regularizing, stabilizing, and integrating migrants have primarily targeted individuals of Venezuelan origin and nationality.⁴⁷¹

Are there any final observations you would like to make? Please write below.

In Colombia, there is no express legal provision granting regular migrants more favorable treatment based on their nationality (e.g., EU citizens in EU countries, New Zealanders in Australia, etc.); however, in practice, it can be observed that certain nationalities enjoy some benefits due to historical reasons, such as the following:

⁴⁶⁸ Department for Social Prosperity of Colombia (Departamento para la Prosperidad Social de Colombia), *Renta Ciudadana* (2024), retrieved from: <https://prosperidadsocial.gov.co/sgpp/transferencias/renta-ciudadana/>

⁴⁶⁹ Department for Social Prosperity of Colombia (Departamento para la Prosperidad Social de Colombia), *Renta Joven* (n.d.), retrieved from: <https://prosperidadsocial.gov.co/sgpp/transferencias/renta-joven/>

⁴⁷⁰ Decree 1075 de 2023 “Whereby the organizational structure of the Ministry of Equality and Equity is established and other provisions are enacted”, retrieved from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=213630>

⁴⁷¹ Ministry of Equality and Equity of Colombia (Ministerio de Igualdad y Equidad de Colombia), *Raíces en Movimiento: Programa para la migración segura y la acogida en dignidad* (n.d.), retrieved from: <https://www.minigualdadyequidad.gov.co/raices-movimiento-programa-migracion-segura-acogida-dignidad>

Venezuelan citizens: Decree 216 of 2021⁴⁷² established the Temporary Protection Statute for Venezuelan Migrants (ETPV), a special and temporary regime that allows Venezuelans in Colombia to regularize their immigration status. This statute grants access to fundamental rights such as healthcare, education, employment, and financial services—benefits not automatically extended to migrants of other nationalities. Its implementation responds to the humanitarian and large-scale migration crisis originating from Venezuela.

Citizens of member countries of the Andean Community of Nations (CAN): Bolivia, Ecuador, and Peru. These citizens benefit from facilitated procedures to obtain residence and work visas, expedited recognition of academic degrees, and freedom of movement under specific conditions, by virtue of multilateral agreements signed within the Andean region.

Citizens of countries with bilateral or regional agreements: Through migration and consular instruments signed with Latin American nations, the issuance of special visas is facilitated—for example, within the framework of the Pacific Alliance with Chile, Mexico and Peru—and procedures for temporary residence are simplified.

Spanish citizens: The Ministry of Foreign Affairs is the competent authority for evaluating naturalization applications submitted by foreigners who wish to acquire Colombian nationality through adoption. Law 2332 of 2023 “*Whereby the requirements and procedures necessary for the acquisition, loss and recovery of Colombian nationality are established and other provisions are set forth.*”⁴⁷³ establishes that foreigners residing in Colombia may initiate the naturalization process if they have maintained continuous domicile in the country for a period of five (5) years, counted from the date of issuance of the resident visa. However, for Spanish citizens, the required period of continuous residence is reduced to two (2) years, in accordance with the provisions of the Nationality Agreement signed between Colombia and the Kingdom of Spain, approved by Law 71 of 1979 “*Whereby the “Agreement on Nationality between Colombia and Spain,” signed in Madrid on June 27, 1979, is approved.*”⁴⁷⁴.

⁴⁷² Decree 216 of 2021, retrieved from: https://www.cancilleria.gov.co/sites/default/files/Normograma/docs/decreto_0216_2021.htm

⁴⁷³ Law 2332 of 2023.

⁴⁷⁴ Law 71 of 1979, retrieved from: <https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1620910>

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

December 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Croatia

Authors: Iris Goldner Lang, Franka Logarić and Nika Vicković

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		
1967 Protocol to the Convention relating to the Status of Refugees		
1954 Convention relating to the Status of Stateless Persons		
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)		
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
Convention on the Rights of the Child (CRC)		
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)		
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		
ILO Equal Remuneration Convention (No. 100)		
ILO Discrimination (Employment and Occupation) Convention (No. 111)		

ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		
American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Part I - Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Visas

As of 1 January 2023, the Republic of Croatia is a member of the Schengen Area and no longer issues national short-stay visas. All short-term entry into Croatian territory is governed by the EU common visa policy, specifically by the EU Visa Code.

Non-EU/EEA nationals require a Schengen visa for short stays of up to 90 days within any 180-day period in the Schengen Area. This visa allows for travel throughout all Schengen states, including Croatia, for purposes such as tourism, business, or short-term family visits. The 180-day period is calculated from the date of first entry.

Schengen visas come in different forms:

- Uniform visa (type C) for one, two, or multiple entries across Schengen countries;
- Limited territorial validity (LTV) visa, which is issued exceptionally under Article 25 of the EU Visa Code in cases where the applicant does not fulfil all the entry conditions, and which is issued on humanitarian grounds, for reasons of national interest, because of

international obligations, or in situations where other Schengen countries consulted object to the issuing of a visa. LTV visas are valid only for the Schengen Member State(s) indicated, including in cases where the travel document is not recognised by all Schengen States.

- Airport transit visa (type A), for transit through international zones of airports in Schengen countries;

Prior to Croatia's full Schengen membership, between 22 July 2014 and 1 January 2023, Croatia applied Decision 565/2014 of the European Parliament and of the Council. During that period, foreign nationals who were holders of valid Schengen documents, as well as those holding national visas or residence permits issued by Bulgaria, Cyprus, or Romania were permitted to enter Croatia without the need for a separate Croatian visa for stays of up to 90 days within any 180-day period. This transitional regime is no longer applicable since Croatian accession to Schengen.

Longer stays exceeding 90 days are not covered by the EU Visa Code and fall under national competence. Croatia continues to issue long-stay (type D) visas and residence permits based on national legislation for purposes such as work, study, or family reunification.

Residence Permits

The residence permit system in Croatia differentiates between EU/EEA nationals and third-country nationals.

EEA nationals and their family members may reside in Croatia for:

- Short-term stay (up to 90 days without registration);
- Temporary residence (for more than 90 days);
- Permanent residence, after five years of continuous legal stay;

Their rights are governed by EU Directive 2004/38 which is implemented in Croatia by its Act on EEA Citizens and Their Family Members for EU/EEA nationals and their families (*Zakon o državljanima država članica Europskog gospodarskog prostora i članovima njihovih obitelji*), and which enables free movement of EEA nationals and their family members in the European Economic Area.

On the other hand, third-country nationals may be granted one of the following types of stay:

- Short-term stay (up to 90 days in any 180-day period, under Schengen rules);
- Temporary residence (usually for up to 1 year, renewable, based on specific legal grounds);
- Long-term residence (after 5 years of continuous legal stay and fulfillment of integration criteria);
- Permanent residence (an indefinite status under Croatian national law, subject to stricter requirements).

Each category is subject to separate conditions, depending on the purpose of stay, such as employment, study, family reunification, or international protection. Applications are processed by the Croatian Ministry of the Interior, via the local police directorates or diplomatic missions abroad.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Non-nationals may reside in the Republic of Croatia for more than three months if they are granted temporary residence, long-term residence, or permanent residence, depending on the legal basis and duration of stay. The residence procedure and rights differ between two groups of non-Croatian nationals: EU/EEA citizens and third-country nationals.

EU/EEA citizens and their family members:

Under Directive 2004/38, EU/EEA citizens have the right to reside in Croatia for more than three months if:

- They are employed or self-employed in Croatia, or
- They have sufficient resources and health insurance in Croatia, or
- They are enrolled as students, have sufficient resources and health insurance in Croatia

The right to reside also includes EU/EEA citizens' family members who are accompanying or joining them in Croatia. Family members may include spouses, registered partners, dependent children, and dependent parents.

According to Art. 2(2) of Directive 2004/38, family members include:

- a) the spouse;
- b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;
- c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner
- d) the dependent direct relatives in the ascending line and those of the spouse or partner.

Additionally, according to Art. 3(2) of Directive 2004/38, Member States should facilitate entry and residence for the following persons:

- a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;
- b) the partner with whom the Union citizen has a durable relationship, duly attested.

Third-country nationals:

Here are the most frequent purposes for the issuance of temporary residence permits to third-country nationals:

- **Employed Worker:** third-country nationals may be granted temporary residence for purposes of work. In this case national rules apply, but the procedure has to be aligned with the Single Permit Directive (Directive 2024/1233, which repeals Directive 2011/98, has to be transposed by 21 May 2026 and it will repeal Directive 2011/98).
- **Highly-Qualified Worker (EU Blue Card holders):** Based on Directive 2021/1883, the Blue Card is granted to highly qualified non-EU nationals with a job offer meeting salary and qualification thresholds. It allows intra-EU mobility after 12 months.
- **Intra-Corporate Transferee (ICT):** Based on Directive 2014/66, applicable to employees of multinational companies transferred to a Croatian branch. Their residence is tied to the duration of the transfer.
- **Seasonal Worker:** Based on Directive 2014/36, residence permits for seasonal work are granted for employment in sectors such as agriculture or tourism, for the duration from five to nine months in a 12-months period.
- **Family Member:** Based on Directive 2003/86, third-country nationals may apply for residence to reunite with their third-country nationals family members who are legally residing in Croatia.
- **Researcher, student, trainees and volunteers:** Residence permits may also be granted to third-country nationals for the purpose of research, study, training, or volunteering, based on Directive 2016/801.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

International protection in the Republic of Croatia is granted to third-country nationals in accordance with EU asylum law and national legislation. The key legal source is the Act on International and Temporary Protection (*Zakon o međunarodnoj i privremenoj zaštiti*), adopted in 2015 and subsequently amended several times, most recently in 2025, notably to further align

procedural safeguards, reception conditions and status-related rights with the EU asylum acquis. The Act transposes the current EU asylum acquis and will require further amendments to align with the newly adopted EU Migration and Asylum Pact (the most recent reform of the EU migration and asylum system).

The Act provides for three main forms of protection for third-country nationals: refugee status, subsidiary protection, and temporary protection. Asylum applications are examined by the Ministry of the Interior, which acts as the determining authority at first instance. Decisions on refugee status and subsidiary protection are subject to appeal before the Administrative Court. Appeals generally have automatic suspensive effect, ensuring that applicants are not removed pending the outcome of judicial review. Decisions of the Administrative Court may be further challenged before the High Administrative Court of the Republic of Croatia. Refugee status is granted to individuals who have a well-founded fear of persecution in their country of origin based on race, religion, nationality, political opinion, or membership in a particular social group. It provides a five-year renewable residence permit and includes access to work, education, healthcare, family reunification, and integration assistance. Subsidiary protection is available to persons who do not qualify as refugees but would face serious harm if returned to their country, such as the risk of torture, inhuman or degrading treatment, or serious threat to life due to armed conflict. It is granted as a three-year renewable residence permit and offers a slightly more limited set of rights compared to refugee status. Temporary protection is a collective and exceptional mechanism activated by a decision of the Council of the EU in response to a mass influx of displaced persons. It grants immediate access to residence and services without requiring an individual asylum procedure. This mechanism has been in place in Croatia since 2022 for displaced persons from Ukraine, and as of 2025, it remains in force, following an EU-level extension through March 2027. In addition, victims of human trafficking may be granted a temporary residence permit under the Foreigners Act, irrespective of their cooperation in criminal proceedings, in line with Directive 2004/81/EC, and are entitled to specialised assistance and protection measures.

According to the TFEU Protocol No. 24 on asylum for nationals of Member States of the European Union, EU Member States are regarded as safe countries of origin in respect of each other in relation to asylum matters. Accordingly, any application for asylum made by a national of an EU Member State is normally not taken into consideration in another Member State. Protocol No. 24 provides in which exceptional circumstances an application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

The Croatian Foreigners Act (*Zakon o strancima*) regulates family reunification for third-country nationals who are family members of legally resident third-country nationals in Croatia. On the other hand, the Act on EEA Citizens and Their Family Members for EU/EEA nationals and their families (*Zakon o državljanima država članica Europskog gospodarskog prostora i članovima njihovih obitelji*) stipulates family reunification of EEA citizens with other EEA

citizens or third-country nationals in Croatia. The Act transposes Directive 2004/38 into the Croatian legal system.

Third-country national family members of EEA citizens in Croatia

Third-country national family members of EEA nationals who are accompanying or joining the EEA national in Croatia can stay on its territory for up to three months without registering their short-term stay at a police station if they have a valid travel document and under the condition that they do not become an unreasonable burden on the social welfare system.

Third-country national family members of an EEA national who intend to stay in Croatia for more than three months have to apply for a residence card of a family member of a Union citizen at a police station according to their place of stay no later than eight days from the expiry of their three-month stay. They are immediately issued a certificate of application and they can use their residence card to prove their right to temporary stay. A biometric residence permit is issued to them, with a validity period of five years.

Third-country family members who have been legally staying in Croatia with an EEA national for a continuous period of at least five years are entitled to permanent stay. They can apply for a permanent stay at a police station according to the place of stay, before their residence card expires. Additionally, third-country national family members of EEA nationals who are staying in Croatia with an EEA national who has been granted the right of permanent stay pursuant to the Act on EEA Nationals and their Family Members will also be entitled to permanent stay, regardless of the duration of their stay in Croatia. The residence card issued for the purpose of permanent stay will be valid for ten years. Additionally, in accordance with Directive 2004/38 and its national transposition, third-country national family members may retain their right of residence before the five-year period in specific circumstances, including in cases of divorce or termination of partnership where particularly difficult circumstances exist, such as domestic violence.

EEA national family members of EEA citizens in Croatia

EEA national family members of an EEA national who intend to stay in Croatia for more than three months have to register their temporary stay at a police station according to their place of stay no later than eight days from the expiry of their three-month stay and provide a copy of a valid ID or travel document, as well as the proof that they are a family member of an EEA national.

Third-country national family members of legally resident third-country nationals in Croatia:

Third-country nationals may be granted temporary stay in Croatia for the purpose of family reunification if they meet general residence conditions and are close family members of another third-country national who holds temporary or permanent residence, long-term residence, or has been granted international protection in Croatia. Close family members are defined under

the Foreigners Act as spouses, common-law partners, minor children (including adopted children) of either or both partners and parents or adoptive parents of a minor child who is a Croatian citizen or a beneficiary of protection or residence right. Under the Foreigners Act, family reunification of legally staying third-country nationals extends to same-sex life partners. While the Act does not expressly equate spouses and same-sex partners, it relies on Croatian family-law concepts, under which same-sex life partnerships are recognised and treated as equivalent to marriage, and no exclusion is provided in the Foreigners Act. Exceptionally, other relatives may be granted temporary stay if justified by serious personal grounds, such as health-related reasons, protection of the best interests of the child, or situations of particular vulnerability, or by humanitarian grounds.

Family reunification is not permitted if the sponsor holds a residence permit for seasonal work, temporary stay for other specific purposes, or is in Croatia as a posted worker or service provider. Moreover, if the sponsor is a third-country national holding a one-year stay and work permit under the Foreigners Act, the family member may apply only if the sponsor has already resided in Croatia for at least one year.

5. What are the conditions for naturalization in the reviewed state?

A foreign national may acquire Croatian citizenship by naturalization if they submit an application and meet the legal conditions set out in the Croatian Citizenship Act (Zakon o hrvatskom državljanstvu). The standard requirements include that the applicant: is at least 18 years old, has been released from their previous citizenship or is able to provide proof that such release will be granted; has resided continuously and legally in Croatia for at least eight years; and holds approved permanent residence status. In addition, the applicant must demonstrate proficiency in the Croatian language and Latin script, knowledge of Croatian culture and social norms, respect for the legal order, and fulfilment of public obligations, with no security-related obstacles. Knowledge of the Croatian language and social order is assessed through a formal language test and an interview conducted by the competent administrative authority. Applications must be submitted in person at the competent police department or, if the applicant resides abroad, through a Croatian diplomatic mission or consular office. Individuals with disabilities may apply through a legal representative.

In addition to the general requirements, certain categories of applicants, such as persons belonging to the Croatian diaspora or those with special contributions to Croatian culture, science, or sport, may be eligible for facilitated naturalization. In such cases, proof of descent or involvement in Croatian communities abroad may be required, as well as evidence of ties to the Croatian people.

Required documentation typically includes a birth certificate, citizenship certificate, proof of legal residence, a proof of release from previous citizenship, and a copy of a valid identity document. Certain documentation requirements, including proof of release from previous citizenship, may be waived or adapted, in line with the Croatian Citizenship Act and international protection standards. In the case of married applicants, a marriage certificate must

also be provided. If the application includes minor children, appropriate parental consent and additional documentation must be submitted.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The Constitution of the Republic of Croatia (Ustav Republike Hrvatske), in Article 14, stipulates that everyone in the Republic of Croatia shall enjoy rights and freedoms irrespective of their race, colour, gender, language, religion, political or other beliefs, national or social origin, property, birth, education, social status, or other personal characteristics, and that all persons are equal before the law.

Additionally, the Anti-Discrimination Act (Zakon o suzbijanju diskriminacije) stipulates that placing of any person in a less favourable position on the grounds of race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, native identity, expression or sexual orientation, shall be deemed to be discrimination.

Consequently, the legal framework on non-discrimination of the Republic of Croatia also covers non-nationals.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

In Croatia, political participation for non-nationals is limited and primarily extends to nationals of other EU Member States. Non-EU nationals generally do not have the right to vote or stand as candidates in European, national or local elections.

1) Local elections

Active and passive suffrage of the citizens of other EU Member States in local election in the Republic of Croatia are regulated by the Act on the Right of Citizens of Other EU Member States in Elections for the Representative Bodies of Local and Regional Self-Government Units (Zakon o pravu državljana drugih država članica Europske unije u izborima za predstavnička tijela lokalne i područne (regionalne) samouprave.

A national of another EU Member State with registered permanent or temporary residence in a local and regional self-government unit where elections are to be held is entitled to vote and stand as candidates for the members of the representative bodies of that unit under the same conditions as Croatian citizens, as stipulated by the Act on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units (conditions that apply to nationals of the Republic of Croatia are prescribed by the Act on Local Elections (Zakon o lokalnim izborima), provided that they have not been deprived of legal capacity in the Republic of Croatia or the EU Member State of their citizenship by a final and binding judgement, or that they have not been deprived of the right to stand as a candidate by an individual criminal law or civil law decision.

Nationals of other EU Member States with registered permanent or temporary residence in the Republic of Croatia register for voting by submitting an application for entry in the electoral register no later than 30 days before the date of the elections to the competent administrative authority keeping the electoral register in their place of permanent or temporary residence in the Republic of Croatia.

The following should be enclosed with the application:

- A copy of a foreign identification document
- A statement certified by a notary public which specifies the person's nationality and the address of permanent or temporary residence in the territory of the unit where the elections are being held
- A statement that the person has not been deprived of voting rights in the EU Member State of his/her nationality.

Nationals of other EU Member States may not stand to be elected for executive functions at the local level; that is, for the executive authority at the local level (this would be a head of a municipality, a city mayor, and a prefect in a county).

Nationals of EU Member States who have applied for entry in the electoral register in local elections will remain registered in the electoral register even after the elections and will only be deleted from the electoral register on their request. They can also be deleted from the electoral register ex officio if they lose their voting right or move out of the Republic of Croatia.

2) European elections

Active and passive suffrage of nationals of other EU Member States in Croatia in election for the European Parliament are regulated by the Act on the Election of Members of the European Parliament from the Republic of Croatia (Zakon o izboru članova u Europski parlament iz Republike Hrvatske).

Nationals of other EU Member States with registered permanent or temporary residence in the Republic of Croatia have to register to be able to exercise their voting rights in elections for members of the European Parliament from the Republic of Croatia.

To be able to vote in the Republic of Croatia, nationals of other EU member states should register for voting by submitting an application for entry in the electoral register no later than 30 days before the date of the elections to the competent administrative authority in their place of permanent or temporary residence in the Republic of Croatia.

The following has to be presented with an application for entry in the electoral register:

- A statement which specifies the person's nationality, the address of permanent residence in the Republic of Croatia, where applicable, and the place or electoral district in their home member state on whose electoral roll they were last included
- A statement on only exercising their voting right in the Republic of Croatia
- A statement that the person has not been deprived of voting rights in the EU member state whose national they are.

Nationals of other EU Member States who request entry in the electoral register in the elections for members of the European Parliament from the Republic of Croatia will be deleted from the electoral register ex officio once the elections have taken place.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil political rights between nationals and non-nationals in the reviewed state? For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g. SA or Victoria) for two years, thus having their movement restricted.

Croatia's Constitution guarantees that all person, regardless of their nationality, are equal before the law and entitled to the same rights and freedoms. This includes freedom of movement and residence, access to justice, freedom of expression, assembly, and association and protection from discrimination based on various grounds. Non-nationals face limitations regarding their

voting rights, employment in the public sector and political participation (more specifically, run for national office or hold certain public offices that require citizenship).

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

The rules vary depending on the type of the property and the nationality of the person.

Regarding the type of property, there are some general restrictions. Properties considered protected are cultural monuments can be acquired only if the local authorities waive their pre-emptive rights to acquire such property. Such pre-emptive rights granted to the local authorities are applicable for every real estate sale agreement no matter who is the buyer. This is regulated by the Law on Protection and Preservation of Cultural Heritage (Zakon o zaštiti i očuvanju kulturnih dobara)

There are also restrictions with regard to some special properties which are by law declared of special interest for the Republic of Croatia and are not suitable for private ownership. Such is the maritime land, defined by law as the seashore, seabed, and sea itself, including ports, harbours, beaches, and areas subject to tidal influence. It is considered a public good of interest to the Republic of Croatia and therefore cannot be privately owned by nationals and non-nationals – the prohibition applies regardless of nationality. Although such land cannot be privately owned there are special permits and concessions that allow for the use of these lands. This is regulated by the Law on Nature Protection (Zakon o zaštiti prirode).

In spite of these general restrictions, non-nationals are generally allowed to buy and own property. The intricacy of those rules furthermore varies depending on the nationality of the person.

1) Nationals of EU Member States, Republic of Iceland, Principality of Liechtenstein and Kingdom of Norway

EU citizens and legal persons from an EU Member State, Republic of Iceland, Principality of Liechtenstein or Kingdom of Norway can acquire ownership rights in real estate in Croatia under the same conditions as Croatian citizens and legal persons with a registered seat in Croatia, with the exception of real estate in exempted areas - agricultural land is governed by a special law. Consequently, the acquisition of ownership rights in such land is not subject to consent by the Minister of Justice and Public Administration.

2) Citizens and legal persons from the Swiss Confederation

Citizens and legal persons from the Swiss Confederation can acquire ownership rights in real estate in Croatia **under the same conditions as Croatian nationals and legal persons with a registered seat in Croatia**, also with the exception of real estate in exempted areas. However, a **certificate of temporary residence** of Swiss nationals must be enclosed with the proposal for registration of ownership submitted to the competent land registry court. The procedure is laid down in the provisions of the Act on Ownership and Other Real Rights (Zakon o vlasništvu i drugim stvarnim pravima) and the Act on General Administrative Procedure (Zakon o općem upravnom postupku).

For legal persons from the Swiss Confederation there are instances of a necessary consent of the minister responsible for judicial affairs, and some where there is no need for this consent.

The consent of the minister is not required for:

- the acquisition of ownership rights on the territory of the Republic of Croatia if the real estate serves as a permanent establishment of a commercial, production or other type of business enterprise, sole proprietorship or independent profession
- the acquisition of such real estate includes the possibility of acquisition of apartments or facilities reserved for them that are designated by the regulations of local or regional self-government units as residential facilities only
- for real estate already co-owned or owned by the legal person
- for the exchange of a condominium unit, where the legal person is already a co-owner in the condominium
- for the acquisition of replacement land in the event of expropriation, land redistribution or consolidation in accordance with national regulations or regulations of local or regional self-government units etc.

The consent is required if:

- the real estate is to be used as a capital investment from the business activities of foreign and foreign-controlled insurance institutions authorised to operate in Croatia, subject to compliance with generally recognised investment principles and provided that the value of all the real estate of the prospective owner does not exceed the provisions considered technically necessary for business operations in Croatia by the competent authority for the supervision of the business operations of the insurer
- the property is to be used for the social insurance of employees of domestic branches or solely for public benefit purposes
- if the property is to be attached to a lien to guarantee the claims of foreign and foreign-controlled banks and insurance institutions licensed to operate in Croatia, in case of compulsory sale and liquidation settlements etc.

The complete list can be found at:

<https://mpudt.gov.hr/acquisition-of-ownership-rights-in-real-estate-by-foreign-nationals/25360#:~:text=Citizens%20of%20the%20EU%2C%20Republic%20of%20Iceland%2C,of%20Justice%2C%20Public%20Administration%20and%20Digital%20Transformation>

3) Citizens of countries other than EU Member States, Republic of Iceland, Principality of Liechtenstein, Kingdom of Norway and the Swiss Confederation

These citizens acquire property after the consent for the acquisition of ownership rights over real estate, granted in an administrative procedure conducted at their request. This procedure is conducted provided that there is reciprocity in the matter of acquisition of real estate ownership between the country of citizenship of the prospective owner and the Republic of Croatia. The

procedure is laid down in the provisions of the Act on Ownership and Other Real Rights (Zakon o vlasništvu i drugim stvarnim pravima) and the Act on General Administrative Procedure (Zakon o općem upravnom postupku).

The following documents must be enclosed with the application form:

- legal basis of the acquisition of ownership (real estate purchase agreement, deed of gift, lifelong support contract, etc.), the original or a certified copy,
- proof of ownership by the seller of the relevant real estate, i.e. a copy from the land register,
- certificate of the administrative body competent for urban and physical planning, according to the location of the real estate, on the legal status of the real estate (whether it is within boundaries of the construction area envisaged by the urban development plan),
- proof of citizenship of the prospective owner (e.g. certified copy of passport) or proof of legal entity status (copy from the court register) if the prospective owner is a foreign legal entity,
- when the applicant is represented by an attorney-in-fact, the original power of attorney or a certified copy thereof must be submitted
- If the applicant is abroad and has not designated an attorney-in-fact to represent them, they must designate an attorney-in-fact for receipt of documents with a domicile in Croatia.

Currently, Croatia is preparing to become a member of OECD. Croatia has already established reciprocity in real estate ownership rights with 36 of the 38 OECD member states. The only two OECD countries without reciprocity are Mexico and Costa Rica. Citizens of these 36 OECD countries can purchase real estate in Croatia under the same conditions as Croatian nationals, without needing to demonstrate reciprocity or obtain special approval. In contrast, citizens of Mexico and Costa Rica still face the reciprocity principle and must prove that Croatia enjoys equivalent property rights in their home countries, and obtain special permission from the Croatian Ministry of Justice.

II.3. Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Nationals of other EU Member States have equal rights and conditions related to work as domestic nationals. On the other hand, the right to work of third-country nationals in Croatia are regulated by the Aliens Act (Zakon o strancima). It stipulates that third-country nationals may engage in employment in the Republic of Croatia on the basis of either a stay and work permit or a work registration certificate, unless otherwise specified by the Act. A stay and work permit constitutes a unified authorisation enabling third-country nationals to reside temporarily and to take up employment in Croatia. It is important to note that third-country nationals are permitted to work exclusively in the positions for which the stay and work permit or work

registration certificate has been issued, and solely with the employers with whom they have concluded an employment contract.

In order to employ third-country nationals, employers have to request a labour market test and the opinion of the Croatian Employment Service.

The Management Board of the Croatian Employment Service will issue a decision on high demand professions which will be published on the website of the Croatian Employment Service, and for those the labour market test is not required.

The labour market test and the opinion of the Croatian Employment Service are not required if:

- the validity of a stay and work permit is extended for the same employer and the same third-country national
- the worker is a seasonal employee in agriculture, forestry, hospitality industry and tourism for up to 90 days in a calendar year
- a stay and work permit is issued pursuant to Article 110 of the Aliens Act (e.g. key personnel in companies, self-employment in a company/sole trade in which they hold an ownership share of at least 51%, EU Blue Card, intra-corporate transferees, service providers, volunteers, trainees, crew members, etc.).

In addition to the stay and work permit, the Ministry may, through a police administration or police station, issue a work registration certificate to a third-country national for the purpose of carrying out contracted work in the territory of the Republic of Croatia for a limited duration. Such a certificate may be granted for a period of up to 90 or 30 days within a calendar year, depending on the type of contracted work.

6. Are there any quotas or limitations for businesses to hire non nationals? For example, some countries allow only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before they hire non-nationals (e.g. labour market testing in Australia).

There are no quotas or limitations for businesses to hire nationals on other EU Member States.

With the changes to the Aliens Act in 2025, Croatia has introduced a labour market test requirement before employers can hire third-country national workers. Employers must demonstrate that no suitable Croatian workers are available for the position. Job criteria cannot be stricter than those for comparable positions, and salaries offered to foreign workers cannot be lower than those paid to local employees. Offering minimum wage solely because the worker is foreign is not permitted. Labour market tests are not required for shortage occupations (tourism and construction) or for workers employed by the same employer in the previous year.

There are no quotas for third-country nationals, but there is a condition that has to be fulfilled for the Croatian Employment Service to issue a positive opinion. Under Article 99(9) and 99(10) of the Aliens Act, the Croatian Employment Service will issue a positive opinion only if the employer employs a minimum share of Croatian/EEA/Swiss nationals in full-time positions relative to third-country nationals: 16% generally, and 8% for occupations listed as

shortage occupations under the decision adopted pursuant to Article 101(1) of the Aliens Act. This allows employers to hire up to 12 foreign workers per local worker in shortage occupations, or 6 per local worker in non-shortage occupations. During the transition, employers with fewer than 50 Croatian employees may submit up to 50 work permit applications, and those with 50 or more may submit up to 250.

To hire foreign workers, employers must have employed at least one Croatian, EU, or Swiss worker in the same position for at least one year on a full-time, permanent basis. Legal entities must have had monthly revenue of at least €10,000 in the past six months; sole proprietors must have had €15,000 per month. Seasonal proprietors must have employed a Croatian, EU, or Swiss worker in the previous season and achieved at least €15,000 revenue during that season.

Employers must have no violations of labour law or tax obligations and cannot use temporary employment agencies unless all conditions are met. Agencies must register all foreign workers and provide the same working conditions as permanent employees to prevent exploitation.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

In Croatia, access to employment in the state civil service is subject to nationality-related restrictions. The relevant legislation is the Civil Servants Act (Zakon o državnim službenicima), which governs employment in state bodies.

As a general rule, posts classified as state civil servant positions, that is, posts involving the exercise of public authority, are reserved for Croatian nationals. In line with EU law, nationals of EU/EEA Member States and Switzerland may exceptionally be admitted to civil servant posts only where the post does not involve the exercise of public authority, and provided that they meet statutory requirements, including knowledge of the Croatian language and Latin script. Third-country nationals cannot be admitted as state civil servants.

The Act distinguishes state civil servants from state employees (*državni namještenici*), who perform technical, administrative, financial, IT and auxiliary tasks necessary for the functioning of state bodies. Such positions do not involve the exercise of public authority and may be filled by non-nationals, including EU/EEA and Swiss nationals, under the conditions laid down by law.

Beyond the state civil service, no general statutory prohibitions exist preventing non-nationals from working in specific sectors such as the media or private employment, subject to general labour and migration law requirements.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

In Croatia, labour protections apply to non-nationals to essentially the same extent as to nationals, provided that they are legally employed. The primary source of labour rights is the

Labour Act (Zakon o radu), which applies equally to Croatian nationals and foreign workers. This includes protection relating to minimum wage, working time and rest periods, overtime pay, paid annual leave, maternity and parental leave, occupational health and safety, and protection against discrimination.

In addition to general labour-law protections, the Aliens Act (Zakon o strancima) contains specific safeguards aimed at preventing the exploitation of third-country nationals. For example, where a residence and work permit is issued, including in the context of intra-corporate transfers, the employment contract or transfer document must guarantee compliance with statutory rules on working time, paid leave, overtime remuneration, health and safety at work, and non-discrimination. The Aliens Act expressly prohibits discriminatory contractual provisions and requires that the remuneration of third-country nationals is not lower than that of workers employed in Croatia in the same or comparable occupations, in accordance with applicable laws and collective agreements.

Consequently, non-nationals who are legally employed in Croatia benefit, in principle, from the same labour protections as nationals, with migration law operating as an additional layer of protection on top of labour law rules.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Health insurance in Croatia is compulsory, meaning that every citizen of the Republic of Croatia should have regulated compulsory health insurance status. Compulsory Health insurance is implemented by the Croatian Health Insurance Fund (CHIF) and regulated by the Compulsory health insurance Act. This insurance provides coverage for a wide range of services: primary health care, specialist-consultative health care, hospital health care, medications determined by the basic and supplementary medicine list of the CHIF, dental prostheses determined by the basic and supplementary prostheses list of the CHIF, orthopaedic and other medical prostheses determined by the basic and supplementary orthopaedic and other medical prostheses list of the CHIF, and the right to cross-border health care.

Persons required to obtain health insurance include:

- persons with permanent residence in Croatia,
- aliens with an approved permanent stay or long-term residence in Croatia,
- EU, EEA, Swiss and UK nationals; citizens of countries with which Croatia has social insurance agreements; and nationals of other states with approved temporary stay for work or professional activity in Croatia (subject to residence and labor regulations, unless otherwise provided by EU law or international treaties),
- nationals of the other Member States in the EU/EEA/Switzerland/UK with the approved temporary stay in Croatia provided they do not exercise compulsory health insurance in another Member States of the EU/EEA/Switzerland/UK,

- nationals of a State that is not an EU Member State/EEA/Switzerland/UK or contracting state with a temporary stay in the Republic of Croatia, unless otherwise stated by EU law, international treaties on social security, or special laws.

Consequently, short-term visitors from EU Member States (e.g., tourists or temporary travellers) can use an EHIC (European Health Insurance Card) for emergency or medically necessary care, free of charge or at reduced cost during their stay. Persons required to obtain health insurance contribute to CHIF and receive compulsory health insurance equal to Croatian citizens, and gain full access to the public healthcare system.

As per the Act on International and Temporary Protection, asylum-seekers in Croatia have guaranteed access to emergency care, treatment of urgent cases, and serious mental disorders. Additional care is provided to persons who have experienced severe forms of violence. The costs of medical care are covered by the Ministry of Health.

Undocumented migrants are not entitled to public healthcare. They can only access the limited set of services available to all individuals free of charge (emergency care), regardless of legal status or insurance. Beyond this minimum, no additional healthcare is provided without payment.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary and tertiary education.

Primary education is compulsory in Croatia and free of charge. If a child has permanent or registered residence in Croatia, they can access primary education under the same conditions as nationals, regardless of natality. Children who are asylum seekers or applicants for international protection also have the right to primary education under the same conditions as Croatian nationals, according to the Law on International and Temporary Protection. Enrolment procedures exist and they usually require proof of residence, identity, and prior schooling. For those lacking some documentation (for example in international protection), the law provides for recognition of foreign qualifications or assessment of prior learning.

After completing primary education, a person can enter different types of secondary schools which are free of tuition. Children of non-nationals who have registered residence are entitled to enrol in secondary schools under the same conditions as domestic nationals. Asylum seekers and persons under subsidiary/ temporary protection have the right to secondary education under the same legal framework.

Croatian nationals get access to higher education under conditions of meeting admission criteria (secondary school diploma, state graduation exams where required). For full-time study, many programmes (especially those in Croatian, public universities) are subsidised by the state, often with low or no tuition fees for nationals. Benefits such as meals, dormitories, subsidised accommodation, student standard (transport for disabled, etc.) apply to nationals.

EU/EEA/Swiss students have the same rights of access to public higher education as Croatian citizens. They pay the same tuition (or subsidised fees) for Croatian-language programmes and enjoy the same subsidies. Third-country nationals are generally enrolled within “foreigner quotas”. Their admission is subject to whatever criteria the institution sets (still, they must meet equivalence/recognition of prior education). They sometimes pay higher tuition, or full cost for programmes in English or for those programmes that are not subsidised.

Students who are beneficiaries of international protection have the right to higher education under the same conditions as Croatian citizens. However, in practice there are challenges, as they may face recognition issues of foreign qualifications, or not get access to all programmes due to the lack of knowledge of Croatian language.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

The system of social benefits in Croatia includes, among others: pension insurance, health insurance, unemployment benefits, family/child allowances and other family benefits, social welfare.

If a non-national is legally employed or self-employed in Croatia, they are subject to the compulsory pension insurance system, just like Croatian nationals. To be eligible for an old-age contributory pension, the law requires a minimum period of contributions and reaching a qualifying pensionable age. For non-nationals from EU/EEA/Switzerland, social security coordination (through EU Regulations) ensures that periods of contributions in other EU/EEA Member States can be aggregated for pension purposes. For third-country nationals similar rights exist if there is a bilateral social security agreement between Croatia and the person’s country of origin. If there is such an agreement, periods abroad may be recognised or aggregated; if not, then only the contributions made in Croatia count.

Non-nationals working legally in Croatia (with work permit / residence permit appropriate to their work) pay into social security including health insurance and have rights similar to nationals in respect of the benefits tied to those contributions. For third-country nationals, whether they have full rights to health services depends on their legal status and whether there is a health-insurance agreement between Croatia and their country.

Regarding unemployment benefits, EU/EEA nationals generally have access under the same conditions as nationals, especially where EU coordination applies. Third-country nationals are more restricted, because unless there is a bilateral agreement regarding unemployment/social security benefits, non-EU nationals may be excluded from exportability and aggregation of unemployment benefits.

Foreigners under international protection (beneficiaries of international protection, subsidiary protection, temporary protection) who legally reside in Croatia are entitled to social welfare under the same law that governs citizens’ social welfare. Third-country nationals with long-term or permanent residence also have access to certain social welfare, child allowance, and

social assistance benefits (e.g. family benefits, child allowance, social housing etc.) if they meet residence/permanence requirements and meet the means-test.

However, non-nationals face difficulties in accessing the same and/or similar social security benefits as nationals, making them in practice less advantaged. Many benefits are dependent on bilateral agreements, costs might be higher when accessing the system, and recognition of insurance periods from abroad, proof of status, identity and residence can pose delays or barriers. Some foreign nationals may struggle with required documentation for eligibility.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among other things.

Access to welfare and social aid programmes depends on both citizenship and residence status. Croatian nationals have broad access to the entire social welfare system, provided they meet the general income and vulnerability criteria set by law. This includes the guaranteed minimum benefit, subsidized housing, child benefit, disability support, and one-time financial assistance.

For non-nationals, the scope of access varies. Non-nationals with permanent residence are generally treated similar to citizens, as they can apply for most of the welfare programmes if they meet the financial and social criteria. Non-nationals with only temporary residence are usually excluded from most long-term welfare benefits. They may be eligible for limited or emergency aid.

Refugees, asylum seekers, and those granted subsidiary or temporary protection are given special status. Croatian law explicitly guarantees them access to social welfare, housing support, and certain financial allowances, often under the same conditions as nationals. For example, they can receive housing assistance if they lack accommodation, and they are exempt from the residence-duration requirements applied to other foreigners.

Some schemes remain citizen-only, particularly those linked to subsidised housing and state-supported property purchases. Affordable Housing Act - part of the broader National Housing Policy Plan, or state-subsidised housing loans are restricted to Croatian citizens, which means non-nationals, even if they have status as permanent residents, cannot access them.

A one-time financial assistance is also a part of the broader welfare system and is governed by the Social Welfare Act. The Act sets out the conditions under which social welfare centres provide one-off payments to individuals or families in urgent or extraordinary situations—such as illness, loss of income, fire, flood, or other emergencies. The amount and frequency are limited, and it is intended as short-term relief rather than ongoing support. Eligibility is tied to legal status and non-nationals with permanent residence also have the right to apply. Beneficiaries of international protection are entitled to social welfare benefits under the same legislative framework governing domestic nationals' social welfare. Beneficiaries of temporary protection also have access to social welfare and housing support, in line with the Act on

International and Temporary Protection (Zakon o međunarodnoj i privremenoj zaštiti), while asylum seekers benefit primarily from reception-related assistance.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

November 2025

*For each question, please pinpoint the relevant **domestic Normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: The Czech Republic

Author: Věra Honusková

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	No	Yes 26/11/1991
1967 Protocol to the Convention relating to the Status of Refugees	No	Yes 26/11/1991
1954 Convention relating to the Status of Stateless Persons	Yes 17/5/2004	Yes 17/5/2004
1961 Convention on the Reduction of Statelessness	Yes 26/10/2001	Yes 26/10/2001
International Covenant on Civil and Political Rights (ICCPR)	Yes 7/10/1968	Yes 11/11/1975
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	Yes 12/3/1991	Yes 22/2/1993

International Covenant on Economic, Social and Cultural Rights (ICESCR)	Yes 7/10/1968	Yes 11/11/1975
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	No	No
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	No	No
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Yes 8/9/1986	Yes 7/6/1988
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Yes 13/9/2004	Yes 10/07/2006
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	Yes 7/3/1966	Yes 29/12/1966
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes 17/7/1980	Yes 22/2/1982
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes 10/12/1999	Yes 26/2/2001
Convention on the Rights of the Child (CRC)	Yes 30/9/1990	Yes 7/1/1991
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	Yes 26/1/2005	Yes 26/8/2013
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	Yes 6/9/2000	Yes 30/11/2001
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	Yes 30/5/2015	Yes 2/12/2015
Convention on the Rights of Persons with Disabilities (CRPD)	Yes 30/3/2007	Yes 28/9/2009

Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	Yes 30/3/2007	Yes 21/8/2021
ILO Forced Labour Convention (No. 29)	No	Yes 30/10/1957
2014 Protocol to the ILO Forced Labour Convention (No. 29)	No	Yes 9/6/2016
ILO Migration for Employment Convention (Revised) (No. 97)	No	No
ILO Equal Remuneration Convention (No. 100)	No	Yes 30/10/1957
ILO Discrimination (Employment and Occupation) Convention (No. 111)	No	Yes 21/1/1964
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	No	No

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	N/A	N/A
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	N/A	N/A
Convention governing the Specific Aspects of Refugee Problems in Africa	N/A	N/A
African Charter on the Rights and Welfare of the Child	N/A	N/A
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	N/A	N/A
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	N/A	N/A

European Convention on Human Rights (ECHR)	Yes 21/2/1992	Yes 18/3/1992
Protocols to the European Convention on Human Rights (list which ones): ● Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms; signed 21/02/1991, ratified 18/03/1992 ● Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions; signed 21/02/1991, ratified 18/03/1992 ● Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention; signed 21/02/1991, ratified 18/03/1992 ● Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto; signed 21/02/1991, ratified 18/03/1992 ● Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention; signed 21/02/1991, ratified 18/03/1992 ● Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty; signed 21/02/1991, ratified 18/03/1992 ● Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms; signed 21/02/1991, ratified 18/03/1992 ● Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms; signed 21/02/1991, ratified 18/03/1992 ● Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms; signed 5/2/1992, ratified 7/5/1992		

• Protocol No. 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms; signed 07/05/1992, ratified 26/06/1992 • Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby; signed 11/5/1994, ratified 28/4/1995 • Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances; signed 3/5/2002, ratified 2/7/2004 • Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention; signed 29/6/2005, ratified 19/5/2006 • Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms; signed 15/3/2013, ratified 18/3/2015		
European Social Charter (ESC)	Yes 27/5/1992	Yes 3/11/1999
European Convention on the Legal Status of Migrant Workers	No	No
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	Yes 2/5/2016	No
American Convention on Human Rights (ACHR)	N/A	N/A
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	N/A	N/A
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	N/A	N/A
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	N/A	N/A
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	N/A	N/A

Inter-American Convention against All Forms of Discrimination and Intolerance	N/A	N/A
Inter-American Convention Protecting the Human Rights of Older Persons	N/A	N/A

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is Not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

European Convention on Nationality (regional, CoE, 1997)	Yes 07/05/1999	Yes 19/03/2004

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

It must first be stated that Czech immigration legislation is largely harmonized with the legal framework of the European Union, ensuring consistency with the legal orders of other EU Member States. The influence of EU law (as well as the case law of the Court of Justice of the EU) on Czech legislation is substantial. At the level of EU law, in addition to the foundations laid in primary legislation, there exists a comprehensive body of secondary legislation that governs the entry and residence of both EU citizens (and their family members) and nationals of so-called third countries.⁴⁷⁵ EU citizens and their family members – including those who are third-country nationals – enjoy a privileged status, with minimal administrative requirements imposed on them. In contrast, third-country nationals are subject to significantly more stringent conditions, including, at later stages of residence, integration measures, among others.

The Czech Republic has an established system of visas and residence permits. The regulation of residence statuses is governed by (a) European law, including both directly applicable regulations and directives that must be transposed into national legislation,⁴⁷⁶ and (b) national

⁴⁷⁵ Exceptions exist for certain non-EU countries that are part of the Schengen Area (such as Norway, Iceland, Switzerland, and Liechtenstein), as well as for some EU Member States that are not part of the Schengen Area (namely Ireland and Cyprus).

⁴⁷⁶ The following pieces of EU legislation may serve as examples (among many others):

- Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code),

- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Free Movement of Persons Directive),

legislation on the residence of foreign nationals (“Act on Residence of Foreign Nationals”).⁴⁷⁷ This national law contains approximately three hundred, often extensive, provisions that frequently refer to one another, making it one of the most complex and difficult-to-understand legal regulations.

Upon entering the country, a foreign national gradually acquires increasingly favourable and stronger residence rights within the legal framework of their stay. More specifically, if the Czech Republic does not have a visa-free agreement with the foreign national’s country of origin⁴⁷⁸ or if visa-free entry does not stem from an applicable EU Regulation,⁴⁷⁹ they must obtain a short-term visa to enter the country. However, such a visa typically does not permit a stay exceeding 90 days.⁴⁸⁰

If a foreign national intends to stay in the Czech Republic for a longer period, they are required to obtain either a long-term visa (Sec. 30, Act on Residence of Foreign Nationals), or a long-term residence permit (Sec. 42, Act on Residence of Foreign Nationals). Applications for these permits are generally submitted at Czech diplomatic missions abroad, although the law provides for certain exceptions.⁴⁸¹

Only after obtaining these initial permits can the foreign national progress through the residence permit hierarchy. For instance, if an individual enters the country with a long-term visa, which is typically granted for a maximum period of one year, they may apply for a long-term residence permit before the visa expires (Sec. 42(1) and Sec. 47, Act on Residence of Foreign Nationals). The long-term residence permit is usually issued for a period of two years and can be renewed. Subsequently, after five years of continuous long-term residence, the individual may apply for permanent residence (Sec. 68, Act on Residence of Foreign Nationals).

Citizens of European Union member states and their family members enjoy a privileged status, as special rules govern their entry and residence conditions (Sec. 15a, Sec. 87a and Sec. 87b, Act on Residence of Foreign Nationals). Nevertheless, they too may eventually qualify for the highest level of residence status: permanent residence (Sec. 87g and Sec. 87h, Act on Residence of Foreign Nationals).

- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents as amended by the Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011,

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (Family Reunification Directive).

⁴⁷⁷ Act. No. 326/1999 Coll., Act on Residence of Foreign Nationals on the Territory of the Czech Republic.

⁴⁷⁸ See the list of bilateral treaties between the third states and the Czech Republic available at the website of the Ministry of Foreign Affairs of the Czech Republic.

⁴⁷⁹ Cf Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification).

⁴⁸⁰ Cf Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) and provisions of the Act on Residence of Foreign Nationals.

⁴⁸¹ There is no single provision of the law that expressly stipulates this; rather, it is addressed across multiple provisions.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

The two primary residence permits, namely the long-term visa (valid for a maximum of one year, Sec. 30 of the Act on the Residence of Foreign Nationals) and the long-term residence permit (Sec. 42 of the Act on the Residence of Foreign Nationals), may be issued for purposes such as employment, study, business activities or family reunification.⁴⁸² It is important to note that the law also allows for issuance of residence permits for "other" purposes.⁴⁸³ This means that a residence permit may be granted for purposes that are not explicitly defined by law (such as some language courses, etc.).

After five years of residence, a foreign national may obtain permanent residence, which represents the highest residence status (Sec. 68, Act on the Residence of Foreign Nationals). However, permanent residence may also be granted earlier in special cases, such as for humanitarian reasons, to individuals of Czech origin, or if it is deemed to be in the interest of the Czech Republic (Sec. 66, Act on the Residence of Foreign Nationals). Additionally, after five years of residence, a foreign national may also qualify for EU long-term resident status (Sec. 83/1, Act on the Residence of Foreign Nationals).

EU citizens are allowed to stay in the Czech Republic for more than three months without requiring any residence permit. They may, but are not required, to apply for a residence certificate (Sec. 87a, Act on the Residence of Foreign Nationals) and, after a certain period, for a permanent residence permit (Sec. 87g, Act on the Residence of Foreign Nationals).

Another distinct category consists of family members of EU citizens. They have a legal right to enter the country and obtain an entry visa (*a contrario* Sec. 20/6, Act on the Residence of Foreign Nationals). Upon arrival, they may apply for a temporary residence permit (Sec. 87b, Act on the Residence of Foreign Nationals). After a specified period (either two or five years), they may then apply for permanent residence (Sec. 87g, Act on the Residence of Foreign Nationals).

The legislation is largely harmonized with the legal framework of the European Union, ensuring consistency with other EU member states.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Here, we must repeat that the Czech legislation is largely harmonized with the legal framework of the European Union, ensuring consistency with the legal orders of other EU Member States and that the influence of EU law (as well as the case law of the Court of Justice of the EU) on the Czech legislation is substantial. In EU law, in addition to the foundations laid in primary

⁴⁸² Relevant Czech legislation specifies the permitted purposes of stay within the sections governing each type of residence permit.

⁴⁸³ Although this fact is not explicitly acknowledged in the Act on the Residence of Foreign Nationals itself, this reason is used; see e.g. [website of the Ministry of Foreign Affairs](#).

legislation, a comprehensive body of secondary legislation on international protection was developed: Common European Asylum System (CEAS). It consists of set of rules in the forms of directives and regulations that regulate various aspects of the protection procedures. Among others there are standards set for determination of a state responsible for the claim; standards for who qualifies as a refugee, for how the procedures for examining the claims should look like and what reception conditions should the states have.⁴⁸⁴ The Pact on Migration and Asylum has significantly changed the shape of the CEAS.⁴⁸⁵

The regulation of protection statuses is governed by (a) European law, which sets standards for “asylum” (refugee status), “subsidiary protection” and “temporary protection” and (b) national legislation, mainly the Asylum Act, which harmonizes the Czech legislation with the EU one and stipulates for other protection statuses.⁴⁸⁶ We mustn’t forget the Czech Constitution⁴⁸⁷ and its territorial asylum and also Temporary Protection Act.⁴⁸⁸

So, there are six main statuses through which the protection to a third country national can be granted: (1) refugee status (in the Czech law called “asylum”), (2) (territorial) asylum, (3) subsidiary protection, (4) asylum or subsidiary protection status for the purpose of family reunification, (5) temporary protection and (6) recognition of a stateless person. To obtain statuses 1) to 4), foreigners must apply for international protection and undergo proceedings conducted by the Ministry of the Interior of the Czech Republic, Department of Asylum and Migration Policy (Odbor azylové a migrační politiky Ministerstva vnitra ČR). Ministry of the Interior of the Czech Republic (hereinafter “Ministry of the Interior”) is responsible for internal security and public administration, i.e. it is similar to a Department of Home Affairs in other countries. In this case, a foreign national must be physically present in the Czech Republic (Sec. 3a, Asylum Act). The international protection may be granted **under the Asylum Act**:

- in the form of (1) “asylum”, with conditions based on the Convention Relating to the Status of Refugees (Sec. 12(b) Act on Asylum), i.e. to those who seek protection as they have “well-founded fear of being persecuted” for the reasons of race, nationality, religion, membership in a particular social group or political opinion or – and this is a national specific reason based on the EU legislation – for the reason of **gender**;
- in the form of (2) territorial asylum (called, again, “asylum”), with conditions based on the Czech Charter of Fundamental Rights (Sec. 12(a) Act on Asylum), i.e. to those who are

⁴⁸⁴ The following pieces of EU legislation may serve as examples (among many others):

- Qualification Directive: Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), from 2026 changing to Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council

⁴⁸⁵ More information can be found at the website of the EU Commission (https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en).

⁴⁸⁶ Act. No. 325/1999 Coll., Act on Asylum.

⁴⁸⁷ Art. 43 of the Act No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms (part of the constitutional order).

⁴⁸⁸ Act No. 221/2003 Coll., on Temporary Protection of Foreigners.

“persecuted for exercising” political rights and freedoms. Territorial asylum may be denied to anyone who has violated fundamental human rights and freedoms. The term "persecution" is interpreted in the same way for both types of asylum, even though they have a different basis.;

- Asylum granted under Section 12(a) and asylum granted under Section 12(b) have the same effect from the perspective of a foreigner in need of protection. Both types of protection are the result of a legal process in which the Ministry of the Interior makes decisions based on different definitions of these types of asylum. There is no administrative discretion in either case. in the form of (3) subsidiary protection (Sec. 14a, Act on Asylum) – intended for individuals who cannot be returned to their country of origin, primarily due to the Czech Republic’s international obligations, i.e. to those who would face a real risk of serious harm in their home country that includes: the death penalty or execution; torture or inhuman or degrading treatment; a serious and individual threat to their life due to indiscriminate violence in situations of international or internal armed conflict. The state authorities take into account the ECtHR case-law on non-refoulement principle;

- in the form of (4) asylum or subsidiary protection for the purpose of family reunification (Sec. Sec. 13 and Sec. 14b, Act on Asylum), i.e. in a case worthy of special consideration to allow for family reunification.

- Until October 2025 there was one more type of protection (national based) status in the CZ, a protection granted in the form of national humanitarian asylum (Sec. 14, Act on Asylum). The status could be granted, i.e., the legislation stipulated there was no subjective right of an individual to receive this kind of protection, in a case worthy of special consideration for humanitarian reasons (not defined by law); an interesting case law of national courts was developed in order to limit the discretion of the state. Main arguments were that the administrative discretion does not mean that the administrative authority acts arbitrarily. It must justify its decision and proceed in a similar manner in similar cases.

In cases of mass influx, (5) temporary protection may be granted by the Czech state under the European Temporary Protection Directive, as incorporated into Czech law through the **Act on Temporary Protection**. The main element here is the concept of mass influx. The protection can be granted to persons fleeing armed conflict, but not exclusively. The Temporary Protection Act can only be activated on the basis of a decision by the Council of the European Union. The Czech Republic could grant national protection with the same name, but not on the basis of this law.

Furthermore, a certain protective function is served by the toleration status, also referred to as "leave to stay status", as defined in the **Act on the Residence of Foreign Nationals** (Sec. 33/1).

The status of a stateless person can be granted on the basis of **Act on the Residence of Foreign Nationals** (Secs. 49a-49c ZPC, Secs. 170d-170g).

Procedures for granting statuses under the Asylum Act and the Temporary Protection Act are carried out by the Ministry of the Interior of the Czech Republic, Department of Asylum and Migration Policy.

The Czech Republic also has a **legal framework for the protection of victims of trafficking in human beings**. It builds on the international and European law commitments.⁴⁸⁹ Trafficking in persons is considered a crime.⁴⁹⁰ Victims of the crime of trafficking in persons are considered particularly vulnerable victims under the Victims of Crime Act.⁴⁹¹ As far as the residence permit is concerned, victims of trafficking in persons who are third-country nationals can apply for specific residence permit under Act on Residence of Foreign Nationals (even from illegality). Under Section 42e, a long-term residence permit for the purpose of protection may be granted to a foreign national who is probable victim of trafficking in human beings and who **cooperates with competent authorities in the respective criminal proceedings**. At the beginning, a foreigner has one month to decide whether he/she will cooperate with the criminal justice authorities. During this period, foreigners cannot be expelled or otherwise deprived of their right to reside in the territory. However, expulsion proceedings may continue, as may proceedings for the granting of international protection. The law does not clearly specify the length of time for which this residence permit is granted, but as this type of visa lasts for the length of the purpose for which it is granted, it is apparently granted for the period during which the person cooperates with the criminal justice authorities. The law nevertheless allows the Ministry of the Interior to grant also a permanent residence on humanitarian grounds and as the information about the Program to support and protect victims of human trafficking provide, the Ministry may do is in the cases which deserve special consideration, i.e. when the victim is exposed to a significant danger in their country of origin. There is also a possibility to transfer the long-term residence permit for the purpose of protection to a long-term residence permit with another purpose of stay, which, according to the NGO La Strada,⁴⁹² which is actually a real possibility and not just a law on paper.

Foreigners who have been victims of human trafficking can enter the above-mentioned official Program to support and protect victims of human trafficking,⁴⁹³ which provides access to social, medical, and psychological support, legal counselling, interpretation services, and voluntary return to the country of origin or help with finding a job, as well as safe accommodation. The program is administered by the Ministry of the Interior in cooperation with specialized NGO (La Strada) and IOM. Participation in the program is voluntary and depends on whether the victim breaks off contact with human traffickers.

⁴⁸⁹ The obligations arise mainly from the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (supplementing the United Nations Convention against Transnational Organized Crime); Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.

⁴⁹⁰ Sec. 168 of the Act. No. 40/2009 Coll., Criminal Code. See also Secs. 340 and 341 of the Criminal Code which cover crime of „Organizing and facilitating the illegal crossing of the state border“ and “Assisting in unauthorized residence in the territory of the republic”. Victims of those two crimes may also be granted the respective residence permit.

⁴⁹¹ Sec. 2 (4) of the Act. No. 45/2011 Coll., Victims of Crime Act.

⁴⁹² La Strada is the main Czech NGO working with victims of trafficking.

⁴⁹³ See the website of the Ministry of the Interior with details about the programme.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Again, we must repeat that the Czech legislation is largely harmonized with the legal framework of the European Union, ensuring consistency with the legal orders of other EU Member States and that the influence of EU law (as well as the case law of the Court of Justice of the EU) on the Czech legislation is substantial. Here mainly two directives come into play: Free Movement of Persons Directive and Family Reunification Directive, which were already mentioned above.

National law, which is largely based on EU law in this, allows for family reunification. Under the provisions of the Act on the Residence of Foreign Nationals, family reunification of third country nationals is generally possible after the sponsor has resided in the country for a certain period; however, in some cases, it may be granted almost immediately upon the sponsor's arrival (Sec. 42a and 42b, Act on the Residence of Foreign Nationals). Those who were granted protection in the form of asylum are also considered sponsors.

The law considers the following persons to be "family members" of the third country nationals (= persons entitled to submit an application for family reunification, Section 42a): a foreigner who is the spouse or child of a foreigner with a residence permit in the territory, or the child of his or her spouse. Furthermore, children placed in foster care or under guardianship, if the care is provided in the Czech Republic; unmarried foreigners over 65 years of age or persons who are unable to live independently for health reasons. Czech law does not allow for the reunification of unmarried partners or non-nuclear family members (there is only exception for cases of minor asylum seekers, where their parents can apply for family reunification regardless of age). The sponsor must prove that they have the financial means to support family members in order for family reunification to be possible.

For EU citizens who have a privileged position to the third country nationals, the situation is different (easier). Family members of the EU citizens have the right to accompany and join them, meaning they may enter and relocate together. This right is largely based on the EU law (as transposed into the Czech law). Additionally, legislation provides for family reunification within the framework of permanent residence, particularly in relation to minor children (Sec. 66, Act on Residence of Foreign Nationals).

The scope of the term "family members" is broader in the case of EU citizens' family members (Sec. 15a of the Foreigners Residence Act). For the purposes of the Act on Residence of Foreign Nationals a family member of a European Union citizen includes their spouse; a parent of an EU citizen under 21 years of age who is actually cared for by them; a child under 21 or such a child of the EU citizen's spouse; and a child or ancestor (or such a relative of the spouse) who is dependent on the EU citizen or their spouse for basic support or necessary care, or was dependent immediately before entering the territory. Additionally, a family member may be a relative of an EU who, in their country of origin, is either financially supported by, part of the household of, or requires urgent personal care from that citizen, or a foreigner in a legally documented durable partnership with them.

Moreover, the Czech law extends the status of family member of an EU citizen to family members of the Czech citizens who live in the Czech Republic permanently. It means, that the EU law applies not only to the family members of EU citizens who move to another country, i.e., exercise their right to free movement (and that is the aim of the European legislation), but also to the third country nationals who are family members of Czech citizens.

There is one more possibility for family reunification: the Asylum Act allows for the granting of international protection status (asylum or subsidiary protection) for the purpose of family reunification; however, this option is relatively limited and is described above under point 3.

5. What are the conditions for naturalization in the reviewed state?

In this area, the influence of European law is minimal; the granting of citizenship remains in the hands of the states. The Czech legal system sets out the grounds for granting citizenship in the Act on State Citizenship (Citizenship Act).⁴⁹⁴ For more than a decade, Czech legislation allows for the dual and multiple citizenship. Interestingly, from the point of view of international law, it does not allow for revocation of citizenship.

A foreign national must meet the following conditions for naturalization:

- permanent residence for 5 (or 3 for the EU citizen) years, or permanent residence combined with 10 years of authorized residence (Sec. 14, Citizenship Act);
- continuous residence in the Czech Republic for at least half of the required period (Sec. 14/2, Citizenship Act);
- no final conviction for a negligent criminal offense resulting in an unconditional prison sentence, or for an intentional criminal offense (Sec. 14/3, Citizenship Act).
- knowledge of Czech language and Czech societal and cultural realities (Sec. 14/4 and 14/5, Citizenship Act). The knowledge is tested through an exam which has a form of a written test. The test is conducted by a state-accredited institution, such as Charles University.⁴⁹⁵ There are courses and practice questions for the tests available;
- no serious violations of obligations under selected laws in the past three years (Sec. 14/6, Citizenship Act);
- proof of sufficient income sources for the past three years (Sec. 14/7, Citizenship Act);
- no significant and unjustified dependency on state social support or material need assistance in the past three years (Sec. 14/8, Citizenship Act).
- There are also various exceptions; for example, children who have spent a substantial part of their lives in the Czech Republic may be eligible to acquire Czech citizenship within three years after reaching the age of 18 (Sec. 35, Citizenship Act).

⁴⁹⁴ Act No. 186/2013 Coll., on State Citizenship of the Czech Republic.

⁴⁹⁵ Cf website of the Institute for Language and Preparatory Studies (Ústav jazykové a odborné přípravy Univerzity Karlovy).

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The Czech Republic has a specific domestic legal framework on non-discrimination that covers also non-nationals. The Czech Republic is also bound by international conventions governing non-discrimination, including the European Convention on Human Rights (ECHR), which prohibits discrimination in Article 14. However, it is not yet bound by Protocol No. 12 to this convention which is aimed at antidiscrimination. There are also provisions of European Law that apply here.

The national basis for non-discrimination can be found in the **Charter of Fundamental Rights and Freedoms** of the Czech Republic.⁴⁹⁶ Non-discrimination between the Czech citizens and foreigners in the area of fundamental rights is guaranteed through it. Its Art. 3(1) stipulates that fundamental rights and freedoms are guaranteed to everyone regardless of gender, race, skin colour, language, faith and religion, political or other opinion, national or social origin, affiliation with a national or ethnic minority, property, birth or other status (in the sense of

⁴⁹⁶ Charter of Fundamental Rights and Freedoms promulgated by Resolution No. 2/1993 Coll. of the Presidium of the Czech National Assembly as part of the constitutional order of the Czech Republic.

something that cannot be changed, or cannot be changed without a fundamental impact on a person's integrity), and Art. 4(3) stipulates that legal restrictions on fundamental rights and freedoms must apply equally to all cases that meet the specified conditions. All provisions of this Charter apply to everybody unless the act itself stipulates that it applies only to citizens of the Czech Republic.⁴⁹⁷

The main law covering non-discrimination is **Antidiscrimination Act** from 2009.⁴⁹⁸ It covers both direct and indirect discrimination (and explicitly counts harassment, sexual harassment, persecution, instructions to discriminate, and incitement to discriminate as discrimination). At the same time, the Antidiscrimination Act defines situations (**specifies the areas**) in which discrimination is prohibited. These are: the right to equal treatment and the prohibition of discrimination in matters of access to employment, self-employment, education, membership and activities in trade unions, membership and activities in professional chambers, social security, recognition and provision of social benefits, access to and provision of healthcare, and access to goods and services.

The Antidiscrimination Act differs between direct and indirect discrimination. **Direct discrimination** means any conduct, including omission, whereby one person is treated less favourably than another person is, has been, or would be treated in a comparable situation on grounds of race, ethnic origin, nationality, gender, sexual orientation, age, disability, religion, belief and also (in legal relationships where directly applicable European Union regulations on the free movement of workers apply) on the basis of citizenship. Discrimination on the grounds of pregnancy, motherhood or fatherhood and on the grounds of gender identity shall also be considered discrimination on the grounds of gender. **Indirect discrimination** means any act or omission in which, on the basis of an apparently neutral provision, criterion, or practice, a person is disadvantaged compared to others for any of the reasons listed above (race, ethnic origin etc.). Indirect discrimination does not occur if this provision, criterion, or practice is objectively justified by a legitimate aim and the means of achieving it are proportionate and necessary.⁴⁹⁹

Foreigners who believe they have been discriminated against may file a lawsuit and seek an end to discrimination, elimination of the consequences of discriminatory action, and adequate compensation. A foreigner may also ask for help at the Office of the Public Defender of Rights (ombudsman), that is national authority for equal treatment and protection against discrimination. Its task is to provide methodological assistance to victims of discrimination, conduct research in the field of discrimination, and issue recommendations for the enforcement of equal treatment.

There are also other, specific, laws (e.g., the Education Act, the Labor Code, the Consumer Protection Act, etc.) that prohibit discrimination on other grounds, such as membership in trade unions or political parties, marital status, social origin, property, etc. Compliance with these laws is monitored by supervisory authorities such as the Czech School Inspectorate, the Czech

⁴⁹⁷ Art. 42 of the Charter of Fundamental Rights and Freedoms.

⁴⁹⁸ Act No. 198/2009 Coll., on Equal Treatment and Legal Protection against Discrimination (Antidiscrimination Act).

⁴⁹⁹ Secs. 2 and 3 of the Antidiscrimination Act.

Trade Inspectorate, Labour Inspectorates, and others. For example, the Labour Code contains several provisions about equal treatment and non-discrimination in labour relations and refers to the Antidiscrimination Act in legal remedies for protection against discrimination in labour relations.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Political participation of foreigners in the Czech Republic is regulated differently for EU citizens and third-country nationals. The legal basis for political participation of EU nationals can be found in the primary EU law (e.g. Arts. 20, 22 TFEU).⁵⁰⁰

Citizens of other EU Member States may vote and stand as candidates in municipal elections and European Parliament elections in the Czech Republic. They must be registered on the electoral roll. However, EU citizens cannot vote in parliamentary (i.e., for deputies and senators) or presidential elections. From 2025, citizens of European Union countries are able to join Czech political parties and movements.⁵⁰¹ This was not possible before, but this restriction was in conflict with EU law.⁵⁰²

Under the Czech law, **citizens of third countries** do not have these rights, i.e. they do not have the right to vote or stand for election at any level, nor do they have the opportunity to become members of political parties. There is also no bilateral agreement allowing citizens of third countries to vote.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Generally, in the Czech Republic, civil and political rights are generally guaranteed to all persons residing in the country, including non-nationals. As written above, certain political rights, such as the right to vote and stand in national elections, are restricted to Czech citizens, while non-nationals may exercise these rights only in local/municipal elections if they are EU citizens. Other civil rights, such as access to courts, freedom of expression, equality before the law, and protection against discrimination, apply to both nationals and non-nationals.

⁵⁰⁰ Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union (2016/C 202/01).

⁵⁰¹ Sec. 2(3) Act No. 424/1991 Coll., on Association in Political Parties and Political Movements.

⁵⁰² Judgment of the Court (Grand Chamber) of 19 November 2024, (Case C-808/21), European Commission v Czech Republic.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

No special requirements are imposed on foreigners from a legal perspective, and there are no restrictions on the acquisition of real estate. The only exception that applies is specific restrictions on foreigners purchasing agricultural land, based on the principle of reciprocity, i.e. if a foreigner cannot own land in a given country, they cannot own it in the Czech Republic either.⁵⁰³

Property rights enjoy constitutional protection, which also sets out fundamental rules for expropriation: this is permitted only in exceptional cases, for reasons of public interest and in compliance with strict rules laid down by law and subject to payment of compensation.⁵⁰⁴

Charter of Fundamental Rights and Freedoms stipulates that everyone has the right to own property. It also declares that a “law may stipulate that certain items may only be owned by citizens or legal entities based in the Czech Republic”.⁵⁰⁵ This provision was adopted in the early 1990s after the change of the regime, when there were concerns about the purchasing power of foreigners. Now, there are no restrictions on ownership, with the exception mentioned above.

All matters directly related to real estate are governed by the Czech Civil Code (Act No. 89/2012 Coll.), which came into force in 2014 as part of the recodification of private law.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

The employment of foreigners in the Czech Republic is subject to a **valid work permit** (or other authorization such as a residence permit combining the right to reside and engage in a formal employment relationship, i.e., employee card) and a **valid residence permit**. Working without a residence permit or without a work permit (if a person needs it) is considered illegal employment,⁵⁰⁶ and is considered a misdemeanour under the Employment Act.⁵⁰⁷ Employers are also required to notify a labour office of a foreigner's commencement of employment no later than on the day of commencement, under penalty of up to 3 million CZK (120 000 EUR).⁵⁰⁸

⁵⁰³ Sec. 3d of the Act. No. 334/1992, Act of the Czech National Council on the Protection of Agricultural Land.

⁵⁰⁴ Art. 11(4) of the Charter of Fundamental Rights and Freedoms.

⁵⁰⁵ Art. 1 and 2 of the Charter of Fundamental Rights and Freedoms.

⁵⁰⁶ Sec. 5(e)(2,3) of the Act No. 435/2004 Coll., Act on Employment (hereinafter also “Employment Act”).

⁵⁰⁷ Cf Secs. 139 and 140 of the Employment Act.

⁵⁰⁸ Sec. 5(j), 87(1), 139(2)(f) and 140(1)(g) of the Employment Act.

A work permit is a document that authorizes foreigners in the Czech Republic to work legally. It contains information about the type and place of work, the employer's identification details, and the period of validity. A work permit is tied to a given employer and to a given job position. An employee cannot change employers with the same work permit.

There are two categories of foreigners according to the possible access to the labour market:

- a) foreigners with free access to the labour market, i.e. with no need of a work permit,
- b) foreigners who need a work permit, because their residence permit does not also include a work permit, or they need a residence permit to live and work in the country, which combines both, i.e. an employee card / blue card.

1. Foreigners with free access to the labour market

Foreigners with free access to the labour market are listed in the Employment Act.⁵⁰⁹ The list is rather extensive; here are some of the categories:

- EU Citizens (and citizens of Iceland, Liechtenstein, Norway, and Switzerland),
- EU Citizen Family members,
- foreigners with permanent residence permit (a status for permanently residing foreigners), and those who already obtained an EU long-term resident status in an other EU country and have received in Czechia a special long-term residence permit for them,
- foreigners who were granted asylum or subsidiary protection,
- foreigners residing on the basis of a long-term residence permit for the purpose of protection (the victims of trafficking mentioned above),
- foreigners who reside on the basis of a residence permit for the purpose of family reunification, but only in certain situation: for example, if their spouses have a permanent residence permit or asylum,
- academics and researchers, in some cases even university students
- (some) of those who studied in the Czech secondary schools and universities,
- government regulation may specify states from where foreigners do not need the permit,
- other categories (the list is long).

For the purposes of the Employment Act, a foreigner with temporary protection is considered a foreigner with permanent residence permission under the Act on the Residence of Foreign Nationals.⁵¹⁰ They therefore have full (see above) and free access to the labour market in the Czech Republic.

⁵⁰⁹ Sec. 98 of the Employment Act.

⁵¹⁰ See Sec. 2 of the Act No. 66/2022 Coll., Act on Measures in the Field of Employment and Social Security in Connection with the Armed Conflict in Ukraine caused by the Invasion of Russian Federation troops for the current temporary protection residence permit; see Sec. 32 of the Act No. 221/2023 Coll., Act on Temporary Protection of Foreigners for the legal regulation of the temporary protection in general.

Foreigners who either reside in the country on a long-term basis (as **permanent residence migrants**) or **benefit from a more favourable treatment based on their nationality** (EU citizens), **refugees**, and **beneficiaries of international protection** (including temporary protection) have free access to the labour market.

2. Foreigners who need a work permit / employee card / blue card

Foreigners who need a work permit are basically those who are **temporary resident migrants** coming for work to the Czech Republic, i.e. for the first five years of their stay. There are exceptions, such as (some) students, (some) beneficiaries of family reunification etc. The exceptions are listed in the Employment Act as those who do not need the work permit.

A **work permit cannot be issued** among others to a foreigner who has applied for international protection in the Czech Republic for a period of 6 months from the date of providing information on the submitted application for international protection or to a foreigner whose employer violated the law in the manner described in Sec. 99 of the Employment Act. Thus, **asylum seekers** do not have access to the labour market for the first 6 months.

Undocumented migrants do not have access to the labour market. To enter the labour market, it is necessary to have a residence permit.

Illegal employment is punishable by a fine of up to 5 million CZK (200 000 EUR) in case of individual employer/ up to 10 million CZK (400 000 EUR) in case of an employer who is a company and up to 100 000 CZK (4 000 EUR) for an employee. There are state and non-state entities helping foreigners who are victims of forced labour and other forms of labour exploitation.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

There are **no formal quotas or limitations for businesses to hire foreigners** as such in the Czech Republic.

What implicitly restricts employers is the requirement to employ (certain categories of) third-country nationals (non-EU nationals) only with a work permit that officially confirms that the position in question cannot be filled by a Czech citizen. Protection of the labour market for Czech citizens thus exists to a certain extent. Employers may freely hire EU/EEA citizens and their family members without any special permit, as they enjoy equal access to the labour market.

While there are no quotas limiting the number of foreign workers, the government may regulate the issuance of work permits or employee cards based on the labour market needs and bilateral agreements with specific countries. Employers must also comply with general labour law obligations, including equal treatment and non-discrimination.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

In the Czech Republic, there are certain functions or professions that are **reserved for the Czech citizens**. There is a condition of the Czech citizenship stipulated for

- the exercise of constitutional and judicial functions,
- service in the armed forces and security forces,
- the exercise of public service,
- certain legal professions.

To hold a constitutional office such as president, member of parliament, senator, or judge of the Constitutional Court of the Czech Republic, a person must have Czech citizenship.⁵¹¹

With a few exceptions, Czech citizenship is also required for public service and service in the armed forces. Only citizens of the Czech Republic can be professional soldiers or persons in public service (i.e., police officers, customs officers, prison officers, security information service officers, etc.).⁵¹²

For exercise of public service, i.e. for civil servants (e.g., ministry officials), the condition of Czech citizenship **or** citizenship of another European Union member state or citizenship of a state that is a signatory to the Agreement on the European Economic Area is stipulated. However, even in this case, Czech citizenship may be required for a position if it is necessary for the protection of the legitimate interests of the Czech Republic that the activities in that position be performed by a Czech citizen.⁵¹³

Foreign nationals are also prohibited from practicing certain legal professions. They cannot become **judges, public prosecutors, executors**.⁵¹⁴ However, not only Czech citizens can be appointed as **notaries**, but also citizens of European Union member states, other states that are part of the European Economic Area, or the Swiss Confederation.⁵¹⁵

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

⁵¹¹ Cf Arts. 57(1), 19(1), 19(2), 84(2) of the constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic.

⁵¹² Cf Sec. 3(1) of the Act No. 221/1999 Coll., on Professional Soldiers, Sec. 13(1) of Act No. 361/2003 Coll., on the Service of Officers of the Security Forces.

⁵¹³ Cf. Secs. 25(1) and 25(3) of the Act No. 234/2014 Coll., Civil Service Act.

⁵¹⁴ Cf. Sec. 60 of the Act No. 6/2002 Coll., Act on Courts, Judges, Assessors and State Administration of Courts, Sec. 17 Act No. 283/1993 Coll., Act on the Public Prosecutor's Office, Sec. 9(1) of the Act No. 120/2001 Coll., Act on Judicial Executors and Enforcement Activities.

⁵¹⁵ Sec. 7(1) Act No. 358/1992 Coll., Notary Code.

Foreigners have the same rights as Czech citizens in employment. They are covered by the Labor Code⁵¹⁶ and other laws that guarantee non-discriminatory treatment etc. Among other things, they are entitled to the following from their employer:

- wages, salary, or remuneration for the work performed. It must be paid in the same amount as other employees receive it for the same work. Compliance with minimum wage must be ensured,
- a maximum working time of 12 hours per shift, there is also right to uninterrupted rest between two shifts,
- maternity and parental leave,
- at least 4 weeks of vacation per calendar year (with compensation of the salary),
- special conditions for certain employees (adapted working conditions in the event of pregnancy etc.),
- overtime work only in exceptional cases.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

In the area of access to public health services, we also **distinguish between EU citizens and third-country nationals**. But this is not the only distinction. Access to public health services for foreigners is also **linked to residence status and economic activity**.

In the Czech Republic, there is no patient co-payment for healthcare from public sources.

In general, EU citizens are always entitled to necessary care in the Czech Republic through the European Health Insurance Card (EHIC) in healthcare facilities that are financed from public sources. So, the access of EU citizens to basic health services is always granted, even in cases of short-term stays. If an EU citizen works in the Czech Republic, they will be insured in the Czech system; for other situations, the directive on the free movement of persons also requires health insurance.⁵¹⁷ Other foreigners (third country nationals) must either be insured or fall under the definition of those who are insured under public health insurance to have access to free public health services.

The **public health insurance system** in the Czech Republic is governed by the Public Health Insurance Act. This act defines who is covered by public insurance and the scope and conditions under which health services are covered by health insurance under this Act.⁵¹⁸ According to Sec. 2(1) an insured person under this Act is:

- persons who are permanent residents of the Czech Republic,

⁵¹⁶ Act No. 262/2006 Coll., Labour Code.

⁵¹⁷ Art. 7 of the Free Movement of Persons Directive.

⁵¹⁸ Sec. 1 of the Act No. 48/1997 Coll., Act on Public Health Insurance.

- employees of employers with their registered office or permanent residence in the Czech Republic
- holders of asylum status or subsidiary protection or temporary protection (not the persons from Ukraine),⁵¹⁹
- children of women with long-term or permanent residence for a certain period after birth,
- those whose insurance is the responsibility of the Czech Republic under coordination regulations or international agreements, and those whose entitlement arises from directly applicable European Union regulations,
- others.

Other persons, i.e. mainly third-country nationals with residence other than permanent residence and residing on grounds other than employment, must take out **commercial health insurance**. In general, during their stay in the country, they are required to have valid health insurance that meets the parameters of the Foreigners Residence Act.⁵²⁰ Foreigners must purchase insurance from one of the approved providers.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

In the Czech Republic, foreigners have broad **access to public education** at all its levels. The public school system consists of:

- compulsory primary education. It is **guaranteed to all children residing in the Czech Republic**, regardless of nationality or residence status, so even children who are staying irregularly should attend school.⁵²¹ Children-foreigners have the same right and obligation to attend 9 years of the basic education as Czech nationals in case they reside in the Czech Republic. Compulsory schooling begins in the school year for children who reach the age of 6 by August 31 prior to the given school year.
- secondary education and higher vocational education. Foreigners are also entitled to free public secondary education under the same conditions as nationals, but here a condition of legal residence applies. Higher secondary education in the Czech Republic takes place at secondary

⁵¹⁹ Ukrainians, who were granted temporary protection since 2022, are covered differently and by a different law: Act No. 65/2022 Coll., Act on Certain Measures in Connection with the Armed Conflict in the Territory of Ukraine Caused by the Invasion of the Russian Federation's Armed Forces. At first, the framework for health insurance was generous, virtually every individual who arrived from Ukraine after 25 February and qualified for temporary protection was covered by public health insurance. Then the duration of state-funded health insurance coverage was gradually shortened. Currently, individuals granted temporary protection are entitled to public health insurance, funded by the state, for the first 90 days without distinction. After this period, state coverage continues only for certain categories of beneficiaries, such as children under 18, students aged 18–26 and individuals over 65.

⁵²⁰ Cf. Sec. 180j-180jb of the Act on Residence of Foreign Nationals.

⁵²¹ Cf. Sec. 20(2) Act No. 561/2004 Coll., Act on Preschool, Primary, Secondary, Higher Vocational and Other Education (Education Act).

schools or conservatories. Applicants who have completed compulsory schooling or successfully completed primary education and met other conditions can be admitted to secondary school education on the basis of an admission procedure.

- tertiary education.⁵²² Access to universities is open to foreigners who meet the same academic requirements as Czech citizens, the status of a foreigner must be legal. There are public, state, private, and foreign universities in the Czech Republic; education is provided in bachelor's, master's, and doctoral study programs. Students do not pay tuition fees at public universities. However, students must pay fees in the following cases: for the admission procedure, for exceeding the standard length of study, and for studying in a foreign language. Compared to fees at public universities, fees at private universities are not limited.

Schools must provide **Czech language support** to children-foreigners.⁵²³

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

The Czech Republic is a country with a developed social system. At the same time, legislation assumes that foreigners will not be a burden on the social system.

European legislation also respects this principle. It contains a number of regulations that coordinate the provision of social security benefits and create a complex system in which EU citizens always remain beneficiaries, but it must be determined in which country.⁵²⁴ In a country where they are not citizens, the reason for determination the respective state as the responsible for providing the benefits is a residence or employment.

Third-country nationals have access to social security and other benefit schemes depending in particular on the length of their stay, on whether they are employed and whether they are covered by the relevant insurance.

Persons with permanent residence have access to the systems in the same way as Czech citizens, as do persons who have been granted asylum or subsidiary protection.

The Czech system of social security is quite complex. We can see three main areas: state social insurance (pension insurance benefits - pensions, sickness insurance etc.);⁵²⁵ state social

⁵²² Act No. 111/1998 Coll., Higher Education Act.

⁵²³ Sec. 20(5,6) of the Education Act.

⁵²⁴ See e.g.

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;

Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems;

Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending the scope of Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality;

Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.

⁵²⁵ Act No. 187/2006 Coll., on Sickness Insurance.

support (state social assistance benefit,⁵²⁶ parental allowance, childbirth allowance, funeral allowance)⁵²⁷ and assistance in material need (emergency immediate assistance).⁵²⁸

Entitlement to Czech pension insurance benefits is not dependent on Czech citizenship or permanent residence in the Czech Republic. In the contributory pension system, entitlement is conditional only on previous participation in the Czech pension system, which is usually derived from gainful employment in the Czech Republic or from another relevant link to the Czech social security system. A person who has acquired the required period of participation in the Czech pension system and meets other conditions prescribed by law is entitled to a Czech pension without regard to whether they are a Czech citizen.

Similar to the pension scheme, the sickness insurance system is intended for gainfully employed persons who, in the event of loss of income in cases of so-called short-term social events (temporary incapacity to work due to illness or injury or quarantine, caring for a family member, pregnancy and maternity, childcare), are provided with sickness insurance benefits. Entitlement is conditional on previous participation in the Czech social security contributions

Regarding the state social support, those who are eligible are persons who have permanent residence (foreigners) in the Czech Republic and reside here. Foreigners who do not have permanent residence in the Czech Republic are eligible persons after 365 days from the date of registration of residence (the period during which the person is an asylum seeker accommodated in a residence centre of the Ministry of the Interior is not counted).

Assistance in material need may be granted basically to everybody with a residence in the Czech Republic (it is a one-time benefit).

Foreigners staying irregularly are not entitled to the respective benefits.

The Czech Republic has also concluded several bilateral social security agreements that may extend the entitlements of third-country nationals in the area of pensions or health insurance.⁵²⁹

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

As was mentioned above, the Czech legislation assumes that foreigners will not be a burden on the social system. It means, that the welfare programmes are primarily aimed at Czech citizens in need.

There are Czech NGOs that help everybody regardless of its status, it applies also for the food aid and in some cases also for other types of aid. The subsidized housing is usually meant for citizens of the respective towns, but in many cases is not explicitly limited to the Czech citizens.

⁵²⁶ Act No. 151/2025 Coll., on State Social Assistance Benefits.

⁵²⁷ Cf Sec. 2 of the Act No. 117/1995 Coll., on State Social Support.

⁵²⁸ Act No. 111/2006 Coll., on Assistance in Material Need.

⁵²⁹ Cf. overview of bilateral social security agreements concluded by the Czech Republic and their material and personal scope on the [website of Ministry of Labour and Social Affairs](#).

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and Law
Second interim report - Rights to stay and during the stay
Country review

April 2025

*For each question, please specify the relevant **national normative framework** (laws, regulations, ordinances, etc.) and any relevant **national practice, including case law**, where applicable, **providing links to the relevant online databases**. Any comments on the effectiveness of the existing regulatory framework are welcome, including on legislative proposals for amendment that are being discussed in the country under review.*

Country under review: Democratic Republic of the Congo (DRC)

Author: Trésor Maheshe Musole

Please indicate the treaties to which the country under review is a party.

United Nations treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	X	July 19, 1965
1967 Protocol to the Convention relating to the Status of Refugees	X	January 13, 1975
1954 Convention relating to the Status of Stateless Persons	X	X
1961 Convention on the Reduction of Statelessness	X	X
International Covenant on Civil and Political Rights (ICCPR)	X	ratified in 1976
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	X	Ratified by the DRC, November 1·1976

International Covenant on Economic, Social and Cultural Rights (ICESCR)	X	ratified in 1976
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	X	X
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	X	X
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	joined on February 17, 1989
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	April 26, 2024
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	X	ratified in 1976
International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	X	October 17, 1986
Optional Protocol to the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Convention on the Rights of the Child (CRC)	X	Ratified by Ordinance-Law no. 90-048 of August 21, 1990 authorizing ratification of the Convention on the Rights of the Child.
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	X	Ratified by the Democratic Republic of the Congo by Decree-Law no. 003/01 of March 28, 2001

Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	X	Decree-Law no. 002/01 of March 28, 2001 authorizing ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	X	
Convention on the Rights of Persons with Disabilities (CRPD)	X	Ratified by the DRC, September 14, 2015
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	X	
ILO Forced Labor Convention (n° 29)	X	Ratified by the Democratic Republic of the Congo on September 20, 1960
2014 Protocol to the ILO Forced Labor Convention (No. 29)	X	
ILO Migration for Employment Convention (Revised) (No. 97)		
ILO Equal Remuneration Convention (n° 100)	X	
ILO Discrimination (Employment and Occupation) Convention (No. 111)	X	
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		December 11, 2020

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		December 8, 2020
Convention Governing the Specific Aspects of Refugee Problems in Africa	September 10, 1969	February 14, 1973
African Charter on the Rights and Welfare of the Child	X	Ratified by the Democratic Republic of the Congo by Decree-Law no. 007/01 of March 28, 2001
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	X	July 15, 2014
Protocol to the African Charter on Human and Peoples' Rights on specific aspects of the right to nationality and the eradication of statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (specify which):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)		
American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention on the Protection of the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list them all, please indicate any other treaties you consider relevant in the field of migration:*

At the continental level, the following treaties can be added:

1. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of December 2, 1949 (accession May 31, 1962)
2. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1957 (Feb. 28, 1975)
3. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (ratified in 2005)

At the sub-regional level, we add the following treaties:

4. Convention of September 20, 1976 establishing the Economic Community of the Great Lakes Countries (C.E.P.G.L.)
5. Treaty of November 30, 1999 establishing the East African Community, signed at Arusha

Part I – Rights to stay

1. What is the general structure of the visa and migration permit system in the State under review?

For example, some countries like China require both a visa and a residence permit. In Australia, only the visa is required, and there is no separate permit requirement. Visa conditions may be imposed.

In the DRC, foreigners may stay in the country solely on the basis of their visa, as long as its validity has not yet expired. When the validity of the visa is less than six months, it may be extended once or several times, up to a total duration of six months (art. 6, para. 1, of Ordinance-Law no. 83-033 of September 12, 1983 on the Aliens Police. (JORDC, no. 18, September 15, 1983).

Foreigners staying in the DRC for more than six months must be in possession of a residence permit (art. 6, para. 2, of the above-mentioned Ordinance-Law).

Foreign nationals born in the DRC must be in possession of a residence permit within thirty days (art. 6, para. 3, of the above-mentioned Ordinance-Law).

2. What are the categories of migratory status that allow a non-national to reside for more than three months in the State under review? Please give a brief overview of these categories.

For example, a visa/permit for reasons of work, education or health, among others.

For example, in Australia, permanent resident (PR) visas include: family visas (child, parents, partner), business visas, employer-sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas, employer-sponsored visas and so on. There are also transitional visas in addition to permanent resident and temporary visas.

In the DRC, there are five types of settlement visa:

1. Special establishment visa: granted for a non-renewable five-year period to a foreigner who is the promoter or agent of a new company, approved under one of the Investment Code schemes (art. 7, ordinance no. 87-281 of August 13, 1987, implementing ordinance-law no. 83-033 of September 12, 1983, relating to foreigners. (JORDC, n° 17, 1^{er} septembre 1987) ;

2. Ordinary settlement visa: renewable for three years. It is granted to foreign nationals who can demonstrate sufficient personal means of subsistence, and whose activities are not deemed incompatible with public safety and/or morality. It is granted and automatically renewed to foreign spouses who are not legally separated. This right is granted until the marriage is dissolved. However, a widow or divorced foreign wife whose adult children have opted for Congolese nationality and have taken up residence in the DRC, may still enjoy her visa, if she has sufficient personal means of subsistence (art. 8, ordonnance n° 87-281 du 13 août 1987 portant mesures d'exécution de l'ordonnance-loi 83-033 du 12 septembre 1983 relative à la police des étrangers. (J.O.RDC., no 17, 1^{er} septembre 1987) ;

3. Visa d'établissement de travail: granted to foreign nationals who hold a work permit obtained under conditions defined by Congolese law (art. 9, ordonnance n° 87-281 du 13 août 1987 portant mesures d'exécution de l'ordonnance-loi 83-033 du 12 septembre 1983 relative à la police des étrangers. (JORDC, no 17, 1^{er} septembre 1987) ;

4. Settlement visa for studies: granted to foreigners whose stay in the DRC is justified by reasons of study or scientific research. It is valid for one year, renewable (art. 10, ordonnance n° 87-281 du 13 août 1987 portant mesures d'exécution de l'ordonnance-loi 83-033 du 12 septembre 1983 relative à la police des étrangers. (JORDC, no 17, 1^{er} septembre 1987) ;

5. Visa d'établissement pour missionnaires: issued to missionaries entering the DRC as part of religious or philosophical communities or associations recognized under Congolese law. The request is made by the community or association, at the request of its legal representative. The latter is also required to provide proof of his or her status in the form of a legalized copy of the act of designation or recognition. (art. 12, ordonnance n° 87-281 du 13 août 1987 portant mesures d'exécution de l'ordonnance-loi 83-033 du 12 septembre 1983 relative à la police des étrangers. (JORDC, no 17, 1^{er} septembre 1987).

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, etc.) to non-nationals in the state under review? Please indicate the legal channels available and briefly describe them.

The DRC is a party to the Convention of July 28, 1951 and its 1967 Protocol. The DRC is also a party to the Organization for African Unity Convention Governing the Specific Aspects of Refugees in Africa. The Congolese authorities can also grant refugee status on the basis of law n° 021-2002 of October 16, 2002 on the status of refugees in the Democratic Republic of the Congo.

4. How, if at all, is migration for the purposes of family reunification regulated in the State under review?

Congolese law does not use the term "family reunification" to grant lasting settlement rights to foreigners who come to join one or more members of their family residing in the DRC. However, this advantage can be deduced from article 8 of ordinance no. 87-281 of August 13, 1987. This provision creates advantages for a foreign woman married to a man established on national territory. It also grants the same advantage to a foreign widow whose children opt for Congolese nationality.

According to this provision,

"the ordinary settlement visa is automatically granted and renewed to the foreign spouse who is not legally separated. This right is granted until the marriage is dissolved. However, the widow or divorced foreign wife whose adult children have opted for Congolese nationality and have taken up residence in the DRC benefits from the advantages [of family reunification]".

This provision grants the right to family reunification to a spouse and not to other persons. Congolese law adapts the Congolese situation to foreigners. Until 2016, Congolese law required

a wife to follow her husband wherever he decided to settle⁵³⁰. Applying this provision to foreigners, the Congolese legislator thus made it easier for a foreign woman to fulfill her obligation to join her husband established in the DRC.

5. What are the conditions for naturalization in the country under review?

In the DRC, foreign nationals must meet the following conditions:

- Be of legal age;
- Expressly introduce an individual declaration;
- Submit a written declaration of renunciation of any other nationality
- Know how to speak one of the Congolese languages;
- Be of good character;
- Permanent residence in the Democratic Republic of the Congo for 7 years at the date of application;
- Never to have engaged, on behalf of a foreign state, in acts incompatible with Congolese status or prejudicial to the interests of the Democratic Republic of the Congo;
- Not have been convicted by a national or foreign court of any of the following offenses: high treason - undermining state security - war crimes, crimes of genocide, crimes against humanity, crimes of aggression - crimes of terrorism, murder, assassination, rape, rape of minors and pedophilia - economic crimes, money laundering, counterfeiting, tax fraud, customs fraud, corruption, arms trafficking, drug trafficking .⁵³¹

In addition to these conditions, Congolese nationality may be granted to a foreigner who renders eminent services to the DRC, or to one whose naturalization presents a real interest for the DRC with visible impact (art. 11, law no. 04/024 of November 12, 2004 on Congolese nationality).

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories of non-nationals***

- a. temporary and permanent resident migrants*
- b. regular migrants benefiting from more favorable treatment because of their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.*
- c. undocumented migrants.*

⁵³⁰ See article 454 of law n°87-010 of August 1, 1987 on the Family . This provision was amended in 2016.

⁵³¹ Art. 22, law no. 04/024 of November 12, 2004 on Congolese nationality.

If the framework is different from those already described, please also specify the applicable legal framework.

- d. refugees*
- e. asylum seekers*
- f. other beneficiaries of international protection, where applicable.*

If there are other relevant categories of non-citizens under the domestic law of the State under review, please indicate them and submit information accordingly.

II.1 - Non-discrimination

1. Does the State under review have a specific national legal framework on non-discrimination that also covers non-citizens?

Article 50(2), of the Congolese Constitution of February 18, 2006, enshrines the right to non-discrimination between Congolese nationals and foreigners. However, this equality between nationals and foreigners remains valid only in the event of reciprocity of the same treatment of Congolese in the country of the foreigner in question. This equality does not apply to political rights.

II.2 - Civil and political rights

2. To what extent, if any, are non-nationals guaranteed political participation in the state under review?

Congolese law makes no provision for the participation of foreigners in public affairs (art. 50, para. 2, of the Constitution of February 18, 2006). In application of this provision, electoral law makes participation in elections conditional on nationality.

3. Apart from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals of the state under review?

For example, freedom of movement and access to justice. In Australia, for example, holders of a regional sponsorship visa are obliged to remain in a specific Australian state (SA or Victoria, for example) for two years, which limits their freedom of movement.

Under Congolese law, in accordance with article 50, paragraph 2, of the Constitution, foreigners may enjoy all civil and political rights. This is the principle. Prior to the 2018 reform of the mining code, foreigners were prohibited from circulating in mining zones. This ban has been lifted since the mining code was reformed in 2018. Commercial legislation in the DRC prohibits foreigners from engaging in petty trade, as this is reserved for foreigners.

4. Are there any limitations on the right of non-nationals to buy and own real estate in the state under review?

Articles 32 and 50 of the Congolese Constitution grant protection to foreigners with regard to their person and property. According to article 32, "Any foreigner who is legally on national territory enjoys the protection accorded to persons and their property under the conditions determined by treaties and laws. They are required to comply with the laws and regulations of the Republic". However, the so-called "land law" makes a distinction between Congolese and foreigners as regards the enjoyment of land rights. According to article 80 of the land law, only Congolese nationals can "enjoy their land indefinitely for as long as they wish". Foreigners can only benefit from a right of enjoyment granted for a period of 25 years.

To benefit from this protection, foreign nationals must have a legal residence permit.

II.3 - Economic, social and cultural rights

Right to work

5. What conditions must be met for non-nationals to take up formal employment?

Congolese law imposes a number of conditions on the employment of foreign workers.

First of all, foreign workers must have an up-to-date passport and visa⁵³² and a vaccination certificate.⁵³³

Secondly, the foreign national must hold a foreigner's work permit⁵³⁴ issued by the Commission Nationale de L'emploi des Etrangers⁵³⁵. Thus, any verbal or written employment contract concluded between an employer and an expatriate without a foreigner's work permit is null and void. Any legal action based on such a contract must be deemed inadmissible. A foreign worker is not exempt from obtaining this card by virtue of the fact that his employment contract has been signed by a Consul, or by himself, or by virtue of the fact that a consular attestation has been issued in his favor. Furthermore, this worker cannot invoke turpitude on the part of the employer, who was obliged to apply for this foreigner's work permit on his behalf, while he boasts about his consular attestation, which he considers to exempt him from the obligation to obtain a foreigner's work permit.⁵³⁶

⁵³² Art. 2 of departmental decree 87/005 of January 21, 1987 determining the conditions of employment for expatriates.

⁵³³ Art. 2 of Ordinance 83-164 of September 12, 1983, implementing Ordinance-Law 83-033 of September 12, 1983, on the Aliens Police.

⁵³⁴ Art. 5 and 6 of departmental decree 87/005 of January 21, 1987 determining the conditions of employment of expatriates.

⁵³⁵ Art. 10 of departmental decree 81/014 of February 23, 1981 amending and replacing decree 07/74 of July 12, 1974 laying down the internal regulations of the national commission for the employment of foreigners.

⁵³⁶ Tribunal de grande instance de Bukavu, *WILLY DAXHELET c/ L'association des parents de l'école privée à programmes belges (Ecole belge de Bukavu)*, R.T.A., 472, judgment of June 09, 1998, unpublished.

6. Are there any quotas or restrictions on companies hiring foreign nationals? For example, some countries only allow of a company's employees to be non-nationals, while other countries require companies to prove that they have tried to hire national workers before recruiting a non-national (e.g. Australia's labor market tests).

In the DRC, Congolese law formally prohibits the employment of more than of foreign nationals.

The Administration ensures that all employers, natural or legal persons, public or private, of Congolese or foreign nationality, comply with the formal prohibition on having more than of their staff of foreign nationality.⁵³⁷

7. Are there any professions or sectors in which non-nationals are not allowed to work? For example, working as a civil servant or in the media sector.

There are a number of jobs that foreigners are not allowed to do in the DRC. In the public sector, foreigners are in principle excluded from these jobs. In the private sector, the legislator has drawn up a list of such jobs departmental decree no. 86/001 of March 31, 1986, which sets out the list of jobs prohibited to foreigners . Such is the case for executive secretaries in the agriculture - fisheries and livestock, mining and manufacturing, building and public works, water and electricity, transport - warehousing and communications, trade and services sectors.

Rights at work

8. To what extent do labor protections apply to non-nationals versus nationals? For example, minimum wage, overtime, maternity leave, among others.

Under Congolese law, foreigners enjoy equal treatment in terms of salary and working conditions. Indeed, the Congolese Constitution stipulates that

"Subject to reciprocity, any foreigner legally present on national territory shall enjoy the same rights and freedoms as Congolese citizens, with the exception of political rights.

It benefits from the protection afforded to people and their property in the conditions determined by treaties and laws" .⁵³⁸

What's more, the Labor Code lays down the labor principle that "under equal conditions of work, professional qualification and performance, wages are equal for all workers, whatever their origin, sex or age"⁵³⁹ . This provision makes no distinction between foreign and national workers. Article 1^{er} of the Labor Code itself, which determines the personal scope of application of this text, provides:

⁵³⁷ Art. 185, 8), Labor Code.

⁵³⁸ Art. 50, paras. 2 and 3, of the Constitution of February 18, 2006.

⁵³⁹ Art. 86, Labour Code, para. 1.

"The present Code is applicable to all workers and employers (...) regardless of (...) the national ancestry, social origin and nationality of the parties (...), as long as it is executed in the Democratic Republic of the Congo".⁵⁴⁰

However, the DRC *Investment Code* restricts the principle of equality laid down in the Labor Code. When it comes to investment, the principle applicable to companies established in the DRC is "with equal competence, nationals must be given preference over foreigners". It is also not uncommon to find that in the personnel recruitment process, a condition requiring candidates to "be of Congolese nationality", as if to exclude foreigners⁵⁴¹. It should also be noted that any company employing foreign workers must undertake to train national workers, with the aim of gradually replacing them with the latter.⁵⁴²

However, the Investment Code grants foreigners the same treatment as natural or legal persons of Congolese nationality, subject to equal treatment of Congolese by the state of which the foreign person concerned is a national.⁵⁴³

The right to health

9. To what extent do non-nationals have access to public health services compared to nationals?

Non-nationals can access health services provided they have the financial means. The DRC does not organize free basic health services for these nationals. Nor can it do so for foreigners.

Right to education

10. To what extent do non-nationals have access to public education services compared to nationals? Please consider the relevant criteria for primary, secondary and higher education.

The Congolese Constitution places no restrictions on nationality in enshrining the right to education. According to article 45, paragraph 2,

"Everyone has access to national educational establishments, without discrimination as to place of origin, race, religion, sex, political or philosophical opinions, or physical, mental or sensory condition, according to ability".

To study in the DRC, foreign students or pupils simply need to have an up-to-date migratory residence permit. If they are adults, they need a study visa. If they are minors, they must have documents justifying their legal residence on Congolese territory.

⁵⁴⁰ Art. 1^{er}, para. 1, Labor Code.

⁵⁴¹ A. KARUNGU NGURU, *op. cit.* p. 87.

⁵⁴² Art 31, point 4 of Law no. 004-2002 of February 21, 2002 on the Investment Code, available at www.Droit-Africa.com.

⁵⁴³ Art. 23 et seq. of Law no. 004-2002 of February 21, 2002 on the Investment Code, available at www.Droit-Africa.com.

Right to social security

11. To what extent do non-nationals have access to social security benefits compared to nationals? For example, social insurance, retirement pensions, etc.

To qualify for Social Security benefits, the law makes this conditional on the foreigner's legal residence. According to Article 33 of Law no. 16/009 of July 15, 2016 laying down the rules relating to the general Social Security scheme, "No person of foreign nationality may be registered unless he or she is in a regular situation with regard to the legislation on the residence and work of foreigners in the Democratic Republic of the Congo. At the time of each registration, the public institution verifies that the foreigner referred to in the previous paragraph is legally resident".

Right to an adequate standard of living

12. To what extent are non-nationals more eligible than nationals for social assistance programs? For example, financial aid, food aid, subsidized housing, among others.

-

Are there any final comments you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

February 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Ethiopia

Author: Fekade Alemayhu Abebe

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons		
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)	X	X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		

ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		X
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	X	
Convention governing the Specific Aspects of Refugee Problems in Africa	X	X
African Charter on the Rights and Welfare of the Child		X
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	X	X
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		
American Convention on Human Rights (ACHR)		

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Under Ethiopian law, the general structure of the visa and migratory permit system includes visas, residence permits, and an identity card for a special group of persons. According to Article 3 (1)(b) of the main legislation in this regard, Immigration Proclamation No. 354/2003,⁵⁴⁴ any non-national seeking to enter Ethiopia must possess a valid entry visa, a valid permanent residence permit, or an identity card issued by the Ministry of Foreign Affairs.

This indicates that both the visa and migratory permit systems are recognised in Ethiopian law. The requirement for the identity card applies to individuals covered by Article 14 (1), which includes diplomats, international civil servants, and their family members residing in Ethiopia, along with refugees whose status has been recognised by the UNHCR or the Ethiopian government, and other non-nationals granted such special status by treaties or other laws.

⁵⁴⁴ <https://www.refworld.org/legal/decrees/natlegbod/2003/en/88593>

Furthermore, according to Article 13(1), the proclamation states that all non-nationals, except those specified under Article 14(1), are required to register with the Immigration and Citizenship Service. It also stipulates that non-nationals registered under Article 13 shall obtain either a temporary residence permit or a permanent residence permit. The combined reading of these provisions with Article 15(1) further indicates that ID cards are issued to those exempt from the obligation to register, as stated in Article 14. In contrast, the requirement of obtaining a temporary or permanent residence permit is directed towards those who are required to register.

A question can also be raised as to whether it is possible to apply for a residence permit before entering the country. However, the reading of Articles 13 and 15 of the proclamation suggests that obtaining a visa precedes application for a permit. Article 15(1) states that a foreigner registered in accordance with Article 13 must obtain a residence permit, whether it is permanent or temporary. Article 13(1), as mentioned above, requires all non-nationals to register, including those who enter Ethiopia with an immigrant visa, as well as those with business or student visas who intend to stay for more than ninety days. Moreover, as per Article 13 (1) (d), this registration requirement is also imposed on those exempt from visa requirements, as stipulated in Article 4. Hence, a combined reading of these provisions suggests that obtaining a visa precedes the application for a residence permit.

It is important to note that the Immigration Proclamation has been partially amended by Proclamation No. 1339/2024. However, the conditions for visa and residence permits mentioned above have not been altered.⁵⁴⁵

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

According to Proclamation 354/2003, several types of visas and residence permits allow non-nationals to reside in Ethiopia for more than three months. As per Article 12, the types of visas issued include diplomatic, business, immigrant, student, and special visas. However, under Article 12(4), the proclamation stipulates that the conditions for issuing these visas will be determined by a regulation adopted by the Council of Ministers. Accordingly, the Council of Ministers adopted Regulation No.114/2004⁵⁴⁶, which outlines the conditions for the types of visas specified in Article 12 of the proclamation.

⁵⁴⁵ For explanation of what changed in the new law see <https://ethiopianlaw.com/2024/05/31/the-new-amendment-to-the-ethiopian-immigration-proclamation/#:~:text=The%20new%20amendment%20to%20the%20Ethiopian%20Immigration%20Proclamation%20dramatically%20shifts.Ethiopia%20without%20a%20court%20order.>

⁵⁴⁶ <https://admin.theiguides.org/Media/Documents/immigration%20regulation.pdf>

According to Articles 14 and 15 of the Regulation, diplomatic and service visas will be issued to members of the diplomatic corps, their families, and the employees of their missions, respectively. Article 16 further specifies that a business visa is issued to non-nationals entering Ethiopia for investment activities, employment in any activity (without prejudice to work permit requirements), humanitarian service without remuneration, participation in events such as symposia, exhibitions, and workshops, as well as for study, research, and mass media activities. These business visas may be issued for single or multiple entries, as stated in Article 16 (2) of the proclamation.

Under Art. 17, the regulation also provides that an immigrant visa is issued for non-nationals adopted by Ethiopians or for those who have a valid marriage with nationals and are entering the country with the intention to reside. Moreover, this type of visa is also issued to members of the families of these non-nationals. It is also issued to family members of those with permanent resident permits and non-nationals and their family members who come to reside in Ethiopia without gainful employment and without being a public burden, as per sub-articles 2 and 3, respectively, of Art.17 of the regulation.

The regulation also outlines the conditions for a student visa under Article 20. Accordingly, a student visa is granted to non-nationals entering Ethiopia for education and training activities, provided they present evidence of admission to an educational or training institution in Ethiopia and proof of financial means to cover their academic and accommodation expenses. It is essential to differentiate the reference to training here from that mentioned under Article 16 (1)(e). The latter refers to those who intend to give training, whereas the former (Article 20) refers to those who attend training programs in Ethiopian institutions.

Regarding permits, Proclamation No.354/2003 recognises two types of residence permits: temporary and permanent, as specified in Article 15(1). Regulation No. 114/2004 also outlines the conditions for issuing these permits. According to Article 28 of the regulation, a permanent residence permit is granted to a non-national who entered Ethiopia on an immigrant visa. Exceptionally, it may also be issued to any non-national, provided they have established residency and have lived in Ethiopia for at least three years before applying, possess ‘sufficient and lawful’ income to support themselves and their family members, and demonstrate good character, as laid out under Article 28 (2).

Moreover, as per art.28 (3) a permanent residence permit may be issued to a non-national married to an Ethiopian national, provided that at least one year has passed since the conclusion of the marriage. According to Article 28(4), a non-national engaged in investment or humanitarian activities in Ethiopia or who has made “outstanding contributions in the interest of Ethiopia” may also be granted a permanent residence permit, regardless of the three-year waiting period.

According to Art. 29 (1) of the regulation, a temporary residence permit is granted to any non-national who has been registered and does not qualify for a permanent residence permit. Under Article 29(2), a temporary residence permit is valid for no more than one year from the date of issuance and may be renewed.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Ethiopian law provides for international protection. The specifics of granting such international protection are set out by the Refugees Proclamation No. 1110/2019⁵⁴⁷. Under Article 2 (7), it defines a ‘refugee’ as ‘any person who fulfils the criteria outlined in Articles 5 or 21 of the proclamation.’ While Article 5 establishes the conditions for an individual to be considered a refugee, Article 21 details the criteria under which international protection might be accorded to groups.

Article 5 (1) incorporates the requirements for refugee status under the Geneva Convention, its protocol, and the OAU Refugee Convention. However, Article 5(2) specifies that individuals with multiple nationalities seeking refugee protection will not be considered as lacking protection from their countries of origin if they have not, without valid reason, sought the protection of one of the countries of which they are nationals. Furthermore, the proclamation states that the fact that the conditions prompting an individual to seek refuge occurred while they were already outside their country of nationality or habitual residence should not affect their refugee status determination.

The proclamation also incorporates the Geneva Convention’s formulation of the non-refoulement clause under Article 11, specifying exceptional circumstances where this protection may not apply. Sub-article 1 acknowledges the non-refoulement principle by providing that no individual shall be denied entry and returned to a location where they may face persecution based on nationality, race, religion, membership in a social group, or political opinion, or if their life, physical integrity, or liberty is threatened by external aggression, occupation, foreign domination, or events that seriously disturb public order in part or all of the country. However, sub-article 2 outlines the exceptional circumstances under which the protection of the non-refoulement principle would not be applicable, particularly when there are ‘serious reasons’ to regard someone as a danger to national security or if they have been convicted by a final judgement of a particularly serious crime and pose a danger to the community. According to Article 11(3), the Agency for Refugees and Returnees (now the Service for Refugees and Returnees) will ascertain whether there are serious grounds for considering an individual is a danger to national security.

Under Article 15 (1) of the proclamation, any person arriving at the entry ports of Ethiopia, or currently in Ethiopia, whether they entered regularly or not, and who intends to remain in the country as a refugee must apply to be considered a refugee within 30 days of entry, at the nearest office of the Agency or police station. The agency may accept applications made after the 30-day period for justifiable reasons, as stated in Article 15 (2). The proclamation also guarantees that no criminal charges will be imposed on an asylum seeker due to their ‘illegal entry and presence’ in the country, as detailed in Article 15 (8). Under Article 16 (1), the proclamation stipulates that the Agency examines and decides on the applications made according to the requirements of Article 15 within a six-month period from the registration of the application.

⁵⁴⁷ <https://faolex.fao.org/docs/pdf/eth216792.pdf>

In addition to individuals, the proclamation under Article 21(1) granted the Agency for Refugees and Returnees the power to designate any group of individuals who meet the criteria outlined in Article 5 of this proclamation as refugees. This process takes place, as stated in Article 21(2), in consultation with UNHCR and involves the issuance of detailed directives that outline the events in the country of origin or former habitual residence of the asylum seekers, the characteristics of the beneficiaries, and the relevant date of the decision.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

The clearest articulation of family reunification can be found in the Refugee Proclamation No. 1110/2019. Article 14(1) states that a family member of an asylum seeker has the right to enter and remain in Ethiopia until their claim is finally decided. Moreover, under Article 14(2), a family member of a recognised refugee has a similar right to enter and remain in Ethiopia. In both cases, family members are entitled to all the rights and are subject to all the duties of the refugee or asylum seeker, as provided under Article 14(3). Furthermore, the proclamation, under Article 14 (4), imposes an obligation on the Agency for Refugees and Returnees to facilitate family reunification for asylum seekers and recognised refugees.

The proclamation has also clarified that its provisions on family reunification do not affect the right of family members to apply for refugee status independently under Article 14 (3). It is important to note that the proclamation defines ‘family members’ under Article 2 (9) as any spouse of the recognised refugee or asylum seeker, any unmarried child of the recognised refugee or asylum seeker under 18 years of age, or any person the Agency deems appropriate after assessing their relationship, taking into account the definition of family in the laws of their country of origin and the existence of dependency among them.

In contrast, the Immigration Proclamation does not explicitly provide for family reunification. However, according to Article 17 of Council of Ministers Regulation No. 114/2004, family reunification may be possible through the immigrant visa scheme, as it permits family members of permanent residents or other non-nationals intending to reside in Ethiopia. Additionally, it allows family members who are married to an Ethiopian citizen and their families, as specified under sub-article 1 of Article 17. Family members here refers to ‘spouse, child or any other dependent on the person concerned, as per art.2 (1) of regulation 114/2004.

5. What are the conditions for naturalization in the reviewed state?

The 1995 Constitution⁵⁴⁸ clearly stipulates, under Articles 6(2) and 33 (2), that non-nationals have the right to acquire Ethiopian citizenship through naturalization.

⁵⁴⁸ <https://faolex.fao.org/docs/pdf/eth129684.pdf>

In addition to the constitution, this right is reaffirmed in the Ethiopian Nationality Proclamation No. 378/2003⁵⁴⁹. Accordingly, any non-national can apply for Ethiopian citizenship by law as specified under Article 5. However, the conditions that must be fulfilled are outlined in Article 5. These include: the applicant must be at least 18 years old, have established their domicile and lived in Ethiopia for a total of at least four years before the application, be able to communicate in at least one of the country's languages, have a sufficient and lawful source of income to support themselves and their family, be of good character, have no record of criminal conviction, prove that they have relinquished their previous nationality or that they are stateless, and take the oath of allegiance as provided under the proclamation.

The Refugee Proclamation No. 1110/2019, under Article 42, reaffirms the right of refugees to apply for the acquisition of Ethiopian nationality, provided that the requirements specified under Article 5 of the nationality proclamation and other laws are fulfilled.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

⁵⁴⁹ <https://www.refworld.org/legal/legislation/natlegbod/2003/en/19350>

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Ethiopia does not have specific legislation regarding equality and non-discrimination. However, this principle is enshrined in the 1995 Constitution. According to Article 25 of the Constitution, all individuals are equal before the law and are entitled to legal protection without any discrimination on grounds such as nationality or other status.⁵⁵⁰ This indicates that the equal protection of the law extends to non-nationals as well.

Regarding access to justice and challenging the unconstitutionality of decisions and laws, the Constitution and subsequent proclamations have integrated the principle of non-discrimination and equality in their wording, resulting in the protections extending to foreign nationals. The right to access to justice is laid down under Art.37 of the Constitution.⁵⁵¹ Under sub-article 1, it states that ‘everyone’ has the right to bring a justiciable matter before a court or any other organ vested with judicial power. This wording indicates that the right is guaranteed with the principle of non-discrimination and equality in mind and extends the right to foreign nationals regardless of their status. The Refugees Proclamation no. has made it clear that ‘every recognized refugee and asylum seeker’ has the right to access to justice that is guaranteed for nationals.⁵⁵² Moreover, they shall have the right to access to legal aid provided under Ethiopian Law.⁵⁵³

When these ‘justiciable’ matters⁵⁵⁴ involve constitutional issues. However, in these cases, the power to interpret the Constitution and to decide on any constitutional disputes is vested in the House of Federation (HoF) under Articles 62(1) and 83 (1) of the Constitution.⁵⁵⁵ To execute these powers, the HoF has been tasked with organising a Council of Constitutional Inquiry, as per sub-article 2 of art.62.⁵⁵⁶ The Council so organised shall have powers to investigate constitutional disputes, among other things,⁵⁵⁷ such as when the constitutionality of any state or federal law is challenged.⁵⁵⁸ The Council, after examining the application for constitutional interpretation, submits its recommendation for the House of Federation, if it decides that the matter necessitates constitutional interpretation,⁵⁵⁹ and the HoF will make the final decision within thirty days of receiving such a recommendation from the Council.⁵⁶⁰

⁵⁵⁰ <https://www.ethiopianembassy.be/wp-content/uploads/Constitution-of-the-FDRE.pdf>

⁵⁵¹ <https://www.ethiopianembassy.be/wp-content/uploads/Constitution-of-the-FDRE.pdf>

⁵⁵² Art.30 (1) of the [Refugees Proclamation No. 1110/2019](#)

⁵⁵³ Ibid, Art. 30 (2)

⁵⁵⁴ Application for constitutional interpretation could also be made in ‘non-justiciable’ matters. However, such application is entertained when at least one-third of the Federal or state councils (state parliaments) or at least one third of state executives. See Art.3 (2)(c) [Council of Constitutional Inquiry Proclamation No. 798/2013](#).

⁵⁵⁵ <https://www.ethiopianembassy.be/wp-content/uploads/Constitution-of-the-FDRE.pdf>

⁵⁵⁶ <https://www.ethiopianembassy.be/wp-content/uploads/Constitution-of-the-FDRE.pdf>

⁵⁵⁷ Art.84 (1) of the FDRE Constitution, see <https://www.ethiopianembassy.be/wp-content/uploads/Constitution-of-the-FDRE.pdf>

⁵⁵⁸ Art.84 (2) of the [FDRE Constitution](#)

⁵⁵⁹ Art.84 (3) (b) of the [FDRE Constitution](#)

⁵⁶⁰ Art.83 (2) of the [FDRE Constitution](#). To get the broader Idea of how the system of Constitutional Interpretation in Ethiopia works, I recommend the following articles from Constitutional Law scholars; Anchinesh Shiferaw Mulu, ‘The Jurisprudence and Approaches of Constitutional Interpretation by the House of Federation in Ethiopia’

According to the Council of Constitutional Inquiry Proclamation no. 798/2013⁵⁶¹ enacted to strengthen and specify the powers and functions of the Council provided under art.84 of the constitution, ‘any person’ claiming that their fundamental rights under the Constitution have been violated on account of a final decision by a government body or official has the right to bring the case before the Council.⁵⁶² This claim, however, must be brought after exhausting the remedies for the violation.⁵⁶³ Hence, due to the use by art.5 (1) of this proclamation ‘any person’ instead of ‘any Ethiopian national’, it can be argued that this right is also guaranteed for foreign nationals.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

The 1995 Constitution reserves the right to political participation, through elections, for nationals. Under Art. 38(1), the constitution guarantees ‘every Ethiopian national’ the right to take part in the conduct of public affairs, directly and through freely chosen representatives⁵⁶⁴; on attainment of majority, the right to vote,⁵⁶⁵ and to vote and be elected at periodic elections to any office, at any level.⁵⁶⁶ This is affirmed by the current law governing political participation in Ethiopia, which is the Ethiopian Electoral, Political Parties Registration and Election’s Code of Conduct Proclamation no.1162/2019.⁵⁶⁷ It reaffirms the restriction, under art.38 (1) of the constitution, regarding the right to vote to Ethiopians (see art.18(1)(a), which refers to ‘Ethiopian citizen’) and to be elected to the Ethiopian nationals (see art.31(1)(a), which also refers to ‘Ethiopian citizen’).

Despite the above, Art. 38(2) guarantees the ‘right of everyone’ to be a member of, among other organisations, a political organisation.⁵⁶⁸ Due to the use of the word ‘everyone’, it can be argued that non-nationals could similarly enjoy political participation. Of course, this does not

(2019) 13 Mizan Law Review 419.; Belachew G Degefe, ‘Constitutional Review Design under the FDRE Constitution: Examining the Framers’ Intention in Practical Realities’ (Social Science Research Network, 11 November 2022) <<https://papers.ssrn.com/abstract=4275036>> accessed 3 February 2026.; Zemelak Ayitenew Ayele, ‘Ethiopia’s “Unusual Constitutional Umpire”: Revisiting the Role of the House of Federation’ (50 *Shades of Federalism*, 20 July 2020) <<http://50shadesoffederalism.com/case-studies/ethiopias-unusual-constitutional-umpire-revisiting-the-role-of-the-house-of-federation/>> accessed 3 February 2026.; Belachew Girma, ‘Constitutional Adjudication by Parliaments: Lessons from Comparative Experience’ (2018) 12 Mizan Law Review 29.; Temesgen Beyene, ‘The Question of Independent and Impartial Constitutional Adjudicator in Ethiopia: A Comparative Study with Germany and South Africa’ (2012) 3 Bahir Dar University Journal of Law 67.

⁵⁶¹ <https://chilot.wordpress.com/wp-content/uploads/2014/09/proclamation-no-798-20-13-council-of-constitutional-inquiry-proclamation.pdf>

⁵⁶² Art.5 (1) of the Council of Constitutional Inquiry Proclamation No. 798/2013

⁵⁶³ See Art.5 (2) of the Council of Constitutional Inquiry Proclamation No. 798/2013

⁵⁶⁴ Art.38 (1) (a) of the FDRE Constitution

⁵⁶⁵ Art.38 (1) (b) of the FDRE Constitution

⁵⁶⁶ Art.38 (1) (c) of the FDRE Constitution

⁵⁶⁷ See Ethiopian Electoral proclamation No. 1162/2019. This is partially amended by Proclamation No. 1394/2025.

⁵⁶⁸ Art.38 (2) of the FDRE Constitution

necessarily mean foreign nationals are excluded from any kind of political participation, as hinted by the art.38 (2) of the Constitution. However, due to the existence of a clear wording limiting the right to vote and be elected to citizens, we can rule out such a form of political participation being available to non-citizens in Ethiopia.

Interestingly, one of the architects of the Constitution, Fasil Nahum, linked this article to cases where there are matters of ‘public interest’ being discussed in ‘civic organisations’ including kebeles (which are the lower tier of government), political parties, labour unions, trade organisations, employer and professional associations and mentioned that persons fulfilling the requirements of these organisations have the right to full participation in such discussions.⁵⁶⁹ Hence, there is a possibility that the drafters envisioned a political participation beyond the electoral realm. In this context, such kind of participation is not, in principle, applicable to non-nationals. I also think that Art.38(2) is linked with the right of association guaranteed to ‘everyone’ under Art.31 of the same constitution for any cause and purpose.⁵⁷⁰ As limiting participation in organisations listed under art.38 (2) would also impact the right to association under art.31.

Moreover, the Electoral Proclamation No. 1162/2019 does not clearly provide that membership is limited to Ethiopian nationals only⁵⁷¹, though this may be because the scope of the proclamation itself is limited to citizens.⁵⁷²

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Under Chapter Three of the 1995 Constitution (Arts. 13-44), fundamental civil and political rights are explicitly stated, such as the right to life;⁵⁷³ security of person;⁵⁷⁴ liberty⁵⁷⁵; protection against cruel, inhuman, or degrading treatment or punishment;⁵⁷⁶ honour and reputation;⁵⁷⁷ privacy;⁵⁷⁸ freedom of religion, belief and opinion;⁵⁷⁹ freedom of thought, opinion and expression;⁵⁸⁰ right to assembly, demonstration and petition;⁵⁸¹ freedom of association;⁵⁸²

⁵⁶⁹ Fasil Nahum, *Constitution for a Nation of Nations: The Ethiopian Prospect* (Red Sea Press, Inc 1997) 153.

⁵⁷⁰ See Art.31 of the FDRE Constitution.

⁵⁷¹ See Art.90 of Ethiopian Electoral Proclamation No. 1162/2019

⁵⁷² See the wording of art.3 (2) of the proclamation which states ‘citizens who form a political party’

⁵⁷³ 1995 FDRE Constitution, Article 15

⁵⁷⁴ Ibid, Article 16.

⁵⁷⁵ Ibid, Article 17

⁵⁷⁶ Ibid, art.18

⁵⁷⁷ Ibid, art. 24

⁵⁷⁸ Ibid, art.26

⁵⁷⁹ Ibid, art.27

⁵⁸⁰ Ibid, art.29

⁵⁸¹ Ibid, art.30

⁵⁸² Ibid, art.31

freedom of movement,⁵⁸³ and access to justice⁵⁸⁴. These rights are recognised as the rights of ‘everyone’ or ‘every person.’ The only other qualification of a civil and political right under the Constitution, aside from the right of political participation, concerns freedom of movement under Article 32 (1), where its exercise is limited to non-nationals ‘lawfully present’ in the country. Such an individual has the right to move freely and choose their residence within Ethiopia, and also has the right to leave the country anytime they wish.⁵⁸⁵

Under the Refugees Proclamation no. 1110/2019, the right to association⁵⁸⁶ and freedom of movement⁵⁸⁷ is explicitly recognised for refugees and asylum seekers. Regarding the right to association, the right is acknowledged concerning ‘non-political ‘and ‘non-profit making’ associations and trade unions in the same circumstances as the ‘most favourable treatment afforded to other non-nationals’. As to their freedom of movement, Article 28 (1) guarantees them the freedom to move as they wish within the national territory, including the freedom to choose their residence and to leave the country at their discretion. However, article 28 (2) reserves the right for the Agency for Refugees and Returnees to designate places of residence for refugees and asylum seekers.

4. Are there any limitations to non-nationals’ right to buy and own property within the reviewed state?

Art. 40 of the FDRE Constitution provides for the right of nationals to own private property as well as the right to use and dispose of it as they deem fit.⁵⁸⁸ The Constitution’s understanding of private property includes intangible goods as it has stated that private property includes tangible or intangible products that have ‘value and are produced by the labour, creativity, enterprise, or capital of private individual citizens or juridical persons.’⁵⁸⁹ This indicates that the scope of private property ownership extends to intellectual properties. However, it does not say whether such a right to private property could also be enjoyed by non-nationals. The 1995 Constitution, Article 40(1), reserves the right to own private property exclusively for nationals. Article 40(2) states that private property includes tangible or intangible products that have ‘value and are produced by the labour, creativity, enterprise, or capital of private individual citizens or juridical persons.’ This indicates that the scope of private property ownership extends to intellectual properties.

However, there is a limitation regarding ownership of land, urban and rural, and all natural resources, as it is exclusively vested in the ‘state and the people of Ethiopia’, and it must not be subject to sale or other means of exchange.⁵⁹⁰

⁵⁸³ Ibid, art.32

⁵⁸⁴ Ibid, art.37

⁵⁸⁵ Ibid Art.32 (1)

⁵⁸⁶ See Art.27 of the Refugees Proclamation No. 1110/2019

⁵⁸⁷ Ibid, art.28

⁵⁸⁸ FDRE Constitution, art.40(1)

⁵⁸⁹ Ibid, art.40(2)

⁵⁹⁰ Ibid, art.40(3)

Regarding the ownership of immovable properties, there were clear restrictions on non-nationals' right of ownership of immovable properties under the 1960 Ethiopian Civil Code.⁵⁹¹ According to Article 390, non-nationals cannot own immovable property. However, a special exception exists for investors, as stated in Investment Proclamation No. 1180/2020,⁵⁹² which allows a foreign investor to own immovable property necessary for their investment, excluding land. Moreover, it also allows an exception for an Investor who owns large investment to own one residential house.⁵⁹³ There is also an exception for non-nationals of Ethiopian origin, per Article 5 (4) of Proclamation No. 270/2002⁵⁹⁴, which provides them with certain rights to be exercised in their country of origin, exempting them from the restrictions under Article 390 of the Civil Code.

A recently enacted proclamation has repealed the provisions of articles 390-393 of the Civil Code and guarantees the right of ownership of residential houses. This is the Proclamation issued to Regulate the Ownership of Residential Houses by Foreign Nationals in the Federal Democratic Republic of Ethiopia, No. 1388/2024.⁵⁹⁵ According to Art.4 (1) of this Proclamation, any foreign national who meets the requirements under the proclamation can own residential houses in Ethiopia. Such requirements include that the residential house is constructed on land granted through a lease and allocated through a public bidding process;⁵⁹⁶ and that such a right could be enjoyed with a minimum of 150, 000 USD outlay,⁵⁹⁷ except if they are investors with investment licenses, where such a requirement is waived for one residential house.⁵⁹⁸ If the investor in this case wanted to own more than one, then the monetary requirements would apply.⁵⁹⁹ However, this amount may be subject to a review by the Ministry of Urban and Infrastructure Development.⁶⁰⁰

Any foreign national who acquired the residential houses as per the requirements of the proclamation has the property right guaranteed for any Ethiopian in a similar situation, except renting the residential house for commercial purposes.⁶⁰¹ However, the right of foreign nationals to own a residential house has certain limitations. The first is that they are not allowed to own condominium houses built for citizens with direct government subsidy.⁶⁰² Secondly, foreign nationals are not allowed to finance the purchase of residential houses from domestic financial institutions or any other domestic source.⁶⁰³ The proclamation also repealed Arts. 390-393 of the Civil Code.⁶⁰⁴ It also repealed the rights, restrictions and procedures under Art.18(2) of the Investment Proclamation.⁶⁰⁵

⁵⁹¹ [https://hrlibrary.umn.edu/research/Civil%20Code%20\(English\).pdf](https://hrlibrary.umn.edu/research/Civil%20Code%20(English).pdf).

⁵⁹² See Art.18(1) of the Investment Proclamation No. 1180/2020

⁵⁹³ See *ibid*, Art.18 (2)

⁵⁹⁴ <https://www.refworld.org/legal/decrees/natlegbod/2002/en/27483>

⁵⁹⁵ Foreign Nationals Right of Ownership of Residential Houses Proclamation No. 1388/2025

⁵⁹⁶ *Ibid*, art. 4 (2)

⁵⁹⁷ *Ibid*, art.6 (1)

⁵⁹⁸ *Ibid*, art. 5(2)

⁵⁹⁹ *Ibid*

⁶⁰⁰ *Ibid*, art.6(3)

⁶⁰¹ *Ibid*, art.8 (1)

⁶⁰² *Ibid*, art.10(2)

⁶⁰³ *Ibid*, art.10 (4)

⁶⁰⁴ *Ibid*, art.19(1)

⁶⁰⁵ *Ibid*, art.19 (2)

The Refugee Proclamation 1110/2019 recognises special rights to refugees and asylum seekers. Accordingly, under art.29 (1), refugees and asylum seekers are entitled to the ‘most favourable treatment’ accorded to other non-nationals vis-a-vis acquisition of movable or immovable property, leases and other contracts relating to the property. This means they would benefit from the rights accorded to foreign nationals under Article 4 (1) of Proclamation 1388/2025 and be able to own one residential house, provided that they fulfil all the requirements.

When it comes to intellectual property rights, the Refugees Proclamation guarantees similar treatment to nationals.⁶⁰⁶ Moreover, recognised refugees and asylum seekers have the right to import their assets and properties free of tariffs at the time of their admission⁶⁰⁷, as well as take their assets and properties, including those they acquired in Ethiopia, when they leave the country.⁶⁰⁸

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

According to Article 176 (1) of the New Ethiopian Labour Proclamation No. 1156/2019⁶⁰⁹, a non-national cannot undertake any form of work in the country without first obtaining a work permit from the Ministry of Labour and Social Affairs. Per sub-article 2 of Article 176 of the proclamation, this work permit shall be issued for a specific type of work and is valid for three years, renewable annually, although the Ministry has the authority to adjust the three years as necessary.

Moreover, as per art.28 (5) of the Immigration Regulation no. 114/2004, a non-national with a permanent residence permit must be issued with a work permit.

The Refugees Proclamation, under art.26 (1), also guarantees the right to work for refugees and asylum seekers ‘in the same circumstances as the most favourable treatment’ provided to other non-nationals as per relevant laws. Hence, this implies the necessity of a work permit. This is confirmed by the directive issued by the Refugees and Returnees Service Directive no.1019/2024⁶¹⁰ on the implementation of the right to work of refugees and asylum seekers, Art.3(2).

Under Art. 3 (1) of this directive, any employer intending to hire refugees and asylum seekers in sectors not restricted by the proclamation must obtain a work permit. These sectors include national defence, security, foreign affairs, and other similar political establishments, as stated in Art. 26(10) of the proclamation. However, under Art. 26(9), such restrictive measures

⁶⁰⁶ See Art.29 (2) of the Refugees Proclamation no.1110/2019

⁶⁰⁷ See Ibid, art.29 (3)

⁶⁰⁸ See Ibid, art.29 (4)

⁶⁰⁹ <https://faolex.fao.org/docs/pdf/eth204430.pdf>

⁶¹⁰ <https://www.refworld.org/legal/decrees/natlegbod/2024/en/148630>

regarding access to labour markets do not apply to refugees or asylum seekers who are married to an Ethiopian citizen or have at least one child with Ethiopian nationality.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Neither the Constitution nor the labour law provides for quotas for businesses. However, under Investment Proclamation No. 1180/2020, Article 22 (1), investors can hire non-nationals when it is determined that Ethiopians with similar qualifications or experience required by the sector are unavailable. Moreover, the Proclamation stipulated that investors must replace non-nationals employed after such justification within a limited period by hiring Ethiopians and arranging the necessary training, as outlined in Article 22(4).

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Yes, non-nationals are excluded from working as civil servants as per the Public Servants Proclamation no. 1353/2025⁶¹¹, art.25.

As per art.26(10) of the Refugees Proclamation no 1110/2019, refugees or asylum seekers cannot be employed in national defence, security, foreign affairs and other similar political establishments.

Under the Federal Advocacy Service licensing proclamation no.1249/2021⁶¹², non-nationals are not permitted to practice law in the country as one requirement under art.6 (1)(a) for getting a license to practice law is being a national.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

It is not clearly provided by any of the specific legislations.

The Labor Proclamation No. 1156/2019, while requiring work permits for non-nationals, does not state that the extensive labour protections it proclaims apply to non-nationals.

The Refugees Proclamation, however, under Article 28(8), states that refugees and asylum seekers are entitled to rights granted by the applicable national laws. From this, one can infer that the labour protections under Labor Proclamation No. 1156/2019 also apply to refugees and asylum seekers.

⁶¹¹ <https://justice.gov.et/en/law/federal-civil-servants-proclamation-4/>

⁶¹² <https://chilot.wordpress.com/wp-content/uploads/2023/02/dc116-proclamation-no.-1249-2021-federal-advocacy-service-licensing-and-administration.pdf>

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Under Article 41(3), the 1995 Constitution reserves the right to equal access to publicly funded social services exclusively for nationals.

For refugees and asylum seekers, however, Article 25 of the Refugees Proclamation No. 1110/2019 provides that they have access to available health services in Ethiopia.

For other categories of non-nationals, there is no clear affirmation of this kind.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

As mentioned above in response to Q.9, Article 41(3) of the 1995 Constitution reserves the right to access publicly funded services, including all levels of education, for nationals.

However, for refugees and asylum seekers, Article 24 of the Refugees Proclamation No. 1110/2019 guarantees their right to access all levels of education. According to sub-article 1 of Article 24, refugees and asylum seekers are entitled to the same treatment as nationals concerning pre-primary and primary education. However, their access to secondary, higher education, technical, adult, and non-formal education depends on the available resources and educational policies of Ethiopia, as stated in Article 24 (2). Moreover, Article 24 (3) stipulates that they may receive more favourable treatment compared to other non-nationals regarding education beyond primary, such as access to studies, recognition of foreign school certificates, diplomas and degrees, remission of fees and charges, and the awarding of scholarships.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Ethiopian law divides the social security system into a public servants' pension scheme and a private organizations' employees' pension proclamation. The former is established under the Public Servants' Pension Proclamation No. 1267/2022.⁶¹³ Article 3 (1) of this proclamation states that the scheme applies only to nationals.

The Private Organization Employees' Pension Proclamation No. 1268/2022⁶¹⁴ similarly restricts the pension scheme's application to only Ethiopian nationals.⁶¹⁵

⁶¹³ Public Servants' Pension Proclamation No. 1267/2022
http://www.intranet.portal.ebi.gov.et:9980/Committees/Rj pz4_photo.pdf

⁶¹⁴ Private Organizations Employees' Pension Proclamation No. 1268/2022

⁶¹⁵ Ibid, art.3(1)

Both schemes make an exception for foreign nationals of Ethiopian origin, whose rights to a pension are recognised under Article 5(3) of Proclamation No. 270/2002⁶¹⁶, enacted to grant them special rights.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

For refugees and asylum seekers, the Refugees Proclamation No. 1110/2019 stipulates that the Refugees and Returnees Service shall ensure special protection and assistance for those in need under Article 38 (3).

In addition, Ethiopia has a National Social Protection Policy that appears to focus on its citizens (see, for example, p.5).

Are there any final observations you would like to make? Please write below.

⁶¹⁶ <https://www.refworld.org/legal/decrees/natlegbod/2002/en/27483>

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Framework under review: European Union

Author: Andreas Müller

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		
1967 Protocol to the Convention relating to the Status of Refugees		
1954 Convention relating to the Status of Stateless Persons		
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)		
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
Convention on the Rights of the Child (CRC)		
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)	X	X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		

ILO Equal Remuneration Convention (No. 100)		
ILO Discrimination (Employment and Occupation) Convention (No. 111)		
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	X	X
American Convention on Human Rights (ACHR)		

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

The only treaties that the European Union (EU) has formally acceded to in the areas mentioned above are the UN Convention on the Rights of Persons with Disabilities (CRPD) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). The EU became a party to these treaties on 23 December 2010 and on 1 October 2023, respectively. However, the EU has so far not ratified the Optional Protocol to the CRPD.

The reason for the “lack” of pertinent ratifications on the part of the EU lies in the fact that the EU is (and remains) not a state in the formal sense, but a regional integration organization and thus an international organization. Most of the aforementioned treaties only allow for states to become parties, but do not accept ratifications on the part of international organizations (except for the CRPD and the Istanbul Convention). In addition, for a long time, the EU founding treaties did not provide it with the competence to formally join international treaties in the field of human rights.

At the same time, by transferring a wide range of competences (especially in the field of asylum and migration law) to the EU, its 27 Member States have shifted major aspects of their sovereignty – in particular law-making competences – to the EU. The EU Treaties give rise to a federal structure which (in a functional perspective) may, in many respects, be compared to a federal state. This includes an intricate system of division of competences between the Member States level and the EU level (see also “General Remark” in Part I).

This unique structure sets the EU apart from all other international organisations, including other regional integration organizations. In addition, it positions the EU as both a potential violator and a protector of human rights so that it is of utmost importance to clarify to what extent the EU and its some 450 million inhabitants fall under the protective umbrella of international human rights law. For it would be a misperception to believe that the aforementioned international legal instruments to which the EU has not formally acceded do not bear any relevance on the EU law order.

As concerns, firstly, the Convention relating to the Status of Refugees (Geneva Refugee Convention) and the 1967 Protocol to the Convention relating to the Status of Refugees (New York Protocol), Art. 78 para. 1 of the Treaty on the Functioning of the European Union (TFEU) states: “The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.”

In a similar vein, Art. 18 of the Charter of Fundamental Rights of the EU (as regards the legal status of the FRC see shortly below) states: “The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees [...]”

According to the standing case-law of the Court of Justice of the European Union (CJEU), this means that “it should be noted that, under Article 18 of the Charter, the right to asylum is to be guaranteed with due respect for, inter alia, the rules of the Geneva Convention. As stated, inter alia, in recital 4 of Directive 2011/95, the Geneva Convention provides the cornerstone of the international legal regime for the protection of refugees. It follows that the provisions of that directive must be interpreted [...] in compliance with that convention.” (see as a recent example CJEU, Case C-63/24, Galte, Judgment of 30 April 2025, paras. 32-33). In addition, “in the light of the role conferred on the UNHCR by the Geneva Convention, the documents issued by it are particularly relevant” (id., para. 34) in this regard.

This results in an at least indirect binding effect of the Geneva Refugee Convention and the New York Protocol for the law-making activity of the EU. This also includes the competence of the CJEU to review EU legislation in asylum matters against the standard of the Geneva Refugee Convention and the New York Protocol.

As regards, secondly, the European Convention on Human Rights (ECHR) and its protocols, the EU is not formally a party to either of them. At the same time, Art. 6 para. 2 of the Treaty on European Union (TEU) states: “The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.” This instruction to join the ECHR (and some of its protocols) emanates from the founding treaties and is therefore binding on the EU. It has, however, not been realized yet, notably due to a CJEU decision in which the Luxembourg Court articulated various reservations against the accession agreement which the EU and its Member States had negotiated with the other Council of Europe Member States (CJEU, Opinion 2/23, Opinion of the Full Court of 18 December 2014) .

It should not be overlooked, however, that in 2009 the EU elevated the Charter of Fundamental Rights of the EU (FRC) to the same rank as the founding treaties (i.e., the highest rank as so-called “primary law”). The FRC thus forms part of the “constitution” of the EU. According to Art. 52 para. 3 of the FRC “[i]n so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.” This means that the ECHR – including the case-law of the European Court of Human Rights (ECtHR) – serves as the human rights minimum standard for all EU actions, particularly including EU legislation, as well as for the EU Members States (both via EU law and due to their own ratifications of the ECHR).

In addition, much of the substance of the European Social Charter and other international human rights treaties has been incorporated into the FRC (see notably Title IV on “solidarity”, Art. 27 FRC et seq.). This also holds true for the Convention on the Rights of the Child (CRC) – see notably Art. 24 FRC on the “rights of the child”) to which the CJEU regularly refers in its case-law.

Moreover, the EU is legally bound to many provisions of international human rights and other treaties (notably concerning asylum and migration law), inasmuch as they have acquired the status of customary law. In its standing case-law, the CJEU underscores the binding force of customary law for the EU (standing case-law, starting from CJEU, Case C-162/96, Racke, Judgment of 16 June 1998, para. 45).

Part I – Rights to stay

General remark:

The EU and its 27 Member States form a federal entity with a division of law-making functions between the EU and the Member States. This division is laid down in Art. 2 et seq. TFEU. Accordingly, both the “internal market” and the so-called “area of freedom, security and justice” (which are both relevant here) represent a “shared competence” between the EU and the Member States (Art. 4 para. 2 lit. a and j TFEU). Pursuant to Art. 2 para. 2 TFEU, this means that both “the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.”

The fundamental distinction which EU law establishes with respect to “migration” (in a wide sense) is that between a) migration of Union citizens (i.e., the nationals of the 27 EU Member States) and b) migration of third-country nationals. By virtue of association treaties, nationals of the European Economic Area (EEA) states Iceland, Liechtenstein and Norway are granted a legal status that is almost entirely equivalent to that of EU citizens, while Swiss nationals enjoy a largely similar status. Hence, when speaking of “EU citizens” in the following, it should be

understood as also covering the nationals of Iceland, Liechtenstein, Norway and Switzerland as they profit from equal (or at least largely comparable) rights.

The aforementioned two types of migration have different legal bases in the EU treaties.

a) Regarding EU citizens, according to Art. 26 para. 2 TFEU, “[t]he internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties”. Free movement of persons (workers and self-employed persons) is enshrined in Art. 45 et seq. TFEU. In addition, according to Art. 20 para. 2 lit. a and Art. 21 para. 1 TFEU, EU citizens shall enjoy “the right to move and reside freely within the territory of the Member States.” In a similar vein, Art. 45 para. 1 FRC states: “Every citizen of the Union has the right to move and reside freely within the territory of the Member States.” These provisions extend free movement and residence rights to EU citizens who do not migrate for economic purposes, such as students or retired persons.

On this basis, the EU legislator has adopted a series of legal acts in order to specify and implement the right to move and reside freely in the Member States. This also encompasses the right to receive equal treatment to the country’s own nationals in virtually every field of life (e.g., regarding social security benefits or pension schemes). The most important EU legal act in this field is Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (the so-called “Citizens’ Rights Directive”).

b) With respect to third-country nationals, Art. 45 para. 2 FRC states: “Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.” The pertinent provisions are located in the TFEU’s chapter on the “area of freedom, security and justice” (Art. 67 et seq. TFEU). These provisions relate both to asylum and other forms of migration:

(1) According to Art. 77 para. 2 lit. a, b and c TFEU, the Union legislator shall adopt measures concerning the common policy on visas and other short-stay residence permits, regarding the checks to which persons crossing external borders are subject as well as the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period.

(2) Furthermore, according to Art. 78 para. 1 TFEU, “[t]he Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement.” This constitutes the legal basis for the adoption of a series of EU legislative acts harmonizing, to a large extent at least, both the substantive and procedural aspects of asylum and subsidiary protection among the EU Member States. In sum, these legal acts are referred to as the “Common European Asylum System” (CEAS).

According to Art. 78 para. 2 TFEU, the legal acts adopted by the EU in the field of international protection cover the following areas:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
 - (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
 - (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
 - (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
 - (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
 - (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.
- (3) In addition, according to Art. 79 para. 1 TFEU, “[t]he Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.” Pursuant to Art. 79 para. 2 TFEU, the EU shall adopt measures in the following areas:
- (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
 - (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
 - (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
 - (d) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
 - (e) combating trafficking in persons, in particular women and children.

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

According to the fundamental distinction as explained above, one must differentiate between the migration of a) EU citizens (and nationals of countries associated into the EU internal market) and of b) third-country nationals in this regard.

a) As far as EU citizens and their (also third-country) family members are concerned, there do not exist any permit or visa requirements. EU Member States must not introduce any conditions

and restrictions on the rights to entry and residence of EU citizens other than those laid down in the Citizens' Rights Directive or in other pertinent EU legal acts.

According to Art. 6 of the Citizens' Rights Directive, "Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport".

Furthermore, according to Art. 7 of the Citizens' Rights Directive, all Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

- are workers or self-employed persons, or
- have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in that Member State; or
- are students and have comprehensive sickness insurance cover in the host Member State.

In all these scenarios, there is no requirement to apply for a visa or any kind of *ex ante* permit. Yet, according to Art. 8 of the Citizens' Rights Directive, EU Member States may require Union citizens to register with the relevant authorities within a certain period of time. This registration is, however, only of declaratory character and thus not constitutive in nature, i.e., the right to entry and residence comes into existence *ex lege* (i.e., automatically) to the extent that relevant substantive criteria are fulfilled, irrespective of whether the relevant formalities are met.

Pursuant to Art. 28 of the Citizens' Rights Directive, EU citizens may only be expelled by the host State under particular conditions (which are construed restrictively by the CJEU, i.e., in favor of the residence rights of EU citizens). Accordingly, before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his/her links with the country of origin.

In addition, pursuant to Art. 28 para. 2 leg. cit., once a EU citizen or one of his or her (even third-country) family members has obtained the right of permanent residence, a host Member State may not take an expulsion decision except on serious grounds of public policy or public security. Moreover, according to Art. 28 para. 3 leg. cit., an expulsion decision may only be based on imperative grounds of public security, if a EU citizen has resided in a EU Member State for the previous ten years or, in case of a minor, if (in addition) the expulsion is necessary for the best interests of the child (according to the CRC).

b) With respect to third-country nationals, the situation is more complex: If a third-country national qualifies under the rules of international protection adopted by the EU legislator (see below 3.), the relevant legal regimes for asylum, subsidiary protection or temporary protection apply accordingly.

In addition, within the framework of the so-called "Schengen regime", the EU legislator has made use of its aforementioned competence, under Art. 77 para. 2 lit. a TFEU, to adopt

measures concerning the common policy on visas and other short-stay residence permits. One may particularly refer to Regulation (EC) No. 810/2009 of 13 July 2009 establishing a Community Code on Visas (Visa Code) and Regulation (EU) 2018/1806 of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement as well as Regulation (EU) 2016/339 of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) in this regard.

Beyond that, EU law does not provide for a comprehensive harmonization of the legal regime on migration of third-country nationals. Member States retain a significant amount of autonomous decision-making power in this regard. However, there also exists pertinent EU legislation in this field, for instance Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents or Directive (EU) 2021/1883 of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment (the so-called “EU Blue Card Directive”).

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

See above nr. 1(a) and (b).

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

(A) As explained above, on the basis of the competences transferred to it by its Member States, the EU has since the 1990ies continuously built up the “Common European Asylum System” (CEAS). Only recently, the EU legislator adopted a major reform of the applicable rules (by virtue of the so-called “Pact on Migration and Asylum”) that entered into force in 2024 and will become applicable in mid-2026 (for this reason, the present report only refers to the new legislation).

The new package consists of ten legislative acts covering virtually all policy fields addressed by Art. 78 para. 2 TFEU (see above). In the present context, lit. a-c (i.e., asylum, subsidiary protection and temporary protection) are particularly relevant.

a) Asylum status is governed by the new Regulation (EU) 2024/1347 of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary

protection and for the content of protection granted (the so-called “Qualification Regulation”). In its legal definition of the term “refugee” in Art. 3 nr. 5, the Regulation literally embraces the definitional elements of the Geneva Refugee Convention’s refugee definition (see also Art. 9-12 of the Qualification Regulation in this regard). In its pertinent case-law (relating to the predecessor legal instruments of the EU which contained similar clauses), the CJEU has confirmed the relevance of the Geneva Refugee Convention (see as a recent example CJEU, Case C-63/24, Galte, Judgment of 30 April 2025, paras. 32-33).

b) In addition, the legal definition of the term “person eligible for subsidiary protection” in Art. 3 nr. 6 of the Qualification Regulation, refers to “a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that that person, if returned to his or her country of origin or, in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 [...] and is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country“. Art. 15 of the Qualification Regulation defines “serious harm” as consisting of the death penalty or execution; torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or a serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Subsidiary protection thus represents the EU law concept by virtue of which the human rights-based non-refoulement principle (as developed by the European Court of Human Rights since the *Soering* Judgment and embraced by all major human rights tribunals and bodies subsequently) is integrated in the EU asylum legislation. When interpreting the pertinent provisions, the CJEU commonly refers to the jurisprudence of the European Court of Human Rights on non-refoulement (Art. 2 and 3 of the European Convention and Human Rights).

c) As regards temporary protection, the EU adopted a special legal instrument in the wake of the 1999 Kosovo crisis, i.e. Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (the so-called “Mass influx Directive”). The Directive allows for granting a special protection status for a whole group of displaced persons without an individual assessment of refugee or subsidiary protection status. The duration of the protection status is one year, but renewable. The Directive was for the first time activated in the wake of the 2022 Russian aggression against Ukraine, and the temporary protection status granted to displaced persons from Ukraine has been renewed on an annual basis ever since.

(C) Furthermore, EU law contains rules regarding victims of trafficking in persons, notably Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. The Directive was revised in 2024 in order to strengthen the protection of victims of human trafficking.

Art. 11 of the Directive, amongst others, contains provisions on assistance and support for victims of trafficking in human beings. According to its para. 1, “Member States shall take the necessary measures to ensure that specialized assistance and support are provided to victims in a victim-centered, gender-, disability- and child-sensitive approach before, during, and for an

appropriate period of time after the conclusion of, criminal proceedings”. Pursuant to its para. 3, “Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim’s willingness to cooperate in the criminal investigation, prosecution or trial”.

According to Art. 11a of the Directive, with respect to victims of trafficking who may be in need of international protection, “Member States shall ensure that victims of trafficking are able to exercise their right to apply for international protection or equivalent national status, including when the victim is receiving assistance, support and protection as a presumed or identified victim of trafficking in human beings”.

In addition, one should also mention Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. According to its Art. 1, the Directive’s purpose is to define the conditions for granting residence permits of limited duration to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration.

There is therefore no legal obligation on the basis of the Directive to grant residence permits to victims of trafficking in human beings who do cooperate with the authorities. However, Art. 4 of the Directive clarifies that it does not prevent Member States from adopting or maintaining more favourable provisions for affected persons. In a similar vein, Recital 15 of the Directive (which is not legally binding) encourages Member States to “consider authorising the stay on other grounds, according to their national legislation, for third-country nationals who may fall within the scope of this Directive, but who do not, or no longer, fulfil the conditions set by it, for the members of his/her family or for persons treated as members of his/her family”.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

As far as EU citizens are concerned, they have a comprehensive right to take family members (even if these are not EU citizens) with them when they exercise their mobility rights. According to Art. 7 para. 1 lit. d of the Citizens’ Rights Directive, also family members accompanying or joining an EU citizen who meets the aforementioned requirements benefit from the right of residence and the ensuing rights (equal treatment with the nationals of the host State, for instance in matters of social security, access to the labor market or education; see below Part II.).

Art. 2 nr. 2 of the Directive defines the term “family members” for the purposes of family reunification by EU citizens. It includes the spouse; the partner with whom the EU citizen has contracted a registered partnership, if the legislation of the host Member State treats registered partnerships as equivalent to marriage; the direct descendants who are under the age of 21 or are dependants and those of the spouse or registered partner; the dependent direct relatives in the ascending line and those of the spouse or registered partner. In addition, the longstanding jurisprudence of the CJEU interprets these provisions in an extensive manner (relies to this effect also on the free movement guarantees in the EU Treaties, notably Art. 20 and 21 TFEU).

Moreover, as concerns international protection, Art. 3 nr. 9 of the Qualification Regulation defines the term “family members”, in so far as the family already existed before the applicant for international protection arrived on the territory of the Member States and are present on the territory of the same Member State, as including: the spouse; the unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples as equivalent to married couples; the minor or adult dependent children, provided that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as provided for under national law; where the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for that beneficiary, including an adult sibling, whether by the law or practice of the Member State concerned.

In addition, the Long-term Residents Directive and EU Blue Card Directive refer, as far as the definition of family members is concerned, to the respective definition contained in Directive 2003/86/EC of 22 September 2003 on the right to family reunification (the so-called “Family Reunification Directive”). According to Art. 4 para. 1 leg. cit., Member States are *obliged* to allow for family reunification for the following family members: the sponsor’s spouse; the minor children of the sponsor and of his/her spouse, including adopted children; the minor children including adopted children of the sponsor (or of the spouse) where the sponsor (or the spouse) has custody and the children are dependent on him or her. In addition, according to Art. 4 para. 2 leg. cit., the Member States *may* authorize the entry and residence of the following family members: first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin as well as the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

5. What are the conditions for naturalization in the reviewed state?

The EU has no competence to establish rules for naturalization as it is not a state. This is a competence that remains with the Member States. According to the EU Treaties, EU citizenship has (only) accessory character. Art. 20 para. 1 TFEU, states: “Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.”

However, the CJEU has developed an intricate case-law that creates restrictions for Member States decisions granting and revoking citizenship. As recently confirmed in CJEU, Case C-181/23, Commission v. Malta, Grand Chamber Judgment of 29 April 2025, para. 81: “according to settled case-law, while it is for each Member State, having due regard to international law, to lay down the conditions for the grant and loss of the nationality of a Member State, those powers must be exercised having due regard to EU law.”

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

a) Non-discrimination on the basis of nationality

The EU has an extensive legal framework on non-discrimination which does generally not distinguish on the basis of nationality.

As regards the relationship between nationals and other EU citizens (again including EEA nationals, i.e. nationals of Iceland, Liechtenstein and Norway, as well as Swiss nationals; see above), this non-discrimination regime is particularly comprehensive and strict. According to Art. 18, 21, 45, 49 and 56 TFEU as well as Art. 21 para. 2 FRC, it is prohibited to directly or indirectly discriminate against EU citizens in the field of labour, self-employment, but also non-economic activities (e.g. students, retired persons). These provisions form part of EU primary law, i.e. the “EU Constitution” and can be directly relied upon by individuals before all courts and administrative authorities in all EU Member States. The CJEU traditionally construes them in a very “EU-citizen-friendly” and dynamic manner thus prompting EU Member States to revise restrictive domestic provisions.

In addition, in the field of so-called “secondary law” (i.e. EU legislation), there exist many (legally binding) EU regulations and directives that specify the provisions of primary law, thus securing that equal treatment applies in all areas affecting free movement and residence as well as equal access to social security, social assistance and social protection, tax benefits, recognition of professional diplomas, certificates and other qualifications, education and vocational training, health services, freedom of association and affiliation and membership of an organisation representing workers or employers, free movement in the whole territory of the Member State, etc (see in more detail below). One may particularly refer to Regulation (EU) No. 492/2011 of 5 April 2011 on freedom of movement for workers within the Union in this regard.

In addition, long-terms residents enjoy equal treatment rights pursuant to Art. 11 of the Long-term Residents Directive as do EU Blue Card holders according to Art. 15 and 16 of the EU Blue Card Directive.

Furthermore, Art. 26-34 of the Qualification Regulation grant equal treatment rights to beneficiaries of international protection (asylum and subsidiary protection), which are inspired by the requirements of the Geneva Refugee Convention, i.e. regarding free movement, access to employment, education, social security and social assistance, healthcare, accommodation. In some areas, beneficiaries of subsidiary protection do not enjoy fully equal treatment; for instance, according to Art. 31 para. 2 leg. cit., the provision of equal treatment as regards social assistance may be limited for beneficiaries of subsidiary protection status to core benefits (see in further detail below).

b) Non-discrimination on other grounds

According to Art. 21 para. 1 FRC, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. These non-discrimination provision apply irrespectively of the nationality of the individuals concerned.

Pursuant to Art. 19 and 157 TFEU, the EU legislator adopted directives to combat direct and indirect discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation that are binding on EU Member States. These directives are binding on EU Member States and require them to adapt their domestic legislation in order to make it compatible with the non-discrimination requirements of EU law. These legal acts notably cover employment, but also other areas; see for instance: Directive 2000/43/EC against discrimination on grounds of race and ethnic origin; Directive 2000/78/EC against discrimination at work on grounds of religion or belief, disability, age or sexual orientation; on equal treatment for men and women in the access to and supply of goods and services; Directive 2006/54/EC on equal treatment for men and women in matters of employment and occupation.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

The decision on political participation of non-nationals generally falls within the competence of EU Member States, not the EU.

However, the Treaties contain special provisions on the political participation of EU citizens (this time to be understood in the narrow sense, i.e. the nationals of the 27 EU Member States, but not those of Iceland, Liechtenstein, Norway and Switzerland). According to Art. 39 and 40 FRC as well as Art. 22 TFEU, EU citizens have the right to vote and stand as a candidate (i) at municipal elections in the Member State in which they reside under the same conditions as nationals of that Member State as well as (ii) at elections to the European Parliament. The European Parliament is the parliament of the EU. Its currently 720 Members are elected every five years by direct universal suffrage in a free and secret ballot of all EU citizens. According to Art. 10 para. 2 TEU, the Members of the European Parliament directly represent the EU citizens at the Union level.

In addition, Art. 11 para. 4 TEU enshrines the right of so-called “European Citizens’ Initiative”. Accordingly, one million citizens from at least seven Member States may formally invite the European Commission to make exercise of its power of legislative initiative on any matter that falls within the EU’s competence. While this is not a very powerful instrument in political terms, since the Commission is not legally obliged to respect the outcome of a successful initiative, it contributes to participatory democracy laid down in the Treaties (Art. 10 para. 3 TEU).

A contrario, Member States remain free to regulate the access (i) of EU citizens to domestic parliamentary elections (at the national and – in federal states – at the sub-national level), to presidential elections as well as referenda, as well as (ii) of third-country nationals to the exercise of any political right.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Civil rights (notably the rights to freedom of expression and information, assembly and association, thought, conscience and religion, etc.) are guaranteed by the 1950 European Convention on Human Rights and have been fully integrated into the Fundamental Rights Charter of the EU. The FRC was first adopted in 2000 as a soft-law instrument, but promoted to constitutional rank in 2009. The FRC grants the aforementioned civil rights to all individuals living in the EU independently of their nationality. Art. 16 of the European Convention on Human Rights that provides for the possibility of establishing restrictions on the political activity of aliens is not applied in the EU.

A special case is the human rights to free movement. In Europe, it is notably enshrined in Art. 2 of the Fourth Additional Protocol to the European Convention on Human Rights (“everyone lawfully within a State’s territory may move freely within that territory and choose their residence there”) that is binding on all EU Member States. This right has been also included in Art. 45 FRC (“freedom of movement and residence”) according to which “every citizen of the Union has the right to move and reside freely within the territory of the Member States”. Furthermore, the provision adds that “freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State”.

As far as EU citizens (including EEA nationals, i.e. nationals of Iceland, Liechtenstein and Norway, as well as Swiss nationals) are concerned, they enjoy full free movement and residence rights in the territory of all Member States according to Art. 21 TFEU and the Citizens’ Rights Directive (with the restrictions permitted therein; see above Part I, 1).

Free movement and residence rights are granted under Art. 14 et seq. of the Long-term Residents Directive for long-term residents and their family members as well as under Art. 20 et seq. of the EU Blue Card Directive for EU Blue Card holders and their family members. While these rights are far-reaching, they are more limited than those of EU citizens.

Free movement and residence rights are even more limited as regards international protection (asylum and subsidiary protection). According to Art. 26 of the Qualification Regulation, beneficiaries of international protection shall enjoy freedom of movement within the territory of the Member State that granted them international protection, including the right to choose their place of residence in that territory, under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories who are generally in the same circumstances.

As far as movement within the EU (i.e. beyond the borders of the home Member State) is concerned, Art. 27 of the Qualification Regulation states that beneficiaries of international protection shall not have the right to reside in a Member State other than the Member State that granted them international protection. This is without prejudice to their right to apply and be admitted to reside in another Member State pursuant to that Member State’s national law or move freely in accordance with the conditions of Art. 21 of the Convention implementing the Schengen Agreement.

4. Are there any limitations to non-nationals’ right to buy and own property within the reviewed state?

The freedom of movement of capital, as enshrined in Art. 63 TFEU, grants all EU citizens (including EEA nationals, i.e. nationals of Iceland, Liechtenstein and Norway, as well as – to some extent at least – Swiss nationals) the right to buy and own immovable property under the same conditions as nationals of the host State. In addition, the case-law of the CJEU has further developed this fundamental freedom, thus forcing EU Member States to abandon many provisions in their domestic laws that *de jure* or *de facto* restricted the purchase of immovable property.

At the same time, EU Member States generally remain free to regulate the right to buy and own property with respect to third-country nationals.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

On the basis of the pertinent provisions of the TFEU and the Citizens' Rights Directive (see above), EU citizens (including EEA nationals, i.e. nationals of Iceland, Liechtenstein and Norway, as well as Swiss nationals) have full access to employment, both including self-employment and non-self-employment, and must not be directly or indirectly discriminated against nationals of the host State.

Third-country nationals who are EU Blue Card holders have privileged access to the labour market of the host Member State according to Art. 15 of the EU Blue Card Directive and to the labour market of the other Member States according to Art. 21 of the Directive. In a similar vein, pursuant to Art. 11 para. 1 of the Long-term Residents Directive, third country long-term residents enjoy equal treatment in their host State regarding access to employment and self-employed activity and conditions of employment and working conditions, including conditions regarding dismissal and remuneration; under the conditions laid down in Art. 14 of the Directive, they can also take up work or self-employment in another Member State.

Furthermore, Art. 28 of the Qualification Regulation provides that beneficiaries of international protection shall have the right to engage in employed or self-employed activities in the Member State that granted them international protection, and to enjoy equal treatment with nationals of that Member State.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

In the areas where EU free movement rules apply (i.e., regarding EU citizens and privileged third-country nationals; see above), discriminatory practices such as quotas or limitations for businesses to hire non-nationals are generally prohibited. In theory, such practices might be justified in case an important public interest (e.g. public security, public order, public health, etc.) exists and the restrictions are proportionate. However, as the CJEU's scrutiny is particularly strict in this regard, such practices are in virtually all cases deemed not to be compatible with EU law.

At the same time, the Member States remain free to regulate entry into the labour market of third country-nationals that do not enjoy special protection under EU law. This is confirmed by Art. 79 para. 5 TFEU according to which the EU competence in immigration matters shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

According to Art. 45 para. 4 TFEU, freedom of employment shall not apply to employment in the public service. Art. 51 and 62 TFEU contains a similar provision for (permanent and temporary) self-employed activities.

This means that EU Member States have the right to restrict access to the “public service” to their own nationals and to exclude EU citizens (and privileged third-country nationals) from it. However, the CJEU has constantly interpreted this term – as an exception from the general rule of equal treatment of EU citizens with nationals – in a highly restrictive fashion, thus limiting it to activities that require “a special relationship of allegiance to the State on the part of the persons occupying them and reciprocity of rights and duties which form the foundation of the bond of nationality” (CJEU, Case 66/85, Lawrie Blum, Judgment of 3 July 1986, para. 27). Hence, this narrow exception only covers occupations such as judges, public prosecutors, police officers, army officers, diplomats and the like, but, for instance, not teachers or professors employed in public schools or universities or regular staff in ministries and other government offices.

Member States remain free to restrict access to the public sector with respect to third country-nationals that do not enjoy special protection under EU law.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

On the basis of the pertinent provisions of the TFEU and Art. 24 of the Citizens’ Rights Directive (see above), EU citizens (including EEA nationals, i.e. nationals of Iceland, Liechtenstein and Norway, as well as Swiss nationals) enjoy equal treatment with the nationals of the host Member State with respect to labour protections. In addition, on the basis of the “Social Policy” chapter (Art. 151 et seq. TFEU), the EU has adopted various legal acts harmonizing the social policy and labour standards of the Member States.

Third-country nationals who are EU Blue Card holders, according to Art. 16 para. 1 lit. a of the EU Blue Card Directive, enjoy equal treatment with nationals of the Member State issuing the Blue Card in terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace, and, according to lit. d, with respect to recognition

of diplomas, certificates and other professional qualifications. In a similar vein, pursuant to Art. 11 para. 1 lit. a and c of the Long-term Residents Directive, third country long-term residents enjoy equal treatment in their host State regarding conditions of employment and working conditions, including conditions regarding dismissal and remuneration as well as recognition of professional diplomas, certificates and other qualifications.

Furthermore, Art. 28 para. 2 lit. a of the Qualification Regulation provides that beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that granted them international protection as regards terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, and health and safety requirements at the workplace.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

On the basis of the pertinent provisions of the TFEU and Art. 24 of the Citizens' Rights Directive (see above), EU citizens (including EEA nationals, i.e. nationals of Iceland, Liechtenstein and Norway, as well as Swiss nationals) enjoy equal treatment with the nationals of the host Member State regarding access to public health services.

Third-country nationals who are EU Blue Card holders, according to Art. 16 para. 1 lit. e and f of the EU Blue Card Directive, enjoy equal treatment with nationals of the Member State issuing the Blue Card in terms of social security (including health insurance) and access to goods and services and the supply of goods and services made available to the public. In a similar vein, pursuant to Art. 11 para. 1 lit. d and f of the Long-term Residents Directive, third country long-term residents enjoy equal treatment in their host State regarding social security (including health insurance) and access to goods and services and the supply of goods and services made available to the public.

Furthermore, Art. 29 of the Qualification Regulation provides that beneficiaries of international protection shall have access to healthcare under the same eligibility conditions as nationals of the Member State that granted them international protection. In addition, beneficiaries of international protection who have special needs, such as pregnant women, persons with a disability, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, or cruel, inhuman and degrading treatment, or who have suffered from armed conflict shall be provided with adequate healthcare, including treatment of mental disorders when needed, under the same eligibility conditions as nationals of the Member State that granted them international protection

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

On the basis of the pertinent provisions of the TFEU and Art. 24 of the Citizens' Rights Directive (see above), EU citizens (including EEA nationals, i.e. nationals of Iceland, Liechtenstein and Norway, as well as Swiss nationals) enjoy equal treatment with the nationals of the host Member State regarding access to public education services. According to Art. 24 para. 2 of the Directive, however, the host Member States shall only be obliged to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families, after the acquisition of the right of permanent residence (i.e. generally after five years).

Third-country nationals who are EU Blue Card holders, according to Art. 16 para. 1 lit. c of the EU Blue Card Directive, enjoy equal treatment with nationals of the Member State issuing the Blue Card in terms of education and vocational training. However, according to Art. 16 para. 2 of the Directive, Member States may restrict equal treatment as regards study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training. In addition, access to university and post-secondary education may be subject to specific prerequisites in accordance with national law.

In a similar vein, pursuant to Art. 11 para. 1 lit. b of the Long-term Residents Directive, third country long-term residents enjoy equal treatment in their host State regarding education and vocational training, including study grants. However, according to Art. 11 para. 3 of the Directive, Member States may require proof of appropriate language proficiency for access to education and training. In addition, access to university may be subject to the fulfilment of specific educational prerequisites.

Furthermore, Art. 32 of the Qualification Regulation provides that minors granted international protection shall enjoy equal treatment with nationals of the Member State that granted them international protection as regards access to the education system. Beneficiaries of international protection shall continue to enjoy equal treatment with nationals of the Member State that granted them international protection for the completion of secondary education irrespective of whether they reach the age of majority. In addition, according to the same provision, adults granted international protection shall enjoy equal treatment with nationals of the Member State that granted them international protection as regards access to the general education system, further training or retraining.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

On the basis of the pertinent provisions of the TFEU and Art. 24 of the Citizens' Rights Directive (see above), EU citizens (including EEA nationals, i.e. nationals of Iceland, Liechtenstein and Norway, as well as Swiss nationals) enjoy equal treatment with the nationals of the host Member State regarding access to social security services. One may further refer to Regulation (EC) No. 883/2004 of 29 April 2004 on the coordination of social security systems in this regard.

Third-country nationals who are EU Blue Card holders, according to Art. 16 para. 1 lit. e of the EU Blue Card Directive, enjoy equal treatment with nationals of the Member State issuing the Blue Card in terms of social security. In a similar vein, pursuant to Art. 11 para. 1 lit. d of the Long-term Residents Directive, third country long-term residents enjoy equal treatment in their host State regarding social security.

Furthermore, Art. 31 para. 1 of the Qualification Regulation provides that beneficiaries of international protection shall enjoy equal treatment with nationals of the Member State that granted them international protection as regards social security.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

On the basis of the pertinent provisions of the TFEU and Art. 24 of the Citizens' Rights Directive (see above), EU citizens (including EEA nationals, i.e. nationals of Iceland, Liechtenstein and Norway, as well as Swiss nationals) enjoy equal treatment with the nationals of the host Member States regarding access to social assistance. According to Art. 24 para. 2 of the Directive, however, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence.

Pursuant to Art. 11 para. 1 lit. d of the Long-term Residents Directive, third country long-term residents enjoy equal treatment in their host State regarding social assistance and social protection as defined by national law. According to Art. 11 para. 4, however, Member States may limit equal treatment in respect of social assistance and social protection to core benefits.

Furthermore, Art. 31 para. 1 of the Qualification Regulation provides that beneficiaries of international protection shall, in principle, enjoy equal treatment with nationals of the Member State that granted them international protection as regards social assistance. However, access to certain forms of social assistance specified in national law may be made conditional on the effective participation of the beneficiary of international protection in integration measures, where participation in such measures is compulsory, provided that they are accessible and free of charge.

In addition, according to Art. 31 para. 2 leg. cit., the provision of equal treatment as regards social assistance may be limited, where this possibility is provided for under national law, for

beneficiaries of subsidiary protection status to core benefits which contains at least the following: minimum income support; assistance in the case of illness or pregnancy; parental assistance, including child-care assistance; and housing benefits, in so far as those benefits are granted to nationals of the Member State concerned under national law.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

March 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Finland

Author: Katja Karjalainen

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		10.10.1968 (accession) 7.10.2004 (partial withdrawal of reservations)
1967 Protocol to the Convention relating to the Status of Refugees		10.10.1968 (accession)
1954 Convention relating to the Status of Stateless Persons		10.10.1968 (accession)
1961 Convention on the Reduction of Statelessness		7.8.2008 (accession)
International Covenant on Civil and Political Rights (ICCPR)	11.10.1967	19.8.1975

First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	11.12.1967	19.8.1975
International Covenant on Economic, Social and Cultural Rights (ICESCR)	11.10.1967	19.8.1975
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	11.10.1967	19.8.1975
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	X	X
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	4.2.1985	30.8.1989
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	23.09.2003	8.10.2014
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	6.10.1966	14.7.1970
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	?	
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	17.7.1980	4.9.1986
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	10.12.1999	29.12.2000
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
Convention on the Rights of the Child (CRC)	26.1.1990	20.6.1991

Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	7.9.2000	1.6.2012
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	7.9.2000	29.3.2021
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	28.12.2012	12.11.2015
Convention on the Rights of Persons with Disabilities (CRPD)	30.3.2007	11.5.2016
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	30.3.2007	11.5.2016
ILO Forced Labour Convention (No. 29)		13.1.1936/13.1.1937
2014 Protocol to the ILO Forced Labour Convention (No. 29)		27.1.2017
ILO Migration for Employment Convention (Revised) (No. 97)	x	x
ILO Equal Remuneration Convention (No. 100)		14.1.1963/14.1.1964
ILO Discrimination (Employment and Occupation) Convention (No. 111)		23.4.1970/23.4.1971
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	x	x

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	x	x
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	x	x

Convention governing the Specific Aspects of Refugee Problems in Africa	x	x
African Charter on the Rights and Welfare of the Child	x	x
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	x	x
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	x	x
European Convention on Human Rights (ECHR)	5.5.1989	10.5.1990
Protocols to the European Convention on Human Rights (list which ones):	All	All
European Social Charter (ESC)	3.5.1996	21.6.2002
European Convention on the Legal Status of Migrant Workers	x	x
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	11.5.2011	1.8.2015(EF)
American Convention on Human Rights (ACHR)	x	x
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	x	x
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	x	x
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	x	x
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	x	x
Inter-American Convention against All Forms of Discrimination and Intolerance	x	x
Inter-American Convention Protecting the Human Rights of Older Persons	x	x

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

The Aliens Act (ulkomaalaislaki, 301/2024)⁶¹⁷ lays down rules on aliens' entry into, exit from, and residence and work in Finland (Section 2). The objective of this Act is to implement and promote good governance and protection under the law in migration affairs. A further objective is to promote managed migration and the provision of international protection with respect for fundamental and human rights and in consideration of international treaties binding on Finland (Section 1).

European Union citizens and citizens of other Nordic countries: Citizens of EU member states and citizens of similar countries (Iceland, Liechtenstein, Norway and Switzerland) are free to travel to Finland and stay for up to three months without limitations (Aliens Act, Section 158). If⁶¹⁸ their stay exceeds three months they are not required to obtain a residence permit for Finland, but registration of the right of residence must be completed (Section 159). If the person is a citizen of another Nordic country (Denmark, Iceland, Norway or Sweden), they must instead register their personal details with the Digital and Population Data Services Agency. Citizens of Nordic countries do not need to apply for EU registration at the Finnish Immigration Service (Section 157).

Third country nationals: The rules concerning the movement of third-country nationals within the territories of the Schengen member states have been jointly agreed upon (Schengen Borders Code, Regulation (EU) 2016/399).⁶¹⁹ In addition, the countries whose citizens are required to present a visa have been determined (Regulation (EU) 2018/1806). The travel documents that citizens of different third countries must present upon entry are decided separately by each Schengen state. The table of travel documents accepted by the Schengen member states—indicating which documents entitle the holder to cross the external borders and which may be endorsed with a visa—is maintained by the European Commission.⁶²⁰

If Finland is entered from outside the European Union and the entrant stays for more than 90 days, a residence permit must be applied for. A first residence permit application is usually required to be submitted abroad, not in Finland. Identity must also be proven at a Finnish mission (embassy or consulate) abroad. Applications for a first residence permit can be submitted in Finland only in certain exceptional situations (Aliens Act, Section 60). If a residence permit is applied for while in Finland, legal residence in Finland is required. If legal residence is not in place when the application is submitted, the applicant must await the decision

⁶¹⁷ English translation with amendments up to 389/2023 available at: <https://www.finlex.fi/api/media/statute-foreign-language-translation/688424/mainPdf/main.pdf?timestamp=2004-04-29T21%3A00%3A00.000Z>

⁶¹⁸ <https://migri.fi/en/eu-citizen>

⁶¹⁹ <https://um.fi/visa-requirement-and-travel-documents-accepted-by-finland>

⁶²⁰ https://home-affairs.ec.europa.eu/travel-documents-issued-third-countries-and-territorial-entities-part-i_en

abroad.⁶²¹ Residence in Finland is considered legal when a valid residence permit is held. Residence in Finland is also considered legal when a person has spent no more than 90 days in Finland during a 180-day period and one of the following applies: (1) the person holds a valid visa; (2) the person holds a valid Schengen residence permit granted by another country; (3) no visa is required due to citizenship. Note that if the person plans to work, a residence permit may be required even if the stay is shorter than 90 days (Section 40). A residence permit must be applied for personally. Applications cannot, for example, be submitted on behalf of a spouse or employee.

Long stays

Section 17c of the Aliens Act (216/2023) details the requirements for issuance of a long-stay visa:

A long-stay visa shall be issued upon application for an accelerated entry into the country to a third-country national who has been issued with:

- 1) a residence permit for expert duties that require special expertise under section 73;
- 2) a European Union Blue Card referred to in section 73a;
- 3) a residence permit for a startup entrepreneur referred to in section 80;
- 4) a residence permit under section 7 of the Act on the Conditions of Entry and Residence of Third-Country Nationals in the Framework of an Intra-Corporate Transfer (908/2017) as a manager referred to in section 5, paragraph 5 or as an expert referred to in paragraph 6 of the said Act;
- 5) a residence permit for a researcher referred to in section 6 or 6a of the Act on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Research, Studies, Training and Voluntary Service (719/2018) or a residence permit for studies referred to in section 7 or 7a of the said Act;
- 6) a residence permit for duties in the middle or top management of a company under section 74, subsection 1, paragraph 4;
- 7) a residence permit referred to in chapter 5 for gainful employment as an employee of a certified employer; or 8) a residence permit on the basis of family ties to a family member of a person referred to in paragraphs 1–7. A long-stay visa is issued upon application for entry into the country to a third-country national residing abroad who holds a valid residence permit issued by Finland if the applicant's residence permit card has been lost, stolen, expired or is not in the

⁶²¹ A first residence permit can be applied for in Finland if the applicant is: a family member of a Finnish citizen, applying for a residence permit for a child born in Finland, a victim of human trafficking, a victim of labor exploitation, in need of a residence permit on a discretionary basis for humanitarian reasons, or applying for asylum or temporary protection. In other situations, applications for a first residence permit submitted in Finland are usually rejected.

possession of or available to the applicant for another similar reason. The applicant shall provide an explanation of the loss of the residence permit card.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others. For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

The following groups are permitted to enter and reside in Finland: workers, researchers, family members, “remigrants”, other specified groups, and victims of human trafficking. Individuals falling within these categories are eligible to apply for a residence permit in Finland. It should be noted that the subsequent explanations pertain exclusively to non-EU and non-Nordic citizens. The rights and conditions applicable to EU and Nordic nationals are, in principle, governed by European Union law and Nordic Conventions, which stipulate considerably more lenient requirements compared to those imposed on third-country nationals.

Workers: Different types of permits have been defined for various kinds of work, and specific requirements and application processes have been set for each. As a general rule, when no specific permit applies, a residence permit for an employed person must be applied for (Aliens Act, Section 72). If employment is terminated, the conditions of the permit must still be met. A protection period of 3–6 months is granted to find new employment, depending on the type of permit and the length of residence in Finland (Section 58a). If a residence permit has been granted on other grounds, such as family ties or international protection, the right to work may already be included. For seasonal work, a specific permit (visa, certificate, or residence permit) must be obtained. The permit is tied to the employer specified in the application (Seasonal Workers Act, Section 12). Seasonal work refers to jobs in agriculture and tourism during certain times of the year. The process can be accelerated by using the fast-track service, through which a permit can be obtained in about two weeks. This option is available for specialists, ICT transfers, top or middle management, EU Blue Card holders, and start-up entrepreneurs (Directive (EU) 2021/1883). Applications for family members can be submitted at the same time. When a work-based residence permit is granted, family members are usually allowed to apply for a permit based on family ties. An adequate salary must also be ensured to cover living costs in Finland (Aliens Act, Section 39). A D visa can be applied for together with the residence permit, allowing immediate travel to Finland after the permit is granted. The D visa is available for specialists, managers, start-up entrepreneurs, EU Blue Card holders, and employees of certified employers.

Researchers: A researcher residence permit is required to conduct research in Finland, pursue a licentiate degree, or prepare a doctoral dissertation. Citizens of EU member states and citizens of Iceland, Liechtenstein, Norway, and Switzerland do not need a residence permit, but registration of the right of residence is required. A researcher residence permit can be granted to holders of a master’s or bachelor’s degree who have signed a hosting agreement with a

research organization. Either an EU directive-based permit or a national residence permit may be issued. Applications for a first residence permit must be submitted abroad; only extended permits can be applied for in Finland (Aliens Act, Section 60). A D visa may be applied for at the same time as the residence permit to allow immediate travel after approval.

Sufficient financial resources must be demonstrated (Aliens Act, Section 39). If employed by a research organization, income must cover living costs and meet collective agreement standards or, if none exist, a gross salary of at least EUR 1,430 per month is required (in 2025). If not employed, at least EUR 1,210 per month must be available through funds, scholarships, or other income. For research lasting less than a year, resources for the entire stay are required; for one year or more, at least EUR 14,520 must be available. For a two-year permit, EUR 29,040 is required. Financial resources are assessed with each application. The right to work begins once the residence permit is issued. Other work may be performed alongside research, provided full-time research and progress are maintained. Researchers may work without a permit for up to 90 days. Family members may be granted residence permits based on family ties (Research and Student Act 719/2018).

Family members: A residence permit on the basis of family ties is required when moving to Finland to live with a family member. The family member living in Finland is referred to as the sponsor. Only persons defined by Finnish law as family members can act as sponsors, and the concept of family is narrower than in many other countries (Aliens Act, Section 37). Applicants for this residence permit must intend to lead a family life with the sponsor in Finland. Family members of Finnish citizens or non-EU foreign nationals include: spouses, registered partners, cohabiting partners (cohabitation for at least two years is required unless joint custody of a child exists or other serious reasons apply), legal guardians of children under 18, and unmarried children under 18 of whom the sponsor has custody.⁶²² In most cases, sufficient financial resources must be demonstrated to cover living costs in Finland (Section 39). Income may come from employment, business, assets, or pensions. Changes in family ties, such as marriage, divorce, birth of a child, or death, must be reported during the application process.

Students: A residence permit for studies can be granted when acceptance as a student at a higher education institution or another educational institution in Finland has been confirmed, and the studies will lead to a degree or a vocational qualification (Researcher and Student Act, Section

⁶²² Section 37 provides that in the application of the Aliens Act, the spouse of a person residing in Finland, and unmarried children under 18 years of age of whom the person residing in Finland or his or her spouse has custody are considered family members. If the person residing in Finland is a minor, the person who has custody of him or her is considered a family member. A person of the same gender is also considered a family member if the partnership has been registered nationally. (380/2006) Persons living in a marriage-like relationship in the same household on a permanent basis are considered to be a married couple regardless of their gender. It is required that they have lived together for at least two years. This is not required if the persons have a child in their joint custody or if there are other serious reasons. An unmarried child under 18 years who is under actual care of the person who has a custody of him or her and is in need of such care on the date a decision is made on the residence permit application, but no official statement is available on the dependency status (foster child), is considered a child under subsection 1. Treatment as a child under subsection 1 also requires reliable evidence that the persons who previously had custody of the child have died or are missing and that the sponsor or his or her spouse was the person who had actual custody of the child before the sponsor entered Finland. If the sponsor is a foster child residing in Finland, treatment as a child under subsection 1 requires reliable information which shows that the person concerned was the person who had actual custody of the sponsor before the sponsor entered Finland (549/2010).

7). A permit can also be granted when participation in an exchange programme between educational institutions or another exchange programme has been arranged. A residence permit for studies cannot be granted if studies mainly consist of distance learning online and do not require the student to stay in Finland. Sufficient funds to live in Finland for the entire period of validity of the residence permit must be available. Insurance coverage is required for students. Costs incurred due to illness in Finland must be covered personally by the student. To obtain a residence permit, private insurance covering medical and pharmaceutical expenses must be taken out. When a residence permit for studies is granted, spouses and children can be granted residence permits on the basis of family ties. When a residence permit for studies has been granted, paid employment in any field is allowed up to an average of 30 hours per week (Section 14). The weekly limit can be exceeded occasionally, provided that the average does not exceed 30 hours per week at the end of the year. During holidays, full-time work is permitted in any field, as long as the annual average remains within the limit. This corresponds to approximately 120 hours per month or 1,560 hours per year.

Remigrants: Remigration is permitted by persons with Finnish roots or some other close connection to Finland. In these cases a residence permit may be granted in Finland without any other grounds such as work or studies. A residence permit on the basis of remigration can be issued to the following groups: former Finnish citizens, verifiable descendants of Finnish citizens by birth, persons who were evacuated from Ingria in 1943-1944 and persons who served in the Finnish army during 1939–1945 (Aliens Act, Section 48).⁶²³ When a residence permit on the basis of remigration has been granted, family members are usually allowed to apply for a residence permit on the basis of family ties. No restrictions are placed on the right to work or study in Finland when a residence permit on the basis of remigration has been granted.

Others: If none of the grounds provided by the Finnish Aliens Act apply, a residence permit may be applied for on other, special grounds (Aliens Act, Section 52). Examples of such grounds include an established dating relationship with a Finnish citizen or a person holding a residence permit in Finland, combined with the intention to marry. Becoming a victim of human trafficking is another example of special grounds. In such cases the decision on the application is based on an overall assessment, and the applicant's entire situation is taken into account. A residence permit can usually be granted only if sufficient financial resources to live in Finland for the entire period of validity of the permit are available. When a residence permit is granted on other, special grounds, the right to work is restricted. A spouse and children may usually apply for a residence permit on the basis of family ties.

Victims of human trafficking: A temporary residence permit can be granted when a person is identified as a victim of human trafficking. To receive a temporary residence permit, the following requirements must be met: staying in Finland must be necessary due to a pre-trial investigation or court proceedings related to human trafficking; cooperation with the authorities must be provided to assist in apprehending persons suspected of human trafficking; and contact with the persons suspected of human trafficking must have ceased (Section 52a).

⁶²³ During World War II.

A continuous residence permit can also be granted to persons deemed to be in a particularly vulnerable position (Section 52a). In such cases, cooperation with the authorities is not required, and remaining in Finland does not require a pre-trial investigation or court proceedings. The application for a residence permit for a victim of human trafficking must be submitted while in Finland. A residence permit can be granted even without a valid passport, and demonstration of financial means is not required. When a continuous residence permit for a victim of human trafficking has been granted, family members may apply for a residence permit on the basis of family ties. When a temporary residence permit has been granted, family members cannot be granted a residence permit on the basis of family ties. When a residence permit for a victim of human trafficking has been granted, no restrictions are placed on the right to work or study in Finland.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

The legal basis for international protection is laid down in the Constitution of Finland (Section 9), which provides that a foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity.

Asylum: Section 87 of the Aliens Act provides that aliens residing in the country shall be granted asylum if they reside outside their home country or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country. However, asylum is not granted to aliens if they have committed, or if there are reasonable grounds to suspect that they have committed: 1) a crime against peace, war crime or crime against humanity as defined by international treaties concerning such crimes; 2) a serious non-political crime outside Finland before entering Finland as refugees; or 3) an act which violates the purposes and principles of the United Nations. Furthermore, asylum is not granted to persons who are eligible for protection or help from bodies or offices of the United Nations other than the United Nations High Commissioner for Refugees (UNHCR).

Section 87a (323/2009) lays down that acts are considered as persecution if they are sufficiently serious by their nature or repetition as to constitute a severe violation of fundamental human rights. An accumulation of various measures of the same level of seriousness, including violations of human rights, is also considered persecution. Acts of persecution may take the form of: 1) acts of physical or mental violence, including acts of sexual violence; 2) legal or administrative measures or police or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner; 3) prosecution or punishment which is disproportionate or discriminatory; 4) absence or denial of judicial redress resulting in a disproportionate or discriminatory punishment; 5) prosecution or punishment for refusal to perform military service in a conflict where performing military service would include e.g. war crimes or crimes against humanity; or 6) acts of gender-specific or child-specific nature.

Section 87b (422/2014) lays down rules regarding reasons for persecution. When assessing the reasons for persecution, account shall be taken at least of factors related to origin, religion, nationality and political opinion, or membership of a particular social group, as provided later in this section. As reasons for persecution: 1) origin means, in particular colour, descent or membership of a particular ethnic group; 2) religion includes, in particular the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief; 3) nationality includes citizenship of a State, or lack thereof and membership of a group determined by its cultural, ethnic or linguistic identity, common geographical or political origins or its relationship with the population of another State; 4) political opinion means, in particular an opinion, thought or belief on potential actors of persecution and on their policies or methods.

When assessing the reasons for persecution, a group can be considered to form a particular social group if: 1) the members of the group share a common background or an innate characteristic or belief that is so fundamental to identity or conscience that they cannot be forced to renounce it; and 2) the group is perceived as being different by the surrounding society. A common characteristic of a social group may also be sexual orientation, which, when assessing reasons for persecution, cannot be understood to include acts considered to be criminal. When determining membership of a social group or the characteristics of such a group, gender identity and other gender-related aspects shall also be taken into account. When assessing if the applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the origin-specific, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution (Section 87b).

Subsidiary protection: In accordance with Section 88 (323/2009) an alien residing in Finland is issued with a residence permit on grounds of subsidiary protection if the requirements for granting asylum under Section 87 are not met, but substantial grounds have been shown for believing that the person, if returned to his or her country of origin or country of former habitual residence, would face a real risk of being subjected to serious harm, and he or she is unable, or owing to such risk, unwilling to avail him or herself of the protection of that country. Serious harm means: 1) the death penalty or execution; 2) torture or other inhuman or degrading treatment or punishment; 3) serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts. An alien is not issued with a residence permit on the basis of subsidiary protection if there are reasonable grounds to suspect that he or she has committed: 1) a crime against peace, war crime or crime against humanity as defined by international treaties concerning such crimes; 2) a serious crime; or 3) an act which violates the purposes and principles of the United Nations.

Temporary protection for those fleeing Ukraine: The purpose of temporary protection is to provide swift help to those fleeing the war in Ukraine. Temporary protection for Ukrainians fleeing the war is currently in place until 4 March 2027.⁶²⁴

Refugee status: Under the provisions of the Aliens Act (Section 90), Finland may admit persons for resettlement who are recognized as refugees by the United Nations High Commissioner for Refugees (UNHCR) or other individuals in need of international protection. The refugee quota refers to the annual admission of such persons into Finland, based on criteria confirmed in the State Budget. This mechanism ensures that individuals requiring international protection and identified for resettlement are granted entry in accordance with national policy priorities.

Section 92 of the Aliens Act specifies the conditions which must be met to grant a residence permit under the refugee quota. These include: 1) the individual must be in need of international protection with respect to his or her country of origin; 2) the individual must require resettlement from the first country of asylum; 3) the prerequisites for admission and integration into Finnish society must have been assessed; and 4) there must be no legal impediments under Section 36 to the issuance of a residence permit.⁶²⁵

Family reunification: In Finland, two distinct procedural frameworks exist: one governing the case of an adult granted asylum who seeks family reunification, and another addressing the corresponding process for a child granted asylum who wishes to bring their family to Finland. In the first case, among other conditions, sufficient means are required. However, the requirement for sufficient financial resources does not apply if the family was formed before “the family reunification sponsor” came to Finland, the family member submitted a residence permit application on the basis of family ties within three months of the sponsor receiving information about being granted asylum and family reunification is not possible outside Finland.⁶²⁶ The relevant provisions of the Aliens Act have recently been amended, introducing new conditions for family reunification.

Section 114 (13 June 2025/302)

Granting a Residence Permit to a Refugee’s Family Member

A residence permit shall be granted on the basis of family ties to a refugee’s family member if the sponsor resides in Finland or has been granted a residence permit for the purpose of moving to Finland.

If the applicant is considered to pose a threat to public order or security, an overall assessment shall be conducted, taking into account the sponsor’s possibility to live a family life with the applicant in a third country. In this assessment, the significance of the family relationship to the parties concerned must be considered.

⁶²⁴ <https://migri.fi/en/temporary-protection>

⁶²⁵ Recent parliamentary decisions have significantly reduced Finland’s refugee quota. In 2022, the quota was set at 1,500 persons; in 2023, it was reduced to 1,050; and in both 2024 and 2025, the quota was further lowered to 500 individuals. See <https://www.ely-keskus.fi/kiintiopakolaiset>. For the year 2026, the refugee quota has been set at zero. See <https://budjetti.vm.fi/sisalto.jsp?year=2026&lang=fi&maindoc=/2026/tae/valtiovarainministerionKanta/valtiovarainministerionKanta.xml&opennode=0:1:247:451:501>

⁶²⁶ Terms and conditions are explained in detail at <https://migri.fi/en/instructions/family-reunification>.

Granting a residence permit under this section requires that the foreign national's means of support are secured. However, the requirement of secure means of support shall not apply if the sponsor is a minor refugee residing in the country without a guardian, or if:

1. The application for a residence permit on the basis of family ties has been submitted within three months of the date on which: a) the sponsor was notified of the decision granting asylum; b) the sponsor was notified of the decision approving their admission to Finland under the refugee quota; or c) the sponsor was notified of the decision granting refugee status on the basis of family ties;
2. The sponsor's family was formed before: a) the sponsor's entry into Finland, if asylum was granted; b) the sponsor's admission to Finland under the refugee quota; or c) the granting of refugee status to the sponsor on the basis of family ties; and
3. Family reunification is not possible in a third country to which the sponsor or the family member has special ties.

If the family was formed after the sponsor's entry into Finland, or after their admission under the refugee quota, or after the sponsor was granted refugee status as a family member, granting a residence permit under this section requires that the sponsor has resided in Finland with a residence permit for at least two years at the time the family member's application is submitted. The requirement concerning the period of residence may be waived in an individual case if there is an exceptionally weighty reason or if the best interests of the child so require.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Section 114a (13 June 2025/302)

Granting a Residence Permit to a Family Member of a Person Granted Subsidiary Protection or Temporary Protection

A residence permit shall be granted on the basis of family ties to a family member of a person granted subsidiary or temporary protection if the sponsor resides in Finland or has been granted a residence permit for the purpose of moving to Finland.

If the applicant is considered to pose a threat to public order or security, an overall assessment shall be conducted, taking into account the sponsor's possibility to live a family life with the applicant in a third country. In this assessment, the significance of the family relationship to the parties concerned must be considered.

If the sponsor has been granted a residence permit on the basis of subsidiary protection due to an armed conflict, or if they have been granted a residence permit on the basis of temporary protection, the overall assessment shall take into account the fact that there is no absolute obstacle to the sponsor's return to their country of origin.

Granting a residence permit under this section requires that the foreign national's means of support are secured.

Granting a residence permit to a family member of a person granted subsidiary protection under this section requires that the sponsor has resided in Finland with a residence permit for at least two years at the time the family member's application is submitted. The requirement concerning the period of residence may be waived in an individual case if there is an exceptionally weighty reason or if the best interests of the child so require.

Section 115 (13 June 2025/302)

Granting a Residence Permit to Other Relatives of a Person Granted International Protection or Temporary Protection

A residence permit shall be granted to another relative, other than a family member, of a refugee, of a person granted a residence permit on the basis of subsidiary protection, or of a person granted temporary protection, if refusal of the residence permit would be unreasonable due to the intention of the parties to continue in Finland the close family life previously lived, or because the relative is wholly dependent on the sponsor residing in Finland. If the applicant is considered to pose a threat to public order, security, public health, or Finland's international relations, an overall assessment shall be conducted in accordance with Section 114(2).

Granting a residence permit under this section requires that the foreign national's means of support are secured.

Granting a residence permit to another relative of a person granted international protection under this section requires that the sponsor has resided in Finland with a residence permit for at least two years at the time the relative's application is submitted. The requirement concerning the period of residence may be waived in an individual case if there is an exceptionally weighty reason or if the best interests of the child so require.

5. What are the conditions for naturalization in the reviewed state?

The Citizenship Act ⁶²⁷ (Kansalaisuuslaki, 359/2003) lays down the requirements for naturalization. New conditions for entitlement to Finnish citizenship were set during the current parliamentary term. Applicants must meet several conditions relating to age, identity, language skills, residence, conduct, financial obligations, and means of support (Section 13). First, the applicant must be at least 18 years of age and have a reliably established identity. Identity is verified either by presenting a valid passport or other official identity document, or by providing trustworthy information concerning one's name, date of birth, nationality, and family relations. Second, applicants are required to demonstrate at least satisfactory oral and written proficiency in Finnish, Swedish, Finnish Sign Language or Finland-Swedish Sign Language. A formal certificate of language skills must be obtained prior to submitting the application. In certain circumstances, exemptions from the language requirement may be requested. Third, applicants must reside in Finland and must have lived in the country for a sufficient period of time. For applications submitted on or after 1 October 2024, continuous residence in Finland for the preceding eight years is required, although shorter periods may suffice in specific cases. For

⁶²⁷ <https://www.finlex.fi/eli?uri=http://data.finlex.fi/eli/sd/2003/359/ajantasa/2025-10-24/fin>

applications submitted before that date, applicants must have resided in Finland either continuously for the past five years, or for a total of seven years after the age of 15, of which the last two years must have been uninterrupted. Fourth, applicants must demonstrate good conduct. They must not have committed criminal offenses or been subjected to a restraining order. Minor infractions resulting in fines or traffic violation fees, however, do not prevent the acquisition of citizenship. Fifth, applicants must have fulfilled their financial obligations, including the payment of taxes, fines, and child support. Finally, applicants must show that their means of support are secure. This requires that they have not received unemployment benefits or social assistance for more than a total of three months during the past two years. In their application, they must indicate the sources of income that have enabled them to sustain themselves in Finland during this period.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Section 6 of the Constitution lays down that everyone is equal before the law. No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that

concerns his or her person. The Non-Discrimination Act (1325/2014) applies to both public and private activities. Section 8 prohibits discrimination on the basis of, among other reasons, origin, nationality, language, and religion. Discrimination is prohibited regardless of whether it is based on a fact or assumption concerning the person him/herself or another. Hence, in principle the rules on non-discrimination also cover non-nationals.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

The Election Act⁶²⁸ (714/1998) provides that in parliamentary elections and presidential elections only Finnish citizens aged 18 or older on the election day are entitled to vote. However, in elections to the European Parliament, citizens of another Member State of the European Union aged 18 or older on the election day are also entitled to vote if their municipality of residence is in Finland or they work for the European Union or another international organization in Finland or are a family member of such a person, provided their personal information has been entered into the Population Information System. However, if a person does not have the right to vote in their country of citizenship (home state) due to a court decision in an individual civil or criminal matter, they are not entitled to vote in Finland. Notably, a Finnish citizen's right to vote cannot be limited according to the Election Act. A citizen who has reached the age of 18 has the right to vote even if their legal capacity has been restricted or they have committed a criminal act.

Specific provisions on the right to vote in municipal elections are laid down in the Constitution and the Municipal Act (29 June 2021/649). Voting is allowed if a person is registered as a resident of the municipality 51 days before election day and has reached the age of 18 by election day. The right to vote is also granted to citizens of EU countries, Norway and Iceland who have a municipality of residence in Finland. Citizens of non-EU countries are granted the right to vote if they have had a municipality of residence in Finland continuously for at least two years by the 51st day before election day.

Specific provisions on the right to vote in county elections is regulated by the Act on Wellbeing Services Counties⁶²⁹ (611/2021). The same principles apply here as in voting in (welfare) county elections (Section 28).

Section 3 of the Election Act (563/2015) provides basic principles on candidate eligibility. Provisions on candidate eligibility in parliamentary elections and the election of the President of the Republic are laid down in the Constitution of Finland. Candidates in these two elections must be Finnish citizens, among other requirements. Provisions on candidate eligibility in elections to the European Parliament are laid down in Section 164 of the Election Act. A citizen of another Member State of the European Union who is eligible to vote in Finland is eligible to

⁶²⁸ <https://www.finlex.fi/eli?uri=http://data.finlex.fi/eli/sd/1998/714/ajantasa/2025-06-27/fin>

⁶²⁹ <https://www.finlex.fi/eli?uri=http://data.finlex.fi/eli/sd/2021/611/ajantasa/2021-06-29/fin>

stand as a candidate in European Parliament elections held in Finland, unless he or she has lost his or her eligibility to stand as a candidate in European Parliament elections in his or her home country. The Municipality Act (Section 71) provides that persons eligible for election to a position of trust in a municipality are those: 1) whose municipality of residence is the municipality in question; 2) who, in the year when municipal councillors are being elected or when an election is being held for some other position of trust, have the right to vote in municipal elections in one of the municipalities; and 3) who have not been declared legally incompetent. Hence, Finnish citizenship is not a requirement for eligibility. Again, the same principles on eligibility apply in welfare county elections (Section 76).

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

The Constitution provides that foreigners legally resident in Finland have the right to freely move within the country and to choose their place of residence. The same rule is also stated in the Aliens Act. Its Section 41 provides that an alien residing legally in the country has the right to move freely in the country and choose his or her place of residence.

In the Migrant Integration Policy Index 2025⁶³⁰ Finland scored highest on migrants' political participation. However, the same report also indicated that many (western European) countries are weakening the role of consultative bodies, failing to renew national strategies on political participation, or scaling back efforts to actively inform migrants of their rights, as seen in Finland, Luxembourg, Denmark and Ireland, among other countries.⁶³¹

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Upon Finland's accession to the European Union, it was required to discontinue the monitoring of real estate acquisitions by persons residing abroad and foreign entities following a transitional period. The right of citizens of the European Union to own real property could no longer be subject to restrictions. The Act on the Monitoring of Real Estate Acquisitions by Persons Residing Abroad and Foreign Entities was repealed (1299/1999) and the ownership rights of persons residing abroad were no longer subject to a permit procedure. In recent years, in particular due to the Russian aggression in Ukraine, foreign ownership of real estate in Finland has been newly restricted through legislation on the grounds of national security. The Act on the Permit Requirement for Certain Real Estate Acquisitions (470/2019) limits the right of nationals of states other than EU and EEA member states to acquire real property in Finland. Concurrently, additional legislative measures were adopted with the objective of strengthening the regulatory framework governing the acquisition of land and real estate deemed significant for comprehensive security. In December 2022, Parliament adopted an amendment to the Act on the Permit Requirement for Certain Real Estate Acquisitions (1098/2022), stipulating that property acquisitions must not pose a threat to national security. Parliament likewise adopted

⁶³⁰ <https://siirtolaisuusinstituutti.fi/wp-content/uploads/2025/09/mipex-participation-index-def.pdf>

⁶³¹ Migrant Integration Policy Index 2025, p. 36.

an amendment to the Act on the State's Pre-Emption Right in Certain Areas (1099/2022), providing that the State shall have a pre-emption right in property transactions where necessary to safeguard national security. In April 2025, Parliament adopted an amendment to the Act on the Permit Requirement for Certain Real Estate Acquisitions (328/2025). Under this amendment, a permit for property acquisition shall not be granted to a person whose state of nationality is engaged in an aggressive war and may constitute a threat to Finland's national security. The prohibition likewise applies to any entity domiciled in such a state or whose ownership or controlling influence is held by a national or entity of such a state.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Non-nationals are subject to the same conditions for engaging in formal employment as those applicable to Finnish citizens. No additional requirements are imposed on the basis of nationality, save for provisions expressly stipulated by law (e.g. civil servants).

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Employers must, as a primary obligation, seek to recruit an employee from the labour force available within the Finnish labour market or from within the European Union (EU) and the European Economic Area (EEA). The purpose of labour market testing is to safeguard and promote the employment opportunities of persons already participating in the labour market. Where no suitable employee can be identified within the labour market, recruitment may be effected from outside the EU and EEA. Labour market testing applies to the following residence permits: the residence permit for an employed person, and the seasonal work residence permit for a duration of six to nine months.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Section 125 of the Constitution provides that an Act may stipulate that only Finnish citizens are eligible for appointment to certain public offices or duties. Such statutory provisions are currently in force, inter alia, with respect to positions including judges, members of the armed forces, and other comparable public functions.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

The provisions of labour protection legislation apply to all persons engaged in work within the territory of Finland. Entitlement to work-based social security benefits, including maternity leave, is determined on the basis of employment in Finland. However, eligibility for such benefits additionally requires residence in Finland at the time the benefit is enjoyed.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

All individuals are entitled to receive the emergency medical treatment they require within the Finnish public health care system, irrespective of their country of origin or the grounds for their stay in Finland. For persons arriving from abroad who have been assigned a municipality of residence in Finland, entitlement extends to public health care services and non-emergency treatment under the same conditions and subject to the same client fees as those applicable to other municipal residents. Entitlement to public health care may also arise under Finnish national legislation, European Union law, or international agreements on medical care, even in cases where the individual does not possess a municipality of residence in Finland. Private health care providers and independent practitioners are likewise obligated to provide treatment to patients originating from EU or EEA countries or Switzerland without discrimination. Such treatment must be offered on the same grounds and at the same cost as for patients in equivalent circumstances who reside in Finland and are covered by Finnish health insurance.⁶³²

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

In Finland, the inviolability of human dignity forms the basis of the right to education by establishing that education must be regarded as a right for everyone, regardless of an individual's abilities or specific needs.⁶³³ Consequently, Section 16 of the Constitution provides that everyone has the right to basic education free of charge. The public authorities must guarantee that everyone has equal opportunity to receive other educational services in accordance with their ability and special needs, as well as the opportunity to develop themselves without being prevented by economic hardship.

The Finnish education system consists of: (1) early childhood education and care, which is provided for children before compulsory education begins (at the age of seven normally); (2) pre-primary education, which is provided for children in the year preceding the beginning of

⁶³² Directive 2011/24/EU on Cross-Border Healthcare.

⁶³³ See, e.g. Pentti Arajärvi, *Koulutusoikeus*, Alma 2021, p. 10.

compulsory education; (3) nine years of compulsory primary and lower secondary education (comprehensive school); (4) upper secondary education (general upper secondary education or vocational education and training); (5) higher education provided by universities and universities of applied sciences. Furthermore, adult education is available at all levels. Liberal adult education offers non-formal studies.⁶³⁴

According to the Finnish Early Childhood Education and Care Act (540/2018), municipalities are obligated to provide early childhood education to children whose official municipality of residence is within that municipality. Additionally, under urgent circumstances or when required by the situation, municipalities must also arrange early childhood education for children staying in the municipality who are not official residents. Research indicates that undocumented children often remain outside early childhood education. Access to daycare for undocumented children frequently depends on the initiative of social services and third-sector actors. There are also challenges in terms of children seeking asylum and receiving reception services. The European Committee of Social Rights has ruled that undocumented children must have access to basic education. According to research they are provided access to basic education in all regions.⁶³⁵

The Act on Compulsory Education (1214/2020) requires children who have permanent residency in Finland to take part in education. The Basic Education Act (628/1998) obligates municipalities to arrange basic education for children whose residence is within that municipality. There is also an obligation to arrange preschool for the year prior to basic education. Furthermore, for immigrants the municipality may arrange additional preparatory education prior to basic education or during basic education, if needed due to lack of language skills, for example.

Under Finland's Act on General Upper Secondary Education (714/2018) upper secondary schools can approve a student's application if they have either completed Finnish basic education or completed foreign education that gives them the right to similar studies as upper secondary education. To be accepted into upper secondary education conducted through English there are additional requirements, such as not having sufficient skills in Finnish or Swedish due to having resided or been educated in Finland for less than three years. For persons who are not EU citizens or citizens of similar countries a residence permit for reason other than studies is required. In exceptional cases, however, exceptions to these specifications may be made. To enrol in vocational school, under the Finnish Act on Vocational School (531/2017) students must have completed either Finnish basic education or similar education, or have the necessary skills for the studies.

At universities of applied sciences and universities, degree-level instruction is free of charge under Section 12 of the Universities of Applied Sciences Act and, correspondingly, Section 8 of the Universities Act (664/2016). Despite the general principle of free education, universities of applied sciences and universities may offer joint or double degree programmes or commissioned training for which they charge a fee. However, fees cannot be charged of citizens

⁶³⁴ For more detail see <https://okm.fi/en/education-system>.

⁶³⁵ See Katisko et al., Social rights of undocumented immigrants in Finland. *Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja* 2023:6, pp. 46-47.

of states belonging to the EU or citizens of states treated as equivalent to EU member states under agreements, nor from their family members.⁶³⁶

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Social security in Finland is primarily residence-based, as stipulated in the Act on Residence-Based Social Security in Cross-Border Situations (16/2019). The Act establishes that entitlement to social security benefits is generally determined by residence within Finland. However, the legislation also sets out specific exceptions and conditions for individuals who are subject to foreign social security systems or who hold special statuses. Under the Act, persons covered by the social security legislation of another state pursuant to an international agreement concluded by Finland are excluded from the scope of Finnish residence-based social security for benefits falling within the agreement's application. Furthermore, nationals of other states are exempt from the Act if they serve in Finland in certain official capacities, such as diplomatic representatives, consular officers, or officials posted by another state. This exemption also applies to individuals serving in international organizations, including the United Nations, European Union institutions, and other intergovernmental bodies, as well as to members of the administrative or technical staff of foreign missions and their household family members, provided they are not considered employees, grant recipients, or entrepreneurs in Finland. Private servants of diplomatic or consular staff who remain subject to the social security legislation of another state are likewise excluded. These exemptions do not apply to individuals who have resided or worked in Finland immediately prior to the commencement of such service. Additionally, asylum seekers are not covered by the Act until their application for international protection has been finally decided. The Act also introduces a residence permit requirement for residence-based benefit legislation to apply. Individuals must reside lawfully in Finland, and where a residence permit is required, it must be valid. If the permit has been applied for and subsequently granted, the requirement is deemed fulfilled from the date of submission of the application. When assessing eligibility for residence-based benefits, the Act provides detailed criteria for persons entering Finland for employment. A person is considered an employee if their earnings meet or exceed the threshold defined in the Unemployment Security Act, calculated as a monthly equivalent of the basic daily allowance. Employee status begins upon commencement of employment and continues as long as the earnings requirement is met. Individuals who have worked for at least six months retain employee status even if their employment is reduced or interrupted, or if they become unemployed and register as jobseekers under the Act on Public Employment and Business Service. This status may continue for up to three months following the reduction or termination of employment, or until the expiry of a residence permit, provided the individual is not subject to another state's social security legislation. Similar provisions apply to entrepreneurs and grant recipients. A person entering

⁶³⁶ Arajärvi, p. 453. (According to Section 13 of the Universities of Applied Sciences Act and Section 9 of the Universities Act, the purchaser of commissioned education has the right to charge participating students fees in accordance with the legislation or practices of the state in which the purchaser is located.)

Finland as an entrepreneur is regarded as such from the start of insurance coverage under the Self-Employed Persons' Pensions Act or the Farmers' Pensions Act. Grant recipients are recognized from the commencement of insurance under the Farmers' Pensions Act. These statuses persist for as long as the insured activity continues. In cases not covered by the specific provisions for employees, entrepreneurs, or grant recipients, entitlement to residence-based social security benefits is determined by an overall assessment of the individual's circumstances. For persons moving from states applying EU legislation, residence is assessed primarily under EU Regulations 883/2004 and 987/2009. For persons arriving from non-EU states, residence is evaluated in accordance with the Municipality of Residence Act. Special rules apply to students: those residing in Finland solely for the purpose of studies are not considered residents for certain benefits. If the overall circumstances indicate permanent residence, the person is deemed resident from the time of entry. Where permanent residence is established later due to changed circumstances, residency is recognized from the time of such change.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

See, right to social security.

Are there any final observations you would like to make? Please write below

During the current parliamentary term (2023-2027), Finland has adopted a restrictive approach to immigration. The conditions for entry and acquisition of citizenship have been significantly tightened. This development reflects a paradox: on the one hand, Finland faces demographic challenges due to an ageing population and seeks to communicate the need for foreign labour and skilled professionals; on the other hand, political compromises have driven policy in the opposite direction. The explanatory notes to the 2026 State Budget illustrate the tightening of immigration policy as well as the effects of the Russian aggression in Ukraine: *"Immigration policy aims to ensure controlled migration and prevent abuse of the system. Assistance to those in greatest need is prioritized in regions of origin. Finland commits to providing full support to individuals fleeing the war in Ukraine and continues their protection in cooperation with other EU Member States. Conversely, mechanisms enabling asylum applications based on crossing European borders and seeking refuge in Finland are minimized. International protection is regarded as temporary in nature. Individuals receiving negative decisions are expected to return or be removed to their countries of origin as swiftly as possible. By tightening the conditions for permanent residence and citizenship, the Government seeks to ensure that those admitted demonstrate a genuine willingness to integrate into Finnish society and comply with its norms and rules."* The Government has also stated that it continues to reform the Aliens Act

with the aim of ensuring “a balanced framework encompassing entry, residence, post-permit monitoring, and removal”.⁶³⁷

⁶³⁷ A strong and committed Finland: Programme of Prime Minister Petteri Orpo's Government (2023).

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: France

Author: Hélène Raspail

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	1951	1954
1967 Protocol to the Convention relating to the Status of Refugees	1967	1971
1954 Convention relating to the Status of Stateless Persons	1954	1960
1961 Convention on the Reduction of Statelessness	1962	
International Covenant on Civil and Political Rights (ICCPR)		1980
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		1984
International Covenant on Economic, Social and Cultural Rights (ICESCR)		1980
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	2012	2015

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	1985	1986
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	2005	2006
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		1971
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	1980	1983
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	1999	2000
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	1980	1983
Convention on the Rights of the Child (CRC)	1990	1990
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	2000	2003
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	2000	2003
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	2014	2016
Convention on the Rights of Persons with Disabilities (CRPD)	2007	2010
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	2008	2010
ILO Forced Labour Convention (No. 29)	1930	1938
2014 Protocol to the ILO Forced Labour Convention (No. 29)		2016
ILO Migration for Employment Convention (Revised) (No. 97)	1952	1955
ILO Equal Remuneration Convention (No. 100)	1951	1954

ILO Discrimination (Employment and Occupation) Convention (No. 111)	1958	1982
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)	1950	1974
Protocols to the European Convention on Human Rights (list which ones):	Protocol n° : 1; 2; 3; 4; 5; 6; 7; 8; 9 ; 10 ; 11; 13; 14; 14bis; 15; 16	Protocol n° : 1 ; 2 ; 3 ; 4 ; 5 ; 6 ; 7 ; 8 ; 11 ; 13 ; 14 ; 15 ; 16
European Social Charter (ESC)	1961	1973

European Convention on the Legal Status of Migrant Workers	1982	1983
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	2011	2014
American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Treaty on European Union

Treaty on the Functioning of the European Union

For Bilateral Treaties regarding entry and stay in France see the list in Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA), Annexe 1, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042906438

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

In France, there are both visas and permits to stay, but sometimes they are one and the same. General rules apply only to third-country nationals, not to European citizens and their families.

Regarding entry in France, a visa is required (CESEDA, art. L. 312-1) except for nationals of countries with which France and/or the EU have concluded a bilateral exemption agreement.

* Visas for transit and short stays (<90 days in any six-month period) are subject to European legislation (Regulation (EC) no. 810/2009 of the European Parliament and of the Council of 13 July 2009 *establishing a Community Code on Visas*, as amended by Regulation (EU) no 610/2013 of 26 June 2013 (*Visa Code*)). This type of visa authorizes entry to all countries in the Schengen area, but it may be limited to France (*visa with limited territorial validity*). They can be issued for various reasons. In any case, the visa application may include supporting documents relating to the purpose of the journey and other documents (Regulation af., art. 14). In French legislation, visa application for family of private reasons have to be accompanied by a proof of accommodation, in the form of an attestation of reception (CESEDA, art. L. 313-1 and seq.⁶³⁸). For other reasons of entry, documents and formalities are specified in the French regulation (CESEDA, art. R. 313-1 and seq.⁶³⁹).

NB: a visa with territorial validity can always be issued for exceptional reasons such as humanitarian ones (Regulation (EC) af., art. 25. 1), but short-stay visas are not for asylum purposes (ECJ [GC], 7 March 2017, *X and X v. Etat belge*, C-638/16 PPU) – in France, visas for asylum are long stay.

* Long-stay visas are not directly covered by European legislation on visas (but have to guarantee the respect of Directive 2003/86/EC of 22 September 2003 on the right to family reunification) and are governed by French law (CESEDA, art. L.312-2 to L. 312-4⁶⁴⁰). In most cases, the reasons are family-related. But they can also be issued for private reasons, studies, internship or professional activity.

Some of those long-stay visas authorize a temporary stay in France with no need to apply for a residence permit once in France. They only have to proceed to an administrative validation, within three months of arrival in France. The beneficiaries are listed in French regulation, CESEDA, art. R. 431-16⁶⁴¹.

⁶³⁸ https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070158/LEGISCTA000042771172/#LEGI SCTA000042777191

⁶³⁹ https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070158/LEGISCTA000042800456/#LEGI SCTA000042807856

⁶⁴⁰ https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070158/LEGISCTA000042771150/#LEGI SCTA000042777214

⁶⁴¹ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000051747516

- They are called visa “*long séjour temporaire*” (VLS-T = temporary long-stay, between 4 and 6 months) or visa “*vacances-travail*” (= working holiday, for the nationals of countries bound by a bilateral agreement with France, 1 year).

- There is also “*visas long séjour valant titre de séjour*” (VLS-TS, = long-stay visas valid as a residence permit) which authorize the following categories of persons not only to enter but to stay long-term (4 to 12 months, renewable), without asking for a residence permit: international volunteers, students, employees with permanent contract, and spouses of French nationals.

In all other cases, long-stay visas are only for entry purposes. They do not exempt a person from applying for a residence permit. Thus, a long-term visa can be issued and the person must apply for a residence permit within 2 months of arrival.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

Those general rules apply to non-EU citizens only.

Aside from long-stay visas valid as a stay or residence permit, non-nationals have to apply at the prefecture for such an authorization. Residence permits may be of several types: temporary (one-year, renewable if the situation that the situation that gave rise to its issue still exists), multi-year (2 to 4 years, renewable as before) or long-term, the general “*carte de resident*” or a specific one for retired people (10 years).

One may distinguish between two categories of residence permits, in relation to the power of the public authority.

In some cases, the residence permit must be granted - particularly if the right to family life is at stake. Those permits are an individual right, but far from being automatically granted: their issuance remains subject to a number of conditions examined by the public authority. The first condition is always the regularity of entry into France. Posterior regularization always falls within the scope of the second kind of permit, subject to the discretionary power of the administration (see below).

Examples (non-exhaustive) of temporary or multi-year residence permits that are considered individual rights:

- in relation to private and family life, e.g.: spouse of a French national, parent of a French national, foreigner living in France since the age of 13, or any case if the denial of the permit could cause a breach of their right to private and family life;

- for medical reasons;

Those reasons must be particularly serious, only if the foreigner’s state of health requires medical treatment, the absence of which could have exceptionally serious consequences for

them, and if they are unable to receive appropriate treatment in their country of origin, given the availability of care and the characteristics of the health system (CESEDA, art. L. 425-9⁶⁴²).

- for victims of domestic violence;
- in relation to an international protection claim (e.g. subsidiary protection, stateless status);
- for seasonal workers;

Examples (non-exhaustive) of long-term residence permits (“*carte de resident*”, 10 years) that are considered individual rights:

- in relation to private and family life: foreigner child of a French national, foreigner parent with French child and French financially dependent spouse;
- in relation to an international protection claim: refugee status
- in relation to victims of human trafficking, subject to the cooperation of the victim in an investigation or judicial procedure against the traffickers (complaint or testimony), see Q°3.

In other cases, the granting of a permit will be subject to the discretionary power of the administration. Thus, the administration may grant a residence permit to a non-national, even if they do not fulfill the legal requirements for it, the first of which being legal entry on the territory (“*admission exceptionnelle au séjour*”). This covers a wide range of situations, including humanitarian needs (CESEDA, art. L. 435-1⁶⁴³).

The law specifies three categories that should particularly be granted such a permit (CESEDA, art. L. 435-2 to L. 435-4⁶⁴⁴), and particularly foreign nationals:

- who were formerly an unaccompanied minor in the care of the child welfare authority between the age of 16 and 18, if training for a professional qualification
- who has worked for 12 months in a salaried job included in a list of professions and geographical areas characterized by recruitment difficulties (regularization of irregular workers, if their job is in short supply, called “*métiers en tension*”), and have been in France for 3 years.

A recent guideline from the ministry of the interior (*Circulaire Retailleau*, 23 janvier 2025⁶⁴⁵) has drastically reduced the situations for admitting such situations, asking prefectures to stick to those cases specifically mentioned by law, articles L. 435-2 to L. 435-4 of the CESEDA, whereas previously, the ministry guidelines only provided harmonization criteria for the application of the general article L. 435-1 of the CESEDA, covering a wider range of situations. If the foreign national is in a situation not specifically covered by law, such as irregular workers exercising a job in short supply, regularization is particularly difficult, requiring 7 years of presence in France (whereas 5 years before). In all cases, integration requirements are enhanced (particularly fluency in French). Even if it is not a binding instrument and it doesn't prevent

⁶⁴² https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042776510?page=1&pageSize=10&query=L.+425-9+ceseda&searchField=ALL&searchType=ALL&tab_selection=all&typePaging=DEFAULT

⁶⁴³ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043982311

⁶⁴⁴ https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070158/LEGISCTA000042771914/#LEGI_SCTA000042776426

⁶⁴⁵ <https://www.legifrance.gouv.fr/circulaire/id/45584>

from a discretionary regularization, prefectures tend to limit themselves to the ministry's guidelines.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Regarding entry into France, no legal framework gives a right to access the French territory for asylum purposes. As said above, one may apply for a long-term visa for humanitarian reasons, but this remains subject to the discretionary power of the Foreign Affairs Ministry, with very few exceptions, which are manifest error of assessments determined by the judge (e.g., Conseil d'Etat, ch. réunies, 16 october 2017, no. n°408374 et 408344⁶⁴⁶, stating that there is no right to be granted an asylum visa; for an example of a manifest error of assessment of the administration, in the case of a very clear need of protection of an Afghan family: Cour administrative d'appel de Nantes, 9 april 2024, n°23NT03218⁶⁴⁷). This is not covered by EU law.

Once in France, the procedure and conditions for granting international protection are harmonized by EU directives (Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 *on common procedures for granting and withdrawing international protection (recast)* and Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 *on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*), which have become EU regulations (respectively Regulation (EU) 2024/1348 and Regulation (EU) 2024/1347 of 14 May 2024, entry into force in 2026), except for stateless status. Those legislations are transposed in French law in the 5th part of the CESEDA.

A special procedure exists when someone asks for protection at the border or at an airport's international zone: there is then a right to access the territory in a strict sense, beyond the border zones, if the application does not appear manifestly unfounded.

Once in the territory, regarding procedure, an asylum seeker must declare themselves to the prefectorial authority and the French office for immigration and integration (*OFII*), in a common office ("*guichet unique pour demandeurs d'asile*" or *GUDA*) in order to be treated according to their status. In practice, they will be granted a provisory stay permit and some material reception conditions ensuring a dignified standard of living, according to the "Reception" Directive of EU Law. According to French Law, they include an allocation, a social support and, in principle, an accommodation. According to the Conseil d'État, when the accommodation capacity normally available is temporarily exhausted, the administrative authority may use arrangements other than those normally provided, for a reasonable period, as

⁶⁴⁶ <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000035819002>

⁶⁴⁷ https://www.legifrance.gouv.fr/ceta/id/CETATEXT000049401511?dateDecision=&init=true&page=1&query=%22article+3%22+du+%22Code+civil%22&searchField=ALL&tab_selection=cetat

short as possible, and covering the asylum seeker's basic needs (Conseil d'Etat, juge des référés, 17 Sept. 2009, n°331950⁶⁴⁸).

Stateless persons willing to be recognized as such don't follow this path and don't have such a protective status during the procedure.

Then, all applicants for protection must apply to a French independent administrative authority (*"Office français de protection des réfugiés et des apatrides (OFPRA)"*), writing a summary of their claim. They have a right to an individual hearing with a translator, at the end of which a decision will be taken. The kinds of protection that can be granted are **refugee status** under the 1951 Geneva Convention relating to the Status of Refugees or **subsidiary Protection** under EU law. The aim of the latter is to cover protection needs that fall outside the scope of the Geneva Convention: risk of death, risk of torture or other inhuman treatments, individual risk in case of a situation of general violence relating to an armed conflict. One may also ask to be recognized as a **stateless person** and granted of the status of the 1954, New-York Convention.

OFPRA decisions may be subject to a judiciary appeal procedure before the French asylum court, a specialized administrative jurisdiction (*Cour nationale du droit d'asile (CND)*). Before this court, in principle, only one judge has to review the decision after a public hearing, but most of the time the case will be heard by a panel of 3 judges. A French particularity has to be mentioned: one of those 3 judges is appointed by the UNHCR. The procedure will lead either to a decision of rejection or to a decision of annulation of the OFPRA's decision, which automatically results in the granting of protection. For stateless status seekers, the procedure will take place before the ordinary administrative judge and will only encompass a review of the validity of the administration's decision. If the OFPRA decision is held to be invalid, OFPRA will then have to issue a new decision.

Moreover, we should mention the existence of **temporary protection** under EU law in case of mass influx of refugees. This protection was created by a directive of the Council of the EU in 2001 (2001/55/EC of 20 July 2001 *on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*) and has been applied to the Ukrainian refugees fleeing war since 2022 by decision of the Council.

In France, this temporary protection is automatically granted to any Ukrainian arrived in France after 24 February 2022, if asked to the Prefecture – but not to foreigners regularly living in Ukraine at that time. This does not prevent a person from applying for refugee status or subsidiary protection.

Finally, a kind of territorial protection is provided by EU law for **victims of human trafficking**. Directive 2011/36/EU of the Parliament and of the Council of 5 April 2011 *on preventing and combating trafficking in human beings and protecting its victims* provide rights for the victims, such as a sufficient assistance and support to be able to escape their traffickers and recover. This assistance is unconditional, even if the person does not reside lawfully in the State, and even if the person is not willing to cooperate in a criminal investigation. Unfortunately, these obligations are vague and nothing in particular is provided for third states nationals victims of

⁶⁴⁸ <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000021646828/>

human trafficking, such as automatic sheltering. Sheltering is mainly offered by associations. In addition, victims who are willing to cooperate with authorities in an investigation or criminal procedure against their traffickers have to be granted a residence permit, on the basis of Council Directive 2004/81/EC of 29 April 2004 *on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*. French law provides a more favourable status (CESEDA, art. L. 425-1 to 5⁶⁴⁹), with a one-year residence permit, renewable (6-months in the Directive). The victim is also granted an allocation, in the same conditions as an asylum seeker. In the case of the condemnation of the trafficker, a 10-years resident card will be issued (as provided in EU Directive). French law also offers a 6-months permit to any victim of human trafficking, outside of any investigation or procedure, on condition that he/she is committed to pathway out of prostitution and toward social and professional integration, renewable as long as this condition is fulfilled.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

There are two types of family reunification in France.

For foreigners, the family reunification (called “*regroupement familial*”) procedure is initiated by the foreign national wishing to bring their family into France. Several conditions must be met:

- The foreign applicant, essentially, must have resided in France for 18 months prior to application and hold a valid residence permit for at least 1 year. Moreover, they must justify sufficient resources to accommodate the family. This means both sufficient accommodation and sufficient income. They also must respect for the “essential principles” governing “family life in France”.
- The beneficiary family member can only be:
 - Legally married spouses (one by foreigner, excluding polygamous unions), aged 18
 - Minor children (at the date of the application) under the couple’s or spouse’s parental authority only.

In the particular case of children to whom parental authority has been delegated by *kafala* (specific measure under Muslim law, which is not equivalent to an adoption), it is the responsibility of the *kafil* (the person who has received this delegation), to ensure the protection of the minor child and to provide for his or her maintenance and education. French law of family reunification doesn’t apply in principle in this case. But the judge will verify that a refusal of visa is not prejudicial to the child’s best interests, in accordance to the Convention of the Rights of the Child, art. 3-1.

They must not be a threat to public order.

⁶⁴⁹https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070158/LEGISCTA000042771808/#LEGI SCTA000042776532

Regarding the procedure, on the one hand, from France, the foreign applicant has to send a reunification demand to the OFII. The OFII then forwards the file to the Mayor of the town concerned, who verifies the accommodation and resources of the applicant. Then the mayor sends their justified opinion to the OFII, and forwards it to the Prefect. The latter accepts or refuses the application. A refusal must be justified and may be reviewed before the administrative judge.

On the other hand, the foreigners' family have to apply for a visa from the country of origin. They must not come to France irregularly to fulfill a reunification demand. Proof of the application for reunification must be sent to the family so that they can apply for a visa from the French consular authority. The visa will be valid as a one-year residence permit (if confirmed once in France), and this permit may be renewed. When residing in France for an uninterrupted period of 3 years, they may be issued a 10-year resident card.

Refugees or beneficiary of the subsidiary protection will benefit from a privileged regime for their family reunification (called "*réunification familiale*").

The conditions of prior residence, resources and accommodation are not applied.

They may be joined by their legally married spouse or civil union partner but also by their cohabiting partner if they had a sufficiently stable and continuous cohabitation before the application. Unmarried children under 19 at the time of application may also come to France. This procedure applies, even if there is no parent-child relationship, to children placed under the refugee's guardianship by a foreign judgment delegating parental authority.

If the refugee or beneficiary of subsidiary protection is an unmarried minor, they may ask to be joined by their first-degree direct ascendants, accompanied by the ascendants' unmarried minor children for whom they are responsible.

The procedure is the same (application to the OFII on one side, application for a visa from the country of origin on the other side). But this time the family will be automatically granted a 10-year resident card.

In any other cases, the entry and stay in France for family purposes fall within the discretionary power of the authorities, having in mind the child's best interest pursuant Convention on the Rights of the Child, art. 3-1 and the right to a family life according to ECHR, art. 8.

5. What are the conditions for naturalization in the reviewed state?

The administration has a discretionary power regarding naturalization. Thus, naturalization is not automatic even if the conditions are fulfilled. On the contrary, one may be granted French nationality without fulfilling the conditions. The administrative judge regularly points out in his decisions that "naturalization is not a right, but a measure of favor for which the Minister of the Interior has very broad discretionary powers".

The general criteria are as follows:

- Applicants must be over 18.

- They must regularly reside in France at the time of the naturalization decree (illegal residence is a reason for refusal of French nationality). This residence has to be for at least 5 years before application. In some situations, residence may be shorter (2 years), such as the following ones:
 - holding a high diploma from French education after 2 years of studies
 - having rendered or being able to render a significant service to France thanks to talents and abilities
 - exceptional integration record

Finally, in some cases there is no minimum residency requirement:

- refugees or beneficiary of the subsidiary protection
 - coming from a French-speaking country if French is the applicant's mother tongue, or if they were educated in a French school
 - being enlisted in the French or allied army during wartime
 - having the center of material interests and family ties in France.
- In all cases, the applicant must have a good integration record and be of good morality.

As for the first requirement, they must have a sufficient knowledge of French language, history, culture and society, as well as of the rights and duties conferred by French nationality. Verification is carried out by the person concerned appearing before an official appointed by the Prefect. After a personal interview, the officer draws up a report noting the applicant's degree of assimilation.

Regarding the second condition, certain criminal convictions or even misbehavior may constitute an obstacle to naturalization. Account is taken of the applicant's social behavior, which is the subject of a prefectorial investigation into the applicant's conduct and loyalty.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. *temporary and permanent resident migrants;*
- b. *regular migrants benefiting from more favorable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. *undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. *refugees;*

e. *asylum seekers;*

f. *other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Beyond the non-discrimination principle from the International and European Human Rights framework (a.o., art. 14 of the ECHR), French law includes an equivalent principle in its Constitution: the principle of equality (art. 1st and 6, *Déclaration des droits de l'Homme et du citoyen*⁶⁵⁰). Thus, for all categories of migrants, the principle of equality applies in principle. It forbids every distinction based on the origin, the race, the religion, beliefs, opinions and sex.

In criminal law, discrimination is even considered a criminal offense (art. 225-1 to 225-2, Penal Code⁶⁵¹). In the case of migrants in particular, discrimination based on the origin, the name, genetic characters, spoken language (other than French), ethnicity, nationality, and alleged race is forbidden in the field of employment, education, housing, access to public services, goods and services.

Nevertheless, this equality is in law, not in fact. It simply requires that all persons in identical situations be subject to the same legal regime. That is to say that, if migrants are considered in a different situation juridically speaking, they may not be granted the same treatment if this restriction is in accordance with the law and proportional to the aim pursued. Thus, criminal law provides that refusals to hire based on nationality do not constitute prohibited discrimination when they result from statutory provisions relating to the public service (art. 225-3, Penal Code⁶⁵²).

The Constitutional Council verifies that foreigners who are denied some rights unlike other categories such as French citizens or regular immigrants are not in the same situation and that their difference of treatment provided by law is not contrary to the principle of equality. Moreover, some rights may not be subject to any difference. To give a recent example, the supreme court ruled that with regard to legal aid, denying it to illegal immigrants would be contrary to this principle⁶⁵³. Indeed, even if illegal immigrants and regular migrants are not in

⁶⁵⁰ <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789>

⁶⁵¹ https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165298/#LEGI_SCTA000006165298

⁶⁵² *Ibidem*.

⁶⁵³ Cons. const., 29.05.2024, n° 2024-1091/1092/1093 QPC, https://www.conseil-constitutionnel.fr/decision/2024/20241091_1092_1093QPC.htm.

the same position, the first have a right to legal aid under the principle of equality before the courts, for all those who reside, legally or otherwise, on French territory.

In the case of an alleged discrimination, before going in front of the French courts, one may refer to the French ombudsman (le Défenseur des droits), even the migrants.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

• Foreigners, in general

Regarding the right to vote and be elected, they are reserved, under the French Constitution, for nationals. National Sovereignty belongs to the French people and the electors are solely French nationals (French constitution, art. 3⁶⁵⁴). Even if a political debate regularly comes up about granting the permanent resident foreigners the right to vote, especially for municipal elections, this proposal never came close to reality.

There is no difference between categories of migrants in French Law: all of them are excluded from the right to vote and to stand for election, even refugees or permanent residents.

• EU citizens

The only category which is granted political rights in French Law is the EU citizens. Under European law, the right to vote and be elected to European Parliament and local elections shall be granted to any EU citizen in their country of residence, on the same conditions as nationals of this country (art. 20, 2 b., Treaty on the Functioning of the EU). Therefore, France had to reviewed its Constitution in order to ratify the Maastricht Treaty that provided this new disposition (French Constitutional Council, 9.4.1992, n°92-308 DC⁶⁵⁵ and art. 88-3 of the French Constitution).

It was also necessary to limit this political right granted to EU citizens in order to prevent them from taking part in the election of the French Senate. Indeed, the municipal council is part of the electoral college of the Senate. Thus, art. 88-3 of the French Constitution provides that those EU citizens may not exercise any function of Mayor or Deputy Mayor, nor participate to the designation of the senatorial electors and to the election of Senators. This way, the political participation of EU citizens remains European or, at the French level, solely local. They do not take any part of the exercise of the French sovereignty at a national level.

⁶⁵⁴ <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000571356/>

⁶⁵⁵ <https://www.conseil-constitutionnel.fr/decision/1992/92308DC.htm>

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

• Political rights

Freedom of assembly, expression and demonstration are guaranteed to every resident in France, regardless of nationality or even regularity of the stay.

Every foreigner also enjoys the constitutional freedom of association. French Law used to prohibit foreign association, unless approved by the administration – which led to arbitrariness. Since 1981⁶⁵⁶, foreigners are granted national treatment as regard to associations. Every foreigner may participate to a political party, syndicate or association. They can also create such groups, regardless of the legality of their residence in France.

All these freedoms allow foreigners to participate in the French political life, in non-institutional forms.

• Civil Rights

With regard to civil rights, every foreigner enjoys them without distinction, in principle. Thus, even irregular migrants enjoy free access to justice (French Constitutional Council, 29.05.2024, n°2024-1091/1092/1093, quoted above). They also enjoy the right to private and family life, within the framework, however, of the right to residence and family reunification. They have the right to marry, even though a recent bill⁶⁵⁷, currently under discussion in the French Parliament, aims to prohibit marriage to foreigners in an irregular situation. Nevertheless, the French Constitutional Council has always been consistent: the right to marry is a fundamental right and shall not be limited in regard to the administrative status of a foreigner (20.11.2003, n°2003-484 DC⁶⁵⁸).

Freedom of movement within French territory is also generally granted to all foreigners, as for nationals. The constitutional principle of individual liberty guarantees this freedom of movement under French law (Constitution, art. 66). However, two categories of migrants may find this freedom restricted.

- Irregular migrants. They do not enjoy any freedom of movement, as soon as an expulsion measure is taken against them. Thus, they may be subject to house arrest or retention in order

⁶⁵⁶ Law n° 81-909, 9.10.1981, reviewing Law 1.07.1901 regarding contract of association (<https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006069570/>)

⁶⁵⁷ <https://www.vie-publique.fr/loi/297443-mariages-etrangers-en-situation-irreguliere-proposition-de-loi-demilly>

⁶⁵⁸ <https://www.conseil-constitutionnel.fr/decision/2003/2003484DC.htm>

to facilitate the execution of this measure, if the administrative authority considers that there is a risk of abscondment.

- Asylum seekers. During the processing of their asylum application, even if they are granted a temporary stay permit, they may not be able to choose their place of residence.

Within the framework of the right to housing provided for by Union law, they may be assigned to a specific accommodation. Even if they still have their freedom of movement, they may lose their material reception conditions if they do not accept to live in the place assigned.

Moreover, French law provided that asylum seekers may also be subject to retention or house arrest during the process of their application (Law n°2024-42, 26.01.2024, art. 41). Such restrictive measures may have been taken in the case of a risk of abscondment, if the person is under a measure of expulsion. But it may also have been justified by a serious threat to public order, without any measure of expulsion (article L. 523-1, al. 1 du CESEDA). Yet, those restrictions of freedom of movement are only justified to facilitate the execution of such a measure. The French Constitutional Council decided that this provision was contrary to the principle of individual liberty if not correlated with an expulsion measure (23.05.2025, n°2025-1140⁶⁵⁹).

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

In principle, in France, non-citizens may buy and own property without limitation. The right of property is guaranteed by the constitutional norm (Declaration des droits de l'homme et du citoyen, art. 17⁶⁶⁰) and the French Civil Code (art. 544⁶⁶¹), with no distinction between nationals and foreigners. Moreover, owning real estate may be an asset in the assessment of an application for entry and residence in France.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Foreign nationals have different access to employment in France depending on their administrative situation.

On one side, irregular migrants have no right to work as such in France. However, French Law is ambiguous, since having a job in France, even if it's not legal, can lead to a regularization of

⁶⁵⁹ <https://www.conseil-constitutionnel.fr/decision/2025/20251140QPC.htm>

⁶⁶⁰ <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789>

⁶⁶¹ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006428859

residency, especially if the work is in high demand, as mentioned in a circular⁶⁶². In other words, even though the work is not legal, it is still possible to get it, and that is important in order to get one's residency sorted out.

On the other side, Citizens of EU member States enjoy freedom of movement and can freely come to work in France after completing a few and simple administrative formalities. They don't have to require a specific work permit.

In between, non-EU citizens may only have the right to work depending on their administrative status.

Certain categories of foreign nationals are subject to specific regimes resulting from bilateral agreements between France and their country of nationality, such as with Algeria.

For other non-citizens, in general, only those with a residence permit entitling the holder to work may do so. In other words, foreigners without a residence permit do not have the right to work.

It should particularly be noted that asylum seekers, even if their stay in France is legal, are not allowed to work until they have been in France for six months. After that, they may apply for a work permit issued by the prefecture allowing them to work.

The following residence permits authorize the holder to work, provided they are valid:

- Resident Card (10 years, automatically renewable): no professional or geographical limitations. NB: Refugees are granted such a card.
- Temporary Stay Permit, with the mention "employee" (1 year): indicate one or more professional activity the holder may exercise, with possible geographical restriction.
- Temporary Stay Permit, with the mention "skill and talents" (3 years)
- Temporary Stay Permit, with the mention "employee on assignment" (3 years): for expatriate foreigners of a group.
- Temporary Stay Permit, with the mention "seasonal worker" (3 years): only for workers who don't have their principal residence in France but want to work in France a maximum of 6 months out of 12.
- Temporary Stay Permit, with the mention "Private and Family Life" (1 year or more, automatically renewable): no professional limitation; geographically speaking, may be restricted to the overseas department that issued it. NB: beneficiaries of subsidiary protection are granted a 4-year Permit in this category.
- Temporary Stay Permit, with the mention "Scientifique" (1 year): to carry out scientific or research activities solely in an authorized institution or organization with which there is a hosting agreement.
- Temporary Stay Permit, with the mention "Etudiant" (1 year): authorizes its holder to have a professional activity in the limit of 60% of the legal annual working time.

⁶⁶² <https://www.legifrance.gouv.fr/download/pdf/circ?id=45584>

For other foreigners with a legal status in France, they have to request a temporary work permit in order to have a professional activity (1 year). Such a permit includes reference to a named employer and profession.

Finally, if a foreigner does not already reside in France and wishes to work there, the employer willing to hire this person must submit an application for the introduction of a foreign worker to the departmental directorate of labor, employment, and vocational training to which the employer reports.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

There is no such thing in French law. However, in order to benefit from regularization of an irregular situation on exceptional grounds, occupations considered to be "in high demand" are particularly highlighted, as said above. A circular indicates that, in other cases, regularizations should not happen⁶⁶³.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

In France, access to certain professions is restricted for non-nationals, particularly in the civil service, defence, public security and regulated professions. These restrictions are enshrined in several legal texts, such as the Law of 13 July 1983 on the rights and obligations of civil servants⁶⁶⁴, the Defence Code for military⁶⁶⁵ or the Internal Security Code for policemen⁶⁶⁶. They mainly target jobs involving the exercise of public authority or national security.

- Only French nationals can access so-called sovereign jobs, i.e. positions involving the exercise of sovereign powers, such as the police, the judiciary or the army. This even excludes European citizens.

⁶⁶³ <https://www.legifrance.gouv.fr/download/pdf/circ?id=45584>

⁶⁶⁴ <https://www.legifrance.gouv.fr/loda/id/LEGISCTA000006086310>

⁶⁶⁵ https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071307/LEGISCTA000006182627?dateVersion=16%2F09%2F2025&nomCode=2cQj5Q%3D%3D&page=1&query=nationalit%C3%A9+fran%C3%A7aise&searchField=ALL&tab_selection=code&typeRecherche=date&anchor=LEGIARTI000025495484#LEGIARTI000025495484

⁶⁶⁶ https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000025503132/LEGISCTA000028285607?dateVersion=16%2F09%2F2025&nomCode=BfMAIA%3D%3D&page=1&query=nationalit%C3%A9+fran%C3%A7aise&searchField=ALL&tab_selection=code&typeRecherche=date&anchor=LEGIARTI000051057036#LEGIARTI000051057036

- Only French nationals, European citizens or Andorra nationals may be a public servant in other public service sector (state, local or hospital). Other foreigners may work in those public services, but as regular employees. That is to say they can normally exercise their activity but under a different status (doctor/teacher for ex. as employee and not as a public servant). This is also on condition of validation of qualifications or professional adaptation courses.

- Regarding regulated professions (lawyer, doctor, chemist, architect, solicitor...), they are accessible to foreigners but subject to recognition of their professional qualifications for EU Citizens. For third-countries nationals, more complex procedures are required, such as the validation of qualifications or a professional adaptation course.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Foreign nationals who hold a residence permit authorising them to work are entitled to the same rights as nationals in terms of labour law. The Labour Code provides various guarantees and does not distinguish on the basis of nationality, but only on the basis of the legality of the employment: minimum wage, working hours, paid leave, social protection, maternity/paternity leave, etc. Similarly, they are protected by common law rules such as the right to non-discrimination in hiring (Article L. 1132-1 of the Labour Code), the right to health at work (Article L. 4121-1 of the Labour Code), the right to paid leave (Article L. 4121-2 of the Labour Code), the right to paid annual leave (Article L. 4121-3 of the Labour Code), the right to paid overtime (Article L. 4121-4 of the Labour Code), for the principal.

On the other hand, irregular immigrants do not hold work permits, but this does not mean that they have no rights. In fact, they enjoy fundamental rights under labour law by virtue of the principle of reality of work. This principle provides that if work is performed under the authority of an employer, the latter must comply with the obligations arising from the Labour Code, even in the absence of a work permit. Thus, an undocumented worker can obtain payment of the minimum wage or other agreed wages (Article L. 3243-1, Labour Code); take legal action before the labour court in cases of abuse, harassment or non-payment (which is rare due to a lack of knowledge of the avenues of appeal and the fear of being identified and then arrested, even though the Labour Code protects undocumented workers regardless of their administrative situation); request lump-sum compensation for damages suffered as a result of the employer's illegal behaviour (Article L. 3243-2, Labour Code); and request the employer to provide a work permit. These are the main examples of protection provided by French Labour Law to every employee, regardless of nationality.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

The right to health protection is recognized as a constitutional objective in French law (Preamble to the 1946 Constitution, paragraph 11⁶⁶⁷), also provided by Public Health Code (art. L. 1110-1). It is granted to every person in France, regardless of their nationality or administrative status. But access to public health services is not exactly the same to every category of foreigners.

- Foreign nationals with preferential treatment. EU Citizens, EEE and Switzerland nationals have access to healthcare through their European Health Insurance Card. Other foreign nationals such as from Algeria or USA also have access to healthcare in the same conditions as nationals, thanks to bilateral social security agreements⁶⁶⁸.

- Refugees and beneficiaries of the subsidiary protection. They have a complete access to the French Healthcare Services, in the same conditions as nationals. Their status entitles them to a health insurance card and direct affiliation to the health insurance system. They are automatically affiliated to the Universal health coverage (Called “Puma”, which enables healthcare costs to be covered freely and without loss of entitlement) and are eligible for a supportive supplementary health insurance for adults.

- Other foreigners in a regular situation. They also have access to the basic scheme of the French Healthcare Services, if they work (and even if they do not reside in France⁶⁶⁹) or if they have a stable and regular residency in France (Social Security Code, art. 160-1670). Thus, they have access to the Universal health coverage and the supportive supplementary health insurance.

- Asylum Seekers. Children have a full access to the basic scheme already described. With regard to adults, they have a 3-month delay (with uninterrupted residence in France) before having access to the Universal Health Coverage and the supportive supplementary health insurance. In the meantime, they can benefit from urgent care, which covers (freely):

- Care whose absence would jeopardize the prognosis or could lead to serious and lasting deterioration in the health of the person or that of an unborn child;
- Care designed to prevent the spreading of disease to those around a person or to the community;
- Care for pregnant women and newborns, and voluntary or medically necessary abortion.

- Irregular migrants. Children can immediately benefit from State Medical Aid. Adults can benefit from State Medical Aid, after 3 months of residence in France (with no permit),

⁶⁶⁷ <https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/preambule-de-la-constitution-du-27-octobre-1946>

⁶⁶⁸ For the list of the States with which France has such an agreement : <https://www.cleiss.fr/docs/textes/>

⁶⁶⁹ Art. L. 111-2-2 of the Social Security Code, https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000031686324

⁶⁷⁰ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000044404322

subject to their income not exceeding certain thresholds. State Medical Aid entitles its beneficiary to 100% coverage of one's medical and hospital care.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

In France, every person in the territory has a right to education, without distinction as to nationality. This is a constitutional right (Preamble of the 1946 Constitution, paragraph 13).

- Primary and secondary education. Article L. 111-1 of the Education Code guarantees the right to education for all children residing in the territory, including foreign minors in an irregular situation. Discrimination is prohibited.

- Higher education. EU citizens, EEE and Swiss nationals have the same treatment as French nationals. Third country nationals may enrol in higher education institutions but may be subject to differentiated tuition fees. Their access to scholarships is generally subject to certain conditions (having a residence permit, having been domiciled in France for at least two years and providing proof of having been part of a tax household in France for at least two years) .

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

In principle, most French social benefits are available to foreigners, provided they have stable and regular residence in France and a residence permit from a list set out in a decree dated May 10, 2017⁶⁷¹. However, this list does not apply to family benefits.

EU citizens, EEE and Swiss nationals do not have to produce any stay permit to get those benefits.

Since asylum seekers are granted a specific income (asylum seeker's allowance), they cannot be granted aids of the French basic scheme.

Irregular migrants do not have access to social aid.

More precisely:

As for social insurance

- European, EEE and Swiss citizens. They can take advantage of the coordination of social security schemes under EU law. The principle of equal treatment applies, provided they prove legality of residence and the pursuit of a professional activity. The mechanism for aggregating

⁶⁷¹ Arrêté du 10 mai 2017 fixant la liste des titres de séjour prévu au I de l'article R. 111-3 du code de la sécurité sociale, JO 11 Mai 2017, NOR : AFSS1713741A.

contribution periods allows rights to be claimed in several Member States. This regime is set up by Regulation (EC) n°883/2004 on the coordination of social security systems.

- Third-country nationals, as said above, may benefit from the Social insurance, provided they have a professional activity or a stable and regular residence in France.

As for other social aids

Those aids are in principle solely accessible to regular residents, subject to the length of stay. But there is no condition of nationality.

The “*Revenu de solidarité active*” (RSA, Active solidarity income) guarantees a minimum level of income for people without resources. Residence in France has to be stable and regular. The income is accessible to people aged 25 and over. For younger persons of 18 to 24 years, they may be admissible if they are single parents or have a minimum length of professional activity.

Other social aids

- Disability insurance. It is aimed to provide a pension to compensate for the loss of income resulting from a reduction of the ability to work. It is subject to the legality of the stay.

- Indemnity or income as a result of a work-related accident or occupational illness. Those aids are granted only if the accident happened in French territory. Only foreigners with regular residence in France may benefit from this aid. It should be noted that a foreign worker, whether legally employed or without a residence permit, is entitled to immediate and free medical care if they are the victim of an accident at work (Social Security Code, art. L. 431-1⁶⁷²).

- Allowance for disabled adults. It is subsidiary to the aids mentioned above. It is subject to the legality of the stay in France.

- Personalized independence allowance. This is for the elderly, above 60 years old, subject to regular and permanent residence in France.

Family allowances and *préstations*. Every foreigner has access to these aids, under condition of regular residency and also regular entry in France. That is to say that persons who entered the country illegally and were subsequently regularized through the exceptional admission procedure are not eligible for this benefit. In every case, the aids are given when at least 1 child is dependent (also entered and staying in France regularly). More precisely, entitlement to family benefits for dependent children of foreign nationals is subject to their legal entry under the family reunification procedure (Social security code, art. L. 512-2⁶⁷³).

⁶⁷² https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000035640835

⁶⁷³ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042920150

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

As for other social aids, they are not accessible to irregular migrants but only to foreigners with stable and regular residency in France. In addition to the aforementioned aids, one can mention:

- Personalized housing assistance. They reduce the amount of the rent. They are accessible under condition of stable and regular stay in France, and, since the 2024 Law on immigration, provided the person can prove five years of residence in the country, or two and a half years for people who are working.
- Retirement pension. They are proportional to the contribution of the former employee. If this income is insufficient, a solidarity allowance for the elderly can be provided. Those aids are subject to the regularity of residence in France.
- Death insurance. It is intended to partially compensate, during the period immediately following death, for the loss of income caused by the death of the insured person. It guarantees payment of an income to persons recognized as beneficiaries of the insured. Both (the insured and the beneficiary) must provide the proof of stable and regular stay in France.

Are there any final observations you would like to make? Please write below.

As regards economics rights and access to social aids, most provisions of French law do not apply in the same way in Mayotte to foreigners. Exemptions most often exclude them from the provisions of the law.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

January 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Germany

Author: Adela Schmidt

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	x	x
1967 Protocol to the Convention relating to the Status of Refugees	x	x
1954 Convention relating to the Status of Stateless Persons	x	x
1961 Convention on the Reduction of Statelessness	x	x
International Covenant on Civil and Political Rights (ICCPR)	x	x
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	x	x
International Covenant on Economic, Social and Cultural Rights (ICESCR)	x	x
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	x	x

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	-	-
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	x	x
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	x	x
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	x	x
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	-	-
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	x	x
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	x	x
Convention on the Rights of the Child (CRC)	x	x
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	x	x
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	x	x
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	x	x
Convention on the Rights of Persons with Disabilities (CRPD)	x	x
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	x	x
ILO Forced Labour Convention (No. 29)	x	x
2014 Protocol to the ILO Forced Labour Convention (No. 29)	x	x
ILO Migration for Employment Convention (Revised) (No. 97)	x	-
ILO Equal Remuneration Convention (No. 100)	x	x

ILO Discrimination (Employment and Occupation) Convention (No. 111)	x	x
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	-	-

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	-	-
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	-	-
Convention governing the Specific Aspects of Refugee Problems in Africa	-	-
African Charter on the Rights and Welfare of the Child	-	-
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	-	-
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	-	-
European Convention on Human Rights (ECHR)	x	x
Protocols to the European Convention on Human Rights (list which ones):	x (1-6, 8-15)	x (1-6, 8-11, 13-15)
European Social Charter (ESC)	x	x
European Convention on the Legal Status of Migrant Workers	No	No
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	x	x
American Convention on Human Rights (ACHR)	-	-

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	-	-
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	-	-
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	-	-
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	-	-
Inter-American Convention against All Forms of Discrimination and Intolerance	-	-
Inter-American Convention Protecting the Human Rights of Older Persons	-	-

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Germany is a Member State of the European Union.

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Citizens of other EU Member States and their core family have a right to free movement within the EU. Their status is not regulated by immigration law.

As per Section 4 (1) Residence Act (Aufenthaltsgesetz, the central set of rules governing the law on third country nationals in Germany)⁶⁷⁴, third country nationals require a residence title to enter and reside in the federal territory, unless otherwise specified by European Union law or statutory order, or unless they have a right of residence under the Agreement of September

⁶⁷⁴ Federal Law Gazette I p. 162, last amended by Federal Law Gazette I Nr. 27.

12, 1963, establishing an association between the European Economic Community and Turkey (EEC/Turkey Association Agreement⁶⁷⁵).

Residence titles are issued as:

1. Visa

Visas are issued by German Missions outside of Germany to third country nationals. A visa can be issued as Schengen visa for short term travels of up to 90 days within 180 days or as long-term national D-Visa for stays of more than 90 days within 180 days.⁶⁷⁶ Long-term national D-Visas can be extended in-country.

2. Residence permit

The residence permit is a temporary residence title.

3. EU Blue Card

The EU Blue Card is a temporary residence title issued to highly qualified non-nationals for employment purposes. The requirements and conditionals are determined by the EU Blue Card Directive.⁶⁷⁷

4. ICT Card

An ICT card is a residence title for the purpose of an intra-company transfer of a non-national for at least 90 days and up to 3 years. The requirements and conditionals are determined by the ICT Card Directive.⁶⁷⁸

5. Mobile ICT Card

A Mobile ICT Card is a residence title in accordance with Directive (EU) 2014/66 for the purpose of an intra-corporate transfer if the non-national holds an ICT Card issued by another Member State in accordance with Directive (EU) 2014/66 that is valid for the duration of the application procedure.⁶⁷⁹

6. Settlement permit

The settlement permit is a permanent residence title.

7. Permanent residence permit – EU

The Permanent residence permit – EU is a permanent residence title. The requirements and conditionals are determined by the Long-term Residence Directive.⁶⁸⁰

⁶⁷⁵ Federal Law Gazette II p. 509.

⁶⁷⁶ Schengen Visas are issued as per the Regulation (EC) No. 810/2009, OJ L 243, 15.9.2009, p. 1.

⁶⁷⁷ Directive (EU) 2021/1883, OJ L 382, 28.10.2021, p. 1.

⁶⁷⁸ Directive (EU) 2014/66, OJ L 157, 27.5.2014, p. 1.

⁶⁷⁹ Ibid.

⁶⁸⁰ Directive (EU) 2003/109, OJ L 016 23.1.2004, p. 44.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Germany allows the residence of third country nationals for the following purposes⁶⁸¹:

1. Education,
2. Labor,
3. Family Reunion,
4. Humanitarian or political purposes including international protection and
5. Miscellaneous as per authorities' discretion.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

The right to asylum is a right in Germany's Constitution, the Grundgesetz⁶⁸². Persons persecuted for political reasons enjoy the right of asylum in Germany pursuant to Article 16a para. 1 Grundgesetz. However, this constitutional right cannot be invoked by anyone entering from a Member State of the European Union or from another third country in which the application of the Convention Relating to the Status of Refugees and the Convention for the Protection of Human Rights and Fundamental Freedoms is ensured. Given Germany's geographical setting, the constitutional right to asylum is granted rarely.⁶⁸³

In addition to constitutional right to asylum, Germany's system for granting international protection is governed by EU law, namely the Common European Asylum System⁶⁸⁴: A harmonized legal framework created to ensure common standards for asylum seekers in all EU Member States. The Common European Asylum System was recently reformed through the 2024 Pact on Migration and Asylum⁶⁸⁵ and regulates recognition, reception, and procedures.

⁶⁸¹ Cf. footnote 1.

⁶⁸² Federal Law Gazette I p. 1.

⁶⁸³ In January and February 2026, only around 2% of all asylum decision were positive decisions based on Article 16^a Grundgesetz. See Bundesamt für Migration und Flüchtlinge, Asylgeschäftsstatistik, <https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/Asylgeschaeftsstatistik/hkl-statistik-kumuliert-2026.html?nn=284746>.

⁶⁸⁴ See Article 78 Treaty on the Functioning of the European Union.

⁶⁸⁵ For an overview see European Commission: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en.

It is possible to obtain refugee status under § 3 of the Asylum Act⁶⁸⁶, which is based on the Qualification Directive⁶⁸⁷ belonging to the Common European Asylum System. § 3 of the German Asylum Act as well as the Qualification Directive will be replaced by the Qualification Regulation⁶⁸⁸ by June 12, 2026. Both the Qualification Directive as well as the Qualification Regulation refer to the Convention of 28 July 1951 on the Status of Refugees: A foreigner is a refugee if, owing to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or membership of a particular social group, he or she is outside the country of his or her nationality and is unable or, owing to such fear, unwilling to avail himself or herself of the protection of that country, or, being stateless, is outside the country of his or her former habitual residence and is unable or, owing to such fear, unwilling to return to it.

International protection is also granted to individuals eligible for subsidiary protection under § 4 of the Asylum Act, in accordance with the Qualification Directive, soon to be replaced by the Qualification Regulation⁶⁸⁹. A foreigner is eligible for subsidiary protection if substantial grounds have been shown for believing that he or she would face a real risk of serious harm in the country of origin. Serious harm includes the imposition or execution of the death penalty, torture or inhuman or degrading treatment or punishment, or a serious individual threat to the life or physical integrity of a civilian as a result of indiscriminate violence in an international or internal armed conflict.

If refugee status is granted, the refugee receives an extendable residence permit for three years combined with unlimited access to the German labor market. The extendable residence permit for a person eligible for subsidiary protection is initially issued for one year with unlimited access to the labor market.⁶⁹⁰

However, the Federal Republic of Germany processes the application for international protection only if, under the EU's Dublin III Regulation⁶⁹¹, it is the EU Member State responsible for the asylum process. Since the Dublin III Regulation assigns responsibility for examining an asylum application—subject to a few exceptions—to the Member State which the applicant first entered, Germany is, due to its geographical location, *de jure* responsible only in very rare cases. The Dublin III Regulation will be replaced by the Regulation on Asylum and Migration Management⁶⁹² by June 2026, but the Member State of first entry will remain the main criterion for determining responsibility.

Germany has created a legal base for victims of trafficking in persons in § 25 para. 4a Aufenthaltsgesetz. As per this regulation, the victim of a criminal offence under sections 232 to 233a of the Criminal Code (Strafgesetzbuch) is also to be granted a temporary residence permit

⁶⁸⁶ Federal Law Gazette I p. 1798, last amended by Federal Law Gazette I p. 364.

⁶⁸⁷ Directive (EU) 2011/95, OJ L 337 20.12.2011, p. 9.

⁶⁸⁸ Regulation (EU) 2024/1347, OJ L 1347 22.5.2024, p. 34.

⁶⁸⁹ Ibid.

⁶⁹⁰ See §§ 25, 26 of the Residence Act. Under Art. 28 of the Refugee Convention, a refugee travel document is issued to refugees.

⁶⁹¹ Regulation (EU) 604/2013, OJ L 180 29.6.2013, p. 31.

⁶⁹² Regulation (EU) 2024/1351, OJ L 71 22.5.2024, p. 1.

for a temporary stay, even if this person is actually enforceably required to leave the federal territory. The temporary residence permit may only be issued if

- the public prosecutor's office or the criminal court considers the non national's presence in the federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without the non-national's information,
- the non-national has broken off contact to the persons accused of having committed the criminal offence and
- the non-national has declared the willingness to testify as a witness in the criminal proceedings relating to the offence.

After the criminal proceedings have ended, the temporary residence permit is to be extended as a rule if humanitarian or personal reasons or public interests require the non-national's further presence in the federal territory. The residence permit does not entitle the holder to pursue an economic activity; such activity may be permitted.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

The rules on family reunification, which comply with the EU Family Reunification Directive⁶⁹³, are of central importance for actual immigration into the Federal Republic of Germany. However, this directive leaves Member States considerable leeway.⁶⁹⁴ The right to family reunification attempts to strike a balance between the individual right to protection of marriage and family under Article 6 of the German Constitution and preventing the use of public funds as a central guiding principle of immigration law.⁶⁹⁵

A distinction must be made between family reunification with foreigners who have a right of residence and with German citizens. The latter have the right to bring their spouses, minor unmarried children, or a parent to exercise parental care, provided they are still minors themselves.⁶⁹⁶ In contrast, spouses and unmarried minor children of foreigners with residence permits are generally only granted a residence permit if their livelihood is secured and sufficient living space is available.⁶⁹⁷ Under strict conditions, both spouses and children of foreigners with residence permits have the possibility of obtaining an independent right of residence, separate from that of the principal beneficiary, with children who have grown up in the Federal Republic of Germany being given priority.⁶⁹⁸

⁶⁹³ Directive (EU) 2003/86/EC, OJ L 251, 3.10.2003, p. 12.

⁶⁹⁴ Ibid.

⁶⁹⁵ See § 27 Aufenthaltsgesetz.

⁶⁹⁶ See §28 Aufenthaltsgesetz.

⁶⁹⁷ See §§ 29-32 Aufenthaltsgesetz.

⁶⁹⁸ See §§ 31, 34 Aufenthaltsgesetz.

Germany does not grant family reunion permits to unmarried partners which results in a situation where the unmarried partner typically must have an independent legal path to residency (e.g. through employment).

The Residence Act allows family reunion for non-nuclear family members on a discretionary basis if necessary to avoid exceptional hardship. Applicants must prove the circumstances which constitute an exceptional hardship and must cover the subsistence of living for the family member, including health insurance.⁶⁹⁹

In 2024, Germany created a legal option for parents of a highly qualified non-national who was granted a residence title for employment purposes for the first time on or after 1 March 2024. The same applies to the parents of the non-national's spouse, if the spouse resides permanently in the federal territory. The non-national must cover the subsistence of living for the parent, including health insurance.⁷⁰⁰

5. What are the conditions for naturalization in the reviewed state?

The central set of rules governing the law on naturalization of non-nationals in Germany is the Staatsangehörigkeitsgesetz⁷⁰¹. Non-nationals qualify for German citizenship upon application if they meet the following criteria:

- At least 5 years of legal residence in Germany and unlimited right of residence,
- Identity and nationality have been clarified,
- Applicant is committed to the free democratic basic order of the German Constitution and declares that he or she does not pursue or support, or has not pursued or supported, any activities that
 - a) are directed against the free democratic basic order, the existence or security of the Federation or state, or
 - b) aim to unlawfully impair the functioning of the constitutional organs of the Federation or of a Land or their members, or
 - c) endanger the foreign interests of the Federal Republic of Germany through the use of force or preparatory acts aimed at such use, or credibly demonstrates that he or she has renounced his or her former pursuit or support of such endeavors,
- Applicant acknowledges Germany's special historical responsibility for the National Socialist Regime of injustice and its consequences, in particular for the protection of Jewish life, as well as for the peaceful coexistence of peoples and the prohibition of waging a war of aggression,
- Secured livelihood,
- German language skills at least level B 1

⁶⁹⁹ § 36 para. 2 Aufenthaltsgesetz.

⁷⁰⁰ § 36 para. 3 Aufenthaltsgesetz.

⁷⁰¹ Federal Law Gazette 2025 I Nr. 364; last amended by Federal Law Gazette 2026 I Nr. 49.

- Applicant has not been convicted of an unlawful act or been subject to a measure of correction and security due to their incapacity to be held criminally responsible.
- Applicant has knowledge of the legal and social order and living conditions in Germany. Proof of this is typically provided by passing the citizenship test which is a multiple choice test on the legal order, culture and living conditions in Germany.⁷⁰²

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- temporary and permanent resident migrants;*
- regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- refugees;*
- asylum seekers;*
- other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The central set of rules governing the law on non-discrimination is the Allgemeines Gleichbehandlungsgesetz, the General Equal Treatment Act (AGG).⁷⁰³ It covers both German citizens and non-nationals within its scope and prohibits discrimination based on race, ethnic origin, gender, religion, disability, age, or sexual orientation in employment and civil law.

⁷⁰² Einbürgerungstestverordnung, Federal Law Gazette I 1649, last amended by Federal Law Gazette 2024 I Nr. 211.

⁷⁰³ Federal Law Gazette I 1897, last amended by Federal Law Gazette 2023 I Nr. 414.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Many Federal States and municipalities have established integration councils or migration advisory councils, sometimes directly elected by foreign residents and sometimes appointed via migrant organizations. These bodies however have no binding decision-making power but a consultative and representational function.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Individuals in Germany generally enjoy broad political participation rights and civil liberties.⁷⁰⁴ These include:

- Freedom of expression (Art. 5 Basic Law)
- The right to peacefully participate in demonstrations and public assemblies, subject to applicable legal requirements
- Freedom of association and the ability to join organizations, unions, and advocacy groups
- Engagement with NGOs, advocacy groups, and trade unions.

However, it should be noted that certain constitutional rights, such as freedom of assembly under Article 8 and freedom of association under Article 9 of the Grundgesetz, are formally granted to “all Germans” as constitutional rights. Non nationals nevertheless receive substantial protection through other constitutional guarantees as well as on statutory basis.

4. Are there any limitations to non-nationals’ right to buy and own property within the reviewed state?

No.

⁷⁰⁴ See Articles 5, 8, and 9 Grundgesetz.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

The non-national must hold a work permission which is granted in the residence title (“One stop-government principle”).⁷⁰⁵ The eligibility requirements as well as the access to the German labor market depend on the individual status: While e.g. refugees are granted unlimited access to the German labor market upon issuance of their permit, international students with a student permit have a limited access and can work only for 140 days per calendar year.⁷⁰⁶

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies’ employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

No.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Germany generally allows non-nationals to work in most professions, but certain roles and sectors are legally restricted or partially reserved, primarily for reasons of state sovereignty, public authority, and national security (e.g. Bundeswehr or diplomatic staff). The restrictions depend on citizenship (German / EU / third country nationals) and the nature of the role.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

German labor law regulations apply to all persons working on German soil, irrespective of their citizenship.

⁷⁰⁵ See §§4, 4a Residence Act.

⁷⁰⁶ See §16b Residence Act.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Citizenship as such does not confer healthcare entitlements while the immigration and/or insurance status does. Non-nationals who hold a regular residence permit are typically fully integrated into the health insurance system. Health access for asylum seekers and persons obliged to leave the country is separately governed by the Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz)⁷⁰⁷ which provides very limited health services.⁷⁰⁸

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

For children between the age of 6 and 16 years, schooling is compulsory and non-nationals have the same rights and obligations as German citizens. At higher levels, access remains equal, with differences mainly in tuition fees, admission conditions, and residence-law requirements, not in principle of access.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Germany's social security system is primarily insurance-based. Access depends on contributions, not citizenship: Statutory health insurance, pension insurance, unemployment insurance, accident insurance as well as long-term care insurance are granted on equal terms once contributions are paid, regardless of citizenship.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

For legal purposes, "welfare" means tax-financed, non-contributory benefits, mainly:

- Minimum income for job-seekers
- Social assistance for those unable to work
- Housing allowance
- Certain integration and participation benefits

⁷⁰⁷ Federal Law Gazette I 2022, last amended by Federal Law Gazette 2025 I Nr. 363.

⁷⁰⁸ Ibid.

These differ from social insurance benefits (unemployment insurance, pension, health insurance), which are contribution-based. Third country nationals' access to welfare depends on residence status.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Ghana

Author: Mariam Odunayo Nurudeen-Arole

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	Yes	Yes
1967 Protocol to the Convention relating to the Status of Refugees	Yes	Yes
1954 Convention relating to the Status of Stateless Persons	No	No
1961 Convention on the Reduction of Statelessness	No	No
International Covenant on Civil and Political Rights (ICCPR)	Yes	Yes
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	Yes	Yes
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Yes	Yes
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	Yes	No

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	Yes	Yes
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Yes	Yes
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Yes	Yes
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	Yes	Yes
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	Yes	Yes
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes	Yes
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes	Yes
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes	Yes
Convention on the Rights of the Child (CRC)	Yes	Yes
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	Yes	No
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	Yes	Yes
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	Yes	No
Convention on the Rights of Persons with Disabilities (CRPD)	Yes	Yes
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	Yes	Yes
ILO Forced Labour Convention (No. 29)	Yes	Yes
2014 Protocol to the ILO Forced Labour Convention (No. 29)	No	No
ILO Migration for Employment Convention (Revised) (No. 97)	No	No

ILO Equal Remuneration Convention (No. 100)	Yes	Yes
ILO Discrimination (Employment and Occupation) Convention (No. 111)	Yes	Yes
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	No	No
Convention against Transnational Organized Crimes (UNTOC)	No	Yes
Optional Protocol Convention against Transnational Organized Crimes (UNTOC) against the Smuggling of Migrants by Land Sea and Air	No	Yes
Optional Protocol Convention against Transnational Organized Crimes (UNTOC) to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children	No	Yes

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	Yes	Yes
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	Yes	Yes
Convention governing the Specific Aspects of Refugee Problems in Africa	Yes	Yes
African Charter on the Rights and Welfare of the Child	Yes	Yes
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	Yes	No
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	No	No
European Convention on Human Rights (ECHR)	No	No
Protocols to the European Convention on Human Rights (list which ones):	No	No

European Social Charter (ESC)	No	No
European Convention on the Legal Status of Migrant Workers	No	No
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	No	No
American Convention on Human Rights (ACHR)	No	No
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	No	No
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	No	No
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	No	No
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	No	No
Inter-American Convention against All Forms of Discrimination and Intolerance	No	No
Inter-American Convention Protecting the Human Rights of Older Persons	No	No

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Ghana has both the visa and residence permit system. For anyone who wants to enter Ghana, visa is a requirement of entry⁷⁰⁹. (Section 4 (1) Immigration Act 2000 act 573)

The Visa system offers individuals authorization to enter Ghana for various reasons and durations, while the residence permits, in addition to visas, allow for stay for longer duration of time or extended time. Under Section 5 of the Immigration Act 2000, a person must possess a visa or resident permit if such person is not a citizen. Anyone who has a legal visa on entry to Ghana can then apply for a resident permit. The residents permit grants the right to reside or work in Ghana as specified in his passport for the maximum of 8 years and. at the first instance, can only be granted 4 years, which can be renewable (see also Section 13 of Immigration Act). The visa types include visitors⁷¹⁰/Business visas, Students visa, Visa on arrival⁷¹¹, transit visa⁷¹², Re-entry visa⁷¹³, Indefinite Residence permit.⁷¹⁴

Migrants coming to Ghana are required to apply for a visa from either Ghana or from the 56 diplomatic Missions abroad prior to the issuance of the visa⁷¹⁵. Indefinite resident permits as governed by the Regulation 2 to 9 of Immigration Regulation 2001 (L1 1691). A person with a work permit is required to apply for a resident permit in addition to the work permit (visa).

An emergency visa can be obtained on arrival.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas.

⁷⁰⁹ Ghana: Act No. 573 Immigration Act, 2000, 2 February 2000 [https://lawsghana.com/post-1992-legislation/table-of-content/Acts%20of%20Parliament/IMMIGRATION%20ACT,%202000%20\(Act%20573\)/41](https://lawsghana.com/post-1992-legislation/table-of-content/Acts%20of%20Parliament/IMMIGRATION%20ACT,%202000%20(Act%20573)/41)

⁷¹⁰ Ghana: Act No. L1 1691 Immigration Regulation, 2001 Regulation 8 <https://gis.gov.gh/wp-content/uploads/2024/02/LI-1691.pdf>

⁷¹¹ Regulation 4 Immigration Regulations.

⁷¹² Regulation 6 Immigration Regulations.

⁷¹³ Regulation 5 Immigration Regulations.

⁷¹⁴ Immigration Regulation 2001 (L1 1691); <https://gis.gov.gh/getting-a-visa-to-ghana-a-comprehensive-guide/>. See also Regulation 10 Immigration Regulations.

⁷¹⁵ Ghana Immigration Service <https://gis.gov.gh/getting-a-visa-to-ghana-a-comprehensive-guide/>

Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

There are two broad categories of visas. Those issued in Ghana and those issued in the 56 diplomatic missions abroad. Those in Ghana cover single or multiple entry visas that varies from six months to 5 years.

Types of visas in Ghana for extended stay beyond 3 months: 6 months for temporary work visas and 1-year renewable work visa. The residence permit includes a maximum of four years at a time.⁷¹⁶ The residence permit lasts up to 8 years maximum⁷¹⁷. We have the 1) Business Visa; 2) Study Visa; and 3) Work Visa.⁷¹⁸ We also have the residence permits, in Ghana, which include Work and Residence Permits, Dependent Permits for long term residents, and Indefinite Residence permit.⁷¹⁹

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Ghana is a party to the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol.

Ghana is also a party to the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of September 1969. In 1992, Ghana adopted its Refugee Law,⁷²⁰ which is the main legal instrument regulating the recognition of refugee status in the country. The grounds for refugee status as provided in the 1951 Convention are similar to those under the Refugee Law 1992. There is currently little information available as to international protection statuses in Ghana other than refugee status and granting asylum to persons in need of asylum.

The Ghana Refugee Board is the authority in charge of refugee matters.⁷²¹ The GRB is the agency saddled with the responsibility to grant refugee status to person seeking asylum. The Ghana Refugee Board was established by the provisions of section 4 the Refugee Law 1992. Aside from granting asylum, the Board resettles asylum seekers from various countries, such as Liberia, Cote d' Ivoire, Sudan, etc. spread across the regions of Ghana. The Board also provides advice and services for the reception and support of refugees in Ghana and assists refugees in seeking employment and/or education, including for refugee children. As of January 2024, Ghana hosted up to 10,690 registered asylum-seekers from mainly Burkina Faso, Togo,

⁷¹⁶ Section 13 Immigration Act.

⁷¹⁷ Regulation 9 Immigration Regulations.

⁷¹⁸ ⁷¹⁸ Immigration Regulation 2001 (L1 1691); <https://gis.gov.gh/getting-a-visa-to-ghana-a-like-comprehensive-guide/>

⁷¹⁹ Ghana Immigration Service website https://gis.gov.gh/permits/#:~:text=A%20foreign%20national%20can%20apply%20for%20a,Missionaries/NGOs/%20Immigrant%20Quota%20GIPC/Shareholders%20*%20Visa/Permit%20Extension

⁷²⁰ Ghana Refugee Law of 1992, 27 August 1993, <https://gis.gov.gh/wp-content/uploads/2024/02/PNDCL-305D.pdf>

⁷²¹ Ghana Refugee Board website <https://www.mint.gov.gh/agencies/ghana-refugee-board/>

Liberia and Sudan.⁷²² The United Nations High Commissioner for Refugees and the Ghana Refugee Board work hand in hand to achieve a successful refugee system.⁷²³ However, in the course of the research, I found out that, under section 11 of the Refugee law 1992, a person granted refugee status would get an ID Card, Residence Permit and also a UN travel document.

The Procedure under the Refugee Law is as follows: anyone who wants to apply for refugee status, firstly, should apply within 14 days of entering Ghana to the Ghana Refugee Board, which can be done through the nearest immigration office, Police Station or the UNHCR office.

- 1.) The person must provide supporting documents or information to back their claim.
- 2.) The Board will thereafter review the application within 30 days and may invite the asylum seeker for an interview.
- 3) Finally, the board will notify the applicant of their decision to either grant or refuse the application.

The applicant has a right of appeal within 30 days. The Secretary to the Board can either uphold the refusal or reverse the Board's decision. Further steps could be taken by inviting the representative in Ghana of UNHCR to make oral or written representation in the matter; referring the matter back to the Board for further inquiry and investigation to be made; making such further inquiry and investigation into the matter as he thinks necessary. While awaiting the final decision of the Board, the applicant shall be allowed to remain in the country.⁷²⁴

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

It is regulated by the Constitution, Immigration Act, and Immigration Regulations.⁷²⁵ Ghana is keen on uniting family through various of its applicable laws. Section 7 of the Constitution of Ghana states that the following persons can be registered as citizen of Ghana:⁷²⁶

“(1) A woman married to a man who is a citizen of Ghana or a man married to a woman who is a citizen of Ghana may, upon making an application in the manner prescribed by Parliament, be registered as a citizen of Ghana.

(2) Clause (1) of this article applies also to a person who was married to a person who, but for his or her death, would have continued to be a citizen of Ghana under clause (1) of article 6 of this Constitution.

⁷²² <https://www.unhcr.org/africa/countries/ghana>

⁷²³ *ibid*

⁷²⁴ Section 8,9 and 10 Refugee Law 1992 27th August 1993 <https://gis.gov.gh/wp-content/uploads/2024/02/PNDCL-305D.pdf>

⁷²⁵ Immigration Act 2000 <https://ir.parliament.gh/bitstream/handle/123456789/1860/IMMIGRATION%20ACT.pdf?sequence=1&isAllowed=y>

⁷²⁶ Constitution of the Republic of Ghana, 7 January 1993, <https://constitutionnet.org/sites/default/files/Ghana%20Constitution.pdf>

(3) Where the marriage of a woman is annulled after she has been registered as a citizen of Ghana under clause (1) of this article, she shall, unless she renounces that citizenship, continue to be a citizen of Ghana.

Any child of a marriage of a woman registered as a citizen of Ghana under clause (1) of this article to which clause (3) of this article applies, shall continue to be a citizen of Ghana unless he renounces that citizenship.”

By the virtue of the provisions of the Ministry of Interior, requirements for citizenship are that the person must apply after having resided in Ghana for 5 years, especially with an indefinite residence (although in special circumstances a shorter period may apply), and after paying the required fees. While applying, they must attach their spouse’s Ghanaian passport in their applications together with other relevant documents⁷²⁷

Section 16 of the Immigration Act 2000 states:⁷²⁸

“(1) A foreign national married to a citizen of Ghana is entitled to indefinite residence in Ghana in the following circumstances, if that foreign national:

- (a) has resided in Ghana throughout the period of twelve months preceding the date of the application
- (b) and has also resided in Ghana for an aggregate period of not less than two years;
- (c) has not been convicted of any offence and sentenced to a period of imprisonment of twelve months or more;
- (d) intends to reside permanently in Ghana upon the grant of the status; and
- (e) is in possession of a valid residence permit on the date of the application.”

Similarly, the provisions of section 18(2) provide for dependency permit for persons with the indefinite resident permit:

“(2) A non-Ghanaian child or other non-Ghanaian dependant of a person with

(a) indefinite residence status: or

(b) right of abode status, is eligible for a dependency permit.

(3) A dependency permit may on an application be issued by the Director and shall be subject to such conditions as shall be specified therein.

(4) For the purposes of subsection (2) “a child” means a natural or an adopted child under the age of eighteen years.”

Additionally, the granting of citizenship to a parent grants the child the privilege to Citizenship by Registration. According to the Citizenship Act, “The Minister shall register as a citizen of Ghana a child of any person who becomes a citizen of Ghana by registration or naturalization

⁷²⁷ <https://www.mint.gov.gh/e-services-portal/registerationnaturalization-as-citizen-of-ghana>

⁷²⁸ Ghana: ACT no.573 of 2000, Immigration Act, 2 February 2000
<https://ghalii.org/akn/gh/act/2000/573/eng@2000-02-11/source.pdf>

upon application of the parent or guardian of the child”.⁷²⁹ This simply means such child is entitled to citizenship as a result of his parents citizenship status; however, the parent must apply for the child’s citizenship.

5. What are the conditions for naturalization in the reviewed state?

Qualification for naturalization in Ghana is provided by section 14 of the Citizenship Act 2000.⁷³⁰

“(1) Subject to subsection (2) of this section, a person qualifies for naturalization if

- (a).he has resided in Ghana throughout the period of twelve months immediately preceding the date of the application;
- (b).during the seven years immediately preceding the period of twelve months, he has resided in Ghana for periods amounting in the aggregate to not less than five years;
- (c).he is of good character as attested to in writing by two Ghanaians being notaries public, lawyers, or senior public officers;
- (d).he has not been sentenced to any period of imprisonment in Ghana or anywhere for an offence recognised by law in Ghana;
- (e).he is able to speak and understand an indigenous Ghanaian language;
- (f).he is a person who had made or who is capable of making a substantial contribution to the progress or advancement in any area of national activity;
- (g).he is a person who has been assimilated into the Ghanaian way of life or who can easily be so assimilated;
- (h).he intends to reside permanently in Ghana in the event of a certificate being granted to him; and
- (i).he possessed a valid residence permit on the date of his application.

(2) The Minister may in such special circumstances as he thinks fit and with the approval of the President

- (a).allow a continuous period of twelve months ending not more than six months before the date of the application to be reckoned for the purposes of subsection (1)(a) of this section as though it had immediately preceded the date of the application;
- (b).allow residence in an approved country to be reckoned for the purposes of subsection (1)(b) of this section as if it has been residence in Ghana; and
- (c).allow periods of residence earlier than seven years before the date of the application to be reckoned in computing the aggregate period mentioned in subsection (1)(b) of this section.”

⁷²⁹Section 11 of Citizenship Act

⁷³⁰ Citizenship Act,2000 (591) https://citizenshiprightsafrika.org/wp-content/uploads/2016/02/Ghana_Citizenship_Act_with_forms_591_2000.pdf

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. Temporary and permanent resident migrants;*
- b. Regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. Undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Yes, the 1992 Constitution of Ghana prohibits discrimination against any person on the basis of race, gender, religion, colour, ethnic, origin, creed, social or economic status, disability and political affiliation.⁷³¹ This prohibition also applies to the provisions of the Labour Act.⁷³² Discrimination leading to dismissal, on that note, shall be considered an unfair dismissal under the Labour Act. The Act is silent as to whether it covers citizens or non-citizens.

⁷³¹ Article 17(2) of the Ghana Constitution

⁷³² Section 14e of the Labour Act, <https://www.gipc.gov.gh/wp-content/uploads/2023/05/LABOUR-ACT-2003-ACT-651.pdf>.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Political participation is prohibited for non-nationals in Ghana⁷³³. Only citizens are allowed to participate in political activities, including funding political parties' activities.⁷³⁴ Only a citizen may contribute in cash or in kind to the funds of political parties. There are no provisions for foreign nationals to vote or be voted for.⁷³⁵ Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda.

The right to hold some public offices are restricted to citizens alone, additionally, the right to freedom of movement is subject to their rights of residency of status or non-citizens of Ghana (Article 21 of the 1992 Constitution).⁷³⁶

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Aside from the right to vote, non-nationals enjoy similar civil and political rights as nationals. The right to hold some public offices is restricted to citizens alone. Additionally, the right to freedom of movement is subject to their rights of residency for non-citizens of Ghana (Article 21(g) of the 1992 Constitution).⁷³⁷ Additionally, the right to movement is accessible to non-nationals just as its applicable to citizens. However, for non-nationals the movement is subject to his residency or valid visa status. It is noted that the Minister of Interior can designate some area in Ghana as prohibited to foreigners, as stated in section 49 of Immigration Act:

“49. Prohibited Areas

- (1) The Minister may by legislative instrument declare some areas in Ghana as prohibited to foreign nationals.
- (2) A foreign national shall not enter or remain in areas prohibited to foreigners unless he has a valid prohibited area permit granted by the appropriate authority.
- (3) A permit granted under subsection (2) shall be subject to such conditions as may be specified in the permit and prescribed by Regulation 'S' made under section 55 of this Act, and shall be in a prescribed form.”

⁷³³ Article 21(3) of the Ghana Constitution.

⁷³⁴ Article 55(15) of the 1992 Constitution and also Section 23 (1) and Section 24.

⁷³⁵ Article 42 of the 1992 Constitution.

⁷³⁶ Article 21 (1) (g) of the 1992 Constitution

⁷³⁷ Article 21 (1) (g) of the 1992 Constitution

Article 21 of the Constitution affirms the freedom of association, which includes freedom to form or join trade unions or other associations, national or international, for the protection of their interest.⁷³⁸ Additionally, the Labour Act provides the right for every worker regardless of nationality to join trade unions or association Section 79 and 87 of the Labour Act, 2003(Act 651).⁷³⁹

In the case of refugees, section 13 of the Refugee Act grants the Secretary of the Board the right to designate some areas for refugees, which may restrict their movement to those specific areas.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Yes, non-citizens are not entitled to tenure interest in any land in Ghana. However, they can get a lease of up to 50 years,⁷⁴⁰ which means that foreigners are prohibited from owning lands and limited to leasehold of 50 years.⁷⁴¹ Foreigners do not have customary freehold interest regarding skin and stool land since August 1969. Skin and stool land mean lands held in trust by traditional authorities—Kings/Chiefs (Skin) in northern Ghana or Stool occupants in southern Ghana on behalf of their communities.⁷⁴²

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

For a non-national, on the condition that he is granted a work permit and is lawfully resident in Ghana, he is qualified to work or undertake employment, business. Additionally, such position is for the benefit of Ghana⁷⁴³. Non-nationals must apply for a work permit and also apply for approval from an Immigration Quota Committee. Foreign nationals can only be employed based on the stipulation by Immigration Quota Committee as provided by the Immigration Act and the Immigration Regulation.⁷⁴⁴

⁷³⁸ Article 21 (1) (e)

⁷³⁹ Section 79 and 87 of the Labour Act, 2003(Act 651).

⁷⁴⁰ Section 10 Land Act 2020 (ACT 1036) See also Land Rights In GHANA, OSMANU KARIMU AZUMAH, SENDAWULA NOAH, OPEN JOURNAL OF SOCIAL SCIENCES VOL 11 NO.6, 2023.

⁷⁴¹ Section 3(2) Land Act 2020 (ACT 1036) <https://landwise-production.s3.amazonaws.com/2022/06/LAND-ACT-2020-ACT-1036.pdf>

⁷⁴² Hassan, M. 2025. 'Pathways to formal employment in Ghana.' Amahoro Coalition and the Refugee-Led Research Hub, April 2025 p 10. <https://amahorocoalition.com/wp-content/uploads/2025/08/Pathways-to-Employment-Ghana.pdf>
<https://oasl.gov.gh/faqs/#:~:text=Stool%20land%20is%20land%20that%20is%20controlled,community%20or%20the%20captain%20of%20a%20company>

⁷⁴³ Section 27 Immigration Act 2000.

⁷⁴⁴ Regulation 16.

By virtue of Sections 5 and 8 of the Refugee Law, refugees are entitled to employment once granted refugee status.⁷⁴⁵ In this case, they enjoy the same right as a citizen, thereby having access to employment. However, they are required to have a work permit to access formal employment in Ghana, which is equivalent to a resident permit. The permit is free to obtain, and valid for one to two years.⁷⁴⁶

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Yes, according to Section 24 of the Immigration Act, foreign nationals can only be employed based on the stipulation by Immigration Quota Committees. These committees are authorised by section 25-27 of the Immigration Act.⁷⁴⁷ There are no references to refugees in this context.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

There are sectors foreign investors are excluded from participating such as petty trading, operation of Taxi and rental services with fleet fewer than 25 vehicles, lotteries (excluding soccer pools). According to Section 27 of the Ghana Investment Promotions Centre Act 2013 (GIPCA):⁷⁴⁸

“(1) A person who is not a citizen or an enterprise which is not wholly owned by citizen shall not invest or participate in—

- a. the sale of goods or provision of services in a market, petty trading or hawking or selling of goods in a stall at any place;
- b. the operation of taxi or car hire service in an enterprise that has a fleet of less than twenty-five vehicles;
- c. the operation of a beauty salon or a barber shop;
- d. the printing of recharge scratch cards for the use of subscribers of telecommunication services;
- e. the production of exercise books and other basic stationery;
- f. the retail of finished pharmaceutical products;
- g. the production, supply and retail of sachet water; and

⁷⁴⁵ Ibid.

⁷⁴⁶ Hassan, M. 2025. ‘Pathways to formal employment in Ghana.’ Amahoro Coalition and the Refugee-Led Research Hub, April 2025 p 10. <https://amahorocoalition.com/wp-content/uploads/2025/08/Pathways-to-Employment-Ghana.pdf>

⁷⁴⁷ Section 27 Immigration Act 2000.

⁷⁴⁸ <https://www.gipc.gov.gh/wp-content/uploads/2023/04/GHANA-INVESTMENT-PROMOTION-CENTRE-GIPC-ACT-865.pdf>.

h. all aspects of pool betting business and lotteries, except football pool.”

On the one hand, it appears that refugees enjoy almost the same benefits as citizens. They can live, work and own businesses.⁷⁴⁹ The Ghanaian Investment Promotion Centre Act (GIPCA) sets the minimum foreign capital levels for foreigners in wholly owned businesses at \$500,000 and at joint foreigner and Ghanaian owned business at \$200,000. It is to be noted, on the other hand, that there is no explicit distinction between refugees and other foreigners by the GIPCA. Therefore, this can render private refugee owned business illegal. Those that do engage in business are in precarious situation. Their businesses cannot be registered properly and they may be unable to access financial products for their business.⁷⁵⁰

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

As stated earlier, all persons are offered protections by the Constitution and the Labour Act regardless of their citizenship status in Ghana. All workers are deemed to have the same rights. Therefore, all foreign workers are entitled to paid leave, protected from unlawful termination of employment and also provided remedies against unlawful termination. Such rights include paid annual leave under section 20 of the Labour Act, and maternity leave for pregnant workers under Section 57 of Labour Act. In addition, the Labour Act guarantees all employees (workers), whether or not they are foreigners, the right to join unions of their own choice.

Furthermore, Section 30 of the GIPC Act provides the following specific protections for foreigners:

- a. foreign investor, employer or worker are entitled to enjoy the same rights and be subject to the same duties and obligations applicable to citizens;
- b. the Centre, an official agency or any other legal representative of the Centre shall not discriminate against an investor from a particular country or give special treatment to a prospective foreign investor based on that investor’s country of origin or nationality;
- c. a foreign investor is subject to the same laws that apply to domestic enterprises.

⁷⁴⁹ What Ghana can teach us about integrating refugees World Economic Forum Website November 2018 <https://www.weforum.org/stories/2018/11/why-ghana-is-perfect-for-learning-how-to-integrate-refugees/#>

⁷⁵⁰ The United Nations High Commissioner For Refugees (UNCHR), ‘Submission by the United Nations High Commissioner For Refugees For The Office Of High Commissioner For Human Rights’ Compilation Report, Universal Periodic Review: 4th Circle, 42nd Session, July 2022.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

By virtue of section 26 of the National Health Insurance Act, 2012 (NHIA), the national Act insurance scheme applies to all residents of Ghana.⁷⁵¹ Section 1 of the Act provides that the objective of the Authority is to provide universal health insurance coverage to all residents and non-residents of the country. This means residents can register for health insurance, a subsidized health coverage. This does not come without its own challenges, as it requires documents showing one's residency for non-nationals. The law as backed by the Constitution grants access to every resident of Ghana to the right to health. There is no distinction between citizens and non-citizens or refugees. This is reflected in chapter 6, which is the directive principles of state policy, particularly in article 34, 36(10), 37(5) of the Constitution. There is a specific provision of the National Health Insurance Agency (NHIA) ensuring the Board makes the necessary arrangements to assist disadvantaged persons applying for health insurance to facilitate their registrations as members. This is an open-ended option for persons like refugees to explore (my opinion).

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

In accordance with Article 25 of the Constitution, all children shall have access to education:

“(1) All persons shall have the right to equal educational opportunities and facilities and with a view to achieving the full realisation of that right –

- (a).basic education shall be free, compulsory and available to all;
- (b).secondary education in its different forms, including technical and vocational education, shall be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;
- (c).higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular, by progressive introduction of free education;
- (d).functional literacy shall be encouraged or intensified as far as possible;
- (e).the development of a system of schools with adequate facilities at all levels shall be actively pursued.”

The Constitution does not distinguish between migrants and citizens of the country regarding the right to education. All children of school age are ensured of basic education regardless of

⁷⁵¹www.nhis.gov.gh/files/ACT852.pdf

their citizenship status. Access to secondary and higher education are based on financial capacity. Refugees have access to free universal basic education and free senior high school. They also have access to higher education⁷⁵².

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Through the Ghana Card, the National Identity Card, all citizens and foreign nationals resident in Ghana legally and permanently registered under it can access various social services.⁷⁵³

Any foreigner who is resident for at least 90 days can obtain the Non-citizens' Identity card under the Foreigner Identification Management System issued by the National Identification Authority.⁷⁵⁴

In 2022, the Ghanaian government, through the National Identification Authority in collaboration with the Ghana Refugee Board, introduced the registration of refugees for their national identity card in order for them to be included into the social security system of Ghana. With this development, the registered refugees⁷⁵⁵ will have access to social security, such as bank accounts, access to health care, registering sim card amongst others.⁷⁵⁶ The Ghana ID issued to refugees states their refugee status and how long the card is valid for, and it is subject to renewal. The number of refugees with the Ghana card is not available⁷⁵⁷.

Similarly, according to Section 1 of the National Pension Act 2008⁷⁵⁸, there are compulsory national social security for all workers and employees in Ghana, including migrants and citizens. Migrants have access to pension contribution, and they will be eligible for retirement pension. This is further strengthened by the provisions of section 73A of the Pensions Amendment Act 2014, where it is stated that non-Ghanian citizens who contributed to the scheme and intend to emigrate or have emigrated permanently from Ghana would be paid lump sum benefit, where such immigrant qualifies upon his leaving Ghana. Where someone is yet to qualify for pension, he/she will be refunded his/her contribution with interest calculated at 75% of the interest rate of the ninety-one days government treasury bill shall be paid in lump sum. Refugees are included in social security through the Ghana Card, as it is a mandatory requirement for all residents and nationals to access most services and facilities, including

752 Hassan, M. 2025 'Pathways to formal employment in Ghana.' Amahoro Coalition and the Refugee-Led Research Hub, April 2025.

753 <https://nia.gov.gh/service/registration-of-citizens-in-ghana/>

754 <https://nia.gov.gh/service/foreigner-identification-management-systems/>

755 [https://www.myjoyonline.com/nia-begins-issuing-cards-to-refugees-in-ghana/#:~:text=The%20National%20Identification%20Authority%20\(NIA,has%20thus%20commended%20the%20Authority.](https://www.myjoyonline.com/nia-begins-issuing-cards-to-refugees-in-ghana/#:~:text=The%20National%20Identification%20Authority%20(NIA,has%20thus%20commended%20the%20Authority.)

756 Ibid. See also <https://www.youtube.com/watch?v=bUnQMjO8KNA&t=12s>

757 Hassan, M. 2025. 'Pathways to formal employment in Ghana.' Amahoro Coalition and the Refugee-Led Research Hub, April 2025.

758 https://npra.gov.gh/assets/documents/National_Pensions-Amendment_Act2014_Act-.pdf

healthcare, social insurance, driver's license,⁷⁵⁹ etc. The Refugee Board promises more inclusion of refugees in the provision of social services.⁷⁶⁰

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Non-nationals are included in financial empowerment, through programs like the National Financial Inclusion and Development Strategy.⁷⁶¹ However, in terms of financial aid for students, funding is mostly for citizens or, where possible, permanent residents.⁷⁶² In terms of general welfare program for the needy, the Ministry of Gender, Children, and Social Protection offers various social intervention programs for the needy⁷⁶³. The constitutional provisions of the directive principles of the Ghana constitution ensure the welfare of all persons in Ghana.⁷⁶⁴ Since 2008, the Ministry launched its flagship social protection program called 'Livelihood Empowerment Against Poverty' (LEAP) for household with needs. There is no specific response to determine the citizenship status of the beneficiaries. In 2015 it extended to households with children and pregnant women in need.⁷⁶⁵

For refugees, through partnership with the UNCHR Ghana, the government of Ghana has provisions for supporting refugees in households and shelters. They have access to housing in specific camps, such as the Ampian Camp and Fetentaa Refugee Camp. It has been reported that, since 2015, the refugees have access to limited scholarships to permit 20 brilliant refugee students to pursue senior secondary education.⁷⁶⁶ There are opportunities available to access to DAFI (a German sponsored) scholarship for a limited number of refugees.⁷⁶⁷ The Government has reception centres for refugees arriving Ghana and settlement centres providing shelter, food, core relief materials as well as access to health care, education and social welfare. There is little information about these issues, except on various UNCHR websites.⁷⁶⁸

Are there any final observations you would like to make? Please write below.

After a careful examination of the laws and practices in Ghana regarding migrant rights and access to equal opportunities, this study shows that Ghana may be a migrant-friendly country. This is so especially with the consistent inclusion of refugees in social security schemes. This

⁷⁵⁹ Speech of the Chairman of the Ghana Refugee Board Prof.Kenneth Agyemang Attafuaah Excom 2022 <https://www.unchr.org/sites/default/files/legacy-pdf/634531ee7.pdf>

⁷⁶⁰ Ibid.

⁷⁶¹ https://mofep.gov.gh/sites/default/files/acts/NFIDs_Report.pdf

⁷⁶² <https://www.ug.edu.gh/financialaid/>

⁷⁶³ <https://www.mogcsp.gov.gh/department-of-social-welfare/>

⁷⁶⁴ These rights are known as non-political rights and have been introduced in modern constitutions including Ghana Chapter 6, section 9 (2) of the directive principles of the 1992 Constitution.

⁷⁶⁵ UNICEF, GHANA LEAP 1000 PROGRAMME <https://www.unicef.org/innocenti/reports/ghana-leap-1000-programme#>

⁷⁶⁶ <https://data.unhcr.org/fr/documents/download/56123#>

⁷⁶⁷ Ibid.

⁷⁶⁸ Ibid.

is a good initiative, as Ghana is reputed to be one of the leading refugee host countries in Africa.⁷⁶⁹ As of May 2025, Ghana hosted around 1,823,620, registered refugees and asylum-seekers. However, more can be done, as there is a dichotomy between non-nationals and citizens.

More opportunities can be granted non-citizens, as it is applicable in some countries, especially regarding the right to freedom from discrimination as a result of origin. It is noted however that there is limited information online for refugees about the rights and benefits they enjoy in the host country Ghana. Much of the information is available on the UNHCR websites. More could be done, including ensuring refugees are gainfully employed. Instances, where they have to find an employer before the issuance of a work permit should be reviewed. This will reduce the bottleneck while accessing employment for refugees. The restrictions on kinds of jobs that non-citizens can access could also be reviewed, thereby enabling qualified professionals to fill up in demand jobs in Ghana.

⁷⁶⁹ UNHCR. “Ghana: Operational Data Portal.” Accessed on 10, February 2026 <https://data.unhcr.org/en/country/gha>

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Greece

Author: Stefanos Gakis

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	X	X
1967 Protocol to the Convention relating to the Status of Refugees	-----	X
1954 Convention relating to the Status of Stateless Persons	-----	X
1961 Convention on the Reduction of Statelessness	X	X
International Covenant on Civil and Political Rights (ICCPR)	-----	X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	-----	X
International Covenant on Economic, Social and Cultural Rights (ICESCR)	-----	X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	-----	-----

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	-----	-----
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	-----	X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	-----	X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	X	X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Convention on the Rights of the Child (CRC)	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	-----	-----
Convention on the Rights of Persons with Disabilities (CRPD)	X	X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	X	X
ILO Forced Labour Convention (No. 29)	-----	X
2014 Protocol to the ILO Forced Labour Convention (No. 29)	-----	-----
ILO Migration for Employment Convention (Revised) (No. 97)	-----	-----
ILO Equal Remuneration Convention (No. 100)	-----	X
ILO Discrimination (Employment and Occupation) Convention (No. 111)	-----	X

ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	-----	-----

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	-----	-----
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	-----	-----
Convention governing the Specific Aspects of Refugee Problems in Africa	-----	-----
African Charter on the Rights and Welfare of the Child	-----	-----
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	-----	-----
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	-----	-----
European Convention on Human Rights (ECHR)	X	X
Protocols to the European Convention on Human Rights (list which ones):	9,10,12	1,2,3,5,6,7,8,11,14,15,16
European Social Charter (ESC)	X	X
European Convention on the Legal Status of Migrant Workers	-----	-----
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	X	X
American Convention on Human Rights (ACHR)	-----	-----

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	-----	-----
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	-----	-----
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	-----	-----
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	-----	-----
Inter-American Convention against All Forms of Discrimination and Intolerance	-----	-----
Inter-American Convention Protecting the Human Rights of Older Persons	-----	-----

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, New York, 10 December 1962 (signed, not ratified)

- International Convention for the Protection of All Persons from Enforced Disappearance, New York, 20 December 2006

- International Convention for the Suppression of the Traffic in Women and Children, 30 September 1921 – League of Nations (signed, not ratified)

- United Nations Convention against Transnational Organized Crime, Palermo, 15 November 2000

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Palermo, 15 November 2000

- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, New York, 31 May 2001

- Convention on the Prevention and Punishment of the Crime of Genocide, New York, 9 December 1948

- Geneva Convention relative to the Treatment of Prisoners of War, Geneva, 12 August 1949

- Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949

- Convention Relating to the Protection of the Works of Stateless Persons and Refugees, Geneva, 6 September 1952

- Protocol No. 1 to the Universal Copyright Convention, concerning the application of the Convention to the protection of the works of stateless persons and refugees, Geneva, 6 September 1952

- ILO Convention (No. 138) concerning the Minimum Age for Admission to Employment, Geneva, 58th Session of the General Conference, 26 June 1973

- ILO Convention (No. 182) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Geneva, 87th Session of the General Conference, 17 June 1999

- ILO Convention (No. 019) concerning Equality of Treatment for National and Foreign Workers as Regards Workmen's Compensation for Accidents, Geneva, 7th Session of the General Conference, 5 June 1925

- European Convention on the Repatriation of Minors, The Hague, 28 May 1970

- Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005

- Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, Strasbourg, 28 January 2003

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Greece has both visa and residence permit. The system of visas and residence permits in Greece is governed by Law 5038/2023 (Migration Code), and Ministerial Decision 95391/2024 issued by the Ministers of Foreign Affairs and Migration & Asylum.

The purpose of these regulations is to define the conditions for entry and residence for a period exceeding ninety days in Greek territory for third-country nationals, the rights of third-country nationals and, where applicable, those of their family members, as well as the procedure for issuing and renewing residence permits granted by Greece to third-country nationals, and the process for granting them.

A third-country national entering Greek territory must hold a valid travel document recognized by the competent Greek authorities, meeting the criteria set out in Regulation (EU) 2016/399 (Schengen Borders Code).

According to Article 7 of the Law 5038/2023, a national entry visa is issued with a validity period ranging from ninety-one days to one year.

According to Article 8, the right of residence for third-country nationals who legally enter Greek territory for one of the reasons provided in this law is subject to the following conditions:

- a) They must hold a valid travel document recognized by Greece, valid for at least three months beyond the intended date of departure, containing at least two blank pages, and issued within the previous ten years.
- b) They must hold a valid national entry visa for one of the reasons outlined in the present law, unless otherwise specified.
- c) They must not be considered a threat to public order, public security, or international relations, and must not be listed as undesirable in national databases for serious reasons of public order and security for a period exceeding five years.
- d) They must not pose a risk to public health. Diseases that may justify refusal of entry are those listed by the World Health Organization and EU law, as well as other infectious, communicable, or parasitic diseases that require the adoption of protective measures for public health.

According to Article 13, the initial residence permit is valid for three years, with the possibility of renewal for an equal period.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

The aforementioned Law 5038/2023 sets out in its art. 9 the different categories of residence permits:

i. Residence permits for dependent employment (Category “E”)

Subcategories: residence permit for the purpose of highly skilled employment under Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly skilled employment, and repealing Council Directive 2009/50/EC (L 382) (residence permit type "E.1"), residence permit under intra-corporate transfer in accordance with Directive 2014/66/EU of 15 May 2014 of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (L 157), which was incorporated into Greek legislation by Law 4540/2018 (A' 91) (residence permit type "E.2"), residence permit for employment for a special purpose (residence permit type "E.3"), residence permit for employment following recruitment (residence permit type "E.4"), right of residence and employment for holders of a national visa for the purpose of seasonal work (residence title type "E.5"), residence permit for seasonal workers (residence permit type "E.6").

ii. Right of residence and employment for holders of a long-term national entry visa (Category “Z”)

Subcategories: Digital Nomads visa (residence permit type "Z.1"), members of artistic groups (residence permit type "Z.2"), intellectual creators (residence permit type "Z.3"), third-country nationals transferred from an enterprise established in another Member State of the European Union or the European Economic Area for the purpose of providing a service (residence permit type "Z.4"), third-country nationals transferred from an enterprise established in a third country for the purpose of providing a service (residence permit type "Z.5"), leaders of organized tourism groups (residence permit type "Z.6"), third-country nationals applying for admission for athletic training (residence permit type "Z.7"), higher education students participating in

paid internship programs (residence permit type "Z.8"), Australian citizens participating in the Youth Mobility program, pursuant to the Memorandum of Understanding between Greece and Australia (Work and Holiday Visa), ratified by Law 4353/2015 (A' 173) (residence permit type "Z.9"), flight, technical, and administrative personnel entering the country to meet wildfire-fighting needs during the fire season (residence permit type "Z.10"), scholarship holders of the American Educational Foundation of Greece (Fulbright Foundation) (residence permit type "Z.11"), third-country nationals applying for admission to study or become acquainted with the monastic life of Mount Athos or monastic life in general (residence permit type "Z.12").

iii. Residence permits for family reasons (Category "O")

Subcategories: residence permit for third-country nationals for family reunification pursuant to Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (L 251), which was transposed into Greek legislation by Presidential Decree 131/2006 (A' 143) (residence permit type "O.1"), autonomous residence permit for family members under Directive 2003/86/EC and for family members of a Greek citizen who meet the conditions for the granting of an autonomous residence permit (residence permit type "O.2"), residence card for family members of a Greek citizen (spouse, parents, children, parents and siblings of underage Greek nationals) (residence permit type "O.3").

iv. Residence permits for investment purposes (Category "B")

Subcategories: residence permit for strategic investors (residence permit type "B1"), residence permit for making an investment through the establishment and operation of a business (individuals who are board members, shareholders-partners) (residence permit type "B2"), residence permit for executives of companies established in Greece, subsidiaries of foreign companies established in Greece engaged in commercial activities (shareholders-partners, board members, managers, legal representatives) (residence permit type "B3"), residence permit for financial investments (residence permit type "B4"), residence permit for real estate investors (permanent residence permit for investors) (residence permit type "B5"), residence permit for making an investment in a startup business (residence permit type "B6").

v. Residence permits for educational purposes (Category "H")

Subcategories: residence permit for studies under Law 4666/2020 (A' 35) amending Law 4251/2014 (A' 80) to align Greek legislation with Directive (EU) 2016/801 of the European Parliament and Council, dated May 11, 2016, concerning the conditions for entry and residence of third-country nationals for research, studies, internships, voluntary service, student exchanges, educational programs, and employment of internal unpaid helpers (au pair) (L 132) (residence permit type "H.1"), residence permit for voluntary service under Directive (EU) 2016/801 (residence permit type "H.2"), residence permit for research under Directive (EU) 2016/801 (residence permit type "H.3"), national entry visa allowing temporary residence for internships under Directive (EU) 2016/801 (residence permit type "H.4"), residence permit for professional training (attending colleges, Vocational Training Institutes, Vocational Training

Schools, and Lifelong Learning Centers) (residence permit type "H.5"), national entry visa allowing residence for third-country nationals working in an enterprise established in a third country or another EU or EEA member state, participating in study programs in colleges that provide exclusively education based on certification and franchising agreements with higher education institutions abroad, recognized by the relevant authorities of the country where they are located (residence permit type "H.6"), residence permit for scholarship holders and participants in special programs (such as ERASMUS and Foundation for State Scholarships recipients) (residence permit type "H.7"), national entry visa allowing the residence of students from foreign higher education institutions, participating in summer study programs under Article 90 of Law 4692/2020 (A' 111) (residence permit type "H.8"), residence permit for attending schools and specialized schools of the Armed Forces, Security Forces, or the Merchant Navy academies and schools, schools for training aircraft cabin crew, engineers, and operators, at the Athoniada Ecclesiastical Academy of Mount Athos, musical educational institutions, for learning the Greek language at a teaching center or similar body of a higher education institution (residence permit type "H.9"), residence permit for acquiring a medical specialty (residence permit type "H.10").

vi. Residence permits for humanitarian and exceptional reasons (Category "A")

Subcategories: residence permit, on a case-by-case basis (ad hoc), for humanitarian reasons, particularly for third-country nationals who are victims and essential witnesses of criminal acts, victims of domestic violence, victims of racially motivated crimes, individuals suffering from severe health issues, victims of workplace accidents, third-country nationals who are legally participating in an approved therapeutic program for mental addiction, and third-country nationals who, at the risk of their lives, performed acts of social virtue, contribution, and solidarity that promote the values of humanitarianism (residence permit type "A.1"), residence permit for victims of human trafficking falling under the provisions of the Palermo Protocol, ratified by Law 3875/2010 (A' 158), and not falling under Articles 135 to 142 of this law (residence permit type "A.2"), residence permit for third-country nationals who were employed under particularly abusive working conditions or as minors, according to Article 89 of Law 4052/2012 (A' 41) (residence permit type "A.3"), residence permit for adults unable to manage their own affairs due to health reasons or minors who demonstrably require protective measures and are housed in institutions or other legal entities with a public benefit purpose, provided that their return to a safe environment is impossible, minors whose custody has been assigned by a Greek court or a foreign court recognized by the Greek authorities, to Greek families or families of third-country nationals with legal residence in the country, or for whom an adoption process is pending before the Greek authorities, as well as minors placed in foster care either by a court decision or by a written agreement of the natural parents or the guardian or the organization that has custody of the minor with the foster parents (residence permit type "A.4"), residence permit for minors housed in orphanages under the supervision of relevant ministries (residence permit type "A.5"), residence permit for third-country nationals for exceptional reasons (residence permit type "A.6"), residence permits for victims of human trafficking or illegal immigration trafficking under Directive 2004/81/EC (residence permit type "A.7").

vii. Long-term residence permits (Category “M”)

Subcategories: residence permit for long-term residents under Directive 2003/109/EC of the Council of November 25, 2003, on the status of third-country nationals who are long-term residents (L 16) (residence permit type "M.1"), residence permit for a duration of ten years (residence permit type "M.2").

viii. EU citizens

Subcategories: residence permits for European Union citizens and their family members under Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which was transposed into Greek legislation by Presidential Decree 106/2007 (Government Gazette A' 135) (category "N").

ix. Residence permits for other reasons (Category “I”)

Subcategories: residence permits for the service of public interest (residence permit type “I.1”), residence permits for adult children over twenty years of age of members of the diplomatic and the administrative and technical staff of a diplomatic mission, provided they reside with their parents; for adult children over twenty years of age of consular officers and specialized consular employees serving in Greece; as well as for dependent first-degree ascendant family members of the diplomatic and administrative and technical staff of a diplomatic mission, and consular officers and specialized consular employees serving in Greece (residence permit type “I.2”); residence permits for individuals working as private servants of members of diplomatic missions, in accordance with point (h) of Article 1 of the 1961 Vienna Convention on Diplomatic Relations, ratified by Legislative Decree 503/1970 (Government Gazette A' 108), who are abroad and are being invited to Greece (residence permit type “I.3”); residence permits for receiving medical, nursing, and palliative care (residence permit type “I.4”); residence permits for Canadian citizens participating in the Youth Mobility Program under the Greece–Canada Agreement (Work and Holiday Visa), ratified by Law 4091/2012 (residence permit type “I.5”); residence permits for foreign press correspondents (residence permit type “I.6”); residence permits for studying or becoming acquainted with the monastic life of Mount Athos or with monasticism in general (residence permit type “I.7”); residence permits for third-country nationals with sufficient means of subsistence (residence permit type “I.8”).

x. Residence permits for reasons of international and temporary protection (Category “P”)

Subcategories: refugee residence permits (residence permit type “P.1”), residence permits for beneficiaries of subsidiary protection (residence permit type “P.2”), residence permits for temporary protection (residence permit type “P.3”).

xi. Residence permits for ethnic Greeks (Category “Y”)

Subcategories: residence permits for ethnic Greeks (category “Y”), residence permit for ethnic Greeks who cannot be included under the regulatory framework for ethnic Greeks originating from Albania, Turkey, or countries of the former U.S.S.R. (residence permit type “Y.1”), residence permits for ethnic Greeks originating from Albania, Turkey, and the former U.S.S.R. (residence permit type “Y.2”), residence permit for family members of ethnic Greeks from the countries of the former U.S.S.R. (residence permit type “Y.3”).

xii. Special certificate of lawful residence under paragraph 4 of Article 16 (residence title type “X”)

Granted to a third-country national for whom a suspension decision or temporary suspension order has been issued by the Administrative Court of First Instance regarding an administrative act against which an annulment application has been filed, concerning the rejection of a residence permit renewal request and the revocation of an already issued residence permit.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Greece applies European Union law regarding granting international protection, including refugee status, subsidiary protection, and temporary protection. Although the Greek Constitution does not explicitly recognize the right to constitutional asylum, national legislation provides for a special residence permit on humanitarian grounds, as well as for victims of human trafficking or migrant smuggling. The victims cooperation in this last case is not a condition *sine qua non* and the application for this permit is free of charge.

Relevant legislation in this field is the Law 4939/2022 (Code of Legislation on the Reception, International Protection of Third-Country Nationals and Stateless Persons, and Temporary Protection in the Event of a Mass Influx of Displaced Foreign Nationals) which transposes EU directives in the field.

Grounds for each type of protection can be found to articles detailing residence permits provided by Greek legislation under the aforementioned Law 5038/2023, briefly presented below with particular emphasis on national grounds of protection (humanitarian reasons).

According to Article 164, a refugee residence permit (Type "P.1") is granted to a third-country national or stateless person who is recognized as a refugee. It is issued by the competent Authority for the Reception and Examination of an Application for International Protection, as defined in point (iz) of Article 1 of Law 4939/2022. The residence permit is valid for three years and is renewable by decision of the Head of the Regional Asylum Office, upon application by the beneficiary.

Article 165 provides for a subsidiary protection residence permit (Type "P.2"). A third-country national or stateless person recognized as a beneficiary of subsidiary protection is granted a residence permit (Type "RP2") by the same competent Authority, subject to paragraph 3 of

Article 20 of the same law. The permit is valid for one year and may be renewed for two additional years, following re-evaluation, by decision of the Head of the Regional Asylum Office, upon application by the beneficiary.

Article 166 provides for a temporary protection residence permit (Type "P.3"). Beneficiaries of temporary protection, in accordance with Articles 119 to 142 of Law 4939/2022, and for as long as they remain under this status, are granted a residence permit (Type "R.3") free of charge. This permit is issued by the competent local services of the Asylum Service. Individuals admitted into the country for the purpose of receiving temporary protection are provided with all necessary facilitation for obtaining an entry visa, which includes a transit visa. These visas are also issued free of charge.

Article 134 provides for residence permits on humanitarian and exceptional grounds (Type "A"). By decision of the Minister of Migration and Asylum, an ad hoc residence permit for humanitarian reasons (Type "A.1" – Ad Hoc Residence Permit) may be granted to third-country nationals residing in Greece. This permit includes access to the labor market and is particularly intended for:

- victims and essential witnesses of criminal acts,
- victims of domestic violence,
- victims of crimes with racist motives,
- individuals with serious health conditions,
- victims of work-related accidents,
- persons enrolled in an approved treatment program for mental health or addiction,
- and third-country nationals who, at the risk of their own lives, have performed acts of social virtue, solidarity, or humanitarian value.

The Minister of Migration and Asylum may refer such cases to the Ministry's Migration Committee for an advisory opinion.

According to the same article, by decision of the Secretary of the Decentralized Administration, a residence permit (Type "A.4") for humanitarian reasons may be granted to:

- adult third-country nationals unable to manage their own affairs due to health reasons,
- minors demonstrably in need of protective measures and hosted by institutions or other legal entities of public benefit, where return to a safe environment is impossible,
- minors under the custody of a Greek or recognized foreign court,
- families of Greek citizens or legally residing third-country nationals,
- children under adoption proceedings before Greek authorities,
- and minor third-country nationals placed with foster families by court order or formal agreement with legal guardians or institutions holding custody.

Also by decision of the Secretary of the Decentralized Administration, a residence permit (Type "A.5") may be granted to minors residing in boarding schools operating under the supervision of competent ministries.

Finally, according to Article 138, a residence permit (Type "A.7") is granted to a third-country national identified as a victim of human trafficking or migrant smuggling, by an official act of

the competent Public Prosecutor and following a relevant application submitted either in person or via the Prosecutor. This is in accordance with Article 8 of Directive 2004/81/EC.

On two occasions, Greece has passed legislation suspending the filing of asylum applications and allowing for the immediate return of asylum seekers to their country of origin without further examination of their claims. The first instance was in March 2020, with the Act of Legislative Content on the Suspension of the Submission of Asylum Applications (2 March 2020, A' 45). The second was in July 2025, pursuant to Article 79(1) of Law 5218/2025, ΦΕΚ Α 125/14.07.2025. In both cases Greece argued that it was facing an emergency including an instrumentalization of migrants either from third countries or from smugglers.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Family reunification in Greek legislation takes three types corresponding to three residence permits, all regulated by Law 5038/2023. The first type depends on the sponsor and is regulated by articles 83 to 89. The second type concerns autonomous residence permit explained by articles 90-91, whereas article 93 regulates the third type, concerning family members of a Greek national.

Articles 83 and 84 provide for the scope and conditions of family reunification (Articles 3, 5, 7, and 8 of Directive 2003/86). They concern sponsors, third-country nationals (non-EU) who hold a residence permit issued by the competent Greek authorities, valid for at least two years, which allows them to acquire the right to permanent residence, provided that their family members are also third-country nationals, regardless of their status. Family members concerned are the spouse of the sponsor, provided that they have reached the age of eighteen, as well as their unmarried common children under the age of eighteen—including those who have been lawfully adopted in Greece by court decision or by a foreign court decision that is enforceable in Greece—and the other unmarried children under the age of eighteen of the sponsor or of the other spouse, including those who have been adopted as described above, provided that parental custody has been lawfully assigned: for the sponsor's children, to the sponsor; and for the children of the other spouse, to that spouse. In cases of polygamy, if the sponsor already has a spouse living with them in Greece, family reunification with another spouse is not permitted. Family reunification of the sponsor's minor children with another spouse is not permitted, except in cases where the sponsor has been legally granted custody. Other family members such as adult children, parents, siblings, nieces and nephews cannot be included in the family reunification procedure under Greek Law 5038/2023, art. 4(α) and (β). This is the case even though Directive 2003/86/EC, art. 4(2) and (3) explicitly gives Member States the discretion to admit these categories of family members if they wish. Finally, family reunification is not allowed where partners are not formally married be them homosexual or heterosexual.

The application is submitted and examined when these family members reside outside the Greek territory. Any stay of these members in the Greek territory prior to the submission of the application for family reunification does not constitute a reason to prevent the submission of

the application. In order to exercise this right, the sponsor must prove the family relationship with the family members for whom reunification in Greece is requested and must also possess accommodation adequate to meet the needs of themselves and their family members, a stable and regular personal income sufficient to cover their own and their family's needs, which does not derive from recourse to the country's social assistance system, and full health insurance covering all risks normally covered for the corresponding categories of national workers, which also covers their family members. The income must not be less than the annual net income of a person paid the minimum wage, according to national legislation, increased by twenty percent for the spouse and fifteen percent for each child.

According to Article 87, family members are granted an initial residence permit with an expiry date matching that of the sponsor's residence permit. Upon renewal, the residence permit of the family members follows the status of the sponsor's permit. If the sponsor obtains long-term resident status, the residence permit of the family members is renewed every three years.

Article 89 provides that the sponsor's family members have equal rights of access to education, to dependent employment, to vocational guidance, basic and further training, as well as retraining.

Article 90 forms the basis for granting an autonomous residence permit to family members (residence permit type "O.2") (Article 15 of Directive 2003/86). At the latest after five years of residence in Greece, and provided that the family member has not been granted a residence permit for other reasons beyond family reunification, the spouse or partner and the child who has reached adulthood are entitled, upon request, to obtain an autonomous residence permit in Greece. An autonomous residence permit may also be granted to persons who entered the country through family reunification in the following cases: a. death of the sponsor, provided the family members have resided in the country for at least one year prior to their death, b. in the event of divorce or annulment of marriage or proven termination of marital cohabitation, provided that: the marriage lasted, until the initiation of divorce proceedings or the dissolution of the marriage in the case of consensual divorce, in accordance with Article 1441 of the Civil Code, or annulment of the marriage or proven termination of cohabitation, for at least three years, one of which was spent in the country, or particularly difficult circumstances exist, such as when the family member was a victim of domestic violence during the marriage.

The duration of the autonomous residence permit cannot exceed three years. For children reaching adulthood, the autonomous residence permit is for three years and is renewed for another three years, requiring only the presentation of the previous autonomous permit. Further renewal is not permitted, and the holder may apply for a change in the category of residence permit. The autonomous residence permit grants its holder the right to immediate access to dependent employment, as well as to education at any level.

Article 92 regulates the cases of family reunification with the establishment of a family in Greece. In cases of marriage or signing of a cohabitation agreement in Greece between third-country nationals residing in the country with a residence permit, one of the spouses or partners and their family members, who are already lawfully residing in the country, may be granted a residence permit for family reunification according to this provision.

Finally, Article 93 concerns the granting of a Residence Card to family members of a Greek citizen (residence permit type “O.3”). Third-country nationals who are family members of a Greek citizen, in accordance with point 1z’ of Article 4, and who enter Greece with a uniform visa or a limited territorial validity visa, where required, pursuant to Article 3 of Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 on the list of third countries whose nationals are subject to or exempt from the visa requirement for crossing the external borders of Member States (L 303), are granted a “Residence Card of a family member of a Greek citizen” (residence permit type “O.3”), provided they reside in the country on a stable basis. The Residence Card (residence permit type “O.3”) of paragraph 1 is also granted to parents of minor Greek citizens residing in Greece, regardless of how their children acquired Greek citizenship. The same Residence Card is also granted to minor siblings of the aforementioned Greek citizens. The Residence Card is valid for five (5) years. Upon expiry, the Residence Card is automatically converted into a ten-year residence permit (residence permit type “M.2”) of Article 161.

Family members of a Greek citizen who are third-country nationals may apply to fall under Article 90 and the residence permit category “O.2” due to the sponsor’s death, provided they have resided in the country for at least one year prior to the death, a final divorce or annulment judgment, or dissolution of the cohabitation agreement, provided the marriage or cohabitation agreement lasted, until the date of filing the divorce or annulment petition or the dissolution of the agreement, for at least three years, one of which was spent in Greece, or in case of particularly difficult circumstances, such as when the family member became a victim of domestic violence during the marriage or the cohabitation.

5. What are the conditions for naturalization in the reviewed state?

The conditions for naturalization in Greece are regulated by Law 3284/2004 (Code of Greek Citizenship) and are divided into formal and substantive conditions.

According to the *formal conditions* for naturalization, described in Article 5, a foreign national who wishes to become a Greek citizen through naturalization must:

- a. Be an adult at the time of submitting the naturalization declaration.
- b. Not have been irrevocably convicted of an intentional offense within the ten years preceding the submission of the naturalization application, with a custodial sentence of at least one year, or at any time, with a custodial sentence of at least six months, for the following crimes: offenses against the political system, treason, intentional homicide, grievous bodily harm, crimes related to drug trafficking and dealing, money laundering, international financial crimes, cybercrimes, currency-related crimes, crimes related to child trafficking, child prostitution and child pornography (Law 3625/2007), participation in or membership of a criminal organization (as defined in Article 187 of the Penal Code), crimes under Article 187A of the Penal Code, resisting authority, child abduction, crimes against sexual freedom and economic exploitation of sexual life, theft, robbery, fraud, embezzlement, extortion, usury, violation of the middlemen law, forgery, false certification, obtaining a false certification by fraud, slander, smuggling,

crimes related to weapons, antiquities, or the illegal transport, facilitation, or housing of migrants without valid residence permits in Greece.

A criminal conviction of a foreign national, as outlined above, even if the sentence has been suspended, remains an obstacle to acquiring Greek citizenship through naturalization, even after the suspension period ends—unless the sentence is lifted or revoked.

c. Not be under deportation proceedings or have any other pending issue related to their legal residence status in Greece.

d. Have legally resided in Greece for seven consecutive years prior to submitting the naturalization application. Time spent in Greece as a diplomatic or administrative official of a foreign country does not count toward the required legal residence period.

For the following categories, at least three consecutive years of legal residence is sufficient:

- Citizens of European Union member states,
- Spouses of a Greek man or woman with a child,
- Those who have parental responsibility for a child with Greek citizenship born in Greece,
- Stateless persons.

For spouses of Greek diplomatic staff and employees of the Ministry of Foreign Affairs serving abroad, the time spent abroad due to the Greek spouse's service also counts, as long as the applicant has spent at least one year living in Greece at any time.

For ethnic Greeks and those who were born and continuously reside in Greece, the seven-year residence requirement does not apply.

e. Must possess one of the following types of legal residence permits:

- Long-term resident permit, under Presidential Decree 150/2006,
- Certificate or other residence title granted to EU or EFTA nationals under Presidential Decree 106/2007,
- Residence permit issued to family members of Greek or EU citizens or to parents of minor Greek citizens under Law 3386/2005, Articles 61, 63, and 94,
- Refugee status or subsidiary protection permit (including family members), as provided by Presidential Decrees 61/1999, 90/2008, 96/2008, 167/2008, and 81/2009, as amended,
- Travel documents or special identification cards issued under the 1954 New York Convention on Stateless Persons (ratified by Law 139/1975),
- Any residence permit for ethnic Greeks, except the Special Identity Card for Ethnic Greeks,
- Second-generation residence permit under Article 108 of Law 4251/2014 (Gov. Gazette 80 A),
- Permanent or 10-year residence permit under Article 22(2) of Law 2910/2001 (as amended),

- Investment activity residence permit under Article 16 of Law 4251/2014, excluding executive staff under Ministerial Decision 53969/22.10.2014, and residence permits for property owners or permanent investors under Law 3386/2005 and Law 4251/2014,
- Residence permit for UK nationals and their family members falling under Article 10 of the Withdrawal Agreement between the UK and the EU, issued under Ministerial Decision 4000/1/113-a' (Gov. Gazette 4610 B/2020).

Beyond the formal requirements of Article 5, Article 5A sets out the *substantive conditions* for naturalization, which state that a foreigner seeking Greek citizenship must:

- Have sufficient knowledge of the Greek language, to fulfill the obligations arising from Greek citizenship,
- Have adequate knowledge of Greek history, geography, culture, customs, and the functioning of Greek political institutions,
- Be integrated into the economic and social life of the country, having made Greece the continuous center of their vital interests.

For the determination of the applicant's economic integration, the existence of stable employment in the Country and their overall economic activity are taken into account, as well as the consistent fulfillment of their tax and insurance obligations toward the State.

In order to prove fulfillment of the first and second substantive condition, the applicant is required to take a written examination according to art. 7 of Law 3284/2004. For the determination of the applicant's social integration, particular consideration is given to the establishment of a familial bond with a Greek citizen, their familiarity with the customs and traditions of Greek society, and their participation in volunteer activities, sports teams, municipal activities, and civil society events.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- temporary and permanent resident migrants;*
- regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- refugees;*
- asylum seekers;*

f. *other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Greece has a domestic legal framework on non-discrimination that covers both nationals and non-nationals. This framework is aligned with European Union (EU) law and international human rights standards. Article 4 of the Greek Constitution guarantees equality before the law while article 5(2) states that every person in Greece shall enjoy full protection of their life, honor, and freedom, without discrimination on the basis of nationality, race, language, or religious or political beliefs. Law 4443/2016 is the main anti-discrimination law in Greece implementing EU directives such as Directive 2000/43/EC on racial and ethnic discrimination and Directive 2000/78/EC on equal treatment in employment and occupation. It covers discrimination in employment, education, social protection, access to goods and services, and housing and applies to both public and private sectors. Crucially, it protects all persons, including non-nationals, such as migrants, refugees, and asylum seekers, from discrimination based on race or ethnic origin, religion or belief, disability, age, sexual orientation, gender identity or expression and other protected characteristics.

For temporary and permanent resident migrants, Greece offers protection under both domestic and EU-derived legislation. Law 4443/2016, which implements EU Directives 2000/43/EC and 2000/78/EC, prohibits direct and indirect discrimination on grounds such as race, ethnic origin, religion, disability, age, and sexual orientation. This law applies in areas like employment, education, access to goods and services, and social protection, and generally does not distinguish between nationals and legally residing migrants. In addition, Greece's Migration Code (Law 5038/2023) grants permanent and temporary residents certain rights equal to those of Greek nationals, particularly in employment, education, and access to social services (art. 21A and 21B).

Migrants who benefit from more favourable treatment based on their nationality, such as EU citizens and their family members, enjoy a higher level of protection. As an EU member state, Greece applies the rights established under EU free movement law, especially Directive 2004/38/EC, which ensures equal treatment for EU citizens in employment, social benefits, healthcare, housing, and education. These individuals are effectively treated as nationals in most areas of public life.

Undocumented migrants are not expressly included in the scope of Greece's main anti-discrimination laws, meaning they do not enjoy full legal protection against discrimination in areas like employment, housing, or social security. Nonetheless, certain minimum rights are

still recognized. For example, Greek law guarantees undocumented migrants access to emergency and basic healthcare (under Law 4368/2016), protection against hate crimes and racist violence (Law 4285/2014), and the right of all children to attend school regardless of legal status (Law 2910/2001, Article 40(1), superseded by Code of Migration but still applicable in practice). Additionally, labor legislation allows undocumented workers to file claims for unpaid wages or workplace abuse, even though they do not have formal work authorization (art. 83 of Law 4052/2012). Despite these safeguards, the absence of a specific anti-discrimination framework for undocumented persons limits their ability to seek redress or claim equal treatment in most aspects of life.

Refugees in Greece are entitled to equal treatment with Greek nationals in several key areas, based mainly on Law 4939/2022, which codifies the rights of persons granted refugee status. Article 26 and subsequent provisions ensure that recognized refugees enjoy equal treatment with Greek citizens in employment, education, healthcare, access to public housing, and social security.

According to Article 4 of Law 4939/2022 (General Principles), all provisions of the law are to be applied without discrimination on grounds such as race, nationality, ethnic or social origin, religion or belief, political or other opinion, gender, sexual orientation, age, disability, or other personal status. This article directly applies to asylum seekers. Thus, asylum seekers have the legal right not to be discriminated against in the procedures and reception conditions that govern their stay while their application is pending.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Political participation for non-nationals in Greece is generally limited and tightly regulated, with the legal framework primarily reserving political rights—such as the right to vote or stand for public office—for Greek citizens. According to the Greek Constitution, political rights are inherently linked to citizenship. This means that non-Greek nationals, including legally residing migrants, refugees, and asylum seekers, are excluded from participating in national elections and from holding political office at any level.

The main exception applies to EU citizens who reside in Greece. In line with Directive 94/80/EC and Directive 93/109/EC, which Greece has transposed into its domestic legal order, EU nationals legally residing in Greece have the right to vote and stand as candidates in municipal and European Parliament elections, but not in national parliamentary or presidential elections (Presidential Decree 133/1997 and Law 3852/2010).

Third-country nationals, however, including long-term residents and those with refugee status or subsidiary protection, are entirely excluded from voting or standing for election, both at the local and national levels. A previous attempt to extend local voting rights to non-EU nationals under Law 3838/2010 (also known as the "Ragousis Law") was overturned by the Greek

Council of State in its decision 460/2013, on the grounds that political rights are reserved exclusively for Greek citizens.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Aside from voting rights, there are minimal distinctions in the enjoyment of civil and political rights between Greek nationals and non-nationals in Greece, since international obligations have superseded restrictive constitutional provisions such as article 11 which only guarantees the right of assembly to Greeks.

A notable example are Turkish citizens visiting select Eastern Aegean Greek islands through the facilitated visa scheme. Their movement within Greek territory is limited in two regards. Firstly, it only concerns 12 islands in Eastern Aegean. A Turkish citizen may only apply for one island at a time and cannot circulate to the rest of the Greek territory. Secondly, this type of visa is limited to seven days and at predefined periods of the year.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

While non-nationals generally have the right to buy and own property in Greece, there are some important limitations, particularly related to national security, location, and nationality of the buyer. These limitations are mostly defined in Law 1892/1990, Article 24, and relevant ministerial decisions, and apply to both EU and non-EU nationals under specific conditions. Foreign nationals—regardless of whether they are from the EU or third countries—can purchase and own real estate in Greece. There is no general nationality-based restriction on the right to property under the Greek Constitution (Article 17), and property transactions are generally subject to civil law rules and registration with the national cadastre.

The main legal restriction comes from articles 24-32 of Law 1892/1990, which designates certain areas as border zones or national security zones. These include: Eastern Aegean islands (e.g., Lesbos, Chios, Samos, Rhodes, Kastellorizo), northern border areas (e.g., parts of Evros, Florina, Kastoria) and some islands or coastal areas near Turkey or Albania. In these zones non-EU citizens must obtain special permission from the Ministry of National Defence to acquire property. EU citizens were previously also subject to this restriction, but after Greece's EU accession and several legal reforms, EU nationals are generally exempt, unless the area is of exceptional military sensitivity.

This permit is issued after consultation with military and security authorities and is intended to protect national defense interests.

If the property is in a restricted zone, non-EU buyers must submit an application to the Ministry of National Defence, provide documents regarding the property, their nationality, and intended use and undergo a security review.

Purchasing property without this permit may lead to nullification of the property transfer, administrative fines, and potential criminal liability for falsification or unauthorized acquisition.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

In Greece, non-nationals may engage in formal employment only if they meet the legal requirements established by the country's immigration framework. The primary legislation governing these matters is Law 5038/2023, which replaced the earlier Immigration Code (Law 4251/2014). This law sets out the conditions under which third-country nationals, EU citizens, and beneficiaries of international protection may legally work in Greece.

For third-country nationals (i.e., non-EU/EEA/Swiss citizens), formal employment is permitted only if the individual holds a valid residence permit that explicitly authorizes access to the labor market. The process typically begins with the issuance of a national visa (type D) for employment purposes, in accordance with article 9 of Law 5038/2023. Upon arrival in Greece, the individual must apply for a residence permit, which is granted based on various categories such as salaried employment, seasonal work, self-employment, or highly skilled labor (such as the EU Blue Card system). These residence permits are regulated in Articles 28 to 52 of Law 5038/2023.

Third-country nationals are allowed to work only in the specific occupation and geographic region for which their permit has been issued. Changing jobs or employers often requires official approval or amendment of the residence permit. Moreover, both the employer and the employee must comply with the requirements of labor law, including social insurance contributions and registration with tax authorities.

In contrast, EU citizens and nationals of EEA countries or Switzerland enjoy free movement and employment rights in Greece under Presidential Decree 106/2007, which implements Directive 2004/38/EC. They do not require a work permit and can engage in employment on equal terms with Greek nationals. They are, however, required to register with the competent authorities if they remain in Greece for more than three months.

For beneficiaries of international protection, such as recognized refugees and individuals granted subsidiary protection, Article 26 of Law 4939/2022 guarantees the right to access the labor market without the need for additional permits. These individuals may engage in dependent employment or self-employment under the same conditions as Greek citizens. Their residence permit automatically includes the right to work.

As for asylum seekers, article 57 of Law 4939/2022 provides that they may access formal employment six months after submitting an asylum application, provided that their case has not yet been decided and the application is still pending. The right to work must be indicated on the applicant's Asylum Seeker Card, and the card must be valid at the time of employment.

Finally, undocumented migrants are not legally permitted to work in Greece, and employers who hire them are subject to administrative and financial penalties, as stipulated in Article 23 of Law 5038/2023. Nonetheless, Greek civil courts have recognized, in line with general principles of labor law and jurisprudence (such as Supreme Court decision 1175/2017), that undocumented workers may bring claims against employers for unpaid wages or abusive working conditions, even if their employment was not formally authorized. See also in this regard article 86 of Law 4052/2012.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Greek law imposes limitations and a quota-based system on the hiring of non-nationals, particularly third-country nationals (non-EU/EEA/Swiss citizens), though there is no fixed percentage cap per company. Instead, Greece uses a state-controlled labor market planning and approval mechanism rooted in annual assessments and quotas, alongside a form of labour market test, depending on the type of permit.

This system is primarily governed by Articles 26 and 27 of Law 5038/2023. Each year, the Greek state issues a Joint Ministerial Decision (Κοινή Υπουργική Απόφαση, or KYA) that sets out the maximum number of residence permits that may be granted for employment purposes in each region, the sectors and types of jobs for which these permits are allowed and the criteria under which businesses may apply to hire foreign workers.

This annual decision is based on inputs from regional authorities, employment agencies, and economic ministries. Employers must submit requests in advance (typically through regional decentralized administrations) to be included in the planning.

Thus, Greek law does not limit employers by percentage but rather requires businesses to justify their need to hire foreign workers based on pre-determined national quotas. This effectively functions as a labour market test at the national level, ensuring that third-country nationals are only hired where there is a verified shortage of Greek or EU labor.

There are some exceptions to this general rule such as seasonal work, highly skilled employment, and intra-corporate transfers which may be subject to separate or more flexible procedures, EU/EEA/Swiss nationals who are exempt from any restrictions and may be hired freely and, finally, refugees and subsidiary protection beneficiaries who also enjoy equal access to the labor market without quotas, under Article 76 of Law 5038/2023.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Certain professions and sectors are reserved exclusively for Greek nationals or, in some cases, for citizens of EU Member States, particularly where roles involve the exercise of public authority, national sovereignty, or national security. These limitations are legally grounded in both national legislation and EU law, which allows Member States to restrict access to specific posts in the public service under Article 45(4) of the Treaty on the Functioning of the European Union (TFEU).

Civil service positions in Greece are generally open only to Greek citizens. According to article 4 of Law 3528/2007 (Civil Servants Code), eligibility for permanent posts in public administration, ministries, municipalities, and public agencies typically requires Greek nationality. EU citizens may be employed in certain non-sovereign roles—such as technical or support positions—but they are excluded from posts involving the direct exercise of public authority or functions related to safeguarding the general interests of the state. Third-country nationals, that is, individuals who are not EU/EEA or Swiss citizens, are excluded from civil service roles altogether, except for narrowly defined exceptions such as temporary employment in areas like translation or interpretation, for example in asylum services.

Similarly, security-related professions such as the armed forces, police, fire brigade, coast guard, and intelligence services are constitutionally restricted to Greek nationals (Article 4 par. 4 of the Greek Constitution). These roles are viewed as core to the exercise of national sovereignty and are not accessible to non-nationals under any circumstance. Legal and judicial professions also fall under these limitations. Only Greek nationals can serve as judges, prosecutors, or notaries under article 43 of Law 4938/2022 and the relevant constitutional provisions. While EU citizens may be permitted to register as lawyers or legal consultants, third-country nationals generally require special conditions or bilateral agreements to practice law in Greece.

In the media sector, restrictions are less absolute. Non-nationals can work as journalists in private media without specific nationality-based prohibitions, provided they have legal residence and work authorization. However, employment in state-run media such as the Hellenic Broadcasting Corporation (ERT) may also be restricted for permanent roles to Greek or EU citizens according to its internal regulation.

In public utility companies and strategic sectors such as energy, water, and transport—especially where state control or significant public interest is involved—employment opportunities for non-nationals may be subject to additional scrutiny or restrictions, especially for positions of authority or permanent contracts. One such example are the restrictions imposed by articles 7 and 66 of Presidential Decree 410/1988 applying to public-sector contracts and private-law employment within the broader public service network. These provisions permit only Greek or EU citizens to occupy posts in state-administered or state-controlled entities. While EU citizens are generally permitted to work in non-sovereign positions, third-country nationals often face more substantial limitations. Article 4(1) of Decree-Law 2651/1953 requires Greek nationality for officers aboard Greek-flagged vessels, while Article 57 of the

Legislative Decree 187/1973 (ΦΕΚ Α' 261) (Hellenic Maritime Code) further mandates that seafarers must be Greek citizens (excluding sea workers).

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

In Greece, labour protections apply to non-nationals largely on equal terms with Greek nationals, provided they are legally employed and reside in the country with the appropriate permits. These rights stem from domestic law, the Constitution, EU law, and international conventions such as those of the International Labour Organization (ILO), all of which Greece has incorporated into its legal system.

Presidential Decree 62/2025 (Labour Law Code) ensures equal treatment and non-discrimination in this regard in its articles 16-18. Greek labour law does not discriminate based on nationality when it comes to core employment rights, such as the minimum wage, working hours, leave entitlements, and workplace protections (art. 18).

Thus, non-nationals, including both EU citizens and legally residing third-country nationals, are entitled to receive at least the national minimum wage, which applies universally to all workers. Likewise, rules on working time, including a standard 48-hour workweek and entitlements to overtime pay, apply equally to all workers regardless of their citizenship (art. 187). In parallel, maternity and parental leave protections are also extended to non-nationals, as long as the individual is insured with the national social insurance system (EFKA) according to article 236.

Annual paid leave, public holidays, and health and safety protections are granted on the same basis. Non-nationals who are formally employed accrue the same minimum 20 or 24 days of paid annual leave after a year of work depending on their regime and enjoy the same public holiday entitlements according to article 221 of Presidential Decree 62/2025.

Severance pay and termination protections apply equally. Dismissals must follow legal procedures, including notice periods and compensation based on length of service. Non-nationals who are legally employed benefit from these safeguards in the same way as nationals.

Undocumented migrants, by contrast, are in a much more vulnerable position. While labour protections technically apply to all workers — regardless of legal status — enforcement is difficult in practice. Workers without legal documentation often face barriers to reporting abuse or accessing benefits due to fear of deportation or lack of access to legal aid but certain ways exist. See also in this regard Question n°5.

9. To what extent, compared to nationals, can non-nationals access public health services?

According to Greek law, legally residing and insured non-nationals, including EU citizens and third-country nationals with valid residence and work permits, have equal rights to public health services as Greek nationals. EU citizens residing in Greece can access public health services through the European Health Insurance Card (EHIC) or equivalent arrangements, receiving the same level of care as insured Greek nationals under the public health system (EOPYY and ESY).

Repealed Law 4251/2014, specifically article 21, used to guarantee third-country nationals legally residing in Greece access to healthcare and social services equivalent to those available to nationals. This included access to medical care, pharmaceuticals, hospital services, and maternity benefits, provided the individual is registered with the national social security system (EFKA). After its repeal, the current Code of Migration does not include a similar article. However, articles 8(e) and 18 par. 2 of Law 5038/2023 seem to ensure the same guarantee for all migrants that are legal residents, at the same level with Greek citizens.

For asylum seekers, refugees, and other vulnerable groups such as minors, pregnant women, and persons with disabilities, Law 4368/2016 (article 33) and its implementing ministerial decisions grant free access to public health structures regardless of insurance or legal status. This is also the case for article 30 of Law 4939/2022. These groups are entitled to primary and secondary healthcare services under the special provisions of the asylum system, including the issuance of a temporary health coverage number (PAAYPA) that allows them to access healthcare fully during their asylum process. Victims of human trafficking are also guaranteed access to public health services according to article 137 of Law 5038/2023.

Undocumented migrants, on the other hand, generally do not have entitlement to routine public health services. Their access is limited to emergency care, childbirth services, treatment of infectious diseases, and other urgent medical needs. Hospitals are legally required to provide such emergency assistance regardless of the patient's legal status, reflecting humanitarian and constitutional obligations. Additionally, Ministerial Decision 12184/2022 and article 38 of Law 4865/2021 have implications for uninsured individuals seeking medical care. These provisions stipulate that prescriptions for uninsured patients can only be issued by public hospital doctors and primary healthcare structures, with certain exceptions for specific groups such as minors, individuals with disabilities, and those with particular medical conditions.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

A. All migrants including undocumented ones

With regards to primary and secondary education, all children residing legally in Greece, regardless of nationality or immigration status, have the right to free access to public primary and secondary education. This right is enshrined in the Greek Constitution (Article 16), which guarantees free compulsory education to all minors.

As for tertiary education, access to higher education for non-nationals is more regulated and varies depending on nationality and residency status. Greek nationals and EU citizens have the right to access public universities under the same conditions, typically through participation in national entrance examinations. Third-country nationals who hold a valid residence permit can also apply to public universities but often face additional requirements, such as language proficiency and credential recognition. Refugees and beneficiaries of international protection may be admitted through special quotas or programs aimed at facilitating their inclusion. The legal framework governing tertiary education access includes provisions in the Greek Constitution (Article 16), the Law 4957/2022 on higher education reforms, and relevant ministerial decisions. Thus, Article 304 par. 4 of Law 4957/2022 addresses the recognition of foreign academic degrees for the purpose of pursuing further studies in Greek higher education institutions. It stipulates that holders of academic degrees from foreign higher education institutions are not required to apply to the Hellenic National Academic Recognition Information Centre (DOATAP) for recognition, provided the institution that awarded the degree is listed in the National Registry of Foreign Recognized Higher Education Institutions. If the institution is not listed, the Greek university to which the individual is applying is responsible for verifying the institution's legitimacy and the authenticity of the degree. This provision facilitates the enrollment of non-nationals in Greek universities by streamlining the recognition process.

B. Refugees, other beneficiaries of international protection and asylum seekers.

Under Law 4939/2022, protected persons have access to public education services, including primary and secondary, under conditions that are generally comparable to those for Greek nationals. According to Article 27 of Law 4939/2022, children who are beneficiaries of international protection have the same obligation to attend public primary and secondary education units as Greek nationals. If they do not comply, sanctions may be imposed on their parents. Article 55 extends this obligation to children asylum seekers, with authorities required to provide necessary and adequate means to facilitate the procedure. If their enrollment is not completed within three months from their registration, they may be deprived of reception conditions. Access to secondary education may also concern adult asylum seekers according to Article 56 for as long as a deportation order is not pending against them.

Access to tertiary education is assimilated to the one of other migrants.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

EU Regulation 883/2004 on the coordination of social security systems ensures EU citizens legally residing and working in Greece have equal rights to Greek nationals regarding social insurance benefits, pensions, healthcare, and unemployment benefits. This regulation applies directly in Greece, guaranteeing portability and aggregation of contributions across member states.

In principle, legally residing aliens enjoy the same rights as Greek citizens according to article 18§2 of Law 5038/2023. Law 4387/2016 (Gov. Gazette A' 85/2016), the "Social Insurance Reform Law" reorganized Greece's social security system under EFKA (Unified Social Security Fund). Article 2 defines insured persons to include all workers, regardless of nationality, provided they work legally and pay contributions while article 17 affirms equal treatment of insured persons, including third-country nationals, in accessing benefits such as pensions, sickness, maternity, unemployment, and family benefits. Articles 34-36 detail pension eligibility, calculation, and entitlements, which apply equally to legally insured persons regardless of nationality, based on contribution history.

According to article 26 of Law 4939/2022, refugees and other beneficiaries of international protection are enjoying the same treatment with Greek nationals when it comes to social security. Asylum seekers benefit from social security according to Article 59 of the same Law which also refers to article 33 of Law 4368/2016. Their "Temporary Insurance and Health Care Number for Foreigners" (Π.Α.Α.Υ.Π.Α.) guarantees access to these services.

There is no direct entitlement to contributory social security benefits for undocumented migrants due to lack of legal employment and contribution record. However, according to the aforementioned article 33 of Law 4368/2016, the State provides emergency social assistance and access to public health services for undocumented migrants and vulnerable groups, often via special social welfare programs.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Non-nationals in Greece can access many welfare programs, but the extent of their eligibility varies significantly based on their legal status, nationality, and residency conditions.

EU citizens legally residing in Greece generally have similar access rights to welfare benefits as Greek nationals, under the principle of equal treatment established by EU law, provided they meet certain residence and habitual residence criteria. For example, EU Regulation 883/2004 coordinates social security and welfare rights across member states, ensuring EU citizens legally residing in Greece can access social benefits on similar terms to nationals.

Third-country nationals (non-EU citizens) with legal residence and work permits have access to many welfare programs, but often under more restrictive conditions. In principle they enjoy the same rights as Greek citizens according to article 18 par. 3 of Law 5038/2023 applying the Legislative Decree 57/1973 to legally residing immigrants as well. Access usually requires legal residence, and in some cases, a minimum period of residence or integration criteria. They may apply for programs such as Social Solidarity Income (Social Welfare Benefits). Available under Law 4389/2016, article 235, it also concerns non-nationals with legal residence who fulfill specific criteria (such as income thresholds and continuous legal residence in Greece for at least 12 months). They can, thus, receive the Guaranteed Minimum Income, which includes financial aid and food assistance. See also in this regard, Ministerial Decision Δ13/οικ./33475/1935/2018 - ΦΕΚ 2281/Β/15-6-2018, articles 4 and 5.

Eligibility for these subsidized housing programs is generally based on legal residence status. Non-nationals with legal residence permits may be eligible for certain programs, such as the “My Home”, “My Home II”, “Renovate – Rent” and “Social Housing Exchange” programs, provided they meet the specific criteria set forth in the respective regulations.

Refugees and other beneficiaries for international protection enjoy the same rights as Greek citizens according to article 29 of Law 4939/2022.

For undocumented migrants, access to welfare programs is very limited. They generally cannot access contributory or means-tested welfare benefits due to lack of legal residence and documentation. However, humanitarian and emergency assistance, including food aid and shelter, may be provided by NGOs, international organizations, or through specific state-funded emergency programs.

Are there any final observations you would like to make? Please write below.

On 8 September 2025, Greece adopted a new law on returns, amending the previous legislation. The new Law 5226/2025 reforms the framework for the return of third-country nationals who are residing illegally in Greece. Its purpose is to bring Greek law into full alignment with EU Directive 2008/115/EC on return procedures and to incorporate the directions of the upcoming European Return Regulation. The law clarifies definitions such as irregular stay, return, removal, and entry ban. It makes the return decision an immediate part of any negative asylum or residence permit decision and even allows for several possible countries of return to be indicated when there is uncertainty.

For voluntary departure, the new law sets a short timeframe of seven to fourteen days, which may be extended up to sixty days in exceptional cases such as children attending school or strong family ties. If there is a risk of absconding or a threat to public order or security, no voluntary departure period is granted. When return does not take place voluntarily, removal follows without a separate act and coercive measures may be applied, though always with respect for human rights and proportionality. Removal can be postponed for reasons such as health problems, technical obstacles or violations of the principle of non-refoulement, with the issuance of a written certificate valid for six months.

Detention is introduced as a last resort when there is risk of flight, obstruction of return or national security concerns. The maximum period is set at twelve months, extendable by another twelve if cooperation is lacking or travel documents are delayed, with automatic review every six months. Special rules apply for families and minors: detention is only possible as a last resort and for the shortest time, with guarantees for housing, education, and child welfare.

The law also strengthens penalties. It replaces older provisions and now illegal entry, exit or stay in the country carries at least two years of imprisonment and a minimum fine of 5,000 euros, which is harsher than the earlier regime where penalties were lighter and often redeemable.

Another innovation is the introduction of artificial intelligence systems in migration and asylum procedures, including for applications, interviews and case management, aiming to modernize and speed up the process. At the same time, the law recognizes specific protections for vulnerable persons such as unaccompanied minors, pregnant women, single parents, victims of torture or trafficking.

Compared with the older framework, mainly Law 3386/2005 and Law 5038/2023, the new law narrows the voluntary departure window from up to thirty days down to fourteen, doubles the possible detention time to a maximum of twenty-four months, and makes penalties significantly stricter. It also systematizes return procedures more closely in line with EU standards and introduces digital and AI-based tools, which did not exist in earlier legislation. The overall effect is a much stricter and more standardized framework for returns, combined with stronger formal safeguards for rights and specific vulnerable groups.

Greece has also recently adopted the Common Ministerial Decision 147627/2025 (ΦΕΚ 4581 B/22-8-2025) on the Determination of the age assessment procedure for applicants for international protection. The decision aims to ensure that the age assessment process is conducted fairly, accurately, and in compliance with international standards, particularly regarding minors and unaccompanied minors. The decision defines a standardized procedure for age determination, requiring that assessments be carried out using scientifically recognized methods to ensure accuracy and fairness. Special attention is given to applicants who are minors or claim to be minors, with the process designed to protect their rights and best interests throughout the assessment. The procedure emphasizes the use of non-invasive methods, with invasive techniques permitted only when necessary and only with the informed consent of the individual concerned. Personnel involved in conducting age assessments are required to undergo specialized training to ensure that the process is carried out professionally, ethically, and in line with human rights standards. Applicants also have the right to appeal the results of age assessments, and the decision provides procedures for lodging and reviewing such appeals. The KYA aligns with international standards and guidelines, including those of the European Union and the UNHCR, ensuring that Greece's practices are consistent with its international obligations regarding minors and age determination in asylum procedures.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Guatemala

Author: Javier Zelada

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		Yes (1983)
1967 Protocol to the Convention relating to the Status of Refugees		Yes (1983)
1954 Convention relating to the Status of Stateless Persons	Yes (1954)	Yes (2000)
1961 Convention on the Reduction of Statelessness		Yes (2001)
International Covenant on Civil and Political Rights (ICCPR)		Yes (1992)
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		Yes (2000)
International Covenant on Economic, Social and Cultural Rights (ICESCR)		Yes (1988)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	Yes (2009)	

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	Yes (2000)	Yes (2003)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		Yes (1990)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Yes (2003)	Yes (2008)
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	Yes (1967)	Yes (1983)
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes (1981)	Yes (1982)
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes (2000)	Yes (2002)
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes (1981)	Yes (1982)
Convention on the Rights of the Child (CRC)	Yes (1990)	Yes (1990)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	Yes (2000)	Yes (2002)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	Yes (2000)	Yes (2002)
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	No	No
Convention on the Rights of Persons with Disabilities (CRPD)	Yes (2007)	Yes (2009)
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	Yes (2007)	Yes (2009)
ILO Forced Labour Convention (No. 29)		Yes (1989)
2014 Protocol to the ILO Forced Labour Convention (No. 29)	No	No
ILO Migration for Employment Convention (Revised) (No. 97)		Yes (1952)
ILO Equal Remuneration Convention (No. 100)		Yes (1961)

ILO Discrimination (Employment and Occupation) Convention (No. 111)		Yes (1960)
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		No

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	N/A	N/A
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	N/A	N/A
Convention governing the Specific Aspects of Refugee Problems in Africa	N/A	N/A
African Charter on the Rights and Welfare of the Child	N/A	N/A
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	N/A	N/A
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	N/A	N/A
European Convention on Human Rights (ECHR)	N/A	N/A
Protocols to the European Convention on Human Rights (list which ones):	N/A	N/A
European Social Charter (ESC)	N/A	N/A
European Convention on the Legal Status of Migrant Workers	N/A	N/A
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	N/A	N/A
American Convention on Human Rights (ACHR)		Yes (1978)

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		Yes (2000)
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		Yes (1995)
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		Yes (2003)
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	No	No
Inter-American Convention against All Forms of Discrimination and Intolerance	No	No
Inter-American Convention Protecting the Human Rights of Older Persons	No	No

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

- Central American Single Visa (CA-4):⁷⁷⁰ a regional agreement concluded between Guatemala, El Salvador, Honduras and Nicaragua with the purpose of establishing a harmonized visa classification system and uniform requirements and procedures. Its primary objective is to promote the free movement of non-nationals across the four countries.
- Central American Free Mobility Agreement (CA-4): a regional agreement concluded between Guatemala, El Salvador, Honduras and Nicaragua which grants nationals of the signatory States the right to travel freely across the region using only a national identity document, eliminating the requirement of presenting a valid passport.
- Cartagena Declaration on Refugees: non-binding agreement adopted that broadens the “refugee” definition contained in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Under this declaration, a refugee is consider a person who flee their country because their life, safety or freedom is threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have

⁷⁷⁰ See agreement: https://www.sica.int/documentos/convenio-de-creacion-de-la-visa-unica-centroamericana-para-la-libre-movilidad-de-extranjeros-entre-las-republicas-de-el-salvador-guatemala-honduras-y-nicaragua_1_82962.html

seriously disturbed public order. Although a soft-law instrument, it has had a strong influence in Guatemala's legal framework, incorporating this definition in its domestic law.⁷⁷¹

- Asylum Cooperative Agreement (third-safe country):

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

In Guatemala, migratory statuses are primarily regulated by the Migration Code (Decree no. 44-2016)⁷⁷² specifically in articles 73, 74, 78, 78 and 107. The Code classifies non-nationals into four distinct categories as follows: ordinary status, extraordinary status, special status, and non-nationals under irregular status. This classification constitutes the framework governing entry, residence and stay permits for all non-nationals, as well as the issuance of different visa categories corresponding to each migratory status.

1. **Ordinary status** (article 73 Migration Code): This is the most general and common migratory status, applicable primarily to tourists and “travelers”. It encompasses the broad classification of both temporary residents (TR) and permanent residents (PR).

a. **Tourists and travelers** (article 74 Migration Code): This category applies to individuals who do not intend to apply for a TR or PR. They may remain in the country for up to 90 days, with the possibility of a one-time extension.⁷⁷³ Furthermore, certain categories e.g. technicians, professionals, scientists, athletes, religious, may also be admitted under this status provided they do not intend to remain in Guatemala for over 180 days.

b. **Temporary residents (TR)** (article 75 Migration Code): This classification includes workers, students, athletes, artists, investors, scientists and religious. All these residences are granted for up to five years. Extensions may be requested and are subject to review and approval by the National Migration Institute.

c. **Permanent residents (PR)**: This status is focused on individuals seeking to establish long-term permanent residence in Guatemala. Eligibility is based on any of the following:

⁷⁷¹ National Migration Authority Agreement 2-2019 article 4 a, b, and c. In this article, Guatemala replicates the refugee definition of the 1951 Convention, the Cartagena Declaration on Refugees, and includes sexual violence, gender-based violence, and sexual orientation. (<https://igm.gob.gt/wp-content/uploads/2017/09/ACUERDO-2-2019-Reglamento-Refugiado-1.pdf>)

⁷⁷² See Migration Code: https://igm.gob.gt/wp-content/uploads/2021/11/1_Codigo-de-Migracion-Decreto-44-2016-del-Congreso-de-la-Republica.pdf

⁷⁷³ A form is required and a payment of \$25 for the service. <https://igm.gob.gt/wp-content/uploads/2024/12/Prorroga-de-Visa-de-Turista-o-Viajero-PVT-IGM-01-2025.pdf>

- i. Over five years of temporary residence;
- ii. Family-based grounds: at least one year of marriage or common-law union with a Guatemalan national
- iii. Central American nationals with more than one year of temporary residence;
- iv. Retirees.

For all TRs and PRs a common requirement is to have a Guatemalan sponsor (either individual or legal entity). This sponsor assumes joint and several liability for the financial obligations of the non-national (National Migration Authority Agreement 9-2019, articles 22-27; and its amendment Agreement 4-2022).⁷⁷⁴

Regarding the different type of visas,⁷⁷⁵ they are primarily set forth in the Migration Code (article 105) and National Migration Authority [*AMN*, for its Spanish initials] Agreement 7-2023.⁷⁷⁶ A visa constitutes the formal authorization granted to non-nationals to seek entry, transit through or remain in the country. A visa does not guarantee admission into the country as the final entry decision is subject to immigration control at the port of entry.

Guatemala issues both single-entry and multiple-entry visas, which may be granted by the National Migration Institute or Consular Officers (Ministry of Foreign Affairs).

Visa categories are structured as follows:

Category A – visa exempt: Nationals of 85 countries are exempt from visa requirements.

Category B – consular visa: Nationals of 65 countries require a visa.

Category C – visa requiring prior consultation: Nationals of 45 countries require a visa subject to prior consultation.⁷⁷⁷

2. **Extraordinary status** (article 81 Migration Code): This status applies to non-nationals who are under extraordinary circumstances and therefore, are authorized to remain in Guatemala. This approach is mainly focused on humanitarian grounds and situations of vulnerability.

a. **Provisional stay** (article 82 Migration Code): This status is granted in three specific scenarios.

- i. Individuals required to appear in court as witnesses, experts or victims.
- ii. Individuals required to appear before an official Guatemalan authority.
- iii. Refugee applicants who are permitted to remain in the country for up to 30 days with the possibility of extension. There is no specific regulation regarding the

⁷⁷⁴ See agreement 9-2022: https://igm.gob.gt/wp-content/uploads/2017/09/ACUERDO-AMN-9-2019_Plantilla.pdf

⁷⁷⁵ Article 105 Migration Code

⁷⁷⁶ See agreement: <https://igm.gob.gt/wp-content/uploads/2025/01/06.-REGLAMENTO-DE-VISAS-GUATEMALTECAS-007-2023.pdf>

⁷⁷⁷ See full list: https://www.minex.gob.gt/visor_pagina.aspx?PaginaID=21

number of times or the length of time an extension may be granted. However, in practice, the approach is centered on the protection of individuals.

- b. Special attention (article 83 Migration Code): This status is established for the protection of vulnerable groups, which includes victims of torture, human trafficking, sexual violence, women, children and the elderly.
 - c. Humanitarian (article 85 Migration Code): This status applies to non-nationals who entered Guatemala on humanitarian grounds (natural disasters, medical emergencies, armed conflicts – article 68 Migration Code). A recent example occurred in August 2025, when Guatemala admitted over 100 Mexican nationals from Chiapas who fled across Huehuetenango, Guatemala as a result of drug cartel-related conflicts.⁷⁷⁸
3. Special status (article 87 Migration Code): This status applies to specific groups of non-nationals who enter Guatemala under circumstances that do not fall under any of the ordinary/extraordinary status. It includes cross-border workers, diplomats, special guests, and organized groups (artists, religious, athletes, academics).
 4. Non-nationals under irregular status (article 107 Migration Code): Although not expressly regulated under Article 73 of the Migration Code, which outlines the three principal migratory statuses, this status is considered a fourth category, as it encompasses any individual who enters or remains in Guatemala without fitting into any of the statuses otherwise recognized by the domestic legal framework..

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Guatemala allows non-nationals to reside for more than three months under the following categories.

1. Temporary residents (article 75 Migration Code): The following periods are subject to extension upon evaluation and approval by the National Migration Institute.
 - a. Workers: residence authorized for a period of one to five years
 - b. Students: residence authorized for the duration of the academic program

⁷⁷⁸ See 1: <https://www.latintimes.com/over-100-mexicans-cross-guatemala-fleeing-cartel-violence-officials-dispute-claim-588689>. See 2: <https://igm.gob.gt/huehuetenango-acoge-a-familias-mexicanas-desplazadas-por-la-violencia-en-chiapas/> Similar case in July 2024: <https://prensacomunitaria.org/2024/07/mas-de-200-mexicanos-huyeron-de-violencia-y-buscan-refugio-en-huehuetenango/>

- c. Athletes and artists: residence authorized for the length of the contract, up to a maximum of five years
 - d. Investors: Residence authorized for up to five years
 - e. Religious: Residence granted for up to five years
2. Permanent residents (article 78): This category is granted to non-nationals seeking to establish permanent residence in Guatemala who meet one or more of the eligibility criteria
- a. Temporary residence for more than five years;
 - b. Being married to, or in common-law union with a Guatemalan national for at least one year;
 - c. Central American nationals with more than one year of temporary residence;
 - d. Retirees.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

As part of the extraordinary status, Guatemala authorizes the entry of non-nationals under a humanitarian basis. Grounds for admission include natural disasters, medical emergencies, armed conflicts, requests from another country or international organization, or the repatriation of human remains.

Guatemala recognizes both refugees and asylum seekers (articles 43 and 44 Migration Code). Applications must be submitted at an official port of entry. The legal framework expressly incorporates the principle of non-refoulment, requiring the State to notify UNHCR of removing proceedings before doing so.

The National Migration Authority issued the Agreement 2-2019 on the protection, determination and recognition of refugee status. Under this Agreement, the definition of refugee follows both the 1951 Convention and the Cartagena Declaration, encompassing individuals with a well-founded fear of prosecution on grounds of race, religion, nationality, political opinion, or membership of a particular social group, as well as those who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights, sexual violence, gender-based or sexual orientation persecution, or other circumstances which have seriously disturbed public order.

Refugees and asylum seekers are immediately granted temporary residence and issued an identification document, even prior to the final determination of their refugee status. The relevance of issuing an ID is to guarantee access to basic rights, including freedom of movement, health care, education, information, legal counseling, access to justice, and the right to work. TR may be granted from one to five years (article 6, AMN Agreement 8-2022). The

ID is issued by the Office of Vital Records (*Registro Nacional de las Personas*)⁷⁷⁹ (article 100 Migration Code).

Although Guatemala is party to both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, there is no legal framework regulating statelessness, despite the relatively recent enactment of the Migration Code.

The procedure for granting refugee status is regulated by the Migration Code (article 177-187) and NMA Agreement 2-2019. This Agreement provides detailed rules for the refugee status determination process. It provides definition of key terms such as family reunification, well-founded fear, and refugee, among others. It also affirms basic rights of asylum seekers and refugees, including the right to an ID, freedom of movement, access to employment, and other essential services.

This Agreement creates a National Refugee Commission, composed of technical staff from the Ministry of Foreign Affairs, Ministry of Labor, Ministry of Governance and the National Migration Institute. The Migration Code allows the possibility for the UNHCR to take participation in an advisory capacity.

The formal application may be submitted either in writing or orally at a port of entry. However, non-nationals who are already present within the territory are still permitted submitted an application.

After the application is submitted, staff is required to inform the applicant about the procedure and to schedule an interview, which must take place with the presence of a psychologist and, where necessary, an interpreter. Following the interview, the case is examined and analyzed by the National Refugee Commission within a period not exceeding 30 days. The Commission then issues a reasoned opinion, which serves as the basis for the final determination by the National Migration Authority.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Family reunification is recognized as one of the core principles of the Guatemala's migration system. Article 4 of the Migration Code establishes the right of non-nationals to settle in the country with their families or for reunification purposes. In addition, article 15 recognizes the right of families to remain together at all times, providing that separation may only occur as a rare exception, typically justified by the best interest of the child.

Furthermore, specifically safeguards apply to unaccompanied minors. Under article 170 of the Migration Code, authorities are required to exercise due diligence to ensure that every unaccompanied child is reunited with his or her father, mother, or legal guardian. Likewise, in the context of children returning to Guatemala, article 175 g provides that family reunification shall be authorized only after clear determination that such reunification does not expose the child to risks or violations of their human rights by any family member.

⁷⁷⁹ Article 6 NMA 2-2019

Family ties constitute a direct pathway to permanent residence. Pursuant to Article 78 c) of the Migration Code, non-nationals may apply for permanent residence on the basis of marriage, common-law union, or other recognized family relationships.

5. What are the conditions for naturalization in the reviewed state?

Guatemalan citizenship follows two broad principles (article 144 of the Constitution):

1. Right of the soil (*jus soli*): Citizenship is acquired by birth within Guatemalan territory, including ships and aircrafts bearing the markings of Guatemala.
2. Right of blood (*jus sanguinis*): Citizenship is acquired by descent, whether through mother or father.

Both principles confer the status of “Guatemalan by birth”.

A very distinctive feature of Guatemalan nationality legal framework is its treatment of nationals of the former Central American Federation (El Salvador, Honduras, Nicaragua, Costa Rica and Belize). Pursuant Article 145 of the Constitution, and Article 19 of the Interim Provisions, the nationals of these countries are deemed Guatemalans by birth provided they acquire residency in Guatemala and formally express their wish to become Guatemalan citizens.⁷⁸⁰

With respect to naturalization, the general requirement is that non-nationals must establish legal residency in Guatemala and comply with specific periods of residence in Guatemala on a case-by-case basis. Although the Migration Code modernized much of the migratory framework, it does not regulate naturalization. Instead, naturalization procedures are governed by the Nationality Act (Decree 1613, dated 1966) which provides two legal pathways: a) Naturalization by declaration; b) Naturalization by concession .

a) Naturalization by declaration: Is granted to non-nationals that establish legal residency in Guatemala and formally express their will to acquire Guatemalan nationality, provided the applicant falls under any of following categories:

- a. Marriage
- b. Adoption
- c. Children of naturalized Guatemalan
- d. Nationals of Spain and of Central American

b) Naturalization by concession: Is granted at the discretion of Guatemala and conditioned upon compliance with specific periods of continuous or non-continuous permanent residence.

- a. Continuous residence for five years. Granted to non-nationals who have maintained five years of uninterrupted residence, provided they have not been absent from Guatemala for six consecutive months, or for short periods that when combined equal or exceed one year. (article 33, 1 Nationality Act).

⁷⁸⁰ See article 61 of the Nationality Act.

- b. Non-continuous residence for over ten years. (article 33, 2 Nationality Act).
- c. Continuous residence for over two years in special circumstances. Granted to non-nationals who have resided continuously in Guatemala for more than two years, provided they have not been absent for more than one month, when combined, more than two months and that in addition, meet on or more of the following conditions:
 - i. Economic, social or cultural contributions to Guatemala
 - ii. Prior continuous residence in Central America for at least three years immediately before application.
 - iii. Outstanding merits (artistic, scientific or charitable fields)
 - iv. Statelessness person

If the applicant is national of a former Central American Federation country, a written application must be filed in before the Ministry of Foreign Affairs. In such cases, there is no requirement to demonstrate a specific period of continuous residence, provided they applicant already holds a form of residence in Guatemala, whether TR or PR.⁷⁸¹

For all other applicants, the written applications must be filed in before the local Governor's Office.⁷⁸² Both the Ministry of Foreign Affairs and the Attorney's General Office must issue an advisory opinion on the request before transferring the case for final consideration of the President of Guatemala. If approved, the Ministry of Foreign Affairs conducts a naturalization ceremony. As part of the process, applicants must approve a Spanish language test and a social studies test covering geography, Central American and Guatemalan history.⁷⁸³

The final step in the naturalization process is the registration of the new citizen before the National Registry of Persons (RENAP), which serves as the Office of Vital Records in Guatemala.^{784 785}

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. *temporary and permanent resident migrants;*
- b. *regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. *undocumented migrants.*

⁷⁸¹ https://www.minex.gob.gt/Visor_Pagina.aspx?PaginaID=38

⁷⁸² https://www.minex.gob.gt/Visor_Pagina.aspx?PaginaID=39

⁷⁸³ See article 34 of the Nationality Act for further requirements e.g. good behaviour, occupation, public announcement in newspaper.

⁷⁸⁴ <https://www.renap.gob.gt/servicios/inscripcion-de-guatemalteco-naturalizado>

⁷⁸⁵ Access registration form: https://www.renap.gob.gt/sites/default/files/archivos-paginas/anexo17_solicitud_de_inscripcion_de_guatemalteco_naturalizado.pdf

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Although Guatemala is party to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) it has not yet made the declaration recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and examine individual complaints. Similarly, although Guatemala has ratified a many international human rights instruments addressing non-discrimination (particularly in relation to indigenous peoples and women), it has not ratified the Inter-American Convention Against All Forms of Discrimination and Intolerance nor the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.⁷⁸⁶

Article 4 of the Guatemalan Constitution provides that all human beings are free and equal in dignity and rights. Both man and women, regardless of their marital status, are entitled to equal opportunities and responsibilities.

Although there is no local law or regulation covering non-discrimination, the Criminal Code Decree 17-73 was amended in 2002 by Decree 57-2002 to criminalize acts of discrimination.⁷⁸⁷ Drawing upon CERD and the ILO Convention no. 169 on Indigenous and Tribal Peoples, article 202 bis of the Criminal Code defines discrimination as any distinction, exclusion, restriction or preference based on gender, race, ethnicity, language, age, religion, financial status, disease, disability, marital status or any other circumstance that may impair the exercise of a right. The offense is punishable by one to three years' imprisonment and a fine ranging from Q500 to Q3000.⁷⁸⁸

⁷⁸⁶ Despite both Conventions were adopted at La Antigua Guatemala, Guatemala. https://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance_signatories.asp and https://www.oas.org/en/sla/dil/inter_american_treaties_A-68_racism_signatories.asp

⁷⁸⁷ Article 202 bis. Of the Criminal Code

⁷⁸⁸ Fine in USD 65 to USD390.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

In Guatemala, political participation is reserved exclusively for Guatemalan citizens. As a result, non-nationals, whether permanent residents or naturalized citizens, are not entitled to vote or to stand for election at any level (local, regional, or national).

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

With the exception of restrictions on political participation, Guatemalan law does not establish distinctions in the enjoyment of civil rights between nationals and non-nationals. Article 10 of the Migration Code provides that Guatemala shall protect, without any type of discrimination, the integrity, life and liberty of every individual within its territory, regardless of their nationality. In addition, non-discrimination is one of the key principles that the Migration Institute must observe.⁷⁸⁹

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

There are no limitations on the right of non-nationals to acquire, own, or dispose of property in Guatemala. Pursuant to Article 39 of the Constitution, the right to property is recognized as a fundamental human right, without distinction based on nationality. All individuals are entitled to exercise full ownership rights, including the ability to transfer, sell, or otherwise dispose of their property. Furthermore, the Civil Code of Guatemala covers property in detail and does not establish any distinction or restriction with respect to non-nationals.⁷⁹⁰

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Non-nationals seeking to engage in employment in Guatemala must obtain a temporary residence for migrant workers, which entitles them to carry out work activities for a period

⁷⁸⁹ Article 60 Migration Code

⁷⁹⁰ Article 464 of the Civil Code. <https://mcd.gob.gt/wp-content/uploads/2013/07/codigo-civil.pdf>

ranging from one to five years.⁷⁹¹ In addition to the general requirements applicable to all type of residence permits (application form, criminal records, valid ID, payment of fees), applicants must submit a formal job offer specifying the terms of employment, together with the sponsorship of a Guatemalan individual or company. The process of this type of residence involves both the National Migration Institute and the Ministry of Labor.⁷⁹²

A similar regime applies to athletes and artists. They are required to obtain a temporary residence valid for the duration of their contracts, up to a maximum of five years, with the possibility of an extension. In addition to the general requirements for all types of temporary residence, athletes and artists must present the following:⁷⁹³

- Awards, certificates or diplomas as evidence of professional qualification;
- Certificate issued by a sports federation;
- Job offer;
- Sponsor .

It is important to note that this type of residence also extend to dependents, who are permitted not only to reside in Guatemala but also to exercise the right to work (article 27 Migration Code). This constitutes a significant safeguard, as it helps prevent family separation by ensuring that family members can remain together while enjoying access to job opportunities.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Yes, Guatemalan labour law establishes quotas limiting the number of non-nationals that both private businesses and public sector may employ. As a general rule for private businesses, no more than 10% of a company's workforce may be composed of foreign nationals, and the aggregate wages paid to non-nationals may not exceed 15% of the total payroll.⁷⁹⁴

However, exceptions apply to authorized different employment workforce ratios based on the following circumstances:

- a) Specialized labour or economic needs: If the protection and promotion of the national economy requires, or where no specialized Guatemalan workers are available, the Ministry of Labour may grant a special authorization allowing up to an additional 10% of foreign employees, and separately, an additional 10% of the wage bill, for a renewable term of five years. Employers benefiting from this exception are obligated to

⁷⁹¹ Article 75 a) and c)

⁷⁹² Article 10 of AMN Agreement 08-2022: <https://igm.gob.gt/wp-content/uploads/2025/01/05.-REGLAMENTO-DE-RESIDENCIAS-GUATEMALTECAS-008-2022.pdf>

⁷⁹³ Article 14 of AMN Agreement 08-2022: <https://igm.gob.gt/wp-content/uploads/2025/01/05.-REGLAMENTO-DE-RESIDENCIAS-GUATEMALTECAS-008-2022.pdf>

⁷⁹⁴ Labor Code, article 13 https://www.mintrabajo.gob.gt/doc/Codigo_de_Trabajo_Digital.pdf

train Guatemalan workers to acquire the necessary skills and gradually replace foreign personnel.

b) Authorized Immigration Programs: Exceptions may also apply during periods of authorized and controlled immigration, in accordance with labour and migration policies.⁷⁹⁵

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Public sector employment in Guatemala is limited primarily to Guatemalan nationals. Article 113 of the Constitution provides that Guatemalans are entitled to apply for public employment subject only to principles of capacity, suitability and integrity.

Furthermore, the Public Civil Servant Act, Decree 1748, reaffirms in its article 3 the beforementioned constitutional rule. In addition, Article 7 establishes a preference for Guatemalans over non-nationals in access to public service. However, there are exceptions as well: where there are no Guatemalan citizens qualified to perform a specific job efficiently.⁷⁹⁶

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Non-nationals are entitled to the same labor protections as Guatemalan citizens. This includes equal rights with respect to minimum wage, maternity and paternity leave, safe and healthy working conditions, rest and leisure, etc.

Article 21 of the Migration Code provides that Guatemala shall guarantee to migrant workers and their families, the same rights established in the Constitution, domestic and international instruments adopted by Guatemala. This protection extends to the pro-worker principle, whereby labor law shall always be interpreted in favour of the employee.

Finally, the right to work is expressly recognized in Article 6 of the Migration Code, which applies to all non-nationals without distinction. Under this provision, migrants are entitled to the rights established in the Code itself, as well as those guaranteed by domestic legislation and by the international instruments ratified by Guatemala.

⁷⁹⁵ I do not know of any cases of this happening in Guatemala nor could not find any records.

⁷⁹⁶ https://www.oas.org/juridico/spanish/mesicic2_gtm_ley_servicio_civil.pdf

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Equal access is guaranteed for both nationals and non-nationals, provided that the latter hold a valid TR or PR.

However, the public health system in Guatemala is limited and constantly affected by structural crises, such as frequent strikes, shortages of medicines and other essential medical supplies.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Right to education for migrants is expressly recognized in article 7 of the Migration Code, which guarantees access to the national education system (primary, secondary and higher education). Hence, non-nationals may access public education provided they comply with administrative requirements, such as academic records, transcripts, diplomas, etc. These documents must be translated and duly certified, a requirement that often hinders the enrollment process for migrants.

In addition, the Ministry of Education issued Executive Order 1753-2019 on Validation and Equivalency of pre-school, primary and secondary education.^{797 798} Although not specifically directed at migrants, this Executive Order contains a provision addressing the situation of refugees and asylum seekers,⁷⁹⁹ recognizing that many were forced to leave their own countries without the possibility of retrieving the required documents. This order allows their integration into the national education system regardless of the absence of formal records.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

In Guatemala, social security benefits are administered by the *Instituto Guatemalteco de Seguridad Social IGSS*. Access to these benefits is linked to the existence of a formal employment relationship, despite most of the Guatemalan economy is informal. Both employer and employee must pay a proportional fee for employers to be enrolled in the system and access the benefits.

⁷⁹⁷ <https://www.refworld.org/es/leg/decre/pleg/2019/es/147150>

⁷⁹⁸ See also article 76 of the National Education Act, Decree 12-91 <https://www.acnur.org/fileadmin/Documentos/BDL/2008/6728.pdf>

⁷⁹⁹ Article 20.

Non-nationals are entitled to the same social security benefits as Guatemalan citizens, provided that they hold a valid TR or PR and are employed under formal labor conditions. Some of the benefits of social security are health services, retirement pensions, and disability benefits.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

No distinction between nationals and non-nationals.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Hungary

Author: Tamás Molnár

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
1951 Convention relating to the Status of Refugees	N/A [accession]	14 March 1989 [accession]
1967 Protocol to the Convention relating to the Status of Refugees	N/A [accession]	14 March 1989 [accession]
1954 Convention relating to the Status of Stateless Persons	N/A [accession]	21 Nov. 2001 [accession]
1961 Convention on the Reduction of Statelessness	N/A [accession]	12 May 2009 [accession]
International Covenant on Civil and Political Rights (ICCPR)	25 March 1969	17 Jan. 1974

First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) [individual communications procedure]	N/A [accession]	7 Sept. 1988 [accession]
International Covenant on Economic, Social and Cultural Rights (ICESCR)	25 March 1969	17 Jan. 1974
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	--	--
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	--	--
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	28 Nov. 1986	15 Apr. 1987
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	N/A [accession]	12 Jan. 2012 [accession]
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	15 Sept. 1966	4 May 1967
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	6 Jun. 1980	22 Dec. 1980
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	N/A [accession]	22 Dec 2000 [accession]
Convention on the Rights of the Child (CRC)	14 March 1990	7 Oct. 1991
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	11 March 2002	24 Feb. 2010
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	11 March 2002	24 Feb. 2010
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	--	--

Convention on the Rights of Persons with Disabilities (CRPD)	30 March 2007	20 July 2007
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	30 Mar 2007	20 July 2007
ILO Forced Labour Convention (No. 29)	N/A [accession]	8 June 1956 [accession]
2014 Protocol to the ILO Forced Labour Convention (No. 29)	--	--
ILO Migration for Employment Convention (Revised) (No. 97)	--	--
ILO Equal Remuneration Convention (No. 100)	N/A [accession]	8 June 1956 [accession]
ILO Discrimination (Employment and Occupation) Convention (No. 111)	N/A [accession]	20 June 1961 [accession]
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	--	--

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	N/A	N/A
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	N/A	N/A
Convention governing the Specific Aspects of Refugee Problems in Africa	N/A	N/A
African Charter on the Rights and Welfare of the Child	N/A	N/A
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	N/A	N/A

Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	N/A	N/A
European Convention on Human Rights (ECHR)	6 Nov. 1990	5 Nov. 1992
Protocol No. 1 to the European Convention on Human Rights [ETS No. 9]	6 Nov. 1990	5 Nov. 1992
Protocol No. 2 to the European Convention on Human Rights [ETS No. 44]	6 Nov. 1990	5 Nov. 1992
Protocol No. 3 to the European Convention on Human Rights [ETS No. 45]	6 Nov. 1990	5 Nov. 1992
Protocol No. 4 to the European Convention on Human Rights [ETS No. 46]	6 Nov. 1990	5 Nov. 1992
Protocol No. 5 to the European Convention on Human Rights [ETS No. 55]	6 Nov. 1990	5 Nov. 1992
Protocol No. 6 to the European Convention on Human Rights [ETS No. 114]	6 Nov. 1990	5 Nov. 1992
Protocol No. 7 to the European Convention on Human Rights [ETS No. 117]	6 Nov. 1990	5 Nov. 1992
Protocol No. 8 to the European Convention on Human Rights [ETS No. 118]	6 Nov. 1990	5 Nov. 1992
Protocol No. 9 to the European Convention on Human Rights [ETS No. 140]	6 Nov. 1990	5 Nov. 1992
Protocol No. 10 to the European Convention on Human Rights [ETS No. 146]	9 Febr. 1993	--
Protocol No. 11 to the European Convention on Human Rights [ETS No. 155]	11 May 1994	26 April 1995
Protocol No. 12 to the European Convention on Human Rights [ETS No. 177]	4 Nov. 2000	--
Protocol No. 13 to the European Convention on Human Rights [ETS No. 187]	3 May 2002	16 July 2003

Protocol No. 14 to the European Convention on Human Rights [CETS No. 194]	7 April 2005	21 Dec. 2005
Protocol No. 15 to the European Convention on Human Rights [CETS No. 213]	9 July 2015	30 Nov. 2015
Protocol No. 16 to the European Convention on Human Rights [CETS No. 214]	--	--
European Social Charter (ESC) [ETS No. 35]	13 Dec. 1991	8 July 1999
European Convention on the Legal Status of Migrant Workers	--	--
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	14 March 2014	--
American Convention on Human Rights (ACHR)	N/A	N/A
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	N/A	N/A
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	N/A	N/A
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	N/A	N/A
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	N/A	N/A
Inter-American Convention against All Forms of Discrimination and Intolerance	N/A	N/A
Inter-American Convention Protecting the Human Rights of Older Persons	N/A	N/A

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Multilateral – universal:

- General Agreement on Trade of Services (see notably its Annex on Movement of Natural Persons Supplying Services under the Agreement): ratified on 29 Dec. 1994

Multilateral – regional:

- European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe (ETS No. 25): ratified 30 August 2013

- European Agreement on the Abolition of Visas for Refugees (ETS No. 31): ratified on 6 Nov. 2009

- Revised European Social Charter (ETS No. 163): ratified on 20 April 2009

- European Convention on Nationality (ETS No. 166): ratified on 21 Nov. 2001

- Council of Europe Convention on the avoidance of statelessness in relation to State succession (CETS No. 200): ratified 17 Jan. 2009

Bilateral:

- Hungary has also concluded a series of Working Holiday Scheme agreements with third countries (with Argentina, Chile, Hong Kong, Japan, New Zealand, South Korea, Taiwan, and Australia)⁸⁰⁰

- Local border traffic agreement with Ukraine: ratified 15 Dec. 2007

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Hungary's **new immigration law** applicable for non-EU nationals [third-country nationals] is titled "Act No. XC of 2023 on General Rules for the Admission and Right of Residence of Third-Country Nationals" (hereinafter: 'Third-Country Nationals Act'). It came into force on 1 January 2024, and the new rules are applicable from 1 March 2024. It is accompanied by pieces of implementing legislation, notably Government Decree No. 35/2024. (II. 29).

The Third-Country Nationals Act defines three major categories of stay: 1) short-term stay; 2) long-term stay; and 3) permanent residence.

Short-term stay denotes stays up to 90 days within any 180-day period (with a visa or without a visa – based on the EU Visa Regulation (EU) 2018/1806 defining visa-free and visa-bound third countries). Hungary issues Schengen visas which are, in principle, valid for the territory

⁸⁰⁰ See the list of third countries: <https://oif.gov.hu/index.php/factsheets/working-holiday-agreements>.

of all Schengen countries (27 EU Member States plus Iceland, Liechtenstein, Norway, and Switzerland). Some 120 third countries are visa-bound by virtue of the EU Visa Regulation (Annex I).

Long-term stay denotes any stay exceeding 90 days within any 180-day period. This type of stay encompasses long-stay visas (e.g. national visas, guest investor visas) and various types of residence permits, with categories based on employment qualifications, such as “guest workers”, “single permit holders” (residence and work permit combined), “highly-skilled workers”, and “guest investors” – each with specific criteria. Overall, there are more than 30 grounds for long-term stay, with corresponding residence permit types. The new law specifies 24 types of residence permits, including 8 for the purpose of employment. Some *titres de séjour* are based on EU law (e.g. the Single Permit, the EU Blue Card for highly-skilled workers, family reunification permit, intra-corporate transferee permit, or the seasonal workers permit) or international treaties (Working Holiday Scheme for tourists, statelessness status), while others are purely ‘national permits’, based on national law. Such national permits encompass the National Card (available to Serbian and Ukrainian citizens), the Hungarian Card (available to third-country nationals with a degree in IT, technology or science, music teachers, professional sportsmen and coaches, performers and people working in film production companies), the Company Card, and the White Card for digital nomads. These residence permits are valid for two years, with one 12-month extension possible. Upon expiry, a new application is required, and employment is not allowed while awaiting the new permit. The various categories of migrant workers may not transfer to other types of permits, do not become eligible for permanent residence, and cannot request family reunification.

Permits that entitle the holder to **permanent residence** are national residence card (after 3 years of continuous residence), EU interim long-term residence card (for those in possession of an EU long-term residence permit⁸⁰¹ moving to Hungary) and EU long-term residence permit (after 5 years of continuous residence, allowing for intra-EU mobility). In principle, permanent residence gives the right to the third-country national to stay in Hungary for an unlimited duration (with the exception of EU interim long-term residence permit, which is for 5 years, but can be extended by 5 years at a time). Applicants for permanent residency must comply with the requirements of “social coexistence” and are required to pass a Hungarian history and culture test, conducted in Hungarian, starting 1 January 2025.

As opposed to third-country nationals, **EU/EEA⁸⁰² nationals** enjoy a privileged treatment and status in Hungary. Their rights to enter and stay in Hungary are governed by EU Directive 2004/38/EC,⁸⁰³ which is transposed into Hungarian law by Act No. I of 2007 on the entry and

⁸⁰¹ As per Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents [2003] OJ L 16/44.

⁸⁰² EEA stands for ‘European Economic Area’. The EEA extends the EU’s single market to three European Free Trade Association (EFTA) countries: Iceland, Liechtenstein, and Norway, in addition to all 27 EU Member States. Switzerland is an EFTA member but not a party to the EEA Agreement, choosing instead to pursue a series of bilateral agreements with the EU. Established by the EEA Agreement (in force since 1 January 1994), the EEA allows for the free movement of goods, services, capital, and people between its 30 member countries, creating a unified internal market governed by the same basic EU rules. However, the EEA does not cover areas like the EU’s common agricultural and fisheries policies, customs union, or common foreign and security policy.

⁸⁰³ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

residence of persons with the right to free movement and residence, and its implementing legislation, most importantly Government Decree No. 113/2007 (V.24). They and their family members of whatever nationality enjoy the EU right to free movement in the whole European Economic Area (EEA), including Hungary. For stays **under 90 days**, no registration is needed for EU/EEA nationals, but for longer stays, registration of the Hungarian address and application for a so-called ‘registration certificate’⁸⁰⁴ are required **after 90 days**. Those wishing to settle down **permanently** in the country are issued, after five years of uninterrupted stay, a ‘permanent residence card.’⁸⁰⁵ Third-country national family members accompanying or joining EU/EEA nationals in Hungary are entitled first to a ‘residence card for family members’,⁸⁰⁶ and after five years of uninterrupted stay, a ‘permanent residence card for family members’ (having the same format as the ‘permanent residence card’).

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others. For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

As per the Third-Country Nationals Act, categories of migratory status allowing a **third-country national** to reside for more than three months are the following:⁸⁰⁷

- Guest self-employed residency: available to anyone who has a business in Hungary, whether as a freelancer or as a company owner;
- Guest investor residency: 10-year residency for the entire family in exchange for an investment of over EUR 250,000
- Residence permit for seasonal work: valid only for 6 months;
- Residence permit for employment purposes issued for the implementation of an investment: relevant only in government approved projects;
- Residence permit for guest workers: relevant to third-country nationals who are to work for preferential employers or qualified temporary work agencies (this permit is currently available only to specific nationalities);
- Hungarian Card: available to employees in jobs that need high qualifications;

amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) [2004] OJ L 158/77.

⁸⁰⁴ For its format and specifics, see Council of the European Union - PRADO - HUN-HO-04001.

⁸⁰⁵ For its format and specifics, see Council of the European Union - PRADO - HUN-HO-07001.

⁸⁰⁶ For its format and specifics, see Council of the European Union - PRADO - HUN-HO-07002.

⁸⁰⁷ See Third-Country Nationals Act, Art. 6 and the Third Part of the Act.

- EU Blue Card: available to employees in jobs that need high qualifications; has the added benefit that changing employers does not require a new application after 1 year of employment; however, the monthly minimum salary specified for this type of residency is 1.5 times of the average salary of the year before the previous;
- Intra-corporate transferee permit: available to employees of foreign companies who are transferred to a Hungarian subsidiary or affiliate of the same company;
- Corporate Card: available only to executive officers of specific companies that have made an agreement with the Hungarian government;
- National Card: a type of work permit that can be received only by Serbian or Ukrainian citizens;
- Residence permit for family unification: available to the spouse and underage children (younger than 18 years) of a Hungarian resident (not every type of residence permit provides an option for family unification);
- Residence permit for study purposes: meaning full-time studies at a registered public education institution of higher education;
- Residence permit for training purposes: similar to a student permit, but available to persons participating in other, scholarship-based training programs;
- Residence permit for interns (“traineeship”): available to recently graduated or soon to graduate students of a relevant field, based on a traineeship contract with an approved hosting organization;
- Residence permit for the purpose of research: available to researchers who have a hosting agreement with an accredited research organization;
- Residence permit for job seeking or starting a business: available to soon to graduate students at Hungarian higher education institutions who wish to stay in Hungary in order to find a job or start a business;
- Residence permit for official purposes: available to diplomats/consuls, press correspondents, or members of various cultural, scientific, or educational institutions operating under international treaties in Hungary;
- Working Holiday Scheme permit: available only to certain nationalities, based on international agreements;⁸⁰⁸
- White Card: available to ‘digital nomads’ who want to live in Hungary while performing remote work for a company that is not based in Hungary;
- Residence permit for posted work (or secondment): available to third-country nationals who already have an EU work permit and are now posted to Hungary for a short time;
- Residence permit for medical treatment purposes: based on a formal statement by the medical facility that is to provide treatment;

⁸⁰⁸ See the list of third countries: <https://oif.gov.hu/index.php/factsheets/working-holiday-agreements>.

- Residence permit for voluntary activities: based on a voluntary contract with a host organization;
- Residence permit issued in the national interest of Hungary: granted by the responsible Minister, based on the economic, national political, scientific, cultural and sporting interests of Hungary;
- Residence permit issued for humanitarian reasons: available to stateless persons, victims of trafficking in human beings (in case they cooperate with the authorities), or other people who require some kind of protection or support;
- National residence card (with mostly the same conditions as the former national permanent residence permit): available for those who have been living in Hungary for at least 3 years and has the funds to prolong their stay [a form of permanent residency];
- EU long-term residence card: available for those who have been living in Hungary for at least 5 years and has the funds to prolong their stay [a form of permanent residency];
- Interim EU long-term residence card: available to those who already have permanent residency in another EU country, and they are now moving to Hungary [a form of permanent residency].

EU/EEA nationals – and their family members of whatever nationality – have the right to stay for periods exceeding 90 days, which directly stems from EU law (notably the EU founding Treaties⁸⁰⁹ and Directive 2004/38/EC). They are entitled to stay for an unlimited duration in Hungary in possession of a ‘permanent residence card’ (issued after five years of uninterrupted stay, replacing the ‘registration certificate’ – see above in point 1); whereas their third-country national family members accompanying or joining them are entitled first to a ‘residence card for family members’ and after five years of uninterrupted stay, a ‘permanent residence card for family members’. These documents are issued pursuant to Act No. I of 2007 and its implementing legislation.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

The general legal framework governing granting international protection – i.e. **refugee status** and, as a ‘second-best status’, the so-called ‘**subsidiary protection**’⁸¹⁰ – is laid down in Act No. LXXX of 2007 on asylum (hereinafter: ‘Asylum Act’), alongside Government Decree No. 301/2007 (XI.9) laying down more detailed implementing rules on the matter. However, access to asylum (access to the territory) has been seriously limited in the past few years. Currently,

⁸⁰⁹ See them at Treaties currently in force - EUR-Lex.

⁸¹⁰ As defined in the EU Qualification Directive (Directive 2011/95/EU), Article 2(2)(f) [“a person eligible for subsidiary protection is someone “who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country”].

Hungary does not offer the possibility to third-country nationals to submit asylum applications from the territory of the country (not even at its borders).

After closing down the transit zones at the southern border with Serbia in May 2020,⁸¹¹ Hungary enacted a new law governing asylum procedures as part of a legislative package on ‘the transitional rules and epidemiological preparedness related to the cessation of the state of danger.’⁸¹² The law also provides for the **immediate removal** from the territory (i.e. escorting back to the outer side of the fence in the direction of Serbia) of any person who crosses the Hungarian border unlawfully and indicates an intent to seek asylum. The law introduced a new procedure requiring individuals to express their intent to seek asylum abroad, at designated Hungarian Embassies: in Belgrade (Serbia) and Kyiv (Ukraine) [“**embassy asylum procedure**”]. This is regardless of both the country of origin of the person concerned and their place or residence or apprehension.

First, a ‘declaration of intent’ must be submitted [using a pre-set form⁸¹³] which has to state that the asylum applicant wishes to enter Hungary in order to submit a claim for asylum.⁸¹⁴ The National Directorate-General for Aliens Policing decides on this request within 60 days, and, if necessary, can hear the applicant at the foreign diplomatic mission via telecommunication methods.⁸¹⁵ In case of a positive decision on the declaration of intent, the Hungarian foreign diplomatic mission issues an entry visa to the asylum applicant valid for one entry in 30 days after issuance.⁸¹⁶ The person’s intent to claim asylum in Hungary has to be communicated to the border authorities upon entry.⁸¹⁷ The border authority [border police] must bring the person to the National Directorate-General for Aliens Policing within 24 hours from the person entering Hungary.⁸¹⁸ The rights granted to asylum applicants can only be exercised once the claim for asylum has been submitted to the National Directorate General.⁸¹⁹ Upon receiving the claim for asylum, the National Directorate-General designates accommodation for the asylum applicants in a closed detention centre in Hungary.⁸²⁰ If the authority does not decide on the claim within four weeks, and the conditions to order asylum detention are not met, the Directorate-General designates accommodation to the asylum applicant in an open refugee camp or in a community shelter.

In July 2021, the European Commission referred Hungary to the Court of Justice of the EU (CJEU) for unlawfully restricting access to the asylum procedure in breach of Article 6 of the Asylum Procedures Directive (Directive 2013/32/EU) read in light of Article 18 of the Charter

⁸¹¹ This was as result of a CJEU ruling in Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, 14 May 2020.

⁸¹² Act No. LVIII of 2020 on transitional arrangements related to the end of the emergency state and epidemiological preparedness (*2020. évi LVIII. törvény*), Arts. 267-275.

⁸¹³ National Directorate-General for Aliens Policing, ‘Form for the submission of declaration of intent aiming to lodge a claim for asylum’.

⁸¹⁴ Act No. LVIII of 2020 on the transitional rules related to the termination of the state of danger and on the epidemiological preparedness, Art. 268 (1).

⁸¹⁵ *Ibid*, Art. 268 (3).

⁸¹⁶ *Ibid*, Arts. 268 (4) and 269.

⁸¹⁷ *Ibid*, Art. 270 (2).

⁸¹⁸ *Ibid*, Art. 270 (3).

⁸¹⁹ *Ibid*, Art. 270 (4).

⁸²⁰ *Ibid*, Art. 270 (5).

of Fundamental Rights of the EU (right to asylum).⁸²¹ The CJEU found that by making the possibility of lodging an asylum application subject to the prior submission of a ‘declaration of intent’ to an embassy located in a third country, Hungary has failed to fulfil its obligations under EU law. Still, the government has not made any measures to implement this CJEU ruling and the ‘embassy procedure’ continues to be in force, barring asylum seekers from accessing the asylum procedure in the territory – or even at the border – of Hungary.

In addition to the above, the Asylum Act regulates two forms of **temporary protection** which vary as to their geographical scope of application. One form transposes the EU Temporary Protection Directive (Directive 2001/55/EC) into Hungarian law.⁸²² For its application, the Council of the EU should declare that, on grounds of a massive influx of third-country nationals, temporary protection must be granted to a predefined scope of eligible persons in EU Member States. Currently, this has been activated – for the first time – for people displaced from Ukraine due to the Russian war of aggression since March 2022.⁸²³

Another form, called ‘**interim protection**’⁸²⁴ – independent from the EU Temporary Protection Directive and exists only as a national complementary protection status – can also be invoked in case of mass influx of displaced persons, if they fled their country due to an armed conflict, civil war or other internal armed conflicts, or due to general, systematic and frequent violation of human rights. The cases when this latter form of protection has to be applied and the scope of eligible persons are laid down by a government decree. The provisions of the EU Temporary Protection Directive are not applicable in this case, only the provisions of the national Asylum Act may be relied upon. Interim protection has never been activated yet.

Hungary has also a dedicated **statelessness determination procedure** since July 2007.⁸²⁵ A stateless person residing in the country, regardless of legal or migratory status, can apply for determining his/her stateless status by submitting a verbal or written application to the immigration authority, the National Directorate-General for Aliens Policing. The procedure is free of charge and involves two main interviews, where the applicant must provide detailed personal information and evidence to prove their lack of nationality under the operation of law of any relevant country (such as the country of place of birth, previous residence, or the nationality of family members). The immigration authority has to adopt its decision in 45 days. UNHCR is entitled to participate in the interviews, and to provide the applicant with support and assistance. Successful applicants are granted stateless status and receive a residence permit issued for humanitarian purposes which is valid for 3 years and renewable for 1 year at a time.

⁸²¹ European Commission (2021), ‘Commission refers Hungary to the Court of Justice of the European Union for unlawfully restricting access to the asylum procedure’, press release, 15 July 2021.

⁸²² Asylum Act, Art. 19(1)(a).

⁸²³ See Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection [2022] OJ L 71/1.

⁸²⁴ Asylum Act, Art. 19(1)(b).

⁸²⁵ Third-Country Nationals Act, Part Five and Chapter XXXIII of the Act. For more, see <https://index.statelessness.eu/country/hungary>; Tamás Molnár, ‘Statelessness Determination Procedure in Hungary’ (2013) 4 *Asiel and Migrantenrecht* 271.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

According to the Third-Country Nationals Act, a residence permit for family unification is available to a number of categories of third-country nationals **holding a residence permit**; as well as **permanent residents** and recognized **refugees** (Art. 71).

Family reunification is **not** possible if the sponsor: 1) does not hold a residence permit for the purpose of guest self-employment for at least a year; 2) is a seasonal worker; 3) holds a residence permit for the purpose of investment; 4) is a guest worker; 5) is a White Card holder; or 6) holds a residence permit for the purpose of studies, seeking job or starting a business, training, traineeship or voluntary service.

The following **family members** can be brought to join the applicant [sponsor] in Hungary: 1) the spouse (including registered partner, such as same sex couples, under Act No. XXIX of 2009); 2) the sponsor's and the spouse's minor children (including adopted children); 3) minor dependent children (including adopted and foster children) or those of the spouse with parental custody; as well as 4) the sponsor's or the spouse's dependent – financially or health-wise – (grand) parents and siblings. In case of an unaccompanied child refugee, the parents or the legally appointed guardian are also entitled to join.

5. What are the conditions for naturalization in the reviewed state?

The **general conditions** for any foreign national to acquire Hungarian citizenship via naturalization are the laid down in Act No. LV of 1993 on Hungarian citizenship. These are the following: 1) continuous residence in Hungary over a period of 8 years prior to the submission of the application; 2) clean criminal record; 3) sufficient means of subsistence and a place of abode in Hungary; 4) the naturalization is not considered to be a threat to the public order or to the national security; and 5) passing the citizenship test [civic knowledge] in Hungarian language.⁸²⁶

Facilitated conditions apply for family members of Hungarian citizens, children (including those adopted by Hungarian citizens), recognised refugees as well as stateless persons (e.g. only 3 years of prior residence is required).⁸²⁷

Since 2010, **simplified naturalization** is possible for foreign nationals whose ascendants were Hungarian citizens or who are able to substantiate of being of Hungarian origin, if they prove that they are sufficiently proficient in the Hungarian language. In case of simplified naturalization, no continuous residence in Hungary is requested and the applicant also does not need to have sufficient means of subsistence and a place of abode in Hungary.⁸²⁸ Since its introduction, more than 1,175 million foreign nationals (ethnic Hungarians) acquired

⁸²⁶ Act on Hungarian citizenship, Art. 4(1).

⁸²⁷ *Ibid*, Art. 4(2a)-(3).

⁸²⁸ *Ibid*, Art. 4(3).

Hungarian citizenship via this procedure.⁸²⁹ The majority of them are from Romanian [which accepts dual nationality in its domestic law].

The Government Office of Budapest processes every application for naturalization. The final decision on the citizenship applications is made by the President of Hungary.

Hungary allows for **dual citizenship**. Once Hungarian citizenship is granted, the naturalized citizen enjoys the same rights and obligations as every other Hungarian citizen.

Part II – Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Article XV of the **Fundamental Law [Constitution] of Hungary**⁸³⁰ stipulates that everyone is equal before the law and every human being has legal capacity. Hungary guarantees fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion,

⁸²⁹ See at <https://infostart.hu/belfold/2024/03/21/kiderult-az-egyszerusített-honosítás-új-allampolgárok-száma>.

⁸³⁰ For an English translation of the Fundamental Law (which entered into force on 1 January 2012), see at <https://www.parlament.hu/documents/125505/138409/Fundamental+law/>.

national or social origin, property, birth or any other status. The text also adds that women and men shall have equal rights.

In addition, Hungary has enacted a self-standing legislation on non-discrimination (**Act No. CXXV of 2003**), mainly implementing relevant EU directives on equal treatment and the case law of the ECtHR.⁸³¹ This overarching, across-the-board requirement of equal treatment protects everyone, also with a view to preventing discrimination in many areas of life between nationals and non-nationals present in the territory of Hungary.

More specifically, prohibition of discrimination against EU citizens stems directly from the **EU founding Treaties** which are directly applicable in Hungary and are incorporated in the Hungarian legal order by Act No. XXX of 2004. Sectoral legislation also sets out non-discrimination obligations with respect to certain categories of third-country nationals, such as Single Permit holders (in many areas of life); recognised refugees (as a general rule); as well as beneficiaries of subsidiary and temporary protection and stateless persons (with limitations).⁸³²

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Non-nationals have limited political participation rights in Hungary.

Adult **EU nationals** with registered residency can vote and stand in local (municipal) and European Parliament elections under the same conditions as Hungarian nationals,⁸³³ while adult non-EU (**third-country nationals**) permanently residing in Hungary and recognised **refugees** have the right to vote in local (municipal) elections but not to stand as candidates.⁸³⁴ These rights are contingent on active voter registration and are subject to restrictions set out in acts of the Parliament adopted by two third majority (cardinal law),⁸³⁵ such as not having the right to stand for single-seat constituency seats in European Parliament elections.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

⁸³¹ For more on this body of European law, see FRA and Council of Europe (2018), *Handbook on European non-discrimination law*, 2018 edition, Publications Office, Luxembourg.

⁸³² See, e.g., the pertinent provisions of the Third-Country Nationals Act and the Asylum Act.

⁸³³ Fundamental Law, Art. XXIII(2) – giving effect to Art. 20(2) TFEU.

⁸³⁴ Fundamental Law, Art XXIII(3).

⁸³⁵ See notably Act No. CXIII of 2013 on the elections of members of the European Parliament.

Aside from the right to vote and the right to hold a public office (reserved for Hungarian nationals only),⁸³⁶ Hungarian law, in principle, does not place restrictions on non-nationals' exercise of civil and political rights set out in the Fundamental Law (see the chapter titled "Freedom and Responsibility" therein).

These rights, in line with Hungary's undertaken international obligations under several UN conventions (e.g. the ICCPR) and Council of Europe conventions (e.g. the ECHR), equally apply to all non-nationals, irrespective of migratory status, with the same conditions as in case of own nationals.

Still, some exceptions apply: most importantly, freedom of movement is restricted in case of asylum applicants⁸³⁷ and those migrants in an irregular situation who are subject to return procedures, especially when they are placed in detention pending removal.⁸³⁸

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Buying property [real estate and/or land for farming] in Hungary as a non-national is possible but comes with specific rules depending on the nationality of the person concerned.⁸³⁹

Foreign ownership of **agricultural and forestry land** in Hungary is generally prohibited, with very few exceptions. While EU/EEA nationals who qualify as farmers may potentially acquire agricultural land, natural persons and legal entities from non-EU [third] countries, as well as most foreign legal entities, are explicitly barred from purchasing it. The legislation aims to keep farmland in the hands of Hungarian and EU farmers.

As regards acquiring **real estate** other than land used for agricultural or forestry purposes, EU/EEA nationals enjoy nearly the same rights as Hungarian nationals, while non-EU nationals (third-country nationals) must obtain a purchase permit before completing any transaction. For the latter, the process involves submitting an application for authorization to the relevant government office (20 decentralised government agencies at county and Budapest level), which can take around 30-45 days for approval. It requires mandatory legal representation throughout.

⁸³⁶ Fundamental Law, Art. XXIII(8).

⁸³⁷ Asylum Act.

⁸³⁸ Third-Country Nationals Act.

⁸³⁹ See Government Decree No. 251/2014 (X.2) on the acquisition by foreign nationals of real estate other than land used for agricultural or forestry purpose; and Act No. CXXII of 2013 concerning agricultural and forestry land trade.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

EU/EEA nationals do not need a permit to engage in formal employment, as they enjoy equal treatment with Hungarian nationals pursuant to EU law (notably under Articles 18 and 45-48 TFEU and Regulation (EU) No. 492/2011 – these are directly applicable provisions with direct effect within the Hungarian legal system).⁸⁴⁰

Non-EU nationals (**third-country nationals**) typically need a valid residence permit for the purpose of employment and a work permit (in some cases the two are merged into one document called ‘Single Permit’⁸⁴¹), though certain exceptions exist, such as for EU Blue Card holders (for highly qualified migrant workers) or specific nationalities listed in Annex 1 of Government Decree No. 450/2024 (XII.23) on ‘guest workers’. The process involves securing a job offer, obtaining a preliminary labour or employment contract, and then applying for the necessary residence and work permits at the Hungarian consular or diplomatic representation in their home country.

Some specific groups of third-country nationals enjoy privileged position:⁸⁴² recognized refugees and beneficiaries of subsidiary protection can access employment on a par with Hungarian nationals, meaning that they do not need work permits.⁸⁴³ However, employers must report new employment to the competent government office and the immigration authority [National Directorate-General for Aliens Policing] by the start date or the following day. For stateless persons, a separate humanitarian residence permit and unified work and residence permit (‘Single Permit’) are required to work, to be obtained from the National Directorate-General for Aliens Policing.⁸⁴⁴ Asylum applicants can initially only seek employment within the open reception facility or in a public employment position. After 9 months, they are also allowed to work outside the facility if they find an employer – in this case, the employer needs to request a work permit for the asylum applicant concerned.⁸⁴⁵

⁸⁴⁰ Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (Text with EEA relevance) [2011] OJ L 141/1. For a concise but critical overview, see The Free Movement of Workers in the Twenty-first Century | The Oxford Handbook of European Union Law.

⁸⁴¹ In application of Directive (EU) 2024/1233 of the European Parliament and of the Council of 24 April 2024 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast) [2024] OJ L 1233, 30.4.2024.

⁸⁴² For an overview, see Resources for employers in Hungary | UNHCR Europe.

⁸⁴³ Asylum Act, Art. 10.

⁸⁴⁴ Act No. IV of 1991 on Promoting Employment and Providing for the Unemployed, Art. 7(1).

⁸⁴⁵ Asylum Act, Art. 5(1)(c).

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

No such quotas or limitations apply to **EU/EEA nationals** – see also the response to point 5 above.

As concerns non-EU nationals (**third-country nationals**), Hungary has established quotas and limitations for hiring extra-EU workers, most notably an annual cap of 35,000 work permits for third-country nationals ('guest workers') that took effect on 1 January 2025.⁸⁴⁶ There are also restrictions on the nationalities eligible for 'guest worker' work permits (notably only those from a specified list of countries, currently Georgia and Armenia, and the Philippines can apply for work permits for jobs not requiring higher education).⁸⁴⁷ This list can be expanded to include third countries with readmission agreements with Hungary or the EU, or those with a representative office in Hungary. There is also a requirement for employers to prioritize Hungarian workers, with additional rules barring employers with past labour violations from hiring foreigners.⁸⁴⁸

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Public civil service, notably working in public administration (at all levels), is restricted for Hungarian nationals only. According to Article XXIII(8) of the Fundamental Law, "every Hungarian citizen shall have the right to hold public office according to his or her aptitude, qualifications and professional competence."

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Non-nationals in Hungary are subject to Hungarian labour laws, but their entitlement to work and the specific procedures for obtaining work permits vary based on their nationality and immigration status, with **EU/EEA nationals** enjoying broad free movement rights while non-EU nationals (**third-country nationals**) require specific authorization.

⁸⁴⁶ Decree NGM No. 51/2024 (XII.23) on the total number of residence permits for employment purpose, issued by the Minister for National Economy.

⁸⁴⁷ Government Decree No. 450/2024 (XII.23) on the employment of guest workers in Hungary.

⁸⁴⁸ Government Decree No. 445/2013. (XI. 28.) on the authorization of employment of third-country nationals in Hungary in procedures other than the single application procedure, on the exemptions of such authorization obligation, on the involvement of the metropolitan and county government offices as opinion makers in single application procedures, and on the notification of employment of third-country nationals' authorization free employment in Hungary and salary reimbursement.

Legally employed EU-EEA nationals and third-country nationals are all entitled to standard labour protections, on a par with Hungarian nationals.⁸⁴⁹ However, workers in an irregular situation are not (Hungarian labour law requires lawful residence and a valid work permit for employment to be recognised under the Labour Code⁸⁵⁰) and their employment also carries significant penalties for employers.⁸⁵¹

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Non-nationals have varying access to Hungarian public health services, depending on their employment, residency status, and country of origin (e.g. based on bilateral agreements on social security⁸⁵²). In general, access and entitlements are governed by Act No. CXXII of 2019 on persons entitled to social insurance benefits, and the funding these services.

EU/EEA nationals for a temporary stay (e.g. tourists) are entitled to medically necessary treatment at public healthcare providers covered by the Hungarian National Health Insurance Fund, in possession of a European Health Insurance Card (EHIC)⁸⁵³ or a provisional replacement form. They can access medical services in Hungary on the same terms as nationals during such a temporary stay. For planned or longer stays, EU/EEA nationals working or studying in Hungary can enrol in the public system to get a Hungarian social security card (TAJ card) for broader coverage

As regards non-EU nationals (**third-country nationals**), some categories have equivalent access to healthcare with nationals (e.g. through public health insurance from employment,⁸⁵⁴ long-term residency, or refugee status), while others only have access to essential, emergency, healthcare services unless they have private insurance or enjoy specific protection statuses like temporary protection within the meaning of EU Directive 2001/55/EC.⁸⁵⁵

Asylum applicants are entitled to certain free healthcare services. These include primary care, mandatory vaccinations, emergency outpatient and hospital care, prenatal and obstetric care. Vulnerable people (e.g. pregnant women, children, persons with disabilities, victims of torture or SGBV) may receive additional specialised, psychological or rehabilitative care as needed.

⁸⁴⁹ Act No. I of 2012 on the Labour Code.

⁸⁵⁰ See also, e.g. Eurofound, Working Life in Hungary, 2024; and https://migrationonline.cz/en/e-library/no-work-permit-no-protection?utm_source=chatgpt.com#_ftnref14.

⁸⁵¹ Third-Country Nationals Act, Art. 145.

⁸⁵² For more on these bilateral agreements, see Szociális biztonsági, szociálpolitikai és egészségügyi együttműködési egyezmények – NEAK.

⁸⁵³ See at https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/eu-social-security-coordination/european-health-insurance-card_en.

⁸⁵⁴ See Act No. LXXXIII of 1997 governing the Hungary's compulsory health insurance system.

⁸⁵⁵ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L 212/12.

Recognized refugees have access to free essential healthcare, including primary care, emergency treatment, and vaccinations. In principle, they are eligible for full public healthcare services with a social security card (TAJ card), on a par with Hungarian nationals.⁸⁵⁶

Migrants in an irregular situation are entitled to emergency and life-saving healthcare, but access to more extensive care is limited. While not entitled to a social security card (TAJ card), they can receive primary healthcare services for free if they are socially disadvantaged and not covered by a social security system.⁸⁵⁷ Their access to public health care is often hindered due to administrative and practical obstacles. These include elevated costs, a lack of legal clarity, and fear of being reported, which can impede access to necessary services, particularly for mental healthcare and basic needs like immunisation. Irregular migrants held in pre-removal detention centres or in community shelters have more extensive healthcare access within those facilities.⁸⁵⁸

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

In general, non-nationals can access Hungarian public education services, but access rights and cost vary.

All non-nationals residing in Hungary have a right and obligation to enrol in the compulsory education system (ages 3 to 16), including kindergarten, primary and secondary schools, on the same terms as Hungarian children, in particular if they stay in the country longer than three months.⁸⁵⁹ This right to primary and secondary education also applies to asylum-seeking children and those children who are recognised refugees and beneficiaries of subsidiary or temporary protection as well as stateless children, though there might be practical delays or initial instruction in centres.

When it comes to tertiary (higher) education, **EU/EEA nationals** can apply for state-funded or self-funded programs and receive the same benefits as Hungarian nationals. Non-EU national (**third-country national**) students typically pay tuition fees, though access is still possible through various – e.g. state-funded – scholarship programs and self-funding options. For instance, the Hungarian government offers the *Stipendium Hungaricum Scholarship Programme*, which provides opportunities for students from non-EU countries to study at Hungarian higher education institutions, sometimes at no cost.⁸⁶⁰ University admission can also be based on bilateral agreements between Hungary and third countries. For Hungary, attracting

⁸⁵⁶ For more, see A menekültek és menedékesek egészségügyi ellátáshoz való hozzáféréseinek lényegi elemei Magyarországon – az ukrán válság fényében.

⁸⁵⁷ For more, see http://acta.bibl.u-szeged.hu/7410/1/juridpol_072_205-223.pdf.

⁸⁵⁸ Government Decree No. 35/2024 (II.29), Arts. 125-127.

⁸⁵⁹ Fundamental Law, Art. XI(2); and Act No. CXCV of 2011 on National Public Education.

⁸⁶⁰ The state-funded Stipendium Hungaricum Scholarship Programme was launched in 2013. It is based on bilateral agreements with more than 60 third countries and aims the internationalization of the Hungarian higher education. For more, see <https://stipendiumhungaricum.hu/>.

international students in tertiary education serves the aim of creating a competitive higher education system, as universities have to develop new study programmes and services to be able to receive more foreign students.⁸⁶¹

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Most non-nationals, including those from EU/EEA countries and many non-EU nationals (third-country nationals) working in Hungary, are required to contribute to the social security system through their employment and are therefore eligible for benefits on the same basis as Hungarian nationals. The general rule is that if a non-national is gainfully employed in Hungary and pays the required contributions, they are covered by the social security system and have full access to healthcare, unemployment benefits, retirement pension, accident benefits, family and childcare allowances etc.⁸⁶² Aiming to prevent migrants from the neighbouring [then] non-EU countries from accessing the Hungarian labour market and the social security system was the reason for which Hungary has still not ratified Articles 18 and 19 the European Social Charter.⁸⁶³

Zooming in on **third-country nationals**, if they have an employment contract with a Hungarian company and are not covered by a bilateral social security agreement concluded with their home country (e.g. USA, Mongolia, South Korea, Australia, India, Japan, etc.), their social security status is identical to that of Hungarian employees. Third-country nationals not engaged in economic activity must have a registered residence (with a residence permit or permanent residence permit) to access certain social security benefits like family benefits, healthcare, and unemployment benefits. Third-country nationals posted to Hungary [posted workers] are not covered by the Hungarian social security system for the first two years of their assignment, with a special extension possibility available under specific conditions.⁸⁶⁴ Refugees and other beneficiaries of international protection are considered ‘domestic residents’ under Hungarian law and are required to apply for a social security card, granting them access to the system under the same conditions as Hungarian nationals.⁸⁶⁵

⁸⁶¹ See https://home-affairs.ec.europa.eu/system/files/2020-09/13a_hungary_attracting_retaining_students_en.pdf.

⁸⁶² See Act No. CXXII of 2019 on Persons Entitled to Social Insurance Benefits, and the Funding these Services; and Act No. LXXXI of 1997 on Social Security Pension Benefits

⁸⁶³ For more, see https://link.springer.com/chapter/10.1007/978-3-030-51241-5_14; and [11-Hungary-Report on the social security rights of short-term third-country national migrant workers_2023.pdf](#).

⁸⁶⁴ Act No. I of 2012 on the Labour Code.

⁸⁶⁵ Act No. CXXII of 2019 on Persons Entitled to Social Insurance Benefits, and the Funding these Services.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Most forms of social assistance are provided by the central authorities, but some are granted by municipalities. They are means-tested benefits which aim at providing an adequate standard of living for low-income families, with eligibility based on income and a lack of other sources of income. Forms of social assistance include financial support for families such as family allowances, regular child protection benefits, and support for mothers, alongside assistance for specific needs, including childcare allowances, child raising support, and allowances for individuals with disabilities. Other forms of support include public employment programs that offer temporary work and wages as an alternative to welfare.

EU/EEA nationals in Hungary are entitled to access social assistance in accordance with EU law, but eligibility often depends on their legal residence and economic situation, as economically inactive EU/EEA nationals may face stricter conditions. While employed EU/EEA nationals in Hungary are eligible to social assistance on the same basis as Hungarian nationals, economically inactive EU/EEA nationals may need to demonstrate sufficient resources or qualify under specific provisions to receive social advantages.⁸⁶⁶

Non-EU nationals' (**third-country nationals**) access to Hungarian welfare programmes is limited, generally requiring a valid residence permit or permanent residence permit, and specific criteria must be met for eligibility, such as being a long-term resident or having an EU Blue Card [issued to highly-skilled workers].⁸⁶⁷ Asylum applicants and beneficiaries of temporary protection are entitled to receive accommodation support (but recognised refugees not). Social assistance benefits for those third-country nationals who are not pursuing economic activity is, as a main rule, subject to the effective registration of residence and possession of the residence permit or permanent residence document. There is a strong interrelationship in Hungary between eligibility to social security, social assistance benefits (including welfare programmes) and lawful residence.

Are there any final observations you would like to make? Please write below.

N/A.

⁸⁶⁶ Act No. III of 1993 on Social Administration and Social Benefits.

⁸⁶⁷ *Ibid.*

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

February 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: India

Author: Malavika Rao

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		
1967 Protocol to the Convention relating to the Status of Refugees		
1954 Convention relating to the Status of Stateless Persons		
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		

ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		
American Convention on Human Rights (ACHR)		

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Migration and Mobility Partnership Agreements

1. UK-India Migration and Mobility Partnership, 2021.⁸⁶⁸
2. Germany-India Migration and Mobility Partnership Agreement, 2022.⁸⁶⁹
3. India-France Migration and Mobility Partnership Agreement, 2018.⁸⁷⁰
4. India-Australia Migration and Mobility Partnership Agreement, 2022.⁸⁷¹
5. India-EU Common Agenda on Migration and Mobility, 2016.⁸⁷²

⁸⁶⁸ <https://www.gov.uk/government/news/uk-and-india-sign-ground-breaking-partnership-migration-deal#:~:text=Landmark%20agreement%20will%20allow%20young,operation%20around%20organised%20immigration%20crime>

⁸⁶⁹ <https://www.bmi.bund.de/EN/topics/migration/migration-partnerships/indien/indien-node.html#:~:text=German-Indian%20migration%20agreement,migration%20agreement%20of%20this%20kind.&text=In%20its%20coalition%20agreement%2C%20the,returns%20with%20countries%20of%20origin>

⁸⁷⁰ https://www.mea.gov.in/bilateral-documents.htm?dtl/39071/India_France_Joint_Statement_on_the_visit_of_Shri_Narendra_Modi_Honble_Prime_Minister_of_India_to_France_1012_February_2025#:~:text=Both%20leaders%20also%20welcomed%20the,people%20of%20India%20and%20France

⁸⁷¹ <https://www.homeaffairs.gov.au/news-media/archive/article?itemId=1091>

⁸⁷² https://www.mea.gov.in/images/attach/migration_and_mobility_between_india_and_the_european_union.pdf

Indo-Nepal Treaty of Peace and Friendship (1950): this treaty allows for the free movement of people between India and Nepal, including reciprocal privileges for nationals of both countries to live, work, and own property in either country without the need for visas or work permits (Article 7).⁸⁷³

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

India primarily operates a visa-based system without a separate residence permit requirement. Visas serve both as entry and stay authorizations and conditions are specified for each visa category. For long-term stays exceeding 180 days, foreign nationals must register with the Foreigners Regional Registration Office (FRRO) or the Foreigners Registration Office (FRO) within 14 days of arrival, obtaining a Residential Permit that validates their extended stay. While the legal basis of the stay continues to derive from the visa, the Residential Permit serves as a registration or compliance document (distinct from a residence permit) for long-term foreign residents.

Relevant legislations⁸⁷⁴ to govern visas and entry requirements in India are:

- Citizenship Act, 1955 (primary legislation for rules pertaining to acquiring citizenship)⁸⁷⁵
- Immigration and Foreigners Act, 2025⁸⁷⁶ (replacing the Foreigners Act, 1946; primary legislation regulating entry, stay, and exit of foreigners, and defining who a ‘foreigner’ is)⁸⁷⁷
- Passport (Entry into India) Act, 1967 (primary legislation providing for requirements for entry documents, including passport validity and visa types)⁸⁷⁸

⁸⁷³ <https://www.mea.gov.in/bilateral-documents.htm?dtl/6295/Treaty+of+Peace+and+Friendship>

⁸⁷⁴ For a list of all legislation, see <https://boi.gov.in/boi/public/content/pages/8f783074-e974-4524-8d2d-39a401879866>.

⁸⁷⁵ <https://www.indiacode.nic.in/bitstream/123456789/1522/1/a1955-57.pdf>

⁸⁷⁶ The Foreigners Act, 1946, the Passport (Entry into India) Act, 1920, the Registration of Foreigners Act, 1939, and the Immigration (Carriers' Liability) Act, 2000 have been repealed by the Immigration and Foreigners Act, 2025 (No. 13 of 2025), effective 1 September 2025. The 1967 Passports Act remains in force. <https://www.indiacode.nic.in/bitstream/123456789/21918/1/A2025-13.pdf>

⁸⁷⁷ https://www.mha.gov.in/PDF_Other/act1946_17042017.pdf.

⁸⁷⁸ https://passportindia.gov.in/AppOnlineProject/pdf/passports_act.pdf

Additionally, the Ministry of Home Affairs (MHA) and the Ministry of External Affairs (MEA) of the Government of India issue regulations and guidelines.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

India offers several long-term visa categories that allow non-nationals to stay beyond three months. These visas typically allow multiple entries and require registration if staying more than 180 days. Key categories include:⁸⁷⁹

- (i) Tourist Visa: For tourism, recreation, sightseeing, casual visits to meet friends or relatives. Typically short-term (30 days to 5 years), multiple-entry available.
- (ii) Business Visa: Issued for business purposes including attending meetings, conferences, or exploring business ventures. Duration ranges from short-term visits to 5 years.
- (iii) Employment Visa: Provided to foreign nationals employed in India by registered Indian companies or organizations. Generally valid for 1-5 years, renewable based on employment continuity.
- (iv) Student Visa: Granted to foreign students enrolled in recognized educational institutions in India. Valid for the course duration, extendable based on academic requirements.
- (v) Medical Visa: For those seeking medical treatment in recognized and specialized hospitals. Validity usually up to 1 year, extendable depending on medical conditions.
- (vi) Research Visa: Issued for academic or scientific research purposes in recognized institutions. Typically valid up to 3 years or for the duration of the project.
- (vii) Conference Visa: For attendees of international conferences, seminars, or workshops. Short-term validity, usually limited to event duration.
- (viii) Journalist Visa: For journalists, media personnel, and photographers. Validity often restricted to the specific assignment.
- (ix) Missionary Visa: For individuals coming to India for religious or missionary purposes. Usually subject to strict scrutiny and limited validity.

⁸⁷⁹ For the complete list, see <https://boi.gov.in/boi/public/content/pages/1f620c28-6ba1-4f25-ae77-2e8b63b02b61>

- (x) Entry (X) Visa (Dependent/Family Visa): Granted to dependents and family members (spouses, minor children) of foreigners residing in India on long-term visas (employment, student, research visas). Validity aligned with the principal visa holder's status.
- (xi) Project Visa: For executing projects in power and steel sectors, among others, issued to highly skilled specialists and technicians.
- (xii) Transit Visa: Short-term visa allowing transit through India to another country.

Typically, India does not have a separate residence permit system distinct from the visa system. However, long-term visa holders (e.g., employment, student, research visas) must register with the Foreigners Regional Registration Office (FRRO) within 14 days of arrival if their intended stay exceeds 180 days. Upon registration, foreigners would have a legal residence status documentation, allowing them to lawfully reside in the country for the duration of their visa validity.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

India currently lacks a formal domestic refugee statute and is not a party to the 1951 Refugee Convention or its 1967 Protocol.⁸⁸⁰ India has historically provided refuge to individuals fleeing persecution, primarily through ad hoc administrative practices and governmental decisions. Certain refugee groups, such as Tibetans and Sri Lankan Tamils, have received protection by the Indian government through executive orders, receiving official documentation and assistance.⁸⁸¹ In the case of some other groups, including Afghan, Iraqi, Somali, and Rohingya refugees, the UNHCR's India office undertakes refugee status determination (RSD), providing documentation and access to basic services.⁸⁸² Although the Indian government does not formally recognize this status, it often coordinates with the UNHCR.

India's obligations extend beyond specific treaty commitments due to customary international law principles, notably the principle of non-refoulement, which prohibits the forced return of refugees to territories where they face threats to their life or freedom. Although India has not ratified the Refugee Convention, it is bound by non-refoulement through its ratification of other international instruments like the International Covenant on Civil and Political Rights (ICCPR). Indian courts have recognized non-refoulement as part of the right to life under Article 21 of the Constitution,⁸⁸³ as in the case *Ktaer Abbas Habib Al Qutaifi v. Union of India* (1999),⁸⁸⁴ or

⁸⁸⁰ For a general overview on refugee protection in India, see Shuvro Prosun Sarker, *Refugee Law in India: The Road from Abiguity to Protection* (Springer, 2017).

⁸⁸¹ For example, see the Government of India's order on refugees from Sri Lanka <https://गृहमंत्रालय.सरकार.भारत/sites/default/files/RW-SL-1011.pdf>

⁸⁸² <https://help.unhcr.org/india/refugee-status-determination-2/>

⁸⁸³ <https://www.constitutionofindia.net/read/>

⁸⁸⁴ <https://indiankanoon.org/doc/1593094/>

have been analysed as part of Articles 14 and 19 of the Constitution, as in the case of *Mohammad Salimullah v. Union of India* (2021).⁸⁸⁵

These judgments are ambiguous and inconsistent, and courts have also declined to intervene in immigration cases because of national security concerns. For instance, in the case of Rohingya refugees (*Mohammad Salimullah v. Union of India*, 2021), the Supreme Court declined interim relief against deportations, citing India's non-party status to the Refugee Convention and emphasizing national security concerns. This decision highlights need for a dedicated legal framework of refugee protection. India has endorsed the Global Compact for Safe, Orderly and Regular Migration (GCM) in 2018.⁸⁸⁶ Implementing GCM principles domestically could significantly strengthen India's approach to migration governance and align national practices more closely with international norms.

In conclusion, while India's informal refugee protection mechanisms, judicial interventions, and international commitments provide a foundation for refugee protection, the absence of explicit domestic refugee legislation limits the consistency and effectiveness of its response. Strengthening the domestic legal framework by formally incorporating non-refoulement, clearly defined RSD procedures, and aligning national laws with India's international commitments, such as the ICCPR and the GCM, would greatly enhance legal clarity and protection for refugees and asylum seekers in India.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

There is no specific visa category in India for family reunification. Family reunification in India is primarily facilitated through the Entry (X) Visa, commonly known as dependent visa.⁸⁸⁷ This visa is available to:

- a. Spouses and children of Indian citizens;
- b. Family members of Overseas Citizen of India (OCI) or Person of Indian Origin (PIO) cardholders;
- c. Persons of Indian origin who do not qualify for OCI but wish to reside in India with relatives.

In general, the Entry (X) Visa is typically granted to spouses and dependent family members of individuals holding long-term visas, such as Employment or Student Visas. Applicants must provide documentation proving their relationship to the primary visa holder, including marriage certificates for spouses and birth certificates for children. The duration of the Entry (X) Visa usually depends on the status of the principal sponsor. For family members of Indian citizens or OCI cardholders, it is typically granted for up to 5 years and is renewable. On the other hand,

⁸⁸⁵ <https://indiankanoon.org/doc/10486034/>

⁸⁸⁶ India's position on the GCM: https://www.icwa.in/show_content.php?lang=1&level=3&ls_id=10216&lid=6515#:~:text=For%20India%2C%20signing%20the%20GCM,and%20Members%20of%20Their%20Families.

⁸⁸⁷ https://www.mha.gov.in/PDF_Other/AnnexI_01022018.pdf

for dependents of foreign nationals holding long term visas (employment, student, research), its validity aligns with the principal visa holder's visa period.

5. What are the conditions for naturalization in the reviewed state?

Naturalization in India is governed by Section 6 of the Citizenship Act, 1955.⁸⁸⁸ A foreign national may apply for Indian citizenship by naturalization if they:

- **Residence:** Have resided or been in the service of a government in India for 12 months immediately preceding the date of application; during the period immediately preceding the said 12 months, have resided or been in the service of a government in India for periods aggregating to not less than eleven years;
- **Good character:** are of good character and intend to reside in India;
- **Knowledge of an Indian language:** have an adequate knowledge of a language listed in the Eighth Schedule of the Indian Constitution;
- **Intent to reside:** Take an oath of allegiance to the Constitution of India, and express intent to reside in the country.

For the religious denominations of Hindu, Sikh, Buddhist, Jain, Parsi, Christian in Afghanistan, Pakistan and Bangladesh, the residence requirement is five years. These requirements are provided in Schedule III of the Citizenship Act, 1955.

The Indian government has full discretion in granting or denying citizenship, even when conditions are met. Additionally, India does not recognize dual citizenship; therefore, successful applicants are typically required to renounce any other citizenship they hold.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- g. temporary and permanent resident migrants;*
- h. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- i. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- j. refugees;*

⁸⁸⁸ <https://www.indiacode.nic.in/bitstream/123456789/1522/1/a1955-57.pdf>

- k. *asylum seekers;*
- l. *other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

In India, there is no comprehensive domestic framework on non-discrimination that applies specifically to non-nationals, rather non-discrimination is part of constitutional rights.⁸⁸⁹ The Constitution of India provides the main legal safeguard for non-discrimination in Article 14, which guarantees equality before the law and equal protection of the laws to 'any person,' thus extending protection to non-citizens. Article 21, guaranteeing the right to life and personal liberty, has also been interpreted broadly to cover all persons irrespective of nationality or legal status. For instance, in *National Human Rights Commission v. State of Arunachal Pradesh (1996)*,⁸⁹⁰ the Supreme Court affirmed that refugees were entitled to Article 21 protection.

By contrast, other constitutional guarantees such as Article 15 (prohibition of discrimination on grounds such as religion, race, caste, sex, or place of birth) and Article 16 (equality of opportunity in public employment) apply only to citizens. The Immigration and Foreigners Act, 2025 (replacing the Foreigners Act, 1946) gives the state discretion to restrict or regulate the rights of foreigners, including movement and residence. Operationally, these powers are implemented through the Immigration and Foreigners Rules 2025 and the Immigration and Foreigners Exemption Order, 2025) issued under the Immigration and Foreigners Act, 2025, which set conditions on entry, registration, movement, residence, and departure of foreigners (formerly governed by the Foreigners Order, 1948, issued under section 3 of the Foreigners Act, 1946).⁸⁹¹ The Citizenship (Amendment) Act, 2019 (CAA) illustrates the limitations of India's non-discrimination framework, as it expedites naturalization for members of six religious communities (Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Pakistan, and Bangladesh), while excluding Muslims from its scope, thereby raising questions about its compatibility with the right to equality under Article 14.⁸⁹²

⁸⁸⁹ https://www.indiacode.nic.in/bitstream/123456789/19150/1/constitution_of_india.pdf

⁸⁹⁰ <https://www.refworld.org/jurisprudence/caselaw/indsc/1996/en/33491>

⁸⁹¹ <https://thc.nic.in/Central%20Governmental%20Ordinances/Immigration%20and%20Foreigners%20Order,%202025..pdf>

⁸⁹² https://indiancitizenshiponline.nic.in/Documents/UserGuide/E-gazette_2019_20122019.pdf

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Political participation in India, including voting and standing for office, is restricted to citizens. While Article 326 of the Constitution provides for adult suffrage, citizenship as a condition for voting comes from the Representation of the Peoples Act, 1950.⁸⁹³ Articles 84 and 102 (Parliament) and Articles 173 and 191 of the Constitution limit the eligibility to contest elections and hold constitutional offices to Indian nationals. Non-citizens are therefore excluded from formal political participation at all levels, including at local and municipal bodies. They also cannot hold seats in the Union or State legislatures, and posts reserved for citizens such as in the civil services,⁸⁹⁴ or the judiciary as per Art. 124(3) of the Constitution of India.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Some civil rights are nevertheless available to non-nationals in India. Fundamental rights such as the right to life and personal liberty under Article 21, the right to equality before the law under Article 14, and access to constitutional remedies under Articles 32 and 226, extend to all persons, and have, at times, been invoked successfully by foreign nationals in Indian courts. For example, foreign prisoners have been able to challenge detention conditions through Article 21 petitions.⁸⁹⁵ By contrast, the rights under Article 19 (freedom of speech, assembly, movement, and occupation) are explicitly limited to citizens of India. As to movement, while India does not have obligations for non-citizens to stay for a specific period such as Australia, the movement and residence of non-nationals can be restricted under the Immigration and Foreigners Act, 2025 (e.g., FRRO registration, area restrictions, Protected/Restricted Area permits), constraints that do not apply to citizens.⁸⁹⁶

⁸⁹³ See Secs. 16 and 19: <https://ceodelhi.gov.in/WriteReadData/ManualElectionLaw/REPRESENTATION%20OF%20THE%20PEOPLE%20ACT,%201950.pdf>

⁸⁹⁴ For example, appointments to the Indian Police Service require citizenship as per the IPS Recruitment Rules, 1954. See Rule 5(1): https://upload.indiacode.nic.in/showfile?actid=AC_CEN_26_36_00002_195161_1517807321358&type=rule&filename=updated_ias_recruitment_rules.pdf

⁸⁹⁵ For example, *Louis De Raedt v. Union of India* (1991) <https://www.refworld.org/jurisprudence/caselaw/indsc/1991/en/18622>; *Ktaer Abbas Habib Al Qutaifi v. Union of India* (1999) on non-refoulement <https://www.refworld.org/jurisprudence/caselaw/indhc/1999/en/18610>

⁸⁹⁶ These restrictions are now governed by the Immigration and Foreigners Act, 2025 (formerly section 3(2)(e) of Foreigners Act, 1946 and Paragraphs 7 and 8 of the Foreigners Order, 1948); FRRO portal for registration and permits: <https://indianfro.gov.in>

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Yes, property rights are limited for non-nationals under the Foreign Exchange Management Act (FEMA), 1999 and Reserve Bank of India (RBI) regulations.⁸⁹⁷ According to these, foreign nationals of non-Indian origin who are resident outside India generally cannot purchase immovable property in India without prior RBI approval. Short-term leases up to five years are permitted. All non-nationals, including Overseas Citizen of India (OCI) or Person of Indian Origin (PIO) status, cannot purchase agricultural land, plantation property, or farmhouses. However, NRIs, OCIs and PIOs, can purchase residential or commercial property in India without the approval of RBI, subject to payment through normal banking channels and tax compliance. Moreover, foreign nationals of non-Indian origin resident in India (for eg, on employment or business visas) may acquire residential or commercial property without RBI approval under Regulation 4 of the FEMA (Immovable Property) Regulations, 2018.⁸⁹⁸

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Foreigners in India require an employment visa (e-visa) to take up formal employment.⁸⁹⁹ These visas are issued by the Ministry of Home Affairs and subject to specific conditions, including a minimum salary threshold of INR 16.25 lakhs per year, with limited exceptions (for example, language teachers, ethnic cooks, and embassy staff).⁹⁰⁰ Employment visas are generally valid for one year, and are extendable for the duration of the employment contract, up to five years. Employment is permitted only in companies registered in India and for positions requiring high levels of technical expertise or skills not readily available in the domestic labour market. Unskilled jobs are generally not open to foreign workers, and employment, including intern visas, in sensitive sectors such as defence, railways, atomic energy, and telecom is restricted.⁹⁰¹

⁸⁹⁷ FEMA, 1999: https://www.indiacode.nic.in/bitstream/123456789/1988/1/A1999_42.pdf; RBI Master Direction: https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10195

⁸⁹⁸ <https://incometaxindia.gov.in/Documents/Provisions%20for%20NR/FEM-%20Borrowings-and-Lending-Regulations-2018.htm>

⁸⁹⁹ https://www.mha.gov.in/PDF_Other/AnnexI_01022018.pdf

⁹⁰⁰ See page 6: https://www.mha.gov.in/PDF_Other/AnnexIII_01022018.pdf

⁹⁰¹ For ex, see para. 67(6) https://www.mha.gov.in/PDF_Other/AnnexIII_01022018.pdf.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

India does not impose a fixed quota on the proportion of non-nationals that businesses can employ. Instead, restrictions are implemented indirectly through visa policy and sectoral exclusions.⁹⁰² Employers hiring foreign nationals must justify that the role requires specialised skills not easily available in India. Moreover, foreign employees must typically be senior managers, highly skilled technicians, or individuals engaged in critical projects.

In practice, this limits foreign employment to specialised roles. Low-wage or semi-skilled employment of foreigners is effectively prohibited. Refugees and undocumented migrants, who cannot obtain employment visas are usually engaged in informal sector where their employment is unregulated.⁹⁰³

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Yes. Non-nationals are explicitly barred from employment in government services, including civil and public services, armed forces, and the judiciary. As noted above, sensitive industries such as nuclear energy, defence production, and railways are closed to foreign nationals. Restrictions also extend to certain roles in telecom, media, and research involving national security concerns. Even in sectors formally open to foreigners, visa rules restrict entry to highly skilled positions. The intent is to channel foreign labour into specialised niches while preserving the vast majority of professional and public-sector employment for Indian citizens.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Labour protections in India apply broadly to all workers without restricting nationality. This means foreign nationals in lawful employment are covered by the Code on Wages, 2019,⁹⁰⁴ the Occupational Safety, Health and Working Conditions Code, 2020,⁹⁰⁵ and specific legislations such as the Maternity Benefit Act, 1961.⁹⁰⁶ They are entitled to minimum wages, workplace safety standards, maternity and sick leave, and recourse to labour dispute mechanisms.

⁹⁰² https://www.mha.gov.in/PDF_Other/AnnexIII_01022018.pdf

⁹⁰³ https://nhrc.nic.in/sites/default/files/Refugees_in_India.pdf

⁹⁰⁴ https://labour.gov.in/sites/default/files/the_code_on_wages_as_introduced.pdf

⁹⁰⁵ <https://dgfasli.gov.in/public/Admin/Cms/AllPdf/650059fbb8f1a9.98699174.pdf>

⁹⁰⁶ <https://www.google.com/search?client=safari&rls=en&q=Maternity+Benefit+Act%2C+1961&ie=UTF-8&oe=UTF-8>

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Public health facilities in India are legally open to all persons, including foreigners. Emergency medical care cannot be denied based on nationality.⁹⁰⁷ Foreigners are also eligible to seek treatment in government hospitals, though typically at higher fees than citizens. For specialised treatment, foreign nationals may obtain a medical visa, allowing access to recognised hospitals for procedures such as organ transplants or advanced surgery.⁹⁰⁸ Medical attendants can apply for a special category visa as well.⁹⁰⁹

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Foreign children may enrol in public and private schools in India, but they are not covered by the Right of Children to Free and Compulsory Education Act, 2009, which guarantees free education for Indian citizens aged 6 to 14 years.⁹¹⁰ Enrolment usually depends on availability of documentation (such as birth certificates or residence proof). Refugee children face particular barriers in accessing schools due to lack of recognised identity papers. For example, even children of UNHCR-mandate refugees may encounter difficulties, as documentation issued by UNHCR is not universally recognised by Indian educational authorities.⁹¹¹

At the tertiary level, foreign students can study in Indian universities under supernumerary seats for international students up to 25%.⁹¹² The tuition fees for foreign students is generally higher than citizens and they are excluded from government-funded scholarships.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

India's social security architecture primarily benefits citizens and formal sector employees. Schemes such as the Employees' Provident Fund (EPF),⁹¹³ and Employees' State Insurance

⁹⁰⁷ Art. 21 (right to life) applies to non-nationals. See, *Parmanand Katara v. Union of India*, 1989 <https://www.globalhealthrights.org/wp-content/uploads/2012/11/SC-1989-Pt.-Parmandand-Katara-v.-Union-of-India-and-Ors..pdf>

⁹⁰⁸ <https://www.indiasevisa.org/india-visa-types/medical-visa>

⁹⁰⁹ <https://www.indiasevisa.org/india-visa-types/medical-attendant-visa>

⁹¹⁰ https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/RTE_Section_wise_rationale_re_v_0.pdf

⁹¹¹ <https://www.migrationpolicy.org/article/gaps-india-refugees-vulnerable-internal-migrants-pandemic>

⁹¹² https://www.ugc.gov.in/pdfnews/6865535_Guidelines-for-Admission-and-Supernumerary-seats-of-Foreign-Students.pdf

⁹¹³ https://www.epfindia.gov.in/site_en/index.php

(ESI),⁹¹⁴ technically cover all employees working in India, including foreigners, provided their employers are registered under these schemes. India has entered into bilateral Social Security with many countries, which allow portability of pension and provident fund contributions for workers from countries with which India has signed such agreements.⁹¹⁵

By contrast, welfare schemes such as pensions for the elderly, food subsidies under the Public Distribution System (PDS), and cash transfers under various central and state programmes are restricted to citizens.⁹¹⁶ Refugees and undocumented migrants are excluded, except for limited humanitarian assistance from UNHCR and NGOs.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Welfare programmes designed to guarantee an adequate standard of living, such as the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA),⁹¹⁷ housing schemes,⁹¹⁸ or subsidized food rations,⁹¹⁹ are targeted exclusively at Indian citizens, and are not available to non-nationals regardless of their visa or immigration status, including OCI cardholders and PIOs. Non-nationals, regardless of their legal status, are not eligible to participate in these programmes. Refugees usually rely largely on community networks, religious organisations, NGOs, and UNHCR support for basic needs such as food and shelter.⁹²⁰

Are there any final observations you would like to make? Please write below.

⁹¹⁴ <https://esic.gov.in>

⁹¹⁵ https://www.mea.gov.in/bilateral-documents.htm?dtl%2F26465%2FSocial_Security_Agreements

⁹¹⁶ https://nfsa.gov.in/portal/PDS_page

⁹¹⁷ https://nrega.dord.gov.in/MGNREGA_new/Nrega_home.aspx

⁹¹⁸ <https://pmaymis.gov.in/assets/pdf/book.pdf>

⁹¹⁹ https://nfsa.gov.in/portal/ration_card_state_portals_aa

⁹²⁰ <https://www.unhcr.org/where-we-work/countries/india/>; <https://jrs.net/en/country/india/>;

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

July 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Indonesia

Author: Hanna Adistyana Hefni

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		
1967 Protocol to the Convention relating to the Status of Refugees		
1954 Convention relating to the Status of Stateless Persons		
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	X	

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		X
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		X
ILO Equal Remuneration Convention (No. 100)		X

ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		X

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		
American Convention on Human Rights (ACHR)		

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:

As a member state of Association of Southeast Asian Nations (ASEAN), Indonesia is a party to:

- ASEAN Framework Agreement on Visa Exemption for the Citizens of ASEAN Member Countries⁹²¹
- ASEAN Agreement on the Movement of Natural Persons⁹²²
- ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers⁹²³
- ASEAN Declaration on the Protection of Migrant Workers and Family Members in Crisis Situations.⁹²⁴

Moreover, Indonesia is also a party and co-chair of the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*,⁹²⁵ a forum for information sharing, interactive dialogue, and practical cooperation on people smuggling, trafficking in person, and

⁹²¹ <https://agreement.asean.org/media/download/20160831072909.pdf>

⁹²² <https://agreement.asean.org/media/download/20240329064603.pdf>

⁹²³ <https://asean.org/wp-content/uploads/2021/01/3.-March-2018-ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers.pdf>

⁹²⁴ https://asean.org/wp-content/uploads/2023/11/ASEAN_Declaration_on_the_Protection_of_Migrant_Workers_Family_Members-in-Crisis-Situation-and-its-Guidelines.pdf

⁹²⁵ <https://www.baliprocess.net/about-the-bali-process/>

the other transnational crimes within the region of Asia-Pacific covering 48 members including Indonesia, Australia, and New Zealand.⁹²⁶

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Indonesia regulates migratory permits under the *Law Number 6 Year 2011 on Immigration*⁹²⁷ that differentiates Visa and Residence Permit. Article 1 paragraph 18 provides that

Visa of the Republic of Indonesia, hereinafter referred to as Visa, is a written statement provided by an authorized official at the Representative of the Republic of Indonesia or at any other place designated by the Government of the Republic of Indonesia that contains approval for foreigners to travel to the territory of Indonesia and is the basis for the granting of a Residence Permit.

Meanwhile, Article 1 paragraph 21 defines Residence Permit as, “*a permission granted to a foreigner by an Immigration Officer or foreign service official to be in the territory of Indonesia,*” which is different than Permanent Residence Permit that according to Article 1 paragraph 23 is, “*a permission granted to certain foreigners to reside and settle in the territory of Indonesia as a resident of Indonesia.*”

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Article 34 of Immigration Law provides that Indonesian government grants 4 (four) types of Visa, namely:

- a. Diplomatic Visa is granted to foreigners holding diplomatic passports and other passports to enter Indonesian territory to carry out diplomatic duties;

⁹²⁶ <https://www.baliprocess.net/bali-process-members/>

⁹²⁷ https://www.imigrasi.go.id/uu_imigrasi/bab-1-ketentuan-umum

- b. Official Visa is granted to foreigners holding official passports and other passports who will travel to Indonesian territory in order to carry out official duties that are not diplomatic in nature of the foreign government concerned or international organizations;
- c. Visitor Visa is granted to foreigners who will travel to Indonesian territory in the context of a government, educational, socio-cultural, tourism, business, family, journalistic duty visit, or a stopover to continue the journey to another country; and
- d. Limited Stay Visa is granted to foreigners who are in Indonesian territory as ministers, experts, workers, researchers, students, investors, the elderly, and their families, as well as foreigners who are legally married to Indonesian citizens, who will travel to Indonesian territory for a limited period of residence, or foreigners who work on ships, buoyancy devices, or installations operating in the waters of the archipelago, territorial seas, continental shelf, and/or Indonesia's Exclusive Economic Zone.

According to Article 40 par. 1 of Immigration Law, Visitor Visa and Limited Stay Permit are issued by Minister of Immigration and Correction. On the other hand, the issuance, extension, or revocation of Visitor Stay Permit, Limited Stay Permit, and Temporary Stay Permit are the authority of Minister of Immigration and Correction or the appointed immigration officer (Article 55 of Immigration Law).

Meanwhile, Article 48 of Immigration Law regulates that every foreigner who resides in Indonesian territory must hold a Residence Permit, which is classified into:

- a. Diplomatic Residence Permit is granted to foreigners entering Indonesian territory with a diplomatic visa;
- b. Official Residence Permit is granted to foreigners who enter Indonesian territory with an Official Visa;
- c. Visiting Residence Permit is granted to foreigners who enter Indonesian territory with a visiting visa, or a newborn child in Indonesian territory and their father and/or mother is a holder of a visit residence permit at the time of birth;
- d. Limited Stay Residence Permit is granted to:
 - foreigners who enter the territory of Indonesia with a limited stay visa;
 - children who at the time of birth in Indonesian territory are holders of limited residence permits;
 - foreigners who are granted a transfer of status from a Visiting Residence Permit;
 - captains, crew members, or foreign experts on board marine vessels, buoyancy devices, or installations operating in Indonesian waters and Indonesian jurisdictions in accordance with the provisions of laws and regulations; and
 - foreigners who are legally married to Indonesian citizens; or
 - children of foreigners who are legally married to Indonesian citizens.
- e. Permanent Residence Permit is granted to:

- foreigners who hold a Limited Stay Permit as clergymen, workers, investors, and the elderly;
- Family unification from a mixed marriage;
- husband, wife, and/or child of a foreigner who holds a Permanent Stay Permit; and
- foreigners who are former Indonesian citizens and former subjects of children with dual citizenship of the Republic of Indonesia.

Furthermore, Minister of Law and Human Rights Regulation Number 11 of 2024 concerning the Amendments to the Regulation of the Minister of Law and Human Rights Number 22 of 2023 concerning Visas and Residence Permits provides the technical guidance on the implementation of Immigration Law on the granting of visa and residence permit for the foreigners by the government of Republic of Indonesia.⁹²⁸

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Despite not ratifying the 1951 Refugee Convention, Indonesia has formed its legal framework on refugees and asylum seekers protection through Article 28G paragraph (2) of Indonesian 1945 Constitution that reads, “...*Everyone has the right to be free from torture and degrading treatment and to obtain political asylum from another country.*”⁹²⁹

Chapter VI on Asylum and Refugee Issues of Law Number 37 of 1999 on Foreign Affairs, mainly on Article 27 paragraph 1 that states, “*The President sets a policy on refugees from abroad by taking into account the Minister's considerations,*”⁹³⁰ which allows the issuance of Presidential Regulation Number 125 of 2016 concerning the Refugees Handling. This Presidential Regulation on Refugees Handling provides elaborative technical procedures on refugees’ search and rescue, relocation to the detention house, and voluntary repatriation.⁹³¹

Indonesian Government does not provide Visa nor Stay Permit schemes for the refugees or asylum seekers. In its collaboration with the United Nations High Commissioner for Refugees (UNHCR) and other international organisations that deal with migration and human rights issues, Indonesian government strive to protect the refugees and asylum seekers through search and rescue programme and by housing them in a detention house.⁹³²

⁹²⁸ <https://peraturan.bpk.go.id/Details/285156/permenkumham-no-11-tahun-2024>

⁹²⁹ Republic of Indonesia, “Undang-Undang Dasar 1945,” 1945, <https://peraturan.bpk.go.id/Details/101646/uud-no-->.

⁹³⁰ Republic of Indonesia, “Undang-Undang Nomor 37 Tahun 1999 Tentang Hubungan Luar Negeri,” LN.1999/No.156, TLN NO.3882, LL SETNEG : 11 HLM, 1999, <https://peraturan.bpk.go.id/Details/45358/uu-no-37-tahun-1999>.

⁹³¹ Republic of Indonesia, “Peraturan Presiden Nomor 125 Tahun 2016 Tentang Penanganan Pengungsi Dari Luar Negeri,” LN No. 368/2016, 2016, <https://peraturan.bpk.go.id/Details/41029/perpres-no-125-tahun-2016>.

⁹³² Article 2 of Presidential Regulation Number 125 of 2016 concerning the Refugees Handling.

Presidential Regulation on Refugees Handling elaborates that Search and Rescue Body (SAR) is tasked with searching vessels suspected of containing refugees who make emergency calls and provide help.⁹³³ Assistance to refugees found in Indonesian territorial waters is conducted through inter-sectoral collaboration and cooperation among state institutions, they are Indonesian National Army, National Police Department of the Republic of Indonesia, Ministry of Transportation, Maritime Security Agency, or other relevant ministerial/non-ministerial state institutions that carry out duties in Indonesian territorial waters.

Law Number 39 of 1999 on Human Rights, in Article 28 under Section Sixth on The Right to Security which states that everyone has the right to seek asylum for political protection from another country, with the exception of the fact that the person is proven to have committed a non-political crime or an act contrary to the purposes and principles of the United Nations.

In addition, Indonesia has also passed the Director General of Immigration Regulation Number IMI-0352.GR.02.07 concerning the Handling of Illegal Migrants Who Self-Claimed As Asylum Seekers or Refugees as a derivative regulation of Immigration Law that specifically regulates the elimination of individuals who have been granted asylum seeker or refugee status by the UNHCR and those who are self-claimed.⁹³⁴

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

The Indonesian government, through the 2011 Immigration Law and its derivative regulation Minister of Law and Human Rights Regulation Number 11 of 2024, provides visa and residence permit schemes for family reunification for foreigners who meet one of these classifications (Article 33 paragraph (2) letter h):

- a. foreigners who join their Indonesian citizen spouse;
- b. foreigners who join their spouse who is the holder of a Limited Stay Permit or Permanent Stay Permit;
- c. children resulting from a legal marriage between a foreigner and an Indonesian citizen;
- d. children of foreigners who are legally married to Indonesian citizens;
- e. the biological child of foreigners who is not yet 18 (eighteen) years old and unmarried who joins his or her parents who hold a Limited Stay Permit or Permanent Stay Permit;
- f. children who have a legal relationship and are united with an Indonesian citizen father and/or mother;

⁹³³ Article 6 and Article 7 of Presidential Regulation Number 125 of 2016 concerning the Refugees Handling.

⁹³⁴ Republic of Indonesia, "Peraturan Direktorat Jenderal Imigrasi Nomor IMI-0352.GR.02.07 Tentang Penanganan Imigran Ilegal Yang Menyatakan Diri Sebagai Pencari Suaka Atau Pengungsi" (2016), <https://suaka.or.id/wp-content/uploads/2023/05/Perdirjenim-2016.pdf>. (Please try this one, I will also attach a pdf on email).

- g. father and/or mother who joins an Indonesian biological child who is 21 (twenty-one) years old or older;
- h. foreigners who join their biological children of the holder of a Limited Stay Permit or Permanent Stay Permit; and
- i. foreigners who are not yet 18 (eighteen) years old and unmarried who join a sibling holding a Limited Stay Permit or Permanent Stay Permit.

Cited from Minister of Immigration and Correction Regulation Number 3 of 2025 on Visa, Stay Permit, Facilities, as well as Immigration Supervision for the Diaspora, the amendment of Minister of Law and Human Rights Regulation Number 11 of 2024, a foreigner who intends to join their Indonesian spouse or their sponsor must submit a limited stay visa application that consists of a valid passport (for at least 6 month), proof of request to stay in Indonesia from the Indonesian spouse, financial statement that proves they are capable of supporting themselves and/or their family while staying in Indonesia, official photo (ID photo), and any other document, such as marriage certificate or civil registration at the Indonesian Representative, that supports their intention/purpose coming to Indonesia to the appointed immigration officer.⁹³⁵ Hence, the foreigner has to go through the temporary visa scheme.

Moreover, age limit for children follows instruction provided by Minister of Law and Human Rights Regulation Number 11 of 2024 as stated above. On the other hand, Article 101 par. (4) letter h point 7 and 8 of Minister of Law and Human Rights Regulation Number 11 of 2024 does not indicate any quota for a parent or parents that intend to join their Indonesian national child who lives in Indonesia or who is a holder of a Limited Stay Permit or Permanent Stay Permit.

This regulation, nevertheless, elaborates that a parent or parents who join an Indonesian biological child who is 21 (twenty-one) years old or older, may be granted one year or two years stay permit. Meanwhile, for a parent or parents who join their biological children of the holder of a Limited Stay Permit or Permanent Stay Permit, may be granted one year, two years, five years, or ten years stay permit.⁹³⁶

5. What are the conditions for naturalization in the reviewed state?

In Indonesia, the naturalization procedures are regulated under the *Law Number 12 of 2006 concerning Indonesian Citizenship* (Indonesian Citizenship Law).⁹³⁷ Article 9 of Indonesian Citizenship Law provides that for foreigners who intend to acquire Indonesian citizenship, they must meet these conditions:

⁹³⁵ Republic of Indonesia, “Peraturan Menteri Imigrasi dan Pemasarakatan Nomor 3 Tahun 2025 tentang Visa, Izin Tinggal, Fasilitas dan Kemudahan, serta Pengawasan Keimigrasian bagi Diaspora,” Article 14, <https://peraturan.bpk.go.id/Details/316856/permen-imipas-no-3-tahun-2025>.

⁹³⁶ Republic of Indonesia, “Peraturan Menteri Imigrasi...” Article 105 par. 8 letter g and h.

⁹³⁷ Republic of Indonesia, “Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia” [Indonesian Citizenship Law 2006], available at <<https://peraturan.bpk.go.id/Details/40176>>. See also, Nurul Azizah Zayzda, *Indonesian Citizenship Law* (Melbourne Law School), available at <https://law.unimelb.edu.au/data/assets/pdf_file/0008/4790420/CILIS-Factsheet-1.pdf>.

- a. Be 18 (eighteen) years old or married;
- b. have resided in the territory of the Republic of Indonesia for at least 5 (five) consecutive years or at least 10 (ten) non-consecutive years at the time of applying for citizenship of the Republic of Indonesia;
- c. in the state of being healthy physically and mentally;
- d. able to speak Indonesian and recognize Pancasila as their ideology and the 1945 Constitution of the Republic of Indonesia;
- e. have never been sentenced for committing a criminal act that is threatened with imprisonment of 1 (one) year or more;
- f. acquisition of citizenship of the Republic of Indonesia does not cause the foreigner concerned to have dual citizenship;
- g. have a job and/or have a steady income; and
- h. pay citizenship fee to the State Treasury.

Moreover, Article 19 of Indonesian Citizenship Law states that

“foreigners who are married to Indonesian citizens may obtain Indonesian citizenship by submitting a written statement of citizenship in Indonesian to the authorized official by meeting the requirements in the form of having resided in the territory of the Republic of Indonesia for at least 5 (five) consecutive years or at least 10 (ten) non-consecutive years, unless the acquisition of citizenship results in dual citizenship. In the event that the foreigner concerned does not obtain Indonesian citizenship as a result of dual citizenship, the foreigner may be granted a permanent residence permit in accordance with laws and regulations.”⁹³⁸

In addition, Article 20 of Indonesian Citizenship Law provides that foreigners who have contributed to the state of the Republic of Indonesia or for reasons of state interest may be granted Citizenship of the Republic of Indonesia by the President after obtaining the consideration of the House of Representatives of the Republic of Indonesia, unless the granting of such citizenship results in the person concerned having dual citizenship.

Foreigners deserving merit for services to the Rep. of Indonesia or for the country’s best interests may be given Indonesian citizenship by the President after receiving the deliberations of the People’s Representative Council, unless the granting of such citizenship shall result in double citizenship to the said person.

Meanwhile, Article 21 of Indonesian Citizenship Law states that children who are not yet 18 (eighteen) years old or unmarried, who are and reside in the territory of the Republic of Indonesia from the father or mother who obtained citizenship of the Republic of Indonesia, will automatically hold the citizenship of the Republic of Indonesia. A child of a foreign citizen who is not 5 (five) years old and legally adopted by an Indonesian citizen will obtain citizenship of

⁹³⁸ Republic of Indonesia, “Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia” [[Indonesian Citizenship Law 2006], <https://peraturan.bpk.go.id/Details/40176>].

the Republic of Indonesia. In the event that the child in question holds dual citizenship, the child must declare that he or she chooses one of the citizenships.

In 2016, Indonesian government, via Ministry of Law and Human Rights, issued the Minister of Law and Human Rights Regulation Number 36 of 2016 on Procedure for Submitting a Statement to Become an Indonesian Citizen as a technical and implementation guidance. According to this regulation, a foreigner can be an Indonesian citizen by satisfying these requirements, namely:

- a. Submit an application in the form of a declaration of becoming an Indonesian citizen through the official website of the Directorate General of Public Legal Administration;⁹³⁹
- b. Pay fees in accordance with the provisions of laws and regulations in the field of Non-Tax State Revenue applicable at the Ministry of Law and Human Rights;⁹⁴⁰
- c. Complete and submit the required documents to the Minister through Director General of Public Legal Administration within five days period. The documents are:⁹⁴¹
 - 1) A copy of the Applicant's birth certificate translated into Indonesian by a sworn official translator and legalized by an authorized official;
 - 2) A copy of the Applicant's resident identity card or residence certificate that has been legalized by an authorized official;
 - 3) A copy of the Applicant's husband or wife's birth certificate that has been legalized by an authorized official;
 - 4) A copy of the Applicant's husband or wife's resident identity card that has been legalized by an authorized official;
 - 5) A copy of the Applicant's marriage certificate/marriage book from the husband or wife that has been translated into Indonesian by a sworn official translator and legalized by an authorized official;
 - 6) An original certificate from the immigration office at the Applicant's place of residence stating that the Applicant has resided in Indonesia for at least 5 (five) consecutive years or at least 10 (ten) non-consecutive years;
 - 7) An original police record certificate issued by the Headquarters of the Republic of Indonesia National Police that is still valid;
 - 8) An original certificate from the Applicant's country representative stating that if the Applicant obtains citizenship of the Republic of Indonesia then the person concerned loses his/her citizenship;

⁹³⁹ Republic of Indonesia, "Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 36 Tahun 2016 tentang Tata Cara Menyampaikan Pernyataan untuk Menjadi Warga Negara Indonesia," Article 2 and Article 4, <https://peraturan.bpk.go.id/Details/133260/permenkumham-no-36-tahun-2016>.

⁹⁴⁰ Republic of Indonesia, "Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 36 Tahun 2016..." Article 3.

⁹⁴¹ Republic of Indonesia, "Peraturan Menteri Hukum dan Hak Asasi Manusia Nomor 36 Tahun 2016..." Article 5.

- 9) An original certificate of physical and mental health from a government hospital,
- 10) The latest passport photo applicant as many as 6 (six) copies of 4 x 6 cm coloured with a red background, dressed neatly; and
- 11) The original proof of payment for the application for a statement to become an Indonesian citizen.

The documents mentioned above must be submitted accompanied by a statement letter from the Applicant stating that the truthfulness of the contents of the physical documents required is the full responsibility of the Applicant. If the documents are declared complete, then the decision regarding obtaining citizenship of the Republic of Indonesia is determined by the Minister and submitted to the representative of the Applicant's country of origin.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;
- b. regular migrants benefiting from more favourable treatment based on their nationality;
- c. undocumented migrants;

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;
- e. asylum seekers;
- f. other beneficiaries of international protection, if applicable.

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Yes, Indonesian 1945 Constitution elaborates in Chapter XA on Human Rights that covers Article 28A through Article 28J where the legal subject is “everyone,” and not only the “citizens of the Republic of Indonesia.” Indonesia’s stance on the protection and promotion of human

rights is also reaffirmed by passing the Law Number 39 of 1999 on Human Rights which is the embodiment of the adoption of Universal Declaration of Human Rights 1948 into Indonesia's legal framework.

Article 1 paragraph 1 of Human Rights Law that defines human rights as, *“rights inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state of law, government, and everyone for the honour and protection of human dignity.”* The protection and promotion of human rights by the Indonesian government is reiterated by Article 2 of Human Rights Law that states, *“The Republic of Indonesia recognizes and upholds human rights and fundamental freedoms as rights that are inherent in human beings and inseparable from humans, which must be protected, respected, and upheld for the sake of improving human dignity, welfare, happiness, and intelligence, as well as justice.”*

Furthermore, similar to the Indonesian 1945 Constitution, the legal subject of Human Rights Law is also defined with “everyone” which covers all residents who reside in the jurisdiction of Republic of Indonesia, including the foreigners.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Indonesia specifically grants the right to political participation in the government only to its citizens by using the term *“setiap warga negara”* or “every citizen,” instead of “everyone.” This can be seen in Article 43 of Human Rights Law that states,

“(1) Every citizen has the right to be elected and vote in general elections based on equal rights through voting that is direct, public, free, secret, honest, and fair in accordance with the provisions of the law.

(2) Every citizen has the right to participate in the government directly or through a representative of his or her choice freely in the manner specified in the legislation.

(3) Every citizen can be appointed to any government position.”

However, Article 44 of Human Rights Law provides that, *“everyone, either individually or jointly, submits opinions, requests, complaints, and/or efforts in written or oral form to the government in the context of the implementation of a clean, effective, and efficient government in accordance with the provisions of laws and regulations.”*

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Yes, Indonesian 1945 Constitution ensures that everyone who resides in Indonesia's territory is entitled to:

- The right to fair legal recognition, guarantee, protection, and certainty and equal treatment before the law (Article 28D paragraph (1));
- the right to work and to be rewarded and treated fairly and decently in employment relations (Article 28D paragraph (2));
- the right to embrace religion and worship according to one's religion, to choose education and teaching, to choose employment, to choose citizenship, to choose a place of residence in the territory of the country and to leave it, and to have the right to return (Article 28E paragraph (1));
- the right to freedom to believe in belief, to express thoughts and attitudes, in accordance with one's conscience (Article 28E paragraph (2));
- the right to freedom of association, assembly, and expression of opinion (Article 28E paragraph (3)); and
- The right to life, the right not to be tortured, the right to freedom of mind and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be diminished under any circumstances (Article 28I paragraph (1)).

Furthermore, the civil and political rights are thoroughly regulated in Human Rights Law.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Yes. According to Law Number 5 of 1960 concerning Basic Agrarian Principles or also known as the Agrarian Law, that only Indonesian citizens can have ownership rights to land (Article 21 paragraph (1)). A foreigner domiciled in Indonesia or a foreign legal entity that has a representative in Indonesia may obtain the right of use, namely the right to use and/or collect the proceeds of land directly controlled by the State or land owned by another person, whose permission is granted by an authorized official or in an agreement with the landowner, which is not a lease agreement or land processing agreement, and as long as it does not contradict the spirit and provisions of the Agrarian Law (Article 41 paragraph (1) jo Article 42 letter b).

On its explanation memoir, the principle of nationality contained in Article 1, Article 9, and Article 21 paragraph (1) is the basis that only Indonesian citizens can hold ownership rights to land. Property rights cannot be owned by foreigners and the transfer of property rights to foreigners is prohibited as explained in Article 26 paragraph (2).

Foreigners can own land with a permit in the form of a limited use right. Likewise, basically legal entities cannot have property rights as determined by Article 21 paragraph (2). The consideration to prohibit legal entities from having ownership rights over land is because legal entities do not need to have property rights but only other rights, provided that there are sufficient guarantees for special purposes such as the right to use business, the right to use the building, the right to use as regulated in Articles 28, 35 and 41.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Indonesian government regulates the matter of foreigners' employment in Indonesia in Job Creation Law and Ministry of Employment Regulation Number 8 of 2021 concerning the Employment of Foreign Workers. According to Article 4 of Ministry of Employment Regulation Number 8 of 2021, a foreigner must meet these conditions to be able to work in Indonesia:

- a. Foreign workers must have education in accordance with the qualifications of the position to be occupied;
- b. Foreign workers must have at least 5 (five) years of competence or work experience in accordance with the qualifications of the position to be occupied; and
- c. Foreign workers are willing to commit to knowledge transfer to their foreign labours' supervisor.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Relating to quotas or limitations for business to hire foreign workers, Indonesia through Government Regulation Number 34 of 2021 concerning the Employment of Foreign Workers only rules the employers to prioritize the Indonesian citizens to fill in the available positions, unless that position can only be occupied by a foreign worker (Article 2 of Government Regulation Number 34 of 2021).

Prior to hiring a foreign worker to fill in a position, the employer must already have the Foreign Workers' Employment Planning (Rencana Penggunaan Tenaga Kerja Asing;RPTKA) that is legalized by the Minister of Employment or authorized official (Article 6 of Government Regulation Number 34 of 2021).

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Yes. Foreigners can only work in private sectors as constitutionally stated by Article 28D of Indonesian 1945 Constitution that, “*every citizen of the Republic of Indonesia is entitled to equal opportunity in the government,*” and Law Number 20 of 2023 concerning Civil Apparatus, in Article 1 paragraph 3, defines civil servants as, “*Indonesian citizens who meet certain conditions, are appointed as State Civil Apparatus on a permanent basis by the personnel development official to occupy government positions.,*” and Article 1 paragraph 4 that states, “*Government Employees with Employment Agreements are Indonesian citizens who meet certain conditions, who are appointed under an employment agreement for a certain period of time in order to carry out government duties and/or occupy government positions.*”

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Generally, there is no significant difference in labour protections applied to the foreign workers and Indonesian citizens. The Employment Law only reiterates that the employers must compensate every foreign worker they employ (Article 47) and the other elements will be included in the employment contract.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Indonesia does not differentiate access to public health services between Indonesian citizens and foreigners who reside in Indonesian territory. It is stated by Article 28H of Indonesian 1945 Constitution that everyone is entitled to live a prosper life, physically and mentally, live in a healthy environment, and receive a healthcare service. Article 34 of Indonesian 1945 Constitution mandates the State to provide a proper public health facilities and services.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Article 28C paragraph (1) of Indonesian 1945 Constitution provides that everyone has the right to self-development through the fulfillment of their basic needs, education, and to benefit from science and technology, art and culture, in order to improve their quality of life and for the welfare of mankind. In order to follow-up that constitutional mandate, Indonesian government passed the Law Number 20 of 2003 concerning National Education System in which Article 12

paragraph (3) states that, “*Foreign citizens can become students in educational units held within the territory of the Unitary State of the Republic of Indonesia.*”

However, it appears that regulation that specifically provides a technical guidance and/or implementation guidance of Article 12 paragraph (3) of National Education System is not publicly available as the procedures can be accessed on e-Layanan page by the Ministry of Basic and Middle Education of the Republic of Indonesia.⁹⁴²

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Indonesia, through Law Number 24 of 2011 concerning National Health Insurance, regulates the social insurance for both Indonesian citizens and foreigners who reside in Indonesia’s territory. According to Article 1 paragraph 4, a “participant” or a policy holder is everyone, including foreigners who work for at least 6 (six) months in Indonesia who have paid the insurance premium.

Furthermore, the employers who hire foreign workers must also include the health insurance in the Foreign Workers’ Employment Planning as one of the requirements before submitting the Planning to be legalized by the authorized official.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

In Indonesia, the welfare programmes are mainly targeting the Indonesian nationals. It is conveyed through the Coordinating Ministry of Economic Affairs of the Republic of Indonesia’s Press Release Number HM.4.6/39/SET.M.EKON.3/02/2024 on Various Social Welfare Improvement Programs Continue and Become One of the Forms of State Presence in the Community which addresses that the Ministry distributed food aid, direct financial aid, the Family Hope programme with additional components for pregnant women and the elderly, electricity subsidies, and the Healthy Indonesia Card.⁹⁴³

President Joko Widodo also issued a Presidential Instruction Number 4 of 2022 on the Acceleration of the Extreme Poverty Eradication which targets the underprivileged Indonesian citizens through policy strategies that include: 1) reducing the burden of public expenditure; 2) increase in community income; and 3) a decrease in the poverty rates.⁹⁴⁴

⁹⁴² Ministry of Basic and Middle Educations, “E-Layanan,” 2023, https://e-layanan.dikdasmen.kemdikbud.go.id/elayanan/home/faq_baru_detail?kategori=iba.

⁹⁴³ Coordinating Ministry of Economic Affairs of the Republic of Indonesia, “Beragam Program Peningkatan Kesejahteraan Sosial Terus Dilanjutkan Dan Menjadi Salah Satu Wujud Kehadiran Negara Di Tengah-Tengah Masyarakat,” 2024, Coordinating Ministry of Economic Affairs of the Republic of Indonesia.

⁹⁴⁴ Republic of Indonesia, “Instruksi Presiden Nomor 4 Tahun 2022 Tentang Percepatan Penghapusan Kemiskinan Ekstrem” (2022), <https://peraturan.bpk.go.id/Details/211477/inpres-no-4-tahun-2022>.

Unfortunately, Indonesia does not seem to formulate any welfare programmes for non-citizens who reside in the Indonesia's territory.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

January 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Iran

Authors: Faezeh Rezazadeh and Arash Esfahani

Please check the boxes corresponding to the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		x
1967 Protocol to the Convention relating to the Status of Refugees		x
1954 Convention relating to the Status of Stateless Persons		
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)		x
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		x

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		x
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
Convention on the Rights of the Child (CRC)		x
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		x
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)		x
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		
2014 Protocol to the ILO Forced Labour Convention (No. 29)		x
ILO Migration for Employment Convention (Revised) (No. 97)		

ILO Equal Remuneration Convention (No. 100)		x
ILO Discrimination (Employment and Occupation) Convention (No. 111)		x
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		
American Convention on Human Rights (ACHR)		

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Broadly speaking, Iran has two principal legal instruments governing migration and asylum. With respect to residence, the applicable statute is the *Law on the Entry and Residence of Foreign Nationals in Iran*⁹⁴⁵ adopted in 1931, and with respect to asylum, the relevant framework is the *Refugee Regulation* adopted in 1963.

⁹⁴⁵ Given that the Law on the Entry and Residence of Foreign Nationals in Iran is outdated and no longer relevant to current conditions, over the past four years both the government and Parliament have undertaken initiatives to revise it through the drafting of a comprehensive law on migration and residence. At present, a bill entitled the Establishment of the National Migration Organization is under consideration in Parliament, under which Iran's body of migration-related laws is also to be updated. It is anticipated that this new legislation will be adopted by Parliament within the coming months. It should be noted, however, that based on the drafts of the bill that have been made public, Iran is not expected to witness fundamental or far-reaching changes in its migration laws.

The Law on the Entry and Residence of Foreign Nationals in Iran has been amended and supplemented on several occasions over the years. Pursuant to this law, Article 2 provides that entry into and exit from Iran are effected through the issuance of a visa, which grants its holder the right to reside in Iran for a period of up to ninety days. Furthermore, Article 4 of the law recognizes two types of residence permits: temporary and permanent. The term “permanent” in this context does not denote perpetuity, but rather refers to a situation in which the foreign national possesses a lawful domicile in Iran. For neither form of residence does the law specify a fixed duration; however, it expressly provides that both types of residence permits are subject to renewal.

Therefore, residence in Iran may be obtained either through a visa or through a residence permit. Certain categories of visas, such as marital visas or tourist visas, although issued for a period of ninety (90) days, may be extended while the holder is present within the territory of Iran. However, long-term stays are typically carried out through residence permits. Foreign nationals with work visa, as well as foreign students, are issued a renewable one-year residence permit after their entry into the country.

In addition, over the past five decades, Iran has hosted Afghan and Iraqi refugees and asylum seekers, many of whom entered the country without undergoing the formal legal process for obtaining a visa. A portion of these individuals have been granted short-term residence permits that is renewable.⁹⁴⁶

Generally, the structure of visas and residence permits in Iran is divided into four main categories:

1. Short-term Visas: These visas are issued for various purposes such as employment, education, medical treatment, tourism, pilgrimage, investment, and other similar reasons. These visas are valid for a period of thirty to ninety days. Some of these visas may be extended within Iran up to three or even four times. Work and student visas, with the exception of the nine-month work visa specifically for Afghan workers, are converted into one-year residence permits.
2. Residence Permits for employment and education: Foreign employees who enter Iran on a work visa are granted a one-year residence permit. This permit may be renewed upon the request of the employer and subject to the approval of the Ministry of Cooperatives, Labor, and Social Welfare. Similarly, foreign students who enter Iran on a student visa, upon approval by the Ministry of Science, Research and Technology, are granted a one-year residence permit, which may be renewed until the completion of their course of study.
3. Resident permits for former refugees: Since 2000, Iran has recognized holders of certain residence documents (called *Amayesh* and *Hoviat* cards) as de facto refugees. However, in recent years, the general policy has been to encourage such individuals to relinquish their

Rather, the new law is primarily intended to eliminate the existing fragmentation of migration-related regulations and to consolidate them within a single institutional and legal authority.

⁹⁴⁶ It should be noted that, according to official statistics, more than 95 percent of foreign nationals residing in Iran are Afghans. As a result, laws and administrative practices concerning foreign nationals are to a large extent shaped by the presence of this population. According to statements by officials of the Ministry of Interior, more than 4.5 million Afghans are currently living in Iran, of whom approximately 2 million hold residence documentation.

refugee documentation and instead obtain Afghan passports and residence permits. For instance, refugees who sought to enroll in Iranian universities were required to convert their refugee cards into an Afghan passport and a student visa. Naturally, upon completion of their studies, such individuals were no longer eligible to extend their residence on the basis of education. As a result, a new category of residence permits emerged, enabling persons in these circumstances to renew their lawful stay. To date, the Iranian authorities have adopted a relatively generous approach with respect to the renewal of such residence permits.

4. **Residence Permits for Displaced Persons, Refugees, and Irregular Migrants:** This category covers foreign nationals who have entered Iran as displaced persons, refugees, or irregular migrants. These permits have been issued under three major census programs in 2003, 2012, and 2022. While these permits are generally short-term, they are extendable. Afghans, and to a lesser extent Iraqis and Pakistanis, have been the primary beneficiaries of these permits.

5. **Medium-term Residence Permits for Specific Groups:** This category includes permits granted to economic investors, individuals who are recognized by the Iranian government as “elites” due to their specialized skills or services to the Iranian community, as well as individuals and families of those who have collaborated with Iran's military forces in the region. Afghans have been the primary beneficiaries of these permits. In very rare cases, holders of these residence documents have been able to acquire Iranian citizenship in recent years. For example, some of the immediate family members of individuals who collaborated with Iranian military forces in Syria and were killed there have been granted Iranian citizenship. However, this benefit has not been extended to all such individuals. This practice is based on Article 980 of the Iranian Civil Code, which provides that a foreign national who has rendered “distinguished services” to Iran may be deemed eligible for naturalization.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

The legal statuses that permit residence for more than three months are broadly divided into two main categories: Visas and Resident Permits.

1) Visa types

Tourist Visa (Class B): Issued to foreign nationals entering Iran for tourism purposes. This visa allows a maximum stay of 90 days, with the option to extend while in Iran. Consequently, this visa permits residence for a period exceeding 90 days. It should be noted that many Afghan workers who travel to Iran for employment purposes make use of this type of visa. Given that

these workers are active in the informal sector of the Iranian economy, the possibility of a formal employer application and the issuance of a work permit is very limited. As a result, Iran has relied on this visa category as a means of meeting its demand for foreign labor from Afghanistan. As of 2025, Iran is seeking to change this practice and intends to require that any entry of foreign labor be based on a formal request submitted by an employer.

Pilgrimage Visa (Class C): Issued specifically to Muslim foreign nationals traveling to Iran for religious pilgrimage. This visa allows a maximum stay of 30 days. Although this visa may be extended within the territory of Iran, it generally does not permit a stay exceeding ninety (90) days.

Student Visa (Class E): The student visa is initially issued for a period of 30 to 60 days. After entering Iran and completing the registration process, students are granted a one-year residence permits, which can be renewed for the duration of their studies.

Work Visa (Class F): Work visas for foreign workers are typically issued for one to three months. Once they arrive in Iran and receive a work permit, they can obtain a one-year residence permit that is renewable. In practice, the process works as follows: a company submits its request to the Iranian Ministry of Labor. If the Ministry determines that the required skill is not available within Iran and that hiring a foreign national is necessary, the company's request is approved. Based on this approval, the Ministry of Foreign Affairs issues a work visa. Upon entering Iran, the foreign national must obtain a work permit through the Ministry of Labor. After receiving the work permit, the Immigration Police issues a one-year residence permit. Since 2025, Afghan workers have also been able to get work visas and work permits. In their case, if an Iranian employer sponsors them, they are issued a nine-month visa. This visa is not extendable; the individual must leave Iran upon its expiration and apply for a new visa.

Marital Visa (Class M): The marital visa is available to foreign men who are married to Iranian women, as well as to their children. This visa allows a maximum stay of 90 days, with the option to extend while in Iran. As a result, this visa allows the holder to stay in Iran for more than ninety (90) days.

Medical Visa (Class T): Issued to foreign nationals who have been admitted for treatment at accredited medical centers in Iran. This visa allows a maximum stay of 30 days, with the option to extend while in Iran. In certain circumstances, the extension of this visa may allow the holder to remain in Iran for a period exceeding ninety (90) days.

Detailed information regarding visa types is available on the Iranian Foreign Ministry's website at https://evisatraveller.mfa.ir/en/request/visa_types/.

2) Resident permits

a) Resident permits for work and education: This category of residence permits is issued to individuals who have entered Iran on work or student visas.

b) Temporary Residence Card (*Amayesh* and *Hoviat* cards): These identification cards were introduced in 2001 by the Ministry of Interior. They are called *Amayesh* for Afghan nationals and *Hoviat* for Iraqi nationals. The cards are valid for one year and are subject to renewal. Holders of these two documents are recognized by Iran as de facto refugees.

c) Family Passports: Issued in 2010 by the Iranian Immigration & Passport Police Office for undocumented Afghans at the time. These passports are valid for six months and are renewable. Over time, some of these Family Passports were replaced with Afghan Family Passports issued by the Afghanistan Embassy, accompanied by renewable six-month visas.

d) Temporary Residence Slips: This document, issued during the period from 2016 to 2022 headcount exercise for undocumented Afghan nationals residing in Iran, is valid for a period of three months. By the end of 2024, over two million individuals holding this document were residing in Iran. These documents were extended until March 2025; however, since that time, the government has announced that it no longer recognizes them, and all holders—except for a few exempted groups—are required to leave Iran. According to statements reported in the media by Iranian officials, by the end of summer 2025, approximately one million of these individuals had left the country. As of February 2026, the Iranian government has not carried out any forcible mass expulsions of the remaining individuals, although they face numerous restrictions due to the lack of a valid residence permit..

e) Medium-term Residence Permits: These permits are granted to individuals who meet one of the following criteria:

1. They have family members who have collaborated with Iran's military forces outside the country (Syria, Iraq, Lebanon, ...), as recognized by the Islamic Revolutionary Guard Corps (IRGC).
2. They have made economic investments in Iran in accordance with the guidelines of the Ministry of Economic Affairs and Finance.
3. They possess exceptional skills recognized by the Iranian government and have been designated as elites by the Vice-Presidency for Science and Technology Affairs.

Medium-term permits are issued for periods of 3, 5, or 10 years and are renewable.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Iran acceded to the 1951 Convention and its 1967 Protocol, with reservations to Article 17 (wage earning employment), Article 23 (public relief), Article 24 (labor legislation and social security) and Article 26 (freedom of movement).

The Refugee Regulations represent the first and principal domestic legal framework concerning refugees, which was ratified in 1963. This regulation designates the Ministry of Interior as the responsible authority for reviewing asylum requests, and it was designed to address situations where asylum seekers enter Iran individually and apply for asylum. Although the Refugee Status Determination (RSD) system is in place in the country, it operates within a complex context. In practice, this process is effectively blocked except in highly exceptional cases, and there is currently no clear mechanism for submitting asylum applications. In some instances, the Iranian government may, through a non-transparent process, grant refugee documents to individuals with political affiliations or close ties to the government. However, such an option

is not generally available to all applicants. Additionally, irregular migrants in Iran do not have the opportunity to formally register or identify themselves. They can only apply for residency documents as migrants—not as asylum seekers—when the government conducts census programs.

According to estimates by the United Nations High Commissioner for Refugees (UNHCR), approximately 3.8 million foreign nationals are residing in Iran under conditions akin to those of refugees, the majority of whom are Afghan nationals. The Iranian government, however, estimates this population to be around 6 million. Despite these significant numbers, this population has never been governed by the provisions of the 1963 Refugee Regulations and other international-related treaties. (In practice, Iran has not formally recognized or committed to any long-term obligations related to their situation.)

Instead, residence documents for these individuals have been issued through ad hoc census programs. Among this group, only those holding *Amayesh* and *Hoviat* cards and identity cards are acknowledged by Iran as de facto refugees.

Iran lacks a comprehensive and inclusive legal framework for humanitarian services. Since the late 1970s, when Afghan refugees first arrived, the country has primarily relied on a patchwork of guidelines and directives issued by various government agencies to regulate service provision. These directives have frequently changed over the years and, in many cases, remain vague and inconsistent. As a result, refugees in Iran often struggle to access essential services due to the lack of clear and stable regulations. In recent years, the government and parliament have attempted to draft a new and comprehensive law on migration and refugee affairs, but it has yet to be finalized.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Iran does not have an official family reunification program in general. The Class M Visa or Marital Visa can be considered, with some leniency, a form of family reunification visa, as it allows foreign men married to Iranian women, along with their children, to reunite and live together in Iran. This visa facilitates the process of family reunification by granting entry and residence rights to foreign spouses and their children, provided that certain conditions, such as documentation of marriage and family ties, are met.

It is worth noting that the concept of family reunification in Iran is used in a completely different sense within the judicial system. This concept is often invoked to justify the deportation of unaccompanied migrant children who have been detained for various reasons. In many cases, judges rule that it is in the best interest of the child to be returned to their family, leading to the deportation of Afghan children whose families are not present in Iran.

5. What are the conditions for naturalization in the reviewed state?

The nationality laws in Iran are codified as part of the Civil Code. Articles 976 to 991 of the Iranian Civil Code address matters related to nationality, either explicitly or implicitly. Specifically, Articles 976, 979, and 980 focus on the acquisition of Iranian nationality.

In general, nationality in Iran is based on the principle of *Jus sanguinis* (right of blood), meaning that citizenship is inherited from one's parents. However, there have been significant challenges in implementing nationality laws regarding maternal descent, as Iranian law primarily recognizes paternal lineage for the transmission of nationality. In certain cases, Iran also acknowledges *Jus soli* (right of the soil), considering birthplace and residence as factors in determining nationality under specific conditions. Accordingly, certain individuals may acquire or be granted Iranian nationality upon approval by the Council of Ministers.

According to Article 976 of the Iranian Civil Code, the following individuals are considered Iranian nationals:

1. All residents of Iran, except for those whose foreign nationality is recognized as valid. Foreign nationality is deemed valid if the individual possesses official documents proving their foreign citizenship, and such documents are not contested by the Iranian government.
2. Individuals whose father is Iranian, regardless of whether they are born in Iran or abroad.
3. Individuals born in Iran whose parents are unknown.
4. Individuals born in Iran to foreign parents provided that at least one of their parents was also born in Iran.
5. Individuals whose father is a foreign national but have resided in Iran for at least one year after reaching the age of 18. If they do not meet the one-year residency requirement, their eligibility for Iranian nationality will be subject to additional legal procedures for naturalization.
6. Any foreign woman who marries an Iranian man may acquire Iranian nationality.
7. Any foreign national who has acquired Iranian nationality through legal procedures.

Additionally, Article 980 of the Civil Code grants the Iranian government the discretion to award Iranian nationality to individuals who have rendered significant services or contributions to the country, subject to approval by the Council of Ministers.

Despite the existing legal framework, the practical granting of nationality in Iran has been significantly restricted over the past five decades. The implementation of the relevant articles of the Civil Code has never been transparent or consistent, failing to develop into a clear and publicly accessible procedure. In practice, no publicly available guidelines outline the detailed process of how nationality laws are enforced. Consequently, the process has often been conducted in a non-transparent manner, with a higher likelihood of nationality being granted to

individuals who have connections within the legal bodies responsible for reviewing nationality applications.

Sections 3, 4, and 5 of Article 976 of the Civil Code (which are specified above) have been particularly prone to challenges, mainly in cases where the transmission of nationality through maternal descent is involved.

The acquisition of nationality in Iran over the past five decades has been notably restricted and is primarily governed by Article 980 of the Civil Code, which allows individuals who have rendered significant service or contributions to the country, subject to the approval of the Council of Ministers, to obtain Iranian nationality. Generally, individuals with close political or military ties to the Iranian government have been the primary beneficiaries of this provision.

In recent years, efforts have been made to amend these legal provisions. One such effort was the government's submission of the "Bill for Amending Certain Provisions of Nationality Law" to the Islamic Consultative Assembly (Parliament) in July 2024. However, in February 2025, the government withdrew the bill for further revision due to various concerns — notably the removal of clauses related to granting nationality through women — which drew significant criticism. Specifically, the challenges in granting nationality to women relate to the transmission of nationality via maternal descent or cases involving non-Iranian men who marry Iranian women.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

There are no anti-discrimination laws in Iran that explicitly cover foreign nationals. The only notable exception is the Law on the Protection of Children and Adolescents (2020). While the law does not explicitly prohibit discrimination against non-nationals, Article 6 guarantees access to free healthcare services, stating that this right applies to all children residing in Iran. No such provision exists for other services specified under the law. However, the executive regulations for implementation of the law, approved by the Cabinet in 2021, explicitly state in Article 2, Clause 7 that all services (education, healthcare, child protection, legal protection and so on) under the law are provided equally and without discrimination to all children, irrespective of nationality. This provision represents the clearest legal anti-discrimination measure for non-nationals in Iran.

However, despite five years having passed since the law's enactment, the implementation of healthcare coverage for non-Iranian children has not been realized. Besides, many non-national children remain deprived of the services guaranteed under the law and its bylaws.

It should be noted that Iran's migration and residency laws and regulations, particularly since the late 1970s, have been shaped by the substantial presence of Afghan and Iraqi refugees and asylum seekers. Given that Iran considers them temporary guests, many laws regulating their rights and access are structured in a way that is effectively discriminatory compared to Iranian citizens. This systemic discrimination is implemented with the aim of encouraging repatriation and preventing further migration to the country. Consequently, Iran not only lacks anti-discrimination laws that cover foreign nationals, but its policies and laws are, in many cases, discriminatory toward them.

Besides, despite legal guarantees ensuring access to basic services for foreign nationals with valid documents, discrimination remains widespread. Many foreign students, particularly Afghan children, face biased treatment in schools. In healthcare settings, foreign nationals—especially Afghans—often encounter discriminatory practices. Law enforcement and administrative agencies also frequently treat them unequally. To date, no laws or official directives have been enacted to address or reduce such discriminatory and arbitrary practices against this group.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

In Iran, political participation by non-nationals is structurally limited and practically nonexistent. These restrictions apply across various domains as follows:

1. Voting and candidacy at the national level (presidential and parliamentary elections):
 - The Presidential Election Law explicitly requires Iranian nationality for voters (Article 36), and votes cast with non-Iranian identification are invalid.
 - Presidential candidates must be “of Iranian origin and hold Iranian nationality” (Article 115 of the Constitution⁹⁴⁷).
 - In parliamentary elections, Article 27 requires Iranian nationality for voters, and Article 28 for candidates.
2. Local elections (city and village Islamic councils):
 - The law governing local council elections declares ballots submitted with non-Iranian identification invalid; thus, electoral participation is effectively limited to Iranian nationals.
3. Political parties and groups:
 - The “Law on the Activities of Political Parties and Groups”⁹⁴⁸ explicitly requires Iranian nationality for party founders. Non-nationals cannot establish parties or hold institutional/administrative roles.
4. Non-governmental organizations (NGOs) and organized civic participation:
 - The executive regulations for the establishment and operation of NGOs require Iranian nationality for founding members. Therefore, pathways for meaningful civic participation influencing public policy are practically closed to non-nationals, although collaboration as an observer, volunteer, or supporting staff may be possible in limited circumstances.

For non-nationals, political participation is, at best, limited to individual, non-organized expression—and even then, with potential residency-related risks. Legal restrictions (such as nationality requirements in election, party, and NGO laws) combined with immigration authorities’ powers to restrict or deport, effectively close off all avenues for meaningful political engagement—particularly for refugees, who are explicitly prohibited from political or union activities.

The aforementioned restrictions apply to all foreign nationals, regardless of their residency status or documentation.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

⁹⁴⁷ <https://www.shora-gc.ir/en/news/87/constitution-of-the-islamic-republic-of-iran-full-text>.

⁹⁴⁸ <https://qavanin.ir/Law/TreeText/?IDS=3778800062959947730>.

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

In Iran, a set of legal and administrative restrictions affects the civil and political rights of foreign nationals:

1. **Residence restrictions:** The “Law on Entry and Residence of Foreign Nationals” (1931) grants the government broad discretion to restrict or expel foreign nationals on security grounds. Under resolutions of the Iranian National Security Council, since the early 2000s, Afghan nationals are prohibited from residing in 16 out of Iran’s 31 provinces. Even in provinces where Afghan nationals are allowed to reside, certain restrictions may apply to specific counties.
2. **Freedom of Movement:** Residence permits other than passports and visas are issued for a specific county. Consequently, holders of these permits are not allowed to leave that area without government authorization. Over the years, there have been multiple cases in which families were forced to relocate to another area for various reasons, resulting in the loss of their residence documents or the denial of access to many services in the new location.
3. **Access to Justice:** Article 144 of the Civil Procedure Code⁹⁴⁹ requires foreign plaintiffs to provide a security deposit for legal costs. This requirement does not apply to Iranian citizens and, in practice, hinders equal access to judicial proceedings for non-nationals.
4. **Personal Status and Family Law:** Article 1059 of the Civil Code prohibits a Muslim Iranian woman from marrying a non-Muslim foreign man. Articles 1060–1061 require government permission for marriage with a foreign national. These restrictions create substantive legal differences for non-nationals.
5. **Freedom of Expression and Assembly:** Articles 26 and 27 of the Constitution guarantee the freedom of associations and gatherings, subject to certain limitations. However, given the regulations on political parties, NGOs, and the aforementioned immigration regulations, organized political participation by non-nationals is effectively subject to significant administrative and security restrictions, which may also have unfortunate implications for their residency status.

A wide range of additional legal restrictions for foreign nationals exist in areas such as employment, property ownership, and access to educational and healthcare services, which will be addressed in the following sections.

4. Are there any limitations to non-nationals’ right to buy and own property within the reviewed state?

Iranian laws impose significant restrictions on property ownership by foreign nationals. Article 81 of the Constitution prohibits granting foreign nationals the right to establish companies and institutions in commercial, industrial, agricultural, mining, or service sectors, except in cases serving national interest. This provision indirectly limits the scope of foreign nationals’

⁹⁴⁹ <https://qavanin.ir/Law/TreeText/?IDS=502404499976366661>.

economic ownership. Based on the Law on Ownership of Immovable Property by Foreign Nationals (1921 and amendments 1948),⁹⁵⁰ foreign nationals are generally prohibited from owning immovable property in Iran, except with government permission. Ownership of agricultural land and national estates is absolutely prohibited for foreign nationals.

As a result of these restrictions, millions of Afghan nationals residing in Iran are unable to own houses or land. Some are compelled to register property under the name of a trusted Iranian, which in some cases has led to exploitation and financial losses.

In terms of ownership of movable property, foreign nationals are permitted to own movable property such as vehicles, goods, financial assets, and personal belongings. There are no legal restrictions in this area. However, in practice, Afghan or Iraqi migrants are unable to purchase or officially register moveable property like cars in their own names, and informal transactions often face legal challenges.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Regarding the regulations on foreign nationals' employment in Iran, it is important to distinguish between two groups: those applying for employment from outside Iran, and foreign nationals—primarily Afghan and Iraqi—who are already residing in the country.

1) Foreign nationals seeking employment from abroad

According to the Labor Law of Iran,⁹⁵¹ foreign nationals are required to obtain both a work visa and a work permit in order to be lawfully employed. Employers are likewise obligated to secure these authorizations from the competent authorities prior to concluding any employment contract with a foreign worker.

The Labor Law of Iran (1990), Articles 120–129, stipulates that the employment of foreign nationals is contingent upon obtaining a work permit from the Ministry of Cooperatives, Labor, and Social Welfare. The law sets out key conditions for hiring foreign workers: the unavailability of qualified Iranian applicants, the proven expertise of the foreign national, and the possession of legal residency and a valid work visa. In addition, ministerial directives issued between 2011 and 2024 specify the categories of occupations open or prohibited to foreign workers and impose obligations on employers to renew work permits. Non-compliance by employers is subject to both financial penalties and criminal liability.

2) Foreign nationals residing in Iran (Afghans)

⁹⁵⁰ <https://rc.majlis.ir/fa/law/show/92270>.

⁹⁵¹ <https://qavanin.ir/Law/TreeText/?IDS=3983654531606411392>.

According to current regulations, a work permit is issued annually for males over the age of 18 in conjunction with the renewal of their residence documents. Such permits authorize employment exclusively within a limited set of manual labor occupations defined each year by the Ministry of Cooperatives, Labor, and Social Welfare. Consequently, the scope of employment available to Afghans is structurally restricted to low-skilled work. The issuance of work permits for this group does not necessarily translate into access to formal employment. In practice, the majority are engaged in the Iranian labor market informally, outside the framework of official regulations.

For Afghan women residing in Iran, work permits are issued only if they are the head of household or if there is no male member above the age of 18 in the family who is able to work.

Legally, any foreign national holding a valid work permit is entitled to be formally employed and to benefit from the related entitlements. In practice, however, the share of foreign labor in the formal sector remains very limited.

A major challenge for second- and third-generation Afghan migrants in Iran is that, although they have studied and obtained university degrees, their opportunities for formal-sector employment matching their qualifications are very limited.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

During the early 1980s, Iranian labor regulations included certain quota provisions governing the employment of foreign workers. These measures, however, proved unenforceable in practice, particularly given that a substantial proportion of the foreign labor force was engaged in the informal economy. Consequently, the quota-based framework was gradually repealed. At present, no quota system is in place. Instead, the employment of foreign nationals—most notably Afghan nationals—is regulated through restrictions on specific occupations and categorical prohibitions in some sectors.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Iranian law imposes multiple restrictions on the employment of foreign nationals. Article 82 of the Constitution provides that the employment of foreign experts in governmental bodies is permitted only with parliamentary approval and in cases of necessity. Article 145 explicitly prohibits the presence of foreign nationals in the armed forces. Under the Civil Service Management Act (Article 42)⁹⁵² and related regulations, governmental, judicial, diplomatic, and security posts are reserved exclusively for Iranian nationals.

⁹⁵² <https://qavanin.ir/Law/TreeText/?IDS=1204996686065044702>.

Although there is no officially published list of occupations prohibited for employment of foreign nationals, there exists a set of local and sector-specific directives that, in practice, restrict the employment of foreign nationals—primarily Afghan nationals—in certain occupations, including work in pharmacies, food production units, and bakeries. Some of these guidelines are communicated to work visa applicants directly at branches of the Ministry of Labor. For example, a recently circulated image from one of the registration counters for work permits showed a notice stating that, henceforth, applications for work visas will not be approved for occupations related to public health (including food-related, beauty, and hygiene services), as well as for other jobs for which Iranian labor is available, such as sales positions, security work, and administrative roles. Some other directives are typically announced through media reports rather than promulgated as formally published legal instruments. As a result, no written, publicly accessible legal text setting out these prohibitions is available, and the rules are applied administratively and inconsistently across localities.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

The Labor Law (1990) extends general protections—such as minimum wage, working hours, leave entitlements, occupational safety, and health standards—to foreign workers holding valid work permits. Foreign nationals holding a valid work permit and employed in the formal sector are covered by Iran's Social Security Organization. The Social Security Law (1975)⁹⁵³ covers foreign nationals under retirement, disability, and healthcare insurance; however, unemployment insurance generally does not apply to non-nationals.

Given that the overwhelming majority of the foreign labor force in Iran—primarily Afghan nationals—are employed in the informal sector, they are in practice excluded from the protections afforded by labor law and social security regulations.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

In general, emergency services and vaccinations are generally provided free of charge and without discrimination to all residents of Iran, both nationals and non-nationals. For many years, Iran has offered free childhood immunizations to non-Iranian children alongside Iranian children. During the COVID-19 pandemic, refugees and even undocumented migrants were included in the national vaccination program and were granted access to free testing and treatment. In addition, community health centers provide services such as prenatal care, child immunization, and maternal and child health programs to all residents, including undocumented foreign nationals.

⁹⁵³ <https://qavanin.ir/Law/TreeText/?IDS=15217005284570186428>.

To be more specific in access to healthcare, foreign nationals in Iran can broadly be categorized into three groups: those employed in the formal sector, foreign nationals with valid residence permits, and undocumented migrants.

1) foreign nationals with formal employment

According to Social Security Law (1975) healthcare services are provided to insured persons, and foreign nationals with valid work permits are included under this coverage. Only a very small proportion of foreign nationals residing in Iran benefit from these services.

2) foreign nationals with valid residence permits

For non-Iranians who are not insured through employment, health insurance coverage is limited to individuals holding *Amayesh* and *Hoviat* cards, and only in cases where at least one family member suffers from a serious illness. This program is financially supported by the UN Refugee Agency (UNHCR).

Recently, the Iranian government has been developing a scheme to provide this group with access to health insurance comparable to that of Iranian citizens. Although the details have not yet been finalized, the annual insurance premiums for these individuals are expected to be higher than those for citizens, which may limit access for many low-income households. Another important consideration is that, once the scheme is implemented, healthcare tariffs for this group could increase up to fourfold if they are uninsured.

The lack of health insurance results in higher healthcare costs for foreign households compared to Iranian citizens. This is particularly a barrier for low-income Afghan nationals, often deterring them from seeking medical treatment. Some charitable organizations and hospital social work units typically cover part of these expenses; however, in recent years, and due to the government's increasingly strict policies toward Afghan nationals, such assistance has become severely limited.

3) Undocumented migrants

Undocumented migrants face the greatest level of exclusion, with access limited primarily to primary health care (PHC) and emergency services. During periods of intensified government pressure for the deportation of undocumented migrants, restrictions on their access to non-emergency services in public hospitals have been more commonly enforced. This restriction contradicts the Law on the Protection of Children and Adolescents (2020), which mandates free health insurance for all children residing in Iran. Unfortunately, in 2025, the government pressure was so intense that Iran's largest charity for children with cancer had to cancel its services for uninsured foreign children.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

1-Primary and secondary education

Education up to the end of secondary school is compulsory in Iran. The Law on the Protection of Children and Adolescents (2020) recognizes this right for immigrant and stateless children. In the last four decades, documented non-Iranian children generally have access to primary and secondary education. In certain years, their enrollment has been subject to the payment of additional tuition fees compared to Iranian students, while in other years such fees have been waived.

In Iran's education system, technical and vocational education is a branch of schooling that combines theoretical lessons with practical training to prepare students for specific trades or technical professions and for direct entry into the workforce. Here, there is a quota for foreign students, which cannot exceed 10%, and some fields of study are not accessible to them.

Legal access to education does not equate to equal educational opportunities for documented foreign nationals. Enrollment rates among foreign children have consistently remained below the national average. This disparity is partly due to multiple challenges faced by foreign students in Iran, particularly Afghan children. Financial hardship and inability to pay expenses, limited school capacity and administrative refusal to enroll foreign children, and discriminatory practices within educational settings are among the key factors that restrict foreign children's access to equitable educational services.

Access to primary and secondary education for undocumented children has undergone significant changes over the past decades. In 2006, the Iranian government announced that all children, regardless of their residency status, were entitled to enroll in public schools. However, beginning in 2023, school enrollment was restricted only to those holding valid residence permits. In 2025, following the annulment of Temporary Residency Slips, this group was also barred from registration. According to official statistics, the number of non-Iranian students in Iran's education system dropped to less than half in 2025 compared to the previous educational year.

2-Higher education

Access to higher education in Iran for foreign nationals is contingent upon compliance with the regulations for admitting international students and obtaining a student visa. This requirement has complicated the situation for Afghan nationals residing in Iran. The Regulations on Non-Iranian Students by the Ministry of Science, Research and Technology, 2008, allow documented foreign nationals residing in the country to pursue higher education in Iran, but only upon payment of international tuition fees, without benefiting from the subsidies available to Iranian students. In addition, restrictions apply to enrollment in certain sensitive academic fields including atomic physics, nuclear physics, molecular (plasma) physics, fundamental particle physics, plasma engineering, and so on.

For individuals holding resident permits, university enrollment requires the conversion of their documents into a passport and student visa. This process poses significant challenges. The issuance of an Afghan passport by the Afghan embassy in Iran is conditional upon presenting an Afghan national ID (*tazkira*), which cannot be issued in Iran and requires travel to Afghanistan. This constitutes a serious barrier, particularly for women. In addition, the loss of

residence documents such as the *Amayesh* or *Hoviat* cards reduces the likelihood of renewal of legal status, creating further uncertainty about the future for the students.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Under the Social Security Law, foreign nationals with a valid work permit are subject to mandatory social insurance. This coverage includes healthcare, retirement, disability, and survivors' pensions. However, transfer of such benefits outside Iran remains highly difficult and rare. Unemployment insurance generally does not apply to foreign nationals.

It is important to emphasize that the majority of the foreign labor force—particularly Afghan nationals—is employed in the informal sector and does not benefit from such entitlements.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Under the Law on Targeted Subsidies (2009),⁹⁵⁴ cash subsidies, and livelihood support programs are defined exclusively for Iranian citizens. Foreign nationals, even those with legal residence, are not covered under this law. In addition, certain cash subsidies targeted at families with disabled children do not extend to non-Iranian nationals. Cash and in-kind assistance provided by Iranian relief agencies also generally excludes foreign nationals.

It should be noted that in Iran, the government provides general subsidies for certain basic goods and energy carriers. Since access to these goods does not require proof of identity, foreign nationals are also able to benefit from these subsidies.

The registration guidelines for housing programs usually do not specify the nationality of applicants. However, in practice, the identification and screening of applicants are based on the Iranian national database and the use of a *national ID number*; thus, the nationality requirement is effectively enforced through identity verification and administrative systems. As a result, in practice, only Iranian nationals can formally complete registration, meet eligibility criteria, and benefit from allocation programs.

The primary source of livelihood support for foreign nationals in Iran is international organizations. Eligible Afghans and Iraqis benefit from cash assistance and support packages, including food, healthcare, education, and housing subsidies. The United Nations High Commissioner for Refugees (UNHCR) and international NGOs such as the Norwegian Refugee Council run multi-purpose cash assistance programs for registered families.

Domestic NGOs and charitable organizations provide a range of ad hoc support, including school tuition, food packages, and social services, to foreign nationals regardless of their legal

⁹⁵⁴ <https://rc.majlis.ir/fa/law/show/789036>

status or identity documents. However, in recent years, the government has exerted pressure on Iranian civil society organizations to restrict the provision of services to undocumented foreign nationals.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

November 2024

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Ireland

Author: Mary Catherine Murray

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons		X
1961 Convention on the Reduction of Statelessness		X
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		X

International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		

Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		
ILO Equal Remuneration Convention (No. 100)		
ILO Discrimination (Employment and Occupation) Convention (No. 111)		
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		

Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		X
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		X
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		X
American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Reference to Ireland in this Review is to the Irish state and not to the island of Ireland as a whole. The province of Northern Ireland is a part of the United Kingdom.

The Irish Constitution 1937 states in Art. 29.3 that ‘Ireland accepts the generally recognised principle of international law as its rule of conduct in its relations with other states.’

Common Travel Area

The Common Travel Area, or CTA, is a set of arrangements under customary law between Ireland and the United Kingdom that allows British and Irish citizens to move freely between the UK and Ireland without passport or visa.

The arrangement also gives reciprocal residential rights, the right to work or study, as well as reciprocal access to health care and social assistance benefits. This set of evolved arrangements has been in place formally since 1923.

Because of the importance and complexity of Common Travel Area provisions, Ireland is not a member of the European Union Schengen framework allowing free movement across EU borders. Travel anywhere to the European continent from Ireland as an Irish citizen still requires a passport.

The open land border with Northern Ireland as part of the United Kingdom presents operational challenges for immigration regulations since this Common Travel Area set of rights extends only to Irish and British citizens.

TREATY OF ROME 1957, NOW INCORPORATED INTO TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU) 1993

Established reciprocal residence and working rights for EU/EEA nationals.

UNITED KINGDOM WITHDRAWAL AGREEMENT 2021

This agreement is as a result of the United Kingdom’s withdrawal from the European Union. For immigration law effect for UK citizens in Ireland, see below.

INTERNATIONAL TREATIES ON MIGRANT RIGHTS

It will be noted that the following three UN/ILO treaties concerning rights of migrant workers and their families (INTERNATIONAL CONVENTION ON THE PROTECTION OF RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES, ILO MIGRATION FOR EMPLOYMENT CONVENTION (NO.97), ILO MIGRANT WORKERS CONVENTION 1975 (SUPPLEMENTARY PROVISIONS) (NO 143) as well as the Council of Europe's European Convention on the Legal Status of Migrant Workers has not been ratified by Ireland. This may be because provisions of these treaties may conflict with customary law arrangements for the Common Travel Area described below.

For a complete list of international treaties signed or ratified by Ireland, please see Irish Treaty Series data base of all treaties signed or ratified by Ireland, www.gov.ie/irishtreatyseries

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

In Ireland both a residence permit and an appropriate visa are required. There are separate visa and residence permit procedures, the last referred to simply as immigration permission. A visa allows entrance to the state, and a permission allows them to stay for more than 90 days. Where a person is in a non-visa required category, they do not need a visa to travel to Ireland whether for short-term tourism purposes or for other purposes. But if they wish to remain in the state for longer than 90 days, they will need to have a (residence) permission, and that permission must be registered.

An applicant applies for the relevant visa and, upon approval of that visa, will then register for immigration permission to stay.

The Irish Immigration system has as a fundamental principle that permission to remain in the state is binary; i.e. a person has a permission to remain or not, but cannot possess two sorts of permission at the same time.

THE WAY IN WHICH EUROPEAN MIGRANT RIGHTS DIVIDE

EUROPEAN UNION COURT OF JUSTICE VS. EUROPEAN COURT OF HUMAN RIGHTS JURISDICTION

Due to the customary law arrangements between the United Kingdom and Ireland in the Common Travel Area explained above, **Ireland is not a member of the Schengen Area**, and

Irish nationals travelling within the Schengen Area must carry their passport and non-EU/EEA nationals must have a Schengen visa travelling from Ireland.

Ireland, as well as all other EU Member States, is obliged to observe both EU and domestic law, but defer to superior EU legislation within specified domains. A good example in the field of immigration of how the European Union demands full adherence to its legislation in all aspects of implementation is the newly proposed EU Asylum and Migration Pact.

PERMISSION TO STAY IN IRELAND FOR NON-EU/NON-EEA/NON-SWISS /NON-UK APPLICANTS

Persons coming to Ireland from outside the European Economic Area, the UK, or Switzerland, and wishing to stay more than 90 days, must apply for an appropriate visa to the Irish Immigration Service, which is within the responsibility, of the Department of Justice. This permission is needed to work, study, live, or join family in Ireland. The foreign national will normally receive a stamp in their passport indicating which category of visa they have been granted, but some permissions are granted without direct stamps to the passport. Once permission to stay in Ireland has been received, this permission must be registered with Irish immigration authorities within 90 days. Those who are in the process of registering their received permission to remain will not be expected to leave the country, but they must be able to demonstrate an attempt to register as soon as possible, and that an appointment to register permission to stay has been sought. No registration of permission to stay beyond a 'reasonable time' (term left undefined) by the individual may result in immigration authorities refusing to register that individual's permission to remain, and instead issuing an 'intention to deport' notification. First-time 'permission to stay' registrations are at the Irish Immigration Service offices in Dublin. All renewals following the first have applications made online.

There are about 14 categories of residence permission available for application to stay in Ireland. These are administrative categories and are not based in legislation. These are often known in other states as 'residence permits.' Many Stamp categories contain several different groups of people. Stamps normally are given on a separate Irish Residence Permission card and not on a passport, with some exceptions. They are described here:

• STAMP 0 ELDERLY RELATIVES

For elderly relative of an Irish national, who is a non-EU, non-EEA, non-UK ,or non-Swiss citizen wishing to join a family member in Ireland. Sponsoring relation must have been legally resident in Ireland for a minimum of the three years immediately preceding the date of application for the elderly dependent. This form of Stamp 0 can only be granted if it is proven that the sponsoring relation can support this elderly person financially, medically, and in other necessary ways. Higher-level medical cover is required, also with detailed description of accommodation provision should this elderly relation fall seriously ill. This stamp is renewable on an annual basis. No 'Humanitarian Leave to Remain' applications are considered here; all applications for elderly dependent relatives on the basis of family reunification must be done

from outside the state. Dependent relatives other than parents will be accepted only in truly exceptional circumstances. The more distant the relation, the weaker is the claim.

• **STAMP 0 RETIRING IN IRELAND**

Applicants must be financially independent and meet all conditions with independent verification. e.g. 50,000 euro/year in addition to an emergency lump sum. Successful applicants cannot access state benefits.

• **STAMP 0 VISITING ACADEMIC / RESEARCHER**

Individual's stay in Ireland must be less than 12 months. Payment for research or teaching must be done from outside the state. The sponsor must cover all costs, or the individual must manage their own support and cannot access state benefits. Family members may accompany the person under this category, but they cannot work, access the labour market in any way, or access state benefits. Postgraduate students cannot bring family members.

• **STAMP 1 PERMISSION TO WORK OR OPERATE A BUSINESS BASED ON AN EMPLOYMENT PERMIT OR A WORKING HOLIDAY**

• **STAMP 1H FOR NON-CONSULTANT HOSPITAL DOCTORS**

These work visas have a duration of two years.

• **STAMP 1A TRAINEE ACCOUNTANTS**

This regime allows study or employment as a trainee accountant.

• **STAMP 1G THIRD LEVEL GRADUATE PROGRAMME**

This visa is granted for 12 months only, except when a Masters' Degree has been completed, which allows a further 12 months. All studies must be completed in Ireland. Permission allows full-time work, but no business operation or self-employment. No employment permit is needed. Other rights and entitlements match Stamp 2 below.

• **STAMP 2 PERMISSION FOR FULL-TIME STUDY MAXIMUM SEVEN YEARS**

While allowing full-time study, including to PhD level, this visa regime also permits 20 hours of work per week to allow students to support themselves, with 40 hours work per week permitted during academic holidays. Person cannot engage in any business operation or trade and cannot access state benefits or services. It is this visa that is the focus of possible legislative change, since the subject of full-time study in 85% of cases has been shown to be English language, and it is widely recognised as the quickest pathway to working in Ireland. But time spent in Ireland under this visa regime is not reckonable for citizenship. Maximum study allowed under this regime is seven years and individuals must be continuously resident in the state for the duration of this visa Those granted this visa permission are expected to show progression in their studies.

• **STAMP 2A EU TREATY RIGHTS STUDY VISA**

This study visa for EU nationals allows study at a private secondary school or one term of study at an Irish college or university. The spouse of a financially independent student may accompany them. EU Treaty Rights visas normally apply to EEA nationals and family members

joining them who move to/reside in an EU Member State that is not their own based on their nationality.

- **STAMP 3 VOLUNTEERS OR RELIGIOUS MINISTERS**

This visa regime covers those in above categories with spouses/partners or family members of non-EU/EEA or non-Swiss holder of an Irish work permit.

- **STAMP 4 PERMISSION TO REMAIN FOR A SPECIFIED PERIOD**

Under the Stamp 4 visa regime, there is no need to hold an Irish employment permit to work. It also counts toward reckonable residency for citizenship. Person can establish and operate a business and can also access state benefits and services. There is a requirement to apply for renewal before the expiration date. Stamp 4 visas are normally approved after the person has held a valid employment permit for five years.

A Stamp 4 visa may also be approved under the following circumstances:

- If joining an Irish spouse, civil partner, or de-facto partner
- A group of nationals invited under specific international circumstances to come to Ireland, or those granted subsidiary protection
- When joining family member who is a recognised refugee or person granted subsidiary protection
- Remaining in the state with Irish citizen child
- Participant in Irish Investor /Entrepreneur Programme
- Long-Term Residence

- **STAMP 4D FOR NON-EU OR EEA FAMILY OF UK CITIZENS SEEKING TO RESIDE IN IRELAND AFTER 1 JANUARY 2021.**

- **STAMP 5 PERMISSION TO REMAIN IN IRELAND WITHOUT A TIME CONDITION**

- **STAMP 6 IRISH CITIZENS WITH DUAL CITIZENSHIP**

Irish citizens can apply for a stamp in their non-Irish passport stating their permission to remain in Ireland without condition

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Please see Irish visa classifications set out in Question Number One above.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Legislative framework until June 2026 is the (Irish) Immigration Act 2015 and the (Irish) Immigration Act 1999.

An asylum application is received by the Irish International Protection Office, responsible to the Department of Justice. It prepares a written report for a recommendation of one of three options:

- 1) A declaration of refugee status under the UN Convention on the Status of Refugees 1951 and its 1967 Protocol Relating to the Status of Refugees
- 2) A declaration of subsidiary protection (EU- Council Directive 2004/83/EC) This legislation is aimed at applicants seeking asylum in Ireland who do not meet the legal definition of a refugee, but who have substantial grounds for believing that return to their country of origin (or habitual residence if stateless,) would face a real risk of suffering serious harm as defined in Art. 15 of this Directive and owing to this risk, is unable or unwilling to avail of the protection of that country. Art. 15 includes execution, death, torture, inhumane or degrading treatment, and threat to life due to violence in international or internal armed conflict. Permission is granted for three years initially, with renewal if situation in country of origin continues. Subsidiary protection gives rights and entitlements similar to a declared refugee, including right to family reunification, employment, education, travel, health, and social benefits.
- 3) Neither option recommended

The Minister of Justice then sends on to applicant written notice of recommendation.

An asylum applicant may appeal to the International Protection Appeals Tribunal.

The International Protection Act 2015, Sec.49 allows the granting of permission to remain whether an international protection decision is appealed or not, and this Permission to Remain allows a Stamp 4 visa to beneficiary.

Factors taken into consideration for Permission to Remain include nature of person's connection to Ireland, character and conduct, risk factors, national security, the common good, and humanitarian considerations.

A refusal of Permission to Remain cannot be appealed, and a Deportation Order may issue.

The last pathway remaining at the conclusion of this process is making application to the Irish High Court for judicial review of the decision-making process, arguing that it was flawed.

My observation here is that much of this asylum process is at present left to Ministerial discretion, and I am not persuaded of the transparency or content of the decision-making process.

Historically, the international protection system in Ireland has faced significant delays, resulting in lengthy waiting times for first-instance decisions.

In June 2026 the upcoming (Irish) Immigration Act 2026 will transpose into Irish law the content of the EU Asylum and Migration Pact. There will be accompanying EU Removal Orders. This legislation will supersede the previous Irish legislation above.

The (Irish) Immigration Act 2026 has as its purpose the faster processing of asylum claims, with more efficient decision-making, to facilitate asylum applicants remaining a shorter time in state asylum-seeker accommodation, and to enable a quicker return to the country of origin for failed asylum-seekers.

IRISH REFUGEE PROTECTION PROGRAMME

The above programme was designed as a response to calls by UNHCR for assistance with re-settlement of Syrian war refugees resident in Jordan and Syria, and for those refugees with family members in Ireland. In the period 2024-2027 Ireland agreed to accept 2600 people in this category.

There was a separate Afghan Protection Programme including categories of journalists, women's rights activists, human rights defenders, LGBTQ+ individuals, and judges; 700 people were welcomed. This programme is now closed.

A general Humanitarian Admissions programme for 2026 is now under review.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Family Reunification is based on an application to join and reside in Ireland with a parent, de facto partner, spouse, civil partner, or child in Ireland. Applications for family members outside these categories are considered only in very exceptional circumstances.

The family member must be an Irish national, a UK national, a beneficiary of international protection, or an EU/EEA or Swiss national for the simple application procedure.

If a non-EU/non-EEA/non-Swiss/non-UK national wishes to join and reside with a non-EU/non-EEA/non-Swiss /non-UK national family member, the family member in Ireland must hold an employment permit falling under Category A which includes: Irish citizens, declared refugees, and beneficiaries of subsidiary protection. Category B includes Critical Skills work permit holder, investor/entrepreneur permission, research programme or PHD student, business permission or corporate transfer, full-time non-locum doctor or Minister of Religion.

Applicants not fulfilling Category A may apply under Category B once they have been legally working in Ireland for one year, including non-Critical Skills work permit holders described above that are not already covered by a more favourable family reunification permission.

Those applicants for family reunification that cannot fulfil requirements for Categories A and B above are considered Category C, General Employment Permit Holders, who are not eligible for family reunification.

International protection beneficiaries may apply for family members listed above to join them as soon as asylum decision is received. Please note upcoming changes to family reunification procedure as part of the Irish National Migration and Integration Strategy in Final Observations.

5. What are the conditions for naturalization in the reviewed state?

The position of the Irish government is that the acquisition of Irish citizenship through naturalisation is not a right and is conferred at the discretion of the government.

There are three main routes to Irish naturalisation;

- 1) Applicant has lived legally in Ireland under a visa regime allowing reckonable residency towards citizenship for five years
- 2) Applicant is married to or in a civil partnership with an Irish citizen for three years or more. Applicant must also have been living with that Irish citizen for three out of the last five years on the island of Ireland (to include Northern Ireland), with the full 12 months before the application as a part of those three years.
- 3) Adult applying as parent of a minor

For successful applicants, there is no required exam for citizenship. There is a citizenship ceremony organised by the state for successful applicants in groups. A declaration of fidelity to the Irish nation and loyalty to the state is made, with an emphasis on respect for the rights, freedoms, and laws of Ireland. Attendance is mandatory for adult applicants, and a Certificate of Naturalisation is sent by post after the ceremony.

A Certificate of Naturalisation for an adult is 950 euro, while a minor application under 18 is 200 euro.

A widow, widower, or surviving civil partner of a deceased Irish citizen has a fee of 200 euro.

There is no charge for refugee or stateless persons.

A naturalisation application can fail if:

- Supporting documentation is of poor quality
- A document or documents submitted are not clear enough to read
- There is not a total of 150 points of reckonable residency, and no official explanation of why necessary residence points are not present
- Application form is incomplete- without required documents, signature, etc.
- There is no acceptable proof of identity
- No acceptable proof of legal residency
- Statutory declaration has not been made

Human Trafficking and its Victims in Irish Immigration Procedures

As of February 2026, the relevant legislation applicable in cases of suspected victims of trafficking in persons is the Criminal Law (Human Trafficking) Act 2008 as well as the Child Trafficking and Pornography Act 1998.

A foreign national is defined under this legislation as a non-EEA national, but it may equally apply to EU/EEA/Swiss or UK nationals. All EU legal entitlements or EU agreement rights remain.

This legislation provides for a “Rest and Reflection” Temporary Residence permission period of 60 days to remain in the state for persons suspected to be a victim of this crime. It may be renewed but application must be made for renewal. This rest period may be terminated if the Minister finds that the person has actively, voluntarily, and on their own initiative renewed contact with alleged perpetrators of trafficking in the interests of national security or public policy, or if victim status has been falsely claimed.

Granting of this permission carries no automatic right to reside in Ireland after expiration, but any person over 18 years under consideration of this legislation may apply for permission to remain under any other framework available in the state and will be granted a change in status where applicable.

If a victim wishes to return to country of origin at any time before expiration of this rest period, Ireland will assist the return.

Victims may apply for a change in status after holding this Temporary Residence Permit cited above for three years, or for those holding Temporary Permission while assisting in the investigation or trafficking act prosecutions that have concluded, whichever time-period is shorter.

Considerations in change of status include:

- Character and conduct of the person both within and outside of the state
- Employment record, including self-employment
- Assistance to Irish authorities in investigation and prosecution of person trafficking crime perpetrators
- Family and domestic circumstances

A person that makes an asylum application that is refused may have the fact that they have been identified as a suspected victim of human trafficking taken into account when a deportation order is being considered under (Irish) Immigration Act 1999.

This Temporary Residence Permission may be revoked under the same conditions described above for Rest and Recovery, as well as termination of relevant investigations and prosecutions.

There is no entitlement under this Temporary Permission for victims to be joined by family members.

If the suspected victim is under 18, a period greater than 60 days may be granted. A child may be granted an initial permission to remain for six months.

The Criminal Law (Sexual Offences and Human Trafficking) Act 2024 has passed into legislation, but its provisions have yet to be implemented. Implementation will require a Ministerial Order.

This Act establishes a National Referral Mechanism in Ireland to improve victim identification and support. It extends possibilities of victim ID to non-governmental organisations and other state bodies rather than just police authorities, to increase trust and access to services for victims. In general, the Mechanism puts in place a more victim-centred approach. Suspected victims will have guaranteed access to accommodation, medical support, legal assistance, or assistance to return.

This new legislation also specifically addresses child sex tourism and exploitation and prevent immediate deportations.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants*

The legal frameworks applicable to all categories of EU/EEA/UK/Swiss presently include:

Statutory Instrument No.548/2015 European Communities (Free Movement of Persons) Regulation 2015

Amendment to above , 2021 (UK Withdrawal Act)

Irish Nationality and Citizenship Act 1956

Irish Passport Act, 2008

EU Directive on Adequate Minimum Wage 2024

The legal frameworks applicable to non-EEA /non-Swiss/non-UK nationals presently include:

(Irish) International Protection Act 2015

(Irish) Immigration Acts 1999, 2003, 2004

European Council Directive 2004/83/EC for applicants of subsidiary protection

EU Directive on Adequate Minimum Wage 2024

In addition, non-discrimination legislation applicable to all in Ireland is described below.

The Regularisation Programme for Long-Term Undocumented Migrants was open from January-June 2022 but is now closed.

Please also see Final Observations section

If the framework is different from the ones already described, please also specify the legal framework applicable to:

d. refugees;

e. asylum seekers;

f. other beneficiaries of international protection, if applicable.

The presence of persons invited to enter Ireland as beneficiaries of international protection (presently Ukrainian citizens as a result of conflict in Ukraine) is governed by the EU Temporary Protection Directive 2022.

The EU Temporary Protection Directive is a European Union emergency response to the mass dispersion of Ukrainian people by Russian aggression beginning in 2021. The domestic Irish legislation transposing this EU Directive is the International Protection Act, Sec. 60.

It is intended for those who arrived in Ireland after the Ukrainian conflict began on 24 February 2021.

Importantly, the visa waiver under this Directive does not apply to other nationals resident in Ukraine requiring visas there, including any family members of Ukrainian nationals. These nationals need to apply for an entry visa to enter Ireland.

Beneficiaries of this Directive have immediate access to the labour market, social benefits, and other state supports, e.g., the state medical card and certain education courses.

All beneficiaries are provided with a letter of Temporary Protection, which enables them to access all necessary supports as soon as possible. The European Council of the European Union has extended this Directive until 4 March 2027, when it will go again under consideration.

Family member defined here as spouse or partner, unmarried minor children of either of them, other close dependent relatives who have been living with them as part of a family unit before 24 February 2021, as well as third country nationals and stateless people with a permanent Ukrainian residence permit who cannot safely return to country of origin.

If a Ukrainian national was already present in Ireland with a work permit or as a student, on expiration of that permission they have a choice of renewing existing permission or availing of Temporary Protection Directive during the period it is available.

The rights enumerated in paragraph above for EU Temporary Protection applicants does not apply to international protection applicants.

2018 Community Support Initiative

A Pilot Programme ended in 2019 with full implementation, in which Irish families receive some government support to offer accommodation and meals to a Ukrainian refugee family.

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The primary national legislation in Ireland concerning non-discrimination is the Equal Status Acts 2000-2018 . These Acts are not based on nationality, so apply to all present in the state equally. This framework has as its purpose the prevention of discrimination and promotion of equality, in many sectors of life, including employment, education, and provision of goods and services. This includes the obligation on public bodies to promote equal opportunity, eliminate discrimination, and advance human rights.

The legislation covers nine separate grounds on which discrimination could occur: gender, civil status, family status, sexual orientation, age, disability, race, religion, and membership of the Traveller community. In the Irish context, the Traveller community are a distinct indigenous minority ethnic group in Ireland. Central to Traveller culture are distinct crafts, language, and nomadic traditions.

The Irish Human Rights and Equality Commission was created in 2014 to facilitate access to the rights contained in this legal framework. The Commission provides legal assistance, can conduct investigations, and publishes reports in this domain.

Complaints on violations of above anti-discrimination law can be filed with the Workplace Relations Commission or the Equality Tribunal. Decisions are binding.

Ireland as well as all other European Union Member States is also bound by all EU anti-discrimination law.

My observation on the powers of the Irish Human Rights and Equality Commission is that its funding and staffing is not in conformity with societal need in this area. I have also made it known to the Board of IHREC that the procedure necessary to bringing a complaint, while designed to allow the judicial process to go ahead with self-representation, is in my opinion much too complex and linguistically challenging for the majority of members of the migrant community who would need to avail of it.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

The questions appearing below were the clarifying questions I put to my colleagues in Franchise Section of the Department of Housing and Local Government.

Voting restrictions on migrants with the right to stay in Ireland

To be eligible to vote in presidential elections, referendums, Dáil elections, European Parliament elections, local elections, and Limerick mayoral elections, a person must be: registered to vote, at least 18 years of age, and, ordinarily resident in the relevant constituency or local area. Ordinarily resident is not defined in electoral law.

Legally resident migrants are eligible to vote in different categories of elections, depending on their nationality. In summary, Irish citizens are eligible to vote in all electoral events. British citizens are eligible to register to vote in Dáil and local elections. European Union citizens are eligible to register to vote in European Parliament and local elections (including Limerick mayoral elections if they live in Limerick). All other non-Irish citizens are eligible to register to vote in local elections and Limerick mayoral elections (where ordinarily resident in Limerick). This information is summarised in the table below.

Citizenship	Eligibility to vote in presidential elections	Eligibility to vote in referendums	Eligibility to vote in Dáil elections	Eligibility to vote in European Parliament elections	Eligibility to vote in local and Limerick mayoral elections
Irish	√	√	√	√	√
British			√		√

EU				√	√
Non-EU					√

To vote in an election or referendum in Ireland, a person must be both eligible to vote and registered to vote. Article 12 of Bunreacht na hÉireann sets out that at a presidential election, every citizen who has the right to vote at an election for members of Dáil Éireann shall have the right to vote. Article 16 of Bunreacht na hÉireann sets out that all Irish citizens and such other persons in the State, as may be determined by law, may vote in Dáil elections. Article 28A of Bunreacht na hÉireann sets out that every citizen who has the right to vote at an election for members of Dáil Éireann and such other persons as may be determined by law shall have the right to vote in local elections. Article 47 of Bunreacht na hÉireann sets out that at a referendum, every Irish citizen who has the right to vote for members of Dáil Éireann shall have the right to vote.

The Electoral Act 1992 (as amended) sets out, through sections 7-10, the categories of electors to be registered for different electoral events.

Section 7 provides that a person shall be entitled to be registered as a presidential elector (an elector at presidential elections and referendums) if a person has attained 18 years of age and is a citizen of Ireland and is ordinarily resident in that constituency.

Section 8 provides a person shall be entitled to be registered as a Dáil elector (an elector at Dáil elections) if a person has attained 18 years of age, is ordinarily resident in a constituency and is either (a) a citizen of Ireland, (b) a British citizen, or (c) a citizen of an EU member state, whose citizens are, by virtue of a Ministerial Order, eligible to vote in Dáil elections because that member state allows Irish citizens, ordinarily resident in that member state, to vote in its national parliamentary elections, and where the provisions of eligibility to vote in that member state's parliament elections are the same, or substantially the same, for citizens of that Member State and citizens of Ireland. To date, no such Ministerial Order has been made.

Section 9 provides that a person shall be entitled to be registered as a European elector (an elector at European Parliament elections) if a person has attained 18 years of age and is ordinarily resident in that constituency and is either a citizen of Ireland or a national of another EU member state.

Section 10 provides that a person shall be entitled to be registered as a local government elector in a local electoral area if the person has reached the age of eighteen and is ordinarily resident in that area. The register of local government electors, as defined by Section 13(1) of the Act, relates to persons entitled to vote at local elections, Limerick mayoral elections. Local authorities are responsible for compiling and maintaining the register of electors for their respective areas.

Could you also outline if the department has taken any measures to assist in migrant political party participation in local government?

Information provided by Franchise Section

In 2018, the Department Housing, Local Government and Heritage supported a campaign conducted by the Immigrant Council of Ireland to raise awareness among immigrants that people of all nationalities, aged 18 or over, ordinarily resident in Ireland, are eligible to both register to vote and stand as a candidate in local elections. The campaign involved the promotion of a suite of videos promoting the message of ‘register, vote, run’ ahead of the 2019 local elections.

In 2023, the Government established An Coimisiún Toghcháin (The Electoral Commission). The commission is tasked with promoting public awareness of, and working to increase public participation in, the State’s electoral and democratic processes through education and information programmes. An Coimisiún Toghcháin has consistently stated that it is focused on engaging with those who are under-represented in Ireland. It is currently developing an Education and Engagement Strategy, which it has stated that it hopes to finalise this year.

On foot of the enactment of the Electoral Reform Act 2022, which modernised the electoral registration process with the aim of simplifying it (including through the introduction of online registration), the Department carried out three major national awareness campaigns to inform the public of the changes arising from the modernisation programme.

The objective was to inform all electors or potential electors of their entitlement to register and encourage them to do so, or, for those already registered, to check their details and either confirm or update them. Media assets, including videos, were shared with local authorities, members of the Oireachtas and stakeholders, including a wide range of social and community groups. These included the Immigrant Council for Ireland, the Irish Centre for Human Rights, and the Irish Refugee Council.

Most recently, in 2023, the Department of Housing, Local Government and Heritage ran a campaign in which it circulated awareness-raising advertising assets to a range of stakeholders, including those who work with migrants.

Leaflets promoting democratic participation by all, including migrants

The Department of Housing, Local Government and Heritage has updated and translated into 16 languages a series of existing leaflets:

- [How Members of Local Authorities are Elected](#)
- [The Register of Electors](#)
- [Information for Voters with Disabilities](#)

These can be viewed or downloaded at the hyperlinks above.

Information provided by Local Government Governance and Elected Members Section

The Department of Housing, Local Government and Heritage supports a number of initiatives targeted at under-represented communities and which are intended to improve representation at local government level.

These measures are as follows:

- the provision of funding to political parties for specific projects aimed at increasing the participation of women and people from diverse backgrounds in politics;
- financial support to regional and local level caucuses, which provide a space in which women councillors can discuss issues affecting them or their constituents in an apolitical environment;
- funding to local authorities via the Department's annual "Call for Funding," which offers financing for activities which increase the participation of women and persons from diverse and under-represented groups at local level;
- funding to local authorities to support the upgrade of Council chambers for the running of hybrid council meetings. This is intended to allow for more flexible participation in local democracy, especially for those with family and or caring responsibilities;
- funding to various stakeholder groups that aim to increase the representation of women and people from diverse backgrounds in politics. This includes funding to civil society groups such as Women for Election and See Her Elected, who undertake vital training and capacity building work among potential candidates, as well as carrying out important research which helps to inform Departmental policy.

The Immigrant Council of Ireland

Under the aforementioned funding streams, DHLGH has previously provided funding to the Immigrant Council of Ireland (ICI). The ICI is a national, independent non-governmental organisation, which promotes the rights of migrants in this country. The group works on a non-party aligned basis, working with all political parties on strengthening their approach to diversity and recruitment, and supporting migrant candidates from all political interests. Since 2020, DHLGH has provided over €100,000 in funding to the ICI. The most recent allocation was in 2023 to support initiatives aimed at increasing the representation of people of diversity in the 2024 local elections.

Taskforce on Local Democracy

The Local Democracy Taskforce was established by Government on 4th June 2025 on foot of a commitment in the Programme for Government. The Taskforce's role is to develop and bring forward recommendations to Government for a programme of reform to strengthen local government. This is to ensure more effective and efficient delivery of services and implementation of Government policy for citizens. Included in its terms of reference is a specific requirement to consider mechanisms to make the role of Councillor more attractive to a greater number of people from more diverse backgrounds.

It is anticipated that the Taskforce will deliver its recommendations to Government for consideration in the first half of 2026. While it is expected that the Department will continue to fund initiatives to support under-represented groups, depending on the recommendations of the Taskforce, the Department's existing initiatives may be revised and updated.

My observations on the Immigrant Council of Ireland training initiative described by Irish government colleagues above would be that, while it represents an important start in encouraging non-national participation in political life in Ireland, the training programme is limited to 10 participants for each training session and the present funding provided would not appear to be sufficient to make a serious impact on general encouragement of migrant participation in Irish political life. Many migrants retain interest in political affairs in their home country, and Ireland could benefit from their increased participation in Irish political affairs by increasing funding to an expanded Irish NGO political engagement programme.

Are there any restrictions on migrants to social housing access or would access be the same across the board for both migrants with the right to stay and Irish citizens?

Information provided by Housing Policy Unit

It is open to anyone to apply for social housing support, applications for which are assessed by the relevant local authority, in accordance with the eligibility and need criteria set down in section 20 of the Housing (Miscellaneous Provisions) Act 2009 and the associated Social Housing Assessment Regulations 2011, as amended.

The overarching aim of social housing support is to ensure that households who do not have sufficient resources to provide accommodation themselves to meet their needs are provided with adequate housing. In order to qualify for social housing support the household must be deemed (i) eligible for and (ii) in need of support before being placed on a housing waiting list. As social housing support is intended to address a household's long-term housing need it is expected that households applying for such support have a long-term right to reside in the State.

There are three main criteria for eligibility for social housing support which are; Income, Previous Rent Arrears and Availability of Alternative Accommodation and an applicant must meet them all to be deemed in need of social housing support. Where a household is deemed to meet the eligibility criteria, only then is its housing need assessed under the criteria in Regulation 23 of the 2011 Regulations, having regard to its current accommodation.

At present the decision whether to accept an application from non-Irish national applicant households is guided by Department Circular 41/2012. This Circular is intended to provide guidance to local authorities when considering whether to accept an application for social housing support from EEA and non-EEA nationals, in line with Department of Justice immigration rules and EU directives, which have been transposed into Irish law. A link to Circular 41/2012 can be found here - <https://www.gov.ie/en/circular/42023-circular-housing-412012-access-to-social-housing-supports-for-non-irish-nationals/>

If a household meets the eligibility and need criteria, it qualifies for the suite of social housing supports, including HAP, and is placed on the housing list to be considered for the allocation of suitable tenancies in accordance with the authority's allocation scheme. A household's nationality has no bearing on the priority given in the allocation of social housing support to qualified households as all applicants are treated equally in accordance with each local authority's allocation scheme which is publicly available on their websites.

In January 2024, Government approved the priority legal drafting of the Housing (Miscellaneous Provisions) Bill 2024 which amends the Housing (Miscellaneous Provisions) Act 2009 by making provision for a new Section 20A of the Act which provides the statutory underpinning for the current policy position as set out in Department Circular 41 of 2012. This Bill also provides for the introduction of habitual residency as a new eligibility criterion, mirroring to a large extent similar social protection provisions in the Social Welfare Consolidation Act 2005. The Department is currently engaging with the Office of the Attorney General on the drafting of the Bill.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

There are no restrictions on freedom of movement apart from crossing the border with Northern Ireland which brings the person into the jurisdiction of the United Kingdom. There are access to justice issues across the board for the general population in Ireland, which have been noted historically by international non-governmental human rights organisations, and this is on the basis of the cost of access to justice and the lack of sufficient legal aid provided by the state. There is anecdotal evidence that state assistance is being made available for Judicial Review of administrative procedures, especially in regard to citizenship and issuing of Irish passports, but I await confirmation from colleagues in the Department of Social Protection which would provide such assistance.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

There are two Irish state-sponsored equity schemes for home ownership within the Irish Department of Housing Starter Homes programme. These are the Local Authority Affordable Purchase Scheme and the First Home Scheme. Both have restrictions applying to all applicants of which the residency requirement applies particularly to migrants. The applicable legislation is the Affordable Housing Act, 2021, Sec. 10 2 D. This legislation specifies that applicants for these schemes as well as those destined to live in the home must have the right to reside in the state, but this 'right to reside' is not further defined.

An applicant for the Local Authority Scheme above must purchase the home to live in and cannot have previously purchased or built a home anywhere in the world, with certain exceptions, and have 10% of purchase price.

An applicant for the First Home Scheme cannot have previously purchased or built another home anywhere in the world or have an interest in another property. There are no specific household income limits for this scheme.

The Irish government's new housing plan 2025-2030 is being implemented to tackle issues of supply and affordability in the context of a very severe housing shortage.

It appears from cursory research that no special visa permission is required for ownership of private property in Ireland, but Irish Central Bank rules on the necessary credit, etc. required are stringent.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Please see descriptions of visa regimes allowing formal employment for non-nationals in Ireland.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Irish government policy is that employment opportunities which arise in Ireland should in the first instance be offered to Irish and other EEA nationals, and should only be offered to non-EEA nationals where no suitable candidate emerges from within the EEA to fill the vacancy. This policy also fulfils Irish government obligations under the Community Preference Principles of European Union membership.

In order to ensure that job opportunities are made available to Irish and EEA nationals, employers must satisfy a Labour Market Needs Test before an employment permit can be issued to a non-EEA national.

It is important to note that these rules only apply when companies are applying for or renewing employment permits. It is not an offence for a company to hire a majority of non-nationals, but no further employment permits or renewals will be issued in that case.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Ireland operates a managed employment permits system maximising the benefits of economic migration and minimising the risk of disrupting Ireland's labour market. The eligible occupations categories may be broadened to provide for an expanding economy, labour market shortages, and skills needs. It may also be narrowed and restrictions applied in line with a decline in employment opportunities and an oversupply of labour.

In 2026 the Irish government are currently finalising a review of the Ineligible Occupations List and the Critical Skills Occupations List. The Review updates these lists based on extensive consultations across government, and with the relevant sectoral and enterprise bodies.

Migrant workers with appropriate visas have full access to employment in the media, as well as civil and public service, subject to the labour market restrictions on employment opportunities described above.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Persons legally employed in Ireland with a valid employment permit or other immigration permissions are entitled to the same core employment rights as Irish citizens and EU/EEA nationals. Employment rights protections are vested in the individual based on their employment relationship. Depending on the relevant law, they may have service requirements in order to avail of certain rights, e.g. statutory sick leave. These protections are not based on nationality.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Entitlement to health benefits in Ireland is governed by the 1970 Health Act, as amended. Eligibility for health services is primarily based on residency and income assessment, rather than nationality. Any person accepted by the Health Service Executive as being 'ordinarily resident' in Ireland is entitled to either full eligibility for state health services as holder of a state medical card, or limited eligibility with no medical card. This residence determination has no bearing on nationality. The HSE normally regards a person as ordinarily resident in Ireland if they can show that they have been living in Ireland at least a year or that it is their intention to remain in Ireland for a minimum of one year.

Under the provisions of this 1970 Health Act, determination of this eligibility is the responsibility of the Health Service Executive. Medical cards permitting state-funded medical care are issued to persons who, in the opinion of the HSE, are unable to provide general

practitioner (primary care physician), and medical and surgical services to themselves or any dependents without undue hardship. This is based on need, not nationality.

International protection applicants are entitled to an Irish medical card. This then entitles them to free state health care if they pass an income assessment, and they will then receive the same state medical care as Irish nationals. For foreign nationals with the right to access state medical care under their visa regime, public health service entitlements are exactly the same as those for Irish nationals.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

The Irish Constitution 1937, Art. 42 requires the state, as guardian of the common good, to ensure that children receive ‘a certain minimum education, moral, intellectual, and social.’ The meaning of ‘a certain minimum education’ remains undefined in legislation or official policy.

The (Irish) Admissions to School Act 2018 does not distinguish applications on the basis of immigration status or nationality. This Act treats all applicants equally and all school places are offered on the basis of the selection criteria set out in the school’s admission policy.

Successful international protection applicants can access education and training programmes and third-level student grants under the same conditions as Irish nationals. This includes beneficiaries of subsidiary protection as well as beneficiaries of international protection.

The Department of Further and Higher Education funds and creates policy in the third -level sector. They seek to provide opportunities for everyone, including the most vulnerable in society. In 2021, in view of the long waiting times required for applicants to receive international protection decisions, these applicants were permitted to access undergraduate or postgraduate higher education, resulting in the International Protection Student Scheme. The only requirements were that applicants to the Scheme not engage in criminal behaviour and to have had residency in Ireland for three out of the previous five years.

It is my observation that this right extended to migrants in Ireland is now in danger due to upcoming legislation requiring accelerated international protection procedures, with a goal of three to six months processing, which would not allow for completion of any higher degree in most cases.

In my view that it is not good practice to grant an entitlement to a vulnerable group within society and then withdraw that entitlement. A compromise might be to design short-term courses offered to international protection applicants that could be completed within the new accelerated legislative time frame that would be of use to applicants even if obliged to return to country of origin.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

If a migrant is legally at work in Ireland on a visa regime allowing access to social welfare benefits and is paying the correct and sufficient social insurance contribution from their work, then the person is entitled to claim the State Pension Contributory from their 66th birthday onward.

This contributory state pension moves with the person around the globe.

There is a State Pension Non-Contributory for those on their 66th birthday who have either insufficient social insurance contributions from their work, or none. This is a social assistance payment requiring an income assessment. It may be claimed when the person is both legally resident in Ireland under a visa regime allowing them to access state benefits and has satisfied the income assessment of need.

This non-contributory state pension cannot be claimed outside of Ireland.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

ENTITLEMENT TO SOCIAL PROGRAMMES AND BENEFITS ARE NOT BASED ON NATIONALITY: RESIDENCE AND VISA ARE DETERMINANTS

All social benefit applications are examined on a case-by-case basis in Ireland because of the complexity of rules concerning access. These applications may be made for benefit payments towards which a person has made contributions, or assistance may be received on the basis of an income assessment finding need.

Entitlement to social welfare payments in Ireland hinges on two factors: legal right of residence (normally habitual legal residence with Ireland being the ‘centre of interest’) and then presence in the state under a visa regime permitting access to social benefits. Thus, entitlement to social benefits is not based on nationality. Social assistance is governed in domestic law by the (Irish) Social Welfare Consolidated Act 2005, which is very complex legislation updated on a regular basis.

The visa regimes described above on page 6 will specify if the individual granted a certain visa has an entitlement under those particular visa rules to social welfare benefits. Stamp 2 for example, Full-time Study Visa, carries no entitlement to social benefits or social welfare programmes, while Stamp 4-Permission to Remain for a Specified Period, does carry those entitlements.

EU/EEA/SWISS/UK NATIONALS

EU/EEA/Swiss nationals resident in Ireland can apply for all social benefits and their entitlement to these is dependent on satisfaction of all the conditions required by that benefit, including the condition of habitual residence. Applicable legislation is EU Directive 2004/38/EU, domestic legislation transposed as Statutory Instrument 548/2015, Free Movement of Persons Regulation 2015, and Social Welfare Consolidation Act 2005.

Concerning United Kingdom nationals, the UK left the European Union 31 January 2021, so UK citizens cannot reside as EU citizens, but can reside in Ireland under the provisions of the Common Travel Area, described above.

The right to free movement within the EEA as explained above means that, while most social benefits available in Ireland cannot be accessed outside Ireland, some payments travel with the worker within the European Union. Jobseekers Allowance, Child Benefit, and Illness Benefit all move with the worker entitled to work within the EU, for a period of six months, after which time the person is obliged to apply for a similar benefit in the new EU Member State. The right to access these benefits through freedom of movement into a new Member State is contained in the 2004 EU Directive cited above.

NON-EU/NON-EEA/NON-SWISS/NON-UK NATIONALS

Non-EU/Non-EEU/Non-Swiss/Non-UK nationals legally resident in Ireland on a residency permit/visa regime allowing access to social benefits can apply for all social benefits open to Irish nationals. Entitlement to social benefits is based on the person satisfying all of the conditions of the social programme or social benefit for which they are applying, including the condition of habitual residence and income assessment.

In Ireland, ‘benefit payments’ are based on the person’s social insurance contributions from work, while ‘benefit allowances’ are based on need.

The Housing Assistance Payment, particularly relevant in the context of Ireland’s critical housing shortage and escalating rents, is provided by local council authorities, not central government. This payment is a social housing support for people with a long-term housing need and, as with payments above, is not based on nationality.

INTERNATIONAL PROTECTION APPLICANTS AND LIVING COSTS

At present the Irish government carries full responsibility for living and accommodation costs for international protection applicants. These applicants have the right to work but must wait six months after applying for international protection before receiving permission to work, during which time the Irish government provides a living allowance. Under the proposed legislation for the National Migration and Integration Strategy in the Irish Programme for Government 2025, it is envisaged to require an accommodation contribution for those

international protection applicants who are working, to be done on a sliding scale in relation to their pay. (At present it is estimated that this will affect approximately 7500 people in Ireland.)

Once an international protection application has received a positive decision, the person is expected to leave state accommodation immediately as they are no longer awaiting a decision. If application for international protection fails, the person is expected to leave the country without seeking further social welfare benefits to which they are no longer entitled.

Are there any final observations you would like to make? Please write below.

Immigration on a significant scale is a relatively recent phenomenon in Ireland and began an almost tenfold increase in the late 1990's, as compared with earlier years. For complex historical reasons, Ireland has never had a truly strategic immigration legal framework after full independence from Britain was achieved. The Department of Justice was created in the newly independent Irish state in 1924. The present immigration legal framework evolved over time in a somewhat piecemeal fashion, but upcoming proposed legislative changes aim to put a strong immigration strategy in place for the future. Further development of this national immigration policy is a principal responsibility of the Irish Department of Justice, Home Affairs and Migration. Below are some descriptions of proposed and then very recent legislation changes in the field of migration in Ireland:

EU ASYLUM AND MIGRATION PACT LEGISLATION VS. IRISH NATIONAL MIGRATION AND INTEGRATION STRATEGY

It is important to be sure that the new immigration legislation framework we are speaking about here for Ireland is very clear. As a Member State of the European Union, Ireland (as explained above) is required to pass domestic legislation in the form of the (Irish) International Protection Act 2026 to implement the EU Asylum and Migration Pact. This Pact was finalised by the European Commission for all Member States in February 2025 and will be implemented in June 2026.

The International Protection Bill giving effect to both the International Protection Act 2026 and the EU Migration and Asylum Pact will be available very soon. It will be submitted to the Irish government the week of 12 January 2026 for approval to publish. It has as its goals a reduction in irregular migrant arrivals in Europe, the easing of pressure on EU asylum reception centres, as well as addressing the need to demonstrate to EU citizens that governments are in control of migration, not just reacting to the actions of smugglers and traffickers. The Pact pledges Member States to prevent and combat migrant smuggling and trafficking in persons by additional and more strongly enforced legislation, including increased screening and border procedures, as well as restrictions on movement in the border area by those seeking to avoid detection. It also focuses on faster processing of asylum claims with more efficient decision-making. There is an emphasis on less time spent in EU state-sponsored accommodation for asylum-seekers, and more efficient return procedures for failed asylum-seekers, as well as other asylum/international protection measures. Identification of trafficking victims is a priority, and

the Pact also seeks to build stronger relationships with third countries for effective return of irregular migrants as well as failed international protection applicants, Ireland's International Protection Act 2026 will implement the provisions of the EU Pact in June 2026.

At the same time, Ireland has its own Programme for Government 2025 which includes a separate National Migration and Integration Strategy.

Ireland presently has a population of 5.38 million. In 2025, population growth in the EU averaged .23% across each Member State's national population, while in Ireland this population growth in the same year was 1.66%, or seven times the EU average. On analysing present Irish birth rates, it is clear that this growth in Ireland is driven by inward migration. While inward migration often has very positive strengthening effects on the economy, such unprecedented growth is a cause of concern to the Irish government. It was felt within government that a response was needed to create a rules-based system that is directed by government, rather than simple reaction to increasing migration; this Irish domestic response takes the form of the National Migration and Integration Strategy.

NATIONAL MIGRATION AND INTEGRATION STRATEGY

This programme proposes three main and upcoming legislative changes:

FAMILY REUNIFICATION

Introduction of stricter Family Reunification rules, both for those with work permits and successful international protection applicants. The definition of immediate family will under this proposed legislation be limited now to spouse or partner, minor children, parents, and disabled adult children. In a situation of polygamy, only the first marriage is recognised under Irish law. Presently there is no requirement on applicants for family reunification to provide suitable accommodation for family members, but this will very soon be required under new legislation. Applicants must again also show that they have the means to provide for the relations they wish to bring in, including all medical expenses. An index for the income needed is included in the Reunification application. Presently there is no fee for Family Reunification requests, but a fee will be introduced under the new legislation.

It is also presently the case that successful international protection applicants can apply immediately for family reunification on receipt of their positive decision but, under the new legislation for the National Migration and Integration Strategy, international protection applicants must wait three years before applying for family members to join them in Ireland.

GRANTING OF CITIZENSHIP

It is presently the case that "reckonable residency" (i.e. presence in Ireland under a work visa regime permitting time resident in Ireland to be counted toward citizenship) requires five years legal residence in the state.

Under current Irish legislation, successful international protection applicants require only three years reckonable residence after receipt of their positive application decision if they made application for citizenship before 8 December 2025. Under this new legislation, all applicants for citizenship after 8 December 2025 must show five years reckonable residency.

In addition, it is important to note that EU Temporary Protection status (e.g. as granted by Ireland to Ukrainians under continuing Russian aggression beginning February 2021) cannot count towards citizenship, although this aspect of Temporary Protection status is currently under review.

STUDENT VISA RECONSIDERATION

In 2025, 12,000 full employment visas were issued in Ireland, but 60,000 student visas allowing English language study with 20 hours / weekday work permitted were issued. The government intends to review the conditions of these visas as well as the English language schools associated with them. The prevailing view is that, while many aspects of migration cannot be controlled by national governments, e.g., migration of EU nationals into Ireland, the visa regimes described above have the possibility to be altered.

INTERNATIONAL PROTECTION DECISIONS

There is an emphasis on increasing speed in decisions, both for first instance and cases on appeal. A Pilot Programme testing a three-month decision period is being implemented.

OTHER NEW LEGISLATION ALREADY IN PLACE DESCRIBED BELOW:

EMPLOYMENT PERMITS ACT 2024

This legislation is part of the EU Action Plan for all Member States to strengthen legal, safe pathways for migration into Europe. The purpose of the Irish domestic legislation above is to expand the occupations eligible for work permits. It also establishes a Pilot Programme for a new work permit of seven months aimed at seasonal workers to supplement agriculture. It also established an easier single application procedure for work permits, visas, and immigration permissions. Formerly, work visas were tied to the employer who had secured the original permit for the employee. This legislation now allows permit holders to change employer after 9 months at their first job in Ireland

CRIMINAL JUSTICE (SMUGGLING OF PERSONS) ACT 2021

This legislation makes facilitation of illegal entry, transit, or presence of non-nationals into Ireland or another EU Member State, a crime. It implements in Ireland the content of the UN Protocol Against Smuggling of Migrants by Land, Sea, and Air (Palermo Protocol) as well as EU Directives in this domain.

IMMIGRATION ACT 1999, 2003, 2004

These Acts address immigration control, fraud in official documents, and unlawful entry.

IMMIGRATION ACT 2003

Carrier liability amendments in 2024 increased fines for failure by airlines to ensure proper authorisation/documentation of passengers.

EUROPEAN UNION- EUROPOL REGULATION 2023 (COM (2023) 754)

Regulations are mandatory in European Union legislation and must be implemented in all Member States as written. There is no passage of domestic legislation for EU Regulations, as they pass directly into each Member State's domestic legal framework. This Regulation strengthened police co-operation and support to Europol across Europe to fight trafficking in persons.

QUESTION OF RETURN OF IRREGULAR MIGRANTS IN IRISH JURISPRUDENCE

Much Irish jurisprudence has evolved concerning the rights of children who are Irish/EU/EEA nationals through both in Ireland and those who are non-EEA.

The Court of Justice of the European Union's Zambrano case (Gerardo Ruiz Zambrano v. Office National de L'emploi) (2011) is a landmark judgment establishing for the first time a direct link between EU citizens and right of residence for non-EU parents of EU citizen children.

Mr. Zambrano was a Colombian national living in Belgium with his wife. They had two children who had acquired Belgian nationality by birth. Plaintiff argued that he should have the right to work and reside in Belgium as he was supporting dependent Belgian citizen children.

The Court found that EU law, specifically Art.20 TFEU, prohibits Member States from forcing a non-EU/ non-EEA national to leave their territory if that person is the primary carer of a minor child who is a citizen of that Member State. If non-EEA primary care-giver is forced to leave, then the child's rights as an EU citizen are violated by the Member State.

Irish judicial system elaborated on the Zambrano case in Bakare v. Minister for Justice (2016) by establishing that the rule prohibiting deportation of non-EEA parents does not apply if another parent is residing in Ireland with no appreciable risk that the child will leave the European Union.

Lastly, in Dos Santos and others v. Minister for Justice and others (2015) the Irish Court of Appeal found that non- Irish citizen children lack a constitutional right to remain in Ireland based solely on residence. Ruling held that Minister of Justice is not required to consider the 'best interests of the child' as the primary consideration when making deportation orders involving an entire family.

The Court of Appeal also noted that, as Ireland has a dualist system for international treaty ratification, and that the UN Convention on the Rights of the Child had been ratified by Ireland, but not incorporated into Irish law, that the content of this treaty was not directly binding on Irish law. Many jurists in this field may consider this a disappointing outcome. The Court also noted in this ruling that the EU Charter on Fundamental Rights also had no applicability in making Irish deportation orders. This may change significantly under the new EU Asylum and Migration Pact 2026.

Razgar v. Secretary of State for the Home Department (2004) in the UK has greatly influenced Irish courts in determining if deportation orders are an interference in private and family life.

Past cases have argued that children who are not citizens of the state have no personal right within Art. 40.3 of the Irish Constitution to remain in the state or participate in community life. These rights only arise for non-Irish citizens when given a right in law or an executive decision to live in the state. Once again, these developments may change substantially as the EU Migration and Asylum Pact 2026 will be accompanied by EU Deportation orders.

In responding to whether the interference in family life caused by deportation of irregular migrants violates Art.8 of the European Convention on Human Rights, which HAS been incorporated into Irish law, rulings show a finding that deportation consequences are not considered grave enough to engage Art.8, Right to private and family life under European Convention on Human Rights .

For more detail on Irish immigration jurisprudence, please see European Migration Network-Ireland on emn.ie

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

7 August 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.⁹⁵⁵*

Country under review: Italy

Authors: Elena Sciso, Elvio Anthony Sinopoli and Giulia Ciliberto

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	Yes (1952)	Yes (1954)
1967 Protocol to the Convention relating to the Status of Refugees	Accession	Yes (1972)
1954 Convention relating to the Status of Stateless Persons	Yes (1955)	Yes (1962)
1961 Convention on the Reduction of Statelessness	Accession	Yes (2015)

⁹⁵⁵ This research made limited use of a large language model as a supporting tool during the research and writing process. Specifically, the model was used to assist in identifying potentially relevant sources, legislation, and policy materials, and to support minor refinements in language, structure, and stylistic clarity as the three academics are native Italian speakers with academic English knowledge. No original analysis, arguments, interpretations, or substantive content were generated by the model. All sources identified through this process were independently reviewed, verified, and selected by the authors, with full attribution provided through appropriate citations and, where relevant, direct URLs. The authors retain full responsibility for the content, accuracy, and conclusions of this work.

International Covenant on Civil and Political Rights (ICCPR)	Yes (1967)	Yes (1978)
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	Yes (1976)	Yes (1978)
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Yes (1967)	Yes (1978)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	Yes (2009)	Yes (2015)
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	No	No
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Yes (1985)	Yes (1989)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Yes (2003)	Yes (2013)
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	Yes (1968)	Yes (1976)
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes (1980)	Yes (1985)
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes (1999)	Yes (2000)
Convention on the Rights of the Child (CRC)	Yes (1990)	Yes (1991)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	Yes (2000)	Yes (2002)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	Yes (2000)	Yes (2002)
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	Yes (2012)	Yes (2016)
Convention on the Rights of Persons with Disabilities (CRPD)	Yes (2007)	Yes (2009)

Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	Yes (2007)	Yes (2009)
ILO Forced Labour Convention (No. 29)	n/a	Yes (1934)
2014 Protocol to the ILO Forced Labour Convention (No. 29)	No	No
ILO Migration for Employment Convention (Revised) (No. 97)	n/a	Yes (1952)
ILO Equal Remuneration Convention (No. 100)	n/a	Yes (1956)
ILO Discrimination (Employment and Occupation) Convention (No. 111)	n/a	Yes (1963)
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	n/a	Yes (1981)

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	n/a	n/a
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	n/a	n/a
Convention governing the Specific Aspects of Refugee Problems in Africa	n/a	n/a
African Charter on the Rights and Welfare of the Child	n/a	n/a
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	n/a	n/a
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	n/a	n/a
European Convention on Human Rights (ECHR)	Yes (1950)	Yes (1955)

Protocols to the European Convention on Human Rights (list which ones):	Protocol No. 9 (1952)	Protocol No. 9 (1955)
	Protocol No. 4 (1963)	Protocol No. 4 (1982)
	Protocol No. 6 (1983)	Protocol No. 6 (1988)
	Protocol No. 7 (1984)	Protocol No. 7 (1991)
	Protocol No. 12 (2000)	No
	Protocol No. 13 (2002)	Protocol No. 13 (2009)
	Protocol No. 16 (2013)	No
European Social Charter (ESC) (revised)	Yes (1996)	Yes (1999)
European Convention on the Legal Status of Migrant Workers		Yes (1995)
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	Yes (2012)	Yes (2013)
American Convention on Human Rights (ACHR)	n/a	n/a
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	n/a	n/a

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	n/a	n/a
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	n/a	n/a
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	n/a	n/a
Inter-American Convention against All Forms of Discrimination and Intolerance	n/a	n/a
Inter-American Convention Protecting the Human Rights of Older Persons	n/a	n/a

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

- Schengen Implementing Convention (1990) signed in 1990 and incorporated in the Treaty of Amsterdam in 1997⁹⁵⁶
- Treaty on European Union (TEU, as modified by the Lisbon Treaty 2007) signed in 2007,⁹⁵⁷ ratified in 2008⁹⁵⁸
- Treaty on the Functioning of the European Union (TFEU, as modified by the Lisbon Treaty 2007) signed in 2007,⁹⁵⁹ ratified in 2008.⁹⁶⁰
- Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Deposited with the Government of Ireland), or Dublin Regulation III signed in 1990, notified in 1993.⁹⁶¹
- EU Common European Asylum System (CEAS) binding via EU Membership.⁹⁶²

⁹⁵⁶ https://eur-lex.europa.eu/eli/treaty/ams/pro_2/sign/eng, https://www.esteri.it/en/politica-estera-e-cooperazione-allo-sviluppo/politica_europea/dossier/la-libera-circolazione-e-il-sistema-schengen/

⁹⁵⁷ <https://eur-lex.europa.eu/EN/legal-content/summary/treaty-on-the-functioning-of-the-european-union.html>

⁹⁵⁸ https://www.esteri.it/en/politica-estera-e-cooperazione-allo-sviluppo/politica_europea/architettura-istituzionale-ue/il-trattato-di-lisbona/

⁹⁵⁹ <https://eur-lex.europa.eu/EN/legal-content/summary/treaty-on-the-functioning-of-the-european-union.html>

⁹⁶⁰ https://www.esteri.it/en/politica-estera-e-cooperazione-allo-sviluppo/politica_europea/architettura-istituzionale-ue/il-trattato-di-lisbona/

⁹⁶¹ <https://www.consilium.europa.eu/en/documents/treaties-agreements/agreement/?id=1990090>

⁹⁶² https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-publications/emn-annual-reports/european-migration-network-asylum-and-migration-overview-amo-2024_en

- United Nations Convention against Transnational Organized Crime (Palermo Convention) signed in 2000, ratified in 2006.⁹⁶³
- Protocol against the Smuggling of Migrants by Land, Sea and Air signed in 2000, ratified in 2006.⁹⁶⁴
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children signed in 2000, ratified in 2006.⁹⁶⁵
- International Convention for the Safety of Life at Sea (SOLAS) accession in 1980.⁹⁶⁶
- International Convention on Maritime Search and Rescue (SAR) accession in 1989.⁹⁶⁷
- Council of Europe Convention on Action against Trafficking in Human Beings signed in 2005, ratified in 2010.⁹⁶⁸
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) signed in 2007, ratified in 2013.⁹⁶⁹

Bilateral agreements regarding readmission and migration management (selected agreements)

- Through the EU policies⁹⁷⁰
- Italy-Libya Memorandum of Understanding (2017)⁹⁷¹
- Italy-Albania Protocol (2023)⁹⁷²

⁹⁶³ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18

⁹⁶⁴ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18

⁹⁶⁵ https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-a&chapter=18

⁹⁶⁶ <https://treaties.un.org/pages/showDetails.aspx?objid=08000002800ec37f>

⁹⁶⁷ <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d43b3>

⁹⁶⁸ <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=197>

⁹⁶⁹ <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=201>

⁹⁷⁰ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return/effective-firm-and-fair-eu-return-and-readmission-policy_en

⁹⁷¹ <https://www.governo.it/sites/governo.it/files/Libia.pdf>

⁹⁷² <https://www.esteri.it/wp-content/uploads/2023/12/PROTOCOLLO-ITALIA-ALBANIA-in-materia-migratoria.pdf>

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

In general, entering Italy for the purpose of settling there requires a visa, which regulation varies depending on the reason for entry (work, study, family reunification, religious reasons, research, business, elective residence, etc.).

Issuing an entry visa nonetheless involves a certain degree of discretion. Even where all the legal requirements are formally satisfied, an Italian Consular Authority who receives a visa application may refuse such application on the grounds of so-called “migration risk” (that is, where it is considered that the declared purpose of entry may not be genuine).

A visa may also be required for tourism, depending on the applicant’s nationality. The list of countries whose nationals are subject to a visa requirement is drawn up by the Ministry of Foreign Affairs and International Cooperation. Conversely, reference may be made to the list of visa-exempt countries available at: https://www.esteri.it/it/servizi-consolari-e-visti/ingressosoggiornoinitalia/visto_ingresso/paesi_esenti_visto/.

In relation to Italy’s visa and permit system, it is important to distinguish between nationals in the Schengen Area, which currently includes 25 members, and nationals from other countries.⁹⁷³

As a member of the Schengen area, Italy allows EU citizens to enter and exit through any Schengen external border, including Italian airports, ports, and land borders. These travellers are subject only to limited and efficient checks, increasingly carried out through automated border gates, ensuring security without restricting freedom of movement.⁹⁷⁴ EU citizens and some non-EU nationals are also allowed to study in Italy through the Erasmus+ student exchange program.⁹⁷⁵

Third-country nationals who require a visa must obtain a Uniform Schengen Visa (Type C), which may be issued by Italy or another Schengen State under harmonised EU rules. Once issued, the visa allows entry into Italy and the wider Schengen area.⁹⁷⁶

Like many countries in the EU, Italy has a dual visa and permit system in place for non-EU citizens. Entry visas (“visto di ingresso”) are Uniform Schengen Visas issued by Italian consulates abroad.⁹⁷⁷

⁹⁷³ https://home-affairs.ec.europa.eu/policies/schengen/schengen-area_en

⁹⁷⁴ https://home-affairs.ec.europa.eu/policies/schengen/schengen-area_en

⁹⁷⁵ <https://erasmus-plus.ec.europa.eu/about-erasmus/how-to-take-part>

⁹⁷⁶ https://home-affairs.ec.europa.eu/policies/schengen/schengen-area_en

⁹⁷⁷ https://www.esteri.it/en/servizi-consolari-e-visti/ingressosoggiornoinitalia/visto_ingresso/

According to the EU Visa Code,⁹⁷⁸ visas are classified as follows:⁹⁷⁹

- Airport Transit Visa (Type A)

- Allows transit through the international airport zones of Schengen States (including Italy) without entry into the Schengen area.

- Uniform Schengen Visa (Type C)

- Permits short stays of up to 90 days in any 180-day period throughout the Schengen area. It may allow single, double, or multiple entries and, if conditions are met, can be issued with extended validity of 1 to 5 years (C1–C5).

- Visa with Limited Territorial Validity (LTV)

- An exceptional visa valid only for the issuing Schengen State (e.g. Italy) or for specifically indicated States. It does not permit access or transit through other Schengen countries and is issued only in special circumstances, such as humanitarian reasons, national interest, or international obligations. LTV visas are granted at the discretion of diplomatic or consular authorities and cannot be directly requested by applicants.

- National (Long-Stay) Visa (Type D)

- Issued for stays exceeding 90 days in the issuing State (e.g. Italy). While primarily valid nationally, holders may circulate within other Schengen States for up to 90 days in any six-month period, provided the visa remains valid.

Within the National (Long-Stay) Visa (Type D) are the Working Holiday Visa for Australian citizens up to 365 days,⁹⁸⁰ a Residency Visa if the applicants intend to settle indefinitely in Italy provided they have sufficient financial means and do not engage in any form of employment,⁹⁸¹

⁹⁷⁸ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)

⁹⁷⁹ https://www.esteri.it/en/servizi-consolari-e-visti/ingressosoggiornoinitalia/visto_ingresso/tipologie_visto_durata/

⁹⁸⁰ <https://cons Melbourne.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-straniero/italian-and-shengen-area-visas/national-visas-from-91-to-365-days-in-italy/working-holiday-visa-solo-per-cittadini-australiani/>

⁹⁸¹ <https://cons Melbourne.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-straniero/italian-and-shengen-area-visas/national-visas-from-91-to-365-days-in-italy/residency-visa/>

a Student Visa if their course lasts more than 90 days,⁹⁸² or a digital nomad/remote salaried employment visa.⁹⁸³

On arrival, all non-EU citizens must apply for a residence permit (“permesso di soggiorno”) within 8 business days from arrival in Italy, to be lodged and issued by the Questura, the local police headquarters, which duration and renewal period depend on the length of the stay.⁹⁸⁴

Italy has a quota regime, commonly referred as Flow Decree (“decreto flussi”) that regulates work-related migration under Law 40/1998.⁹⁸⁵ According to the law, Italy regulates immigration flows through a two-step system:

1. A three-year planning document that sets the general framework for migration inflows.
2. An annual “decreto flussi” issued by the Prime Minister, which fixes the maximum number of non-EU nationals admitted each year for employment (employees and self-employed) and family reunification.

If the annual decree is not adopted, temporary decrees may be issued based on the previous year’s quotas. The decree also regulates eligible nationalities and the types of work, either seasonal or non-seasonal.⁹⁸⁶

The most recent “decreto flussi” 2026-2028 will allow 497,550 entries in Italy (164,850 for 2026, 165,850 for 2027 and 166,850 for 2028).⁹⁸⁷

Migrants in Italy may access stronger legal statuses if they live in the country long-term. The EU Council Directive 2003/109/EC establishes that after 5 years of continuous legal residence, the non-EU national will acquire the long-term EU residence permit which allows to move and work in other Member States,⁹⁸⁸ provided certain income and integration conditions are met.⁹⁸⁹

Alternatively, all migrants can seek Italian citizenship, which is regulated by Law 91/1992 (“Italian Nationality Law”), reformed in 2025.⁹⁹⁰ There are three ways for a foreign national to acquire Italian citizenship:⁹⁹¹

1. Residence duration, which is:
 - a. 10 years for non-EU nationals;
 - b. 4 years for EU citizens;

⁹⁸² <https://consmelbourne.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-straniero/italian-and-shengen-area-visas/national-visas-from-91-to-365-days-in-italy/visti-studio-lungo-soggiorno/>

⁹⁸³ <https://ambcanberra.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-straniero/visti/digital-nomad-remote-salaried-employment-visa/>

⁹⁸⁴ <https://www.poliziadistato.it/articolo/10716>

⁹⁸⁵ <https://www.normattiva.it/atto/caricaDettaglioAtto>

⁹⁸⁶ <https://toffolettodeluca.it/en/entry-quota-decree-2026-2028-foreign-workers/>

⁹⁸⁷ <https://toffolettodeluca.it/en/entry-quota-decree-2026-2028-foreign-workers/>

⁹⁸⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02003L0109-20110520>; https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-and-resettlement/long-term-residents_en

⁹⁸⁹ <https://www.consilium.europa.eu/en/press/press-releases/2023/11/23/third-country-nationals-eu-updates-rules-for-long-term-resident-status/>

⁹⁹⁰ <https://legislationline.org/taxonomy/term/13003>

⁹⁹¹ <https://www.ibanet.org/from-ancestry-to-proximity-Italy-reform-2025>

- c. 2 years for those with an Italian parent or grandparent;
- d. 3 years for individuals born in Italy;
- e. 5 years for adopted adults, those serving the Italian state, and stateless persons.

Applicants must also show continuous legal residence, adequate income, tax compliance, and B1-level Italian language proficiency.

2. Ancestry (*ius sanguinis*), which can be applied for only if at least one of the following applies:

- a. the citizenship application was filed before 27 March 2025;
- b. a parent or grandparent held Italian nationality exclusively at death;
- c. a parent resided in Italy for two consecutive years after acquiring citizenship and before the applicant's birth.

3. By birth on Italian territory (*ius soli*), which only applies to a child born in Italy if:

- a. both parents are stateless;
- b. the parents are unknown; or
- c. the child cannot acquire the parents' nationality under foreign law.

4. Marriage or civil union, only after:

- a. 2 years of marriage if residing in Italy; or
- b. 3 years if residing abroad.

These periods are halved if the couple has children. The marriage must remain valid throughout the process, and the applicant must meet the B1 language requirement. Legislative reforms have been proposed but are not yet in force.

While the Italian system provides a structured and legally articulated pathway from entry to long-term residence, its heavy reliance on quotas, employment continuity, and administrative renewal renders legal status highly conditional and vulnerable to disruption.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

As said above, Italy uses a system based on visas and “permessi di soggiorno”, each of these with a different purpose provided in the visa application.

Some of these, as we saw, are long-term while others are short term permits. These are indicated under articles 27 and subsequent of the Legislative Decree 286/1998.

We can divide them in:

- Work permits (“motivi di lavoro”):

- Subordinate employment (“lavoro subordinato”) ⁹⁹²
- Self-employment (“lavoro autonomo”) ⁹⁹³
- Seasonal work (“lavoro stagionale”) ⁹⁹⁴
- EU Blue Card for highly skilled workers ⁹⁹⁵
- Digital Nomads/Remote work ⁹⁹⁶
- Elective residency purposes
- Health purposes

- Study permits (“motivi di studio”), issued to non-EU nationals not eligible to participate in the Erasmus+ enrolled in: ⁹⁹⁷

- Italian Universities
- Doctoral Programs
- Training and Exchange Programs

- Family reunification permits (“ricongiungimento familiare”), issued to non-EU spouses, partners, minor children, and dependent parents of Italian citizens or lawfully resident non-EU migrants. ⁹⁹⁸

- Refugee and humanitarian permits (“richiesta di protezione internazionale”), ⁹⁹⁹ and humanitarian corridors (“corridoi umanitari”) with the support of Ministry of Defence, Italian NGOs and international organisations to allow individuals living in vulnerable conditions to evacuate from their country and relocate in Italy. ¹⁰⁰⁰

- Permit for medical treatment (“permesso di soggiorno per cure mediche”) in Italy. ¹⁰⁰¹

⁹⁹² <https://toffolettoelucalca.it/en/entry-quota-decree-2026-2028-foreign-workers/>

⁹⁹³ <https://toffolettoelucalca.it/en/entry-quota-decree-2026-2028-foreign-workers/>

⁹⁹⁴ <https://toffolettoelucalca.it/en/entry-quota-decree-2026-2028-foreign-workers/>

⁹⁹⁵ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/eu-immigration-portal/eu-blue-card/eu-blue-card-italy_en

⁹⁹⁶ <https://ambcanberra.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-straniero/visti/digital-nomad-remote-salaried-employment-visa/>

⁹⁹⁷ <https://consmbelbourne.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-straniero/italian-and-shengen-area-visas/national-visas-from-91-to-365-days-in-italy/visti-studio-lungo-soggiorno/>

⁹⁹⁸ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/eu-immigration-portal/family-member-italy_en

⁹⁹⁹ https://www.interno.gov.it/sites/default/files/allegati/la_guida_in_italiano.pdf

¹⁰⁰⁰ <https://ambkabul.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-straniero/corridoi-umanitari/>

¹⁰⁰¹ <https://questure.poliziadistato.it/it/Arezzo/articolo/11045bc04e8290fdc952610162>

- Elective residence visa (“residenza elettiva”) for those who do wish to work in Italy, but only to live through their independent financial means.¹⁰⁰²
- EU long-term residency permit (“permesso di soggiorno UE”).¹⁰⁰³
- Special permits for research,¹⁰⁰⁴ religious activities,¹⁰⁰⁵ volunteering,¹⁰⁰⁶ and for victims of trafficking or exploitation.¹⁰⁰⁷

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Italy’s approach is strongly influenced by international law and EU-harmonised laws and domestically regulated in the Legislative Decree 251/2007 and other laws.

International protection (“protezione internazionale”) is a constitutional right under Art 10, paragraph 3 of the Italian Constitution, which states that “Any foreigner who is prevented, in their own country, from the effective exercise of the democratic freedoms guaranteed by the Italian Constitution has the right of asylum in the territory of the Republic, in accordance with the conditions established by law” (“Lo straniero, al quale sia impedito nel suo paese l’effettivo esercizio delle libertà democratiche garantite dalla Costituzione italiana, ha diritto d’asilo nel territorio della Repubblica, secondo le condizioni stabilite dalla legge”).¹⁰⁰⁸

Nevertheless, in practice to enter in Italy for the purpose of seeking international protection, there is no formal legal pathway, with the sole exception of the humanitarian corridors, which, to date, do not have a specific statutory basis. As a result, individuals generally arrive in Italy without a specific visa and submit their application for international protection once they are already present in the country.

Refugee status (“status di rifugiato”) in Italy is regulated by the 1951 Refugee Convention, the Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (or Qualification Directive),¹⁰⁰⁹ the Legislative Decree 251/2007 on the implementation of Directive 2004/83/EC laying down minimum standards for the qualification of third-country nationals or stateless persons as refugees or as persons otherwise in need of international protection,¹⁰¹⁰ and the Decree of the President of the

¹⁰⁰² <https://consmelbourne.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-straniero/italian-and-shengen-area-visas/national-visas-from-91-to-365-days-in-italy/residency-visa/>

¹⁰⁰³ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/legal-migration-and-resettlement/long-term-residents_en

¹⁰⁰⁴ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/eu-immigration-portal/researcher-italy_en

¹⁰⁰⁵ <https://consparigi.esteri.it/it/servizi-consolari-e-visti/servizi-per-il-cittadino-straniero/visti/motivi-religiosi/>

¹⁰⁰⁶ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/eu-immigration-portal/volunteer-italy_en

¹⁰⁰⁷ https://home-affairs.ec.europa.eu/system/files/2022-04/EMN_report2022_trafficking-in-human-beings_updated_final.pdf

¹⁰⁰⁸ <https://www.interno.gov.it/it/temi/immigrazione-e-asilo/protezione-internazionale>

¹⁰⁰⁹ <https://www.unhcr.org/media/qualification-directive>

¹⁰¹⁰ <https://rimap.unhcr.org/node/43198>

Republic 21/2015 on laying down regulations on the procedures for the granting and withdrawal of international protection.

The procedure for recognition of refugee status commences the moment the individual arrives in Italian territory, as per the EU Dublin Regulation III.¹⁰¹¹ Applications for international protection are examined at first instance by the Territorial Commissions for the Recognition of International Protection (“Commissioni Territoriali”), with judicial review available before ordinary courts.

Upon arrival, under the Legislative Decree 251/2007 the individual will apply for refugee status and their application will be assessed by Italian Police considering country information, applicant statements, personal circumstances, any “self-created” grounds after departure, and possible protection elsewhere, past persecution/serious harm, rules on credibility where evidence is lacking (coherence, plausibility, timely application, overall reliability), including attention to minors’ maturity (Art. 3), and sometimes the need for protection after leaving the country (Art. 4). The Police will also look at actors of persecution/serious harm, like a State, organisations controlling territory, or non-State actors where protection is unavailable (Art. 5), and actors of protection and what counts as effective protection (effective legal system, access to protection; not merely temporary) (Art. 6).

A different procedure applies to asylum seekers who come from so-called “safe countries of origin”, or who have submitted a subsequent (repeat) application for protection, or who have prior criminal convictions, or who lodge their application while already subject to expulsion proceedings. In such cases, an accelerated procedure applies, which is decided within a very short timeframe (approximately 7 to 9 days). An appeal may be lodged within 7 or 15 days, but it does not have automatic suspensive effect (suspension must be specifically requested from the judge). For all other applications for international protection, however, the time limit for lodging an appeal is 30 days, and the appeal has suspensive effect by law. The relevant laws are the Legislative Decrees 251/2007, 25/2008, and 142/2025.

The acts of persecution must be sufficiently serious or cumulative, and include violence, discriminatory measures, disproportionate punishment, denial of remedies, etc. (Art. 7), for reasons related to race, religion, nationality, belonging to a particular social group (explicitly including gender considerations/identity), or political opinions (Art. 8).

The status of refugee can be refused if the individual represents a danger to State/public order under defined conditions, or is under UN agency protection, or has committed serious international crimes, or serious non-political crime, or acts contrary to UN purposes (Art. 10 and 12). This also applied to instigators/participants (Art. 10).

Refugee status cessation grounds include re-availing of protection, reacquiring nationality, voluntary re-establishment, fundamental change of circumstances, with conditions on “non-temporary” change and humanitarian reasons (Art. 9).

¹⁰¹¹ https://www.interno.gov.it/sites/default/files/2024-09/guida_pratica_2024_inglese.pdf

Recognition of refugee status will be granted if the criteria are met and no cessation/exclusion applies (Art. 11). It can later be revoked if conditions for refusal exist or where recognition was based on misrepresentation/omission/false documents (Art. 13).

Refugee status constitutes the strongest and most stable form of protection under Italian law. It entails a five-year renewable residence permit, full access to employment, healthcare, and education, family reunification rights, and a clear pathway to EU long-term residence status under Directive 2003/109/EC, as implemented in Italian law.

Beneficiaries of refugee status enjoy strong protection against expulsion. Expulsion may occur only on serious grounds of national security or public order, and exclusively in the cases and under the conditions strictly defined by law (Art. 20), in line with Italy's obligations under EU law and the European Convention on Human Rights.

Upon recognition of protection, beneficiaries must be provided with an information leaflet clearly explaining their rights and obligations. This information is delivered in a language that the person is presumed to understand, or alternatively in English, French, Spanish, or Arabic, ensuring accessibility and informed enjoyment of rights (Art. 21)

Italian law places strong emphasis on family unity. Beneficiaries are entitled to the preservation of family unity and to the protection of family members' rights. Where family members do not independently qualify for protection, they may be granted a residence permit for family reasons. In addition, holders of subsidiary protection are expressly entitled to family reunification (Art. 22).

Recognised refugees are issued a five-year renewable residence permit (Art. 23(1)). This permit grants full access to employment and education and may be converted into a work permit where the statutory requirements are met (Art. 23(2)), are entitled to a travel document issued in accordance with the 1951 Geneva Convention, enabling international travel (Art. 24(1)) and enjoy equal treatment with Italian nationals in access to employment, including self-employment (Art. 25). Access to public employment is also permitted, subject to the same modalities and limitations applicable under EU law to EU citizens, reflecting Italy's compliance with EU free-movement principles.

Minors enjoy full and equal access to education under the same conditions as Italian minors. Adult beneficiaries may access education and vocational training in accordance with the rules applicable to legally resident migrants. The legal framework also provides for the recognition of foreign qualifications and for special assessment mechanisms where documentary evidence cannot be produced, ensuring that lack of documentation does not unduly hinder access to education (Art. 26).

Beneficiaries are entitled to equal treatment with Italian nationals in healthcare and social assistance (Art. 27). Specific attention is given to persons with special needs, including victims of torture, rape, or other serious forms of violence, through guidelines and targeted measures aimed at rehabilitation, psychological care, and mental health support.

Unaccompanied minors receive enhanced protection measures, including the appointment of guardians, appropriate reception arrangements, and access to education and healthcare.

Authorities may undertake family tracing activities, provided that confidentiality is respected and that such activities are conducted exclusively in the best interests of the child (Art. 28).

Beneficiaries enjoy freedom of movement within Italian territory, subject only to the same limitations applicable to other lawfully resident non-nationals (Art. 29).

Where appropriate, beneficiaries of international protection may access assisted voluntary return programmes, funded at national or EU level, in accordance with Art. 30. Participation in such programmes is strictly voluntary and must respect the principle of non-refoulement.

In cases of serious harms like risks of death penalty/execution, torture/inhuman or degrading treatment, or serious and individual threat from indiscriminate violence in armed conflict, in alignment with the EU Qualification Directive,¹⁰¹² the individual can seek in Italy a specific subsidiary protection (“protezione sussidiaria”) (Art. 14), which recognition, cessation (Art. 15), exclusion (Art. 16) and revocation (Art. 18) occurs in the same circumstances of refugee status. Subsidiary protection also provides a five-year renewable residence permit, access to work and social services, and family reunification rights. It equally offers a pathway to long-term residence.

In some cases, individuals can be granted special protection (“protezione speciale”) if they cannot be removed from Italian territory because doing so would violate one of their fundamental rights (for example, where there is a risk of persecution, torture, or inhuman or degrading treatment; or where return would constitute a breach of Italy’s constitutional or international obligations), as regulated by Art. 19 of the Legislative Decree 286/1998 *Consolidated Act of provisions concerning the regulation of immigration and rules on the condition of foreigners* (“Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero”), as reformed by the Legislative Decrees 25/2008 and 130/2020. Special protection provides a renewable residence permit, usually valid for one or two years, and includes the right to work. While offering important safeguards against refoulement and human rights violations, it affords less stability than refugee status or subsidiary protection.

Under the EU Council Directive 2001/55/EC, Italy as EU State Member can grant temporary protection (“protezione temporanea”).¹⁰¹³ This is an exceptional EU mechanism designed to offer immediate, short-term protection during a mass influx (or imminent mass influx) of displaced persons from non-EU countries who cannot safely return home. It allows the EU to respond rapidly when large arrivals would overwhelm national asylum systems. The mechanism is activated by the Council, acting on a proposal from the Commission, and was originally conceived in response to the conflicts in the former Yugoslavia, but only used in 2022 to offer assistance to Ukrainians fleeing the war in 2022.¹⁰¹⁴ Beneficiaries enjoy access to employment (subject to national labour market rules), accommodation, social welfare or subsistence support where needed, medical care, and education for minors. The framework also provides limited family reunification opportunities and permits mobility within the EU,

¹⁰¹² <https://www.unhcr.org/media/qualification-directive>

¹⁰¹³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001L0055>

¹⁰¹⁴ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/asylum-eu/temporary-protection_en

including movement to another Member State prior to the issuance of a residence permit and short-term free movement (90 days in any 180-day period) within the Schengen area once the permit is issued.¹⁰¹⁵

Italy provides a specific, stand-alone permission to stay for victims of trafficking in persons, and it is not conditioned on cooperation with criminal authorities nor on the payment of fees under the main protection pathway.

The key provision is Art. 18 of the *Consolidated Act on immigration*, which establishes a humanitarian and protective residence permit designed specifically for victims of violence, trafficking, and serious exploitation. Its core objective is protection and social recovery, rather than migration control. Unlike classic witness-protection models, Art. 18 does not strictly require formal cooperation with law enforcement. While cooperation may be relevant, the decisive factor is the existence of serious and immediate danger linked to exploitation or violence. This makes the provision particularly important for victims unwilling or unable to testify.

The permit can be activated either:

- through criminal justice channels (police, prosecutors, courts), or
- through social services interventions by local authorities.

This dual-track approach reflects Italy's victim-centred model, allowing protection even in the absence of ongoing criminal proceedings.

Article 18 is closely connected to offences of slavery and trafficking (Articles 600–602 Criminal Code), sexual exploitation and organised crime.

The permit is for special cases, is renewable, allows work, education, healthcare, welfare access, and can be converted into ordinary residence permits (work or study).

Art. 18 also applies (where compatible) to EU citizens in situations of serious danger.

Other than domestic law, Italy is bound to the EU Directive 2024/1712 of the European Parliament and of the Council (or the EU Anti-Trafficking Directive),¹⁰¹⁶ which requires Italy to strengthen criminalisation and investigative powers, expand the definition of trafficking to cover emerging forms of exploitation (including online exploitation, forced marriage, surrogacy and illegal adoption), criminalise the knowing use of services provided by trafficking victims, and treat the use of digital technologies as an aggravating circumstance. It also enhances victim assistance, requires the appointment of national anti-trafficking coordinators and adopt regularly updated national action plans by 15 July 2026.¹⁰¹⁷

Italy adopts a very narrow definition of family, and consequently the application of reunification with non-nuclear family members is very limited.

¹⁰¹⁵ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/asylum-eu/temporary-protection_en

¹⁰¹⁶ <https://eur-lex.europa.eu/eli/dir/2024/1712/oj/eng>

¹⁰¹⁷ https://home-affairs.ec.europa.eu/news/stronger-eu-rules-fight-trafficking-human-beings-enter-force-2024-07-12_en

The EU Family Reunification Directive allows Italy to establish how to regulate first-degree ascendants in the direct line (father and mother of the foreign national), unmarried children above the age of majority, and unmarried partners. However, it does not recognise polygamy in the EU.¹⁰¹⁸

As above, reunification in Italy is regulated by the *Consolidated Act on immigration* under Art. 28 to 30. With reference to non-nuclear family members, Art. 29 regulates family reunification for non-EU nationals legally residing in Italy. It defines who qualifies as a family member, the conditions that must be met (housing, income, and, in some cases, health insurance), and the procedure for obtaining authorisation (“nulla osta”) through the Single Immigration Desk (“Sportello Unico per l’Immigrazione”). The Article applies to:

- Dependent parents if they have no other children in the country of origin, or they are over 65, and the other children are objectively unable to support them due to serious health reasons. Additional requirements apply (e.g. health insurance or enrolment in the Italian health system).
- Adult dependent children financially dependent, and they suffer from serious health conditions resulting in total disability, making them unable to provide for their basic needs.

Other relatives (e.g., siblings, grandparents, cousins, and extended relatives) are not eligible under ordinary family reunification rules.

Regarding partners who are not formally married (de facto couples), Italy does not allow family reunification. The only instances applicable are married spouses (Art. 29 of *Consolidated Act on immigration*) and civil unions (“unioni civili”) for same-sex couples (Law 76/2016).

Exceptional avenues may arise in very limited circumstances. Courts and authorities may allow temporary family reunification on the basis of the European Convention on Human Rights (Art. 8, right to respect for private and family life), the Italian Constitution, (Art. 2 and Art. 30, protection of fundamental personal rights and family relationships), and case law from the Regional Administrative Tribunals (“Tribunali Amministrativi Regionali” or TARs) and the State Council (“Consiglio di Stato”). However, such assessments do not create an automatic right to family reunification and remain highly fact specific.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Migration for family reunification is grounded in EU law, constitutional principles, and national legislation, and operates through a two-stage administrative process and results in a renewable residence permit for family reasons (“ricongiungimento familiare”).

It is formally protected in principle by Articles 2 and 29–31 of the Italian Constitution, which recognises and protects inviolable human rights, the family as a natural society founded on marriage, and impose positive obligations on the State to support and protect the family,

¹⁰¹⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum%3A133118>

motherhood, childhood, and youth,¹⁰¹⁹ and Article 8 of the European Convention on Human Rights that guarantees the right to respect for private and family life, which requires States to refrain from unjustified interference with family life and, in certain circumstances, to adopt positive measures enabling family unity, including in migration and expulsion contexts.¹⁰²⁰

Under EU law, family reunification is regulated by the EU Council Directive 2003/86/EC. It applies to non-EU nationals holding a residence permit valid for at least one year with prospects of long-term residence, but excludes EU citizens' family members, asylum seekers awaiting a final decision, and persons under temporary protection. Eligible family members include spouses and minor dependent children, while Member States may extend reunification to parents, adult children, and unmarried partners under national law. Applications are subject to procedural requirements and may include conditions relating to accommodation, resources, health insurance, and integration, though refugees benefit from significant exemptions. Family members granted reunification receive residence permits of equal duration and access to education and employment, with the right to an autonomous residence permit after five years.¹⁰²¹

In Italy, family reunification is regulated by the *Consolidated Act on immigration* under Art. 28 to 30.

Italian law recognises the right to maintain or restore family unity for non-EU nationals holding a long-term residence permit or a permit valid for at least one year issued for work (subordinate or self-employed), asylum, study, or religious reasons (Art. 28(1)).

In all administrative and judicial proceedings concerning family unity and involving minors, the best interests of the child must be treated as a primary consideration, in accordance with the UN Convention on the Rights of the Child (Art. 28(3)).

Separate and more favourable rules apply to family members of Italian and EU citizens (Art. 28(2)).

Family members eligible for family reunification (Art. 29) are:

- a spouse who is not legally separated and is at least eighteen years of age;
- minor children, including those of the spouse or born out of wedlock, who are unmarried, provided that the other parent, if existing, has given consent;
- dependent adult children who, for objective reasons, are unable to provide for their essential living needs due to their health condition resulting in total disability;
- dependent parents, provided that they have no other children in the country of origin or provenance, or parents over sixty-five years of age, where the other children are unable to support them due to documented, serious health reasons.

¹⁰¹⁹ https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

¹⁰²⁰ <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-8-respect-your-private-and-family-life>

¹⁰²¹ <https://eur-lex.europa.eu/EN/legal-content/summary/family-reunification.html>

In Italy, it is also possible to obtain what is known as “family unity” (*coesione familiare*), namely a residence permit for one of the eligible family members even if the ordinary family reunification procedure has not been followed (Art. 5(5) of Legislative Decree No. 286/1998; Constitutional Court judgment No. 202/2013).

Except for refugees, the sponsor must demonstrate the availability of adequate accommodation and sufficient income, calculated by reference to the annual social allowance (Art. 29(3)).

Applications are assessed by the Questura, with a maximum processing period of 90 days, after which the entry visa may be issued directly by diplomatic or consular authorities (Art. 29(7)–(9)).

Family members admitted through reunification are issued a residence permit for family reasons, which:

- has the same duration as the sponsor’s permit and is renewable (Art. 30(3));
- grants full access to work (subordinate and self-employed), education, vocational training, and social assistance (Art. 30(2)).

The permit may be converted into a work or study permit in cases of legal separation, dissolution of marriage, or when children reach the age of majority (Art. 30(5)).

Decisions refusing family reunification or residence permits are subject to judicial review, ensuring effective legal remedies (Art. 30(6)).

The procedure, as mentioned, is a two-staged model. The sponsor for family reunification must first apply online for an authorisation (“*nulla osta*”) through the One-Stop-Shop for Immigration, demonstrating adequate income and accommodation. Once granted, family members apply for a national entry visa at the competent Italian consulate, which verifies family ties. After entry, they must apply for a residence permit for family reasons within eight days, via the Prefettura/Questura.¹⁰²²

The residence permit has the same duration as the sponsor’s permit, is renewable subject to continued compliance with entry requirements, and grants full access to employment, education, and training. Decisions may be appealed before the Civil Tribunal. Permits may be converted (e.g. to work or study) in cases such as divorce or death of the sponsor. After five years of lawful residence, family members may apply for long-term EU residence, subject to income, accommodation, and public-order requirements.¹⁰²³

5. What are the conditions for naturalization in the reviewed state?

As seen above, Italy has very restrictive conditions when awarding naturalisation of foreign nationals, mostly based on very long residence in the country and descent (“*ius sanguinis*”).

¹⁰²² https://home-affairs.ec.europa.eu/policies/migration-and-asylum/eu-immigration-portal/family-member-italy_en

¹⁰²³ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/eu-immigration-portal/family-member-italy_en

The main legal framework is under Law 91/1992, the National Law.

The law recognises four principal pathways to naturalisation:

1. Naturalisation by long-term residence (“cittadinanza per residenza”) (Art. 9 of the Law 91/1992). An individual will be granted citizenship if they prove a lawful, continuous and registered residence in Italy for
 - 10 years for most non-EU nationals
 - 5 years for recognised refugees and stateless persons
 - 4 years for EU citizens
 - 3 years for descendants of Italian citizens (up to second generations)
2. Naturalisation by marriage or civil union (“cittadinanza per matrimonio o unione civile”), with residence in Italy for 2 years after marriage, or 3 years if residing abroad. Timing is reduced if the couple has children (Art. 5 of the Law 91/1992).
3. Citizenship by birth (*iure sanguinis*) if the child born to an Italian father or mother. Citizenship is transmitted by descent, provided that the Italian parent never renounced Italian citizenship and did not naturalise in another country while the descendant was a minor (Art. 1 of the Law 91/1992).
4. Citizenship based on special laws. Law 379/2000 allowed individuals born and resident in territories of the former Austro-Hungarian Empire, and their descendants, to apply for Italian citizenship; this scheme was time-limited and expired on 19 December 2010. Law 124/2006 applied to Italians who lost citizenship between 1940 and 1947 while residing in Istria, Fiume, or Dalmatia.¹⁰²⁴

Regardless of the specific pathway to naturalisation, Italian law establishes a set of general and cumulative conditions that all applicants must satisfy. First, applicants must demonstrate lawful and continuous residence in Italy for the entire qualifying period required by law, holding valid residence permits (Art. 9), a sufficient and stable income,¹⁰²⁵ must also demonstrate not to have been convicted of serious criminal offences or is considered a threat to public order or national security (Art. 6), and must demonstrate Italian language proficiency at a minimum B1 level of the Common European Framework of Reference for Languages (CEFR) (Art. 9.1).

Finally, under Article 4(2) of Law 91/1992, children born in Italy to non-citizen parents do not automatically acquire Italian citizenship at birth. Instead, they may apply for citizenship upon reaching the age of 18, provided they have resided legally and continuously in Italy since birth and submit their application within a strict one-year time window.

Citizenship acquired by naturalisation (as well as by descent, pursuant to Art. 4, and by marriage to an Italian citizen, pursuant to Art. 5) may be revoked following:

¹⁰²⁴ <https://consbristane.esteri.it/en/servizi-consolari-e-visti/servizi-per-il-cittadino-straniero/citizenship-new-web-section/5-recognition-based-on-special-laws/>

¹⁰²⁵ <https://www.interno.gov.it/it/temi/cittadinanza-e-altri-diritti-civili/cittadinanza>

a final conviction for the offences listed in Article 407(2)(a), no. 4, of the Code of Criminal Procedure, as well as for the offences set out in Articles 270-ter and 270-quinquies.2 of the Criminal Code.

Revocation of citizenship must be ordered, within three years from the date on which the conviction becomes final, by decree of the President of the Republic, upon proposal of the Minister of the Interior.

Since 2018, Italy requires specific test for naturalisation, but it is limited in scope compared to many common-law systems like Australia.

The provision that regulates the Italian language test is Art. 9.1 of Law 91/1992 as reformed in 2018. It is a mandatory requirement for applicants seeking Italian citizenship by marriage (Art. 5) or residence (Art. 9). The minimum level required is Italian language proficiency B1 level of the Common European Framework of Reference for Languages (CEFR), reflecting an intermediate ability to understand and communicate in everyday contexts. The requirement applies to applicants unless they have already demonstrated integration by signing the Integration Agreement under immigration law, or hold an EU long-term residence permit, which presupposes prior language and integration assessments. In these cases, language knowledge must be demonstrated through a recognised Italian educational qualification, or an official language certificate issued by an authorised certifying body.

Italy does not require applicants for naturalisation to pass a civic integration or values test. Integration obligations exist under immigration law through the Integration Agreement (Art. 4-bis of *Consolidated Act on immigration*), but these function as conditions for lawful stay, rather than as prerequisites for citizenship.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Italy extends its framework on non-discrimination to non-nationals, including regular migrants, undocumented migrants, refugees, asylum seekers, and other beneficiaries of international protection.

The cornerstone of the framework is Article 3 of the Italian Constitution, which enshrines the principle of formal and substantive equality, defining all people equal before the law without distinction of sex, race, language, religion, political opinions, or personal and social conditions. Additionally, Article 10 paragraphs 2 and 3 requires Italian law to conform to international law on the treatment of foreigners.¹⁰²⁶

The major law that applies here is the *Consolidated Act on immigration*. Article 2 par.3 guarantees fundamental human rights to all foreigners, irrespective of whether they are lawfully present, while Article 43 prohibits direct and indirect discrimination on grounds of nationality, ethnicity, race, religion, or language in areas including employment and working conditions, housing, access to education, healthcare and social services and access to public services.¹⁰²⁷

These provisions apply to temporary and permanent resident migrants, EU citizens and other migrants benefiting from preferential treatment, undocumented migrants, at least with respect to fundamental rights, refugees, asylum seekers, and other protection beneficiaries.

EU anti-discrimination directives have been transposed into Italian law, notably through Legislative Decree No. 215/2003 (racial and ethnic discrimination),¹⁰²⁸ and Legislative Decree No. 216/2003 (discrimination in employment and occupation).¹⁰²⁹

Victims of discrimination may bring civil proceedings under Articles 43 and 44 of the *Consolidated Act on immigration*, including urgent judicial remedies, like injunctions and compensation, rely on reversal of the burden of proof,¹⁰³⁰ consistent with EU standards included in the Council Directive 2000/43/EC¹⁰³¹ and the Council Directive 2000/78/EC.¹⁰³²

¹⁰²⁶ https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

¹⁰²⁷ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286!vig=>

¹⁰²⁸ <https://www.unar.it/portale/web/unar-en/italian>

¹⁰²⁹ <https://www.unar.it/portale/web/unar-en/italian>

¹⁰³⁰ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286!vig=>

¹⁰³¹ <https://eur-lex.europa.eu/eli/dir/2000/43/oj/eng>

¹⁰³² <https://eur-lex.europa.eu/eli/dir/2000/78/oj/eng>

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

In Italy, political participation is largely reserved to Italian citizens under Articles 48 to 51 of the Italian Constitution, with limited and clearly circumscribed exceptions for EU citizens, in accordance with EU law. In fact, under Article 22 of the TFEU, EU citizens residing in of EU countries like Italy have the right to vote and stand as candidates in municipal elections under the same conditions as nationals, and vote and stand as candidates in elections to the European Parliament in the Member State of residence.

Non-nationals do not have voting rights but may participate indirectly through consultative councils at municipal or regional level, society organisations, trade unions, advocacy groups, public consultations and participatory initiatives without binding effect.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

While fundamental civil rights are broadly guaranteed to all persons, Italian law draws significant distinctions between nationals and non-nationals.

Italian citizens and EU citizens enjoy constitutionally and EU-guaranteed freedom of movement and residence throughout the national territory, subject only to limited public order or security restrictions under Articles 20–21 TFEU,¹⁰³³ Directive 2004/38/EC,¹⁰³⁴ and Legislative Decree 30/2007 which implements the EU directive.¹⁰³⁵

Non-nationals have freedom of movement but conditional under the *Consolidated Act on immigration* and may be restricted by the type of residence permit held, the purpose for which the permit was issued (work, study, protection, etc.) and compliance with administrative obligations (registration, renewal, reporting).¹⁰³⁶

Asylum seekers may experience temporary restrictions on freedom of movement, particularly during initial reception, when accommodated in reception or asylum centres, when required to remain available to authorities for procedural reasons under Legislative Decree 142/2015.¹⁰³⁷

¹⁰³³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>

¹⁰³⁴ <https://eur-lex.europa.eu/eli/dir/2004/38/oj/eng>

¹⁰³⁵ <https://consbristane.esteri.it/wp-content/uploads/2025/01/Relatives-of-UE-citizens-D-Visa.pdf>

¹⁰³⁶ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286!vig=>

¹⁰³⁷ https://www.euaa.europa.eu/sites/default/files/2023-04/factsheet_dublin_transfers-it.pdf

Refugees and beneficiaries of subsidiary protection, once their status is recognised, generally enjoy freedom of movement comparable to that of other lawfully resident foreigners, subject to standard immigration law rules under Legislative Decree 251/2007.¹⁰³⁸

Regarding access to justice, it is guaranteed by Articles 24 and 113 of the Italian Constitution to all persons, regardless of nationality or migration status. However, practical distinctions may arise in relation to access to legal aid, which is subject to income thresholds and administrative conditions under the Presidential Decree 115/2002, Articles 74 to 76.¹⁰³⁹

Under Article 51 of the Italian Constitution, access to public employment is reserved primarily to Italian citizens, with limited exceptions notably for EU citizens in certain non-sovereign roles under Legislative Decree 165/2001.¹⁰⁴⁰

Some benefits are restricted to citizens, conditioned on long-term residence and linked to integration or contribution requirements under Article 38 of the Italian Constitution.¹⁰⁴¹ Under the *Consolidated Act on immigration* as per Articles 34 to 41 access to healthcare, social services, and welfare are differentiated by legal status, with broader equality to EU long-term residents under Article 9.¹⁰⁴²

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

In Italy, there is no general prohibition on non-nationals buying or owning immovable property, but the right is subject to differentiated legal regimes depending on nationality and residence status, with specific limitations for third-country nationals based on reciprocity and lawful residence.

Italian and EU citizens, under Articles 18 and 49 TFEU (non-discrimination on grounds of nationality and freedom of establishment) have full and unrestricted right to acquire and own property. This also applies to refugees and beneficiaries of subsidiary protection under Article 26 of the 1951 Geneva Convention, and Article 34 of the Legislative Decree 251/2007.¹⁰⁴³

Other non-nationals may buy and own property in Italy, but subject to two cumulative conditions:

1. Lawful residence: the individual must hold a valid residence permit.
2. Reciprocity requirement (Article 16 of the Preliminary Provisions to the Italian Civil Code and Article 2 par. 2 of the *Consolidated Act on immigration*): property rights are granted only if Italian citizens enjoy equivalent property rights in the foreigner's country of nationality.¹⁰⁴⁴

¹⁰³⁸ <https://rimap.unhcr.org/node/43198>

¹⁰³⁹ https://e-justice.europa.eu/topics/taking-legal-action/legal-aid/it_en

¹⁰⁴⁰ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2001-03-30;165>

¹⁰⁴¹ https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

¹⁰⁴² <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286!vig=>

¹⁰⁴³ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286!vig=>

¹⁰⁴⁴ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286!vig=>;
<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:codice.civile:1942-03-16;262>

Asylum seekers do not benefit from an automatic exemption from reciprocity due to their temporary legal status and lack of long-term residence documentation, as per Legislative Decree 142/2015.¹⁰⁴⁵

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

In order to work in Italy, a person must hold a residence permit that allows the performance of employment activities (e.g. a permit for work, family reasons, study, asylum seeker status, refugee status, or special protection).

Notably, asylum seekers have the right to work (including as self-employed workers) pending the assessment of their asylum application, provided that 60 days have passed from the submission of their request from asylum. If asylum seekers start working, their asylum applicant permit cannot be converted into a work permit.

The employment of foreign nationals who do not hold a valid residence permit is prohibited and constitutes a criminal offence for the employer.

However, it should be noted that, in order to obtain a residence permit for work purposes, it is generally necessary to enter Italy with a work visa. The issuance of such a visa is in turn subject to the decreto flussi (annual quota decree). As seen, the decreto flussi establishes annual quotas, divided by productive sectors as specified in the decree itself, and operates through a cumbersome mechanism. It requires an employer in Italy to apply for a nulla osta (authorisation to hire) for a worker who is residing abroad.

Over the years, this mechanism has demonstrated its substantial irrationality and has contributed to the production of irregularity.

In any event, individuals holding a residence permit for family reasons, study, religious reasons, or elective residence may also be authorised to work in Italy, subject to the conditions provided by law.

6. Are there any quotas or limitations for businesses to hire non-nationals?

For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

There are no caps or percentages in this sense.

¹⁰⁴⁵ <https://www.unhcr.org/it/sites/it/files/legacy-pdf/Italy-Chapter.pdf>

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Article 38 of Legislative Decree 165/2001 governs access to public employment, which is open to: i) Italian nationals; ii) EU citizens holding the right to residence or permanent residence permit (art. 38 (1)), provided they are entitled to civil and political rights and have a good knowledge of the Italian language (Decree of the President of the Council of Ministers, 174/1994, Art. 3), with the exception of positions involving the exercise of public authority, or related to the safeguarding national interests; iii) open to non-EU nationals who hold long-term residency permits, refugee status or are beneficiaries of subsidiary protection, with some exception, exception of positions involving the exercise of public authority, or related to the safeguarding national interests (art. 38 (3-bis)).

Jobs involving the exercise of public authority or related to the safeguarding national interests are reserved to Italian citizens (Decree of the President of the Council of Ministers, No. 174/1994, Arts. 1-2). These jobs include, e.g.: senior managerial posts in State administration and its autonomous bodies (*posti dei livelli dirigenziali*); major administrative roles in peripheral structures of State bodies (*posti con funzioni di vertice amministrativo*); judges and prosecutors (civil and criminal courts; administrative court; military court; court of audit); State's lawyers and attorneys; civil and military roles at certain Ministries (i.e., Interior, Foreign Affairs, Defence); some other roles in the public administration.

As for EU citizens, the Court of Justice of the European Union had clarified that the reservation to Italian citizens of certain positions in the public administration which involves the exercise of public authority, or is related to the safeguarding national interests, constitutes a derogation to the freedom of movement of workers under Article 45(4) TFEU. Therefore, the derogation must be interpreted very narrowly. It should apply only when it is genuinely necessary to protect Italy's essential national interests. In this case, the derogation is justified only if the public authority is "in fact exercised on a regular basis by that holder" and does not "constitute a minor part of his duties" (ECJ, C-270/13, *Haralambidis*, 10 September 2014). Italian domestic courts had given effect to this judgment by, e.g., ordering the reopening admission to a competition for jobs at the Minister of Home Affairs, which was originally reserved to Italian citizens (*Tribunale di Milano*, Judgment No. 753 of 2025¹⁰⁴⁶).

For national security reasons, non-nationals are not allowed to work in: armed forces (Art. 635, Legislative Decree No. 66/2010 - *Codice dell'ordinamento militare*); intelligence services (Art. 21, Law No. 124/2007); certain security-sensitive roles, such as police forces (Art. 2, Legislative Decree No. 334/2000; Art. 5, Law No. 121/1981).

Moving to professions regulated by professional orders (*ordini professionali*), nationality is not a requirement, i.e. there is no citizenship restriction. However, statutory access conditions apply, notably recognition of qualifications and registration with the relevant professional order

¹⁰⁴⁶ <https://www.retecontrolodio.org/2025/02/25/storica-sentenza-concorso-ministero-interno-dovra-riaprire-a-cittadini-stranieri/>

(lawyers – *Ordine degli Avvocati*, Art. 17, Law No. 247/2012), and residence requirements. Similarly, there is no nationality ban for the media sector.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

The labour protections are the same.

Undocumented migrants enjoy core labour rights, notwithstanding the lack of a regular residency permit (the permit has expired, been revoked or not renewed.). In particular, undocumented migrants have the right to claim, e.g., unpaid wages, overtime pay, severance pay (“Trattamento di Fine Rapporto”, TFR), social security contributions owed by the employer, right to compensation in case of injuries at work.

Moreover, employers employing an undocumented migrant may be sanctioned with imprisonment (6 months to 3 years) and a fine (currently around €5,000 per worker) (Art. 22, Legislative Decree 286/1998). Italian criminal law also criminalises labour exploitation of documented and undocumented migrants, including illegal gangmaster (“caporalato”).

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Foreign nationals are entitled to enrol in the Italian National Health Service (Servizio Sanitario Nazionale – SSN) in the case of residence permits issued for self-employment, family reasons, asylum, subsidiary protection, special cases, special protection, medical treatment, pending asylum application, pending adoption, foster care, acquisition of citizenship, as well as in the case of unaccompanied foreign minors (Art. 35 of Legislative Decree No. 286/1998 – Consolidated Immigration Act).

Other categories (including students, reunited parents, and others) are required to pay a contribution for enrolment—up to €2,000 per year—or alternatively to hold private health insurance coverage.

Undocumented migrants do not have access to the full welfare system, but they are entitled to a core set of health-care services (Article 35, Legislative Decree 286/1998). Notably, undocumented migrants are entitled to urgent and/or essential care, including continuity of treatment for illness and injury, as well as preventive measures. These measures encompass: maternity care and childbirth, treatment of chronic diseases where interruption would cause harm, vaccinations, infectious disease diagnosis and treatment, mental health services where necessary. The National Health Service provides services via a special code (Straniero Temporaneamente Presente - STP), which allows anonymous or confidential treatment. Confidential treatment also implies that health facilities (e.g., doctors, nurses) must not report undocumented migrants to national immigration authorities merely due to their undocumented

status. Health facilities may report undocumented migrants if reporting is required for Italian nationals in the same situations (e.g. serious crimes).

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Art. 34 of the Italian Constitution states that: “1. Schools are open to everyone. 2. Primary education, given for at least eight years, is compulsory and free of tuition. 3. Capable and deserving pupils, including those lacking financial resources, have the right to attain the highest levels of education. 4. The Republic renders this right effective through scholarships, allowances to families and other benefits, which shall be assigned through competitive examinations”. The rights enshrined in Art. 34 apply to non-Italian citizens as well. This provision therefore reflects the principle of equality and non-discrimination, set forth in Art. 3 of the Italian Constitution.

As for primary and secondary education, non-national minors living in Italy are subject to compulsory education and are entitled to access educational services under the same conditions as Italian minors (Art. 38(1), Legislative Decree No. 286/1998) This obligation and right apply also to undocumented non-national minors, i.e. even if the minor does not hold a regular residence permit (Art. 6(2), Legislative Decree No. 286/1998; Art. 45, Presidential Decree No. 394/1999).

Equality of access and treatment applies to upper secondary and vocational training, provided students must meet standard academic requirements. Moreover, residence permit may be relevant, e.g., for certain mobility programmes.

As for tertiary education (e.g., universities), the Italian legal system draws some differences between i) EU citizens; ii) non-EU citizens residing in Italy; iii) non-EU citizens residing abroad. EU citizens enjoy access to tertiary education on equal foot as Italian citizens, to EU freedom of movement (e.g., equal tuition conditions; no quota system governing access to the Italian territory; equal condition to access scholarships). Non-EU citizens residing in Italy may access tertiary education if they hold a regular residency permit (Art. 39(1) and (5), Legislative Decree No. 286/1998). They enjoy equal treatment with Italian citizens as for tuition and access conditions (Art. 39(1), Legislative Decree No. 286/1998), and may access regional scholarships subject to legal requirements, e.g. income requirements (Art. 39(3), Legislative Decree No. 286/1998).

Non-EU nationals residing abroad enjoy access to tertiary education under stricter conditions, notably admission to universities are subject to annual quotas set by national universities for each specific course (Art. 39(2), Legislative Decree No. 286/1998), in addition to pre-enrolment procedures via Italian consulates (e.g., submitting certificates of previous studies) and compliance with visa requirement. Following their university admission and the issuance of

visas and residency permits, non- EU nationals may arrive in Italy via means of legal entry and enjoy the same conditions of Italian and EU-nationals (e.g., equal tuition fees).

Non-Italian citizens may also enjoy full exemption from enrolment fees and university contributions, provided that foreign students are recipients of annual scholarships from the Italian Government under development cooperation programmes and intergovernmental cultural and scientific agreements and related executive programmes (Legislative Decree No. 68/2012, Art. 9(3)).

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Foreign nationals who legally reside in Italy and are engaged in regular employment are entitled to the same social security and insurance benefits as Italian citizens, including old-age pensions, social insurance coverage, and other welfare benefits. Access to these benefits is subject to specific conditions, such as lawful residence, payment of social security contributions, and compliance with certain income requirements.

With regard to the social allowance (“assegno sociale”), certain limitations apply to non-EU nationals. The legislation provides that eligibility is granted to third-country nationals who hold an EU long-term residence permit, as well as to foreign nationals or stateless persons who have been granted refugee status or subsidiary protection. In addition, the requirement of ten years of legal and continuous residence in Italy—applicable to both Italian and foreign nationals—must be satisfied.

The Constitutional Court has referred to the Court of Justice of the European Union (CJEU) the question concerning the exclusion of holders of a single work permit from access to the social allowance. A ruling is currently pending.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Foreign nationals may generally access social assistance benefits in Italy on the same basis as Italian citizens, subject to certain conditions and limitations depending on their residence status. Pursuant to the Consolidated Immigration Act (Art. 41 of Legislative Decree No. 286/1998), equal treatment is guaranteed for Italian citizens and foreign nationals holding a residence permit valid for at least one year with regard to access to social assistance measures.

However, certain specific benefits have introduced additional restrictions:

- Inclusion Allowance (“Assegno di Inclusione”)

In order to access the new Inclusion Allowance, which replaces the former Reddito di Cittadinanza, applicants must hold an EU long-term residence permit or be beneficiaries of

international protection (refugee status or subsidiary protection). In addition, they must have legally resided in Italy for at least five years, of which the last two must have been continuous.

- Training and Work Support (“Supporto per la Formazione e il Lavoro”)

For this employment support measure, the law has introduced nationality- and status-based limitations. Eligible applicants include Italian citizens, citizens of the European Union, and their family members holding a right of residence (including permanent residence). Access is also granted to holders of an EU long-term residence permit and to beneficiaries of international protection. All other categories of residence permits are excluded.

Are there any final observations you would like to make? Please write below.

Between February 2026 and August 2026, the Italian Government and Parliament adopted a number of amendments to the legislation described in this Country Review. These reforms include Law No. 54 of 24 April 2026¹⁰⁴⁷ and Decree Law No. 100 of 12 June 2026¹⁰⁴⁸, together with the related bill converting it into law. In addition, a draft legislative measure is expected to be discussed and possibly adopted in the coming months (Draft Bill No. 1869 of 14 April 2026)¹⁰⁴⁹.

Law No. 54 of 24 April 2026 amended Decree Law No. 23 of 14 February 2026¹⁰⁵⁰ and converted it into law. The Law addresses issues concerning third-country nationals in correctional facilities and pre-removal centres (*Centri di permanenza per i rimpatri* – CPR), expulsions (including access to legal aid), and voluntary returns.

On 5 August 2026, the Italian Parliament definitively approved the bill converting Decree Law No. 100 of 12 June 2026 into law without amendments. At the time of writing this update (6 August 2026), the final law has yet to be enacted and published in the Italian official journal (*Gazzetta Ufficiale*). The Decree mainly implements the EU Pact on Migration and Asylum, which became applicable on 12 June 2026, into the Italian legal system. Notably, it operationalises the EU Pact provisions on issues such as the screening of third-country nationals at external borders (including the detention of persons subject to the screening), the fast-track border procedure (including the “fiction of non-entry”), the implicit withdrawals of asylum applications, the processing of personal data via the Eurodac system, and asylum seekers’ access to employment. For a more detailed overview of the scope and content of these provisions, the Committee may refer to the relevant EU acts under the Pact on Migration and

¹⁰⁴⁷

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2026-04-24&atto.codiceRedazionale=26G00078&elenco30giorni=false

¹⁰⁴⁸

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2026-06-12&atto.codiceRedazionale=26G00119&elenco30giorni=false

¹⁰⁴⁹ <https://www.senato.it/leggi-e-documenti/disegni-di-legge/scheda-ddl?tab=datiGenerali&did=60049>

¹⁰⁵⁰

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2026-02-24&atto.codiceRedazionale=26G00042&elenco30giorni=true

Asylum. The Committee may also return to this matter in the coming months in order to analyse the further Italian laws implementing the EU Pact.

Draft Bill No. 1869 of 14 April 2026 has attracted the attention of six UN Special Rapporteurs, who sent an official communication to the Italian Government expressing concerns about the bill's potential negative impact on the fundamental rights of migrants, asylum seekers and refugees¹⁰⁵¹. Since Draft Bill No. 1869 remains under discussion and has yet to be adopted (even in a provisional form), the Committee may return to this matter in the coming months in order to analyse its final content.

¹⁰⁵¹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=31071>

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Japan

Authors: Obata Kaoru and Hayashi Takami

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		✓
1967 Protocol to the Convention relating to the Status of Refugees		✓
1954 Convention relating to the Status of Stateless Persons		
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)	✓	✓
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)	✓	✓

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		✓
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		✓
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	✓	✓
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	✓	✓
Convention on the Rights of the Child (CRC)	✓	✓
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	✓	✓
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	✓	✓
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)	✓	✓
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		
2014 Protocol to the ILO Forced Labour Convention (No. 29)		

ILO Migration for Employment Convention (Revised) (No. 97)		
ILO Equal Remuneration Convention (No. 100)		
ILO Discrimination (Employment and Occupation) Convention (No. 111)		
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		

American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

At the time of entry, both a visa and a certificate of eligibility for a status of residence are necessary. The certificate is linked with the system of residence status. With an entry permit, a status of residence is conferred and a residence card containing information on the bearer's residence status, period of stay and (if any) work permission, is issued (Art. 9 (3), Immigration Control and Refugee Recognition Act, hereinafter ICRRA <https://www.japaneselawtranslation.go.jp/en/laws/view/3624>). The bearer must show the card to register her or his address and job place, or to open a bank account.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

The statuses of residence are classified into the following two categories: The one based on activities which the bearer is supposed to do during his or her stay in Japan (activities-based statuses, enumerated in Scheme No. 1, IRRA) and the other based on the bearer's personal positions (position-based statuses, enumerated in Scheme No. 2, ICRRA). The latter includes: "Spouse and Child of Japanese", "Permanent Resident" and "Long-term Resident".

Without permission to that effect, the persons with the activity-based status may not engage in the remuneration-earning activities, which are specified in each column of Scheme No. 1. For the foreigners with a position-based statuses of residence, no restriction of remuneration-earning activities is imposed. Even in case of position-based statuses, however, if, and when, its bearer has already ceased to engage the activities closely connected to the position, his or her status of residence is not renewable, and revokable. For example, if foreign spouses of Japanese are found to cease sharing the same household with their spouses, they shall lose their status of residence "Spouse and Child of Japanese".

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

The Convention refugees and persons with "supplementary protection" are eligible for international protection. The concept of "supplementary protection" here was much narrower than the equivalents in Europe and other countries. It is defined as satisfying any requirements of the Convention refugees (Art. 1 (A)(2) of the 1951 Refugee Convention, as modified by Art. 1 (2) of the 1967 Refugee Protocol) but the specified reasons of persecution (Art. 2 (3-2), IRRA). The persons who wish to acquire formal statuses of international protection must apply for their recognition to the Minister of Justice (Art. 61-2 (1)-(3), IRRA). If their statuses are recognized, the "certificates" to the effects are issued, and in case where the applicants have no status of residence, the status "Long-term Resident" shall be conferred in principle (Art. 61-2 (4) (5), Art. 61-2-2). Certainly, the status of international protection and that of residence under IRRA are different from each other and could work parallelly at the same time. It is, however, difficult to invoke their status of international protection in practice, even in the case where he or she is conferred with the certificates, because the authorities have little knowledge about their rights under the 1951 Refugee Convention. They are not trained to refer to the text of the Convention but only to that of ICRRA. The status of international protection is thus absorbed into the status

of residence such as “Long-term resident”. It remains unchecked whether the latter covers every right under the 1951 Refugee Convention.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

No special system is installed into Japanese law for family reunification. It is regulated by the systems explained in 1 and 2 above. If, and when, the spouse or child of a foreigner who stays in Japan wish to enter in Japan for family reunification, they must have a visa and a certificate of eligibility of a status of residence. A status of residence can be issued only to the spouse and child dependent on the foreigners who have been conferred the statuses of residence for skilled workers or the “Permanent Resident” (“Dependent” in the Scheme 1 (4), “Spouse or Child of Permanent Resident”, in the Scheme 2, ICRRA). Under the case law, it is within a wide discretion of the Minister of Justice to confer or reject such statuses of residence even in the case where the applicants’ situation is considered to satisfy any and all of the requirements (see, *mutatis mutandis*, *McLean v the State*, Judgment of the Supreme Court (Grand Bench) of 4 October 1978, Case 1975 (Gyo-Tsu) 120, https://www.courts.go.jp/app/hanrei_en/detail?id=56).

5. What are the conditions for naturalization in the reviewed state?

A foreigner may be naturalized only by the permission of the Minister of Justice (Art. 4, Nationality Act, hereinafter NA, <https://www.japaneselawtranslation.go.jp/en/laws/view/4713>). The Minister may permit naturalization only for the applicant who meets all of the following conditions: (1) having continuously had a domicile in Japan for more than five years, (2) being eighteen years of age or older and, according to the applicant’s national law, (3) being a persons of good conduct, (4) being able to make a living through the household income (5) not having a nationality or having to lose the nationality upon the acquisition of Japanese citizenship, (6) not having planned or advocated the destruction of the Constitution of Japan or the government established under the Constitution, or not having formed or joined a political party or other organization planning or advocating such destruction (Art. 5 (1)). The conditions (1) and (2) above are dispensed for the persons who have stronger tie with Japan in viewpoint of their lineage and /or birthplace (Arts. 6 and 7, NA). Dual nationality is strictly avoided in naturalization with very few exceptions. Note should be also taken of a wide discretion of the Minister of Justice for permission or rejection of naturalization.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Japan has enacted three anti-discrimination Acts: Act for Eliminating Discrimination Against Persons with Disabilities (Act No. 65 (2013) <https://www.japaneselawtranslation.go.jp/en/laws/view/4930>), Act on the Promotion of the Elimination of Buraku Discrimination (Act No. 109 (2016) <https://www.japaneselawtranslation.go.jp/en/laws/view/4080>) and Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons with Countries of Origin other than Japan (Act No. 68 (2016) <https://www.japaneselawtranslation.go.jp/en/laws/view/4081>). It should be noted that no strict prohibition but rather promotion of efforts of elimination is provided by these Acts. However, their protection also extends to non-nationals.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

In practice, no right to participate in elections is admitted even at the municipal and prefectural level (Art. 9 (1) (2), Act on the Elections of Office Holders). According to the case law, it would be constitutional that a statute provides sufficiently connected non-nationals the right to participate in elections at municipal and prefectural level (*X and others v. the Electoral Committees of several Wards of Osaka City*, Judgment of the Supreme Court, 28 February 1995, 49 (2) Minshu 639 https://www.courts.go.jp/app/hanrei_en/detail?id=201).

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

For Japanese nationals, no restriction of freedom of movement is imposed only except in case of imprisonment for and after criminal procedure. For non-nationals subject to deportation procedure, their freedom of movement and that from detention are restricted to large extent without any prior judicial control.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

In the statutory framework, non-national may be denied or restricted land ownership by application of the principle of reciprocity (Art. 1, Act on Land Ownership for Foreigners, Act No. 42 (1926)). No imperial order (or Cabinet order) is valid to provide how to apply the principle of reciprocity. There is therefore no restriction on land-ownership for non-nationals.

The Minister of Land, Infrastructure and Transport may recommend Japanese nationals not to sell or lease internationally navigable vessels to non-nationals (Art. 44 *ter.*, Sea Transportation Act, Act No.187 (1949)).

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Jobs which any given non-national may take are specified by the one's status of residence. As stated above, the ICRRA prohibits any remuneration-earning activity other than those specified by each item of Scheme 1, ICRRA, unless special permissions are offered. The persons who have non-nationals engaged in such activities are punishable by imprisonment of maximum three years (Art. 73 bis, ICRRA). Non-nationals who *predominantly* engage in such activities are punishable by imprisonment of maximum three years, and deportable (Arts. 24 (iv) (a), 70 (iv), ICRRA).

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

No formal quota or limitation is introduced.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Non-nationals are not allowed to work as public civil servants who exercise public powers or participate in decision-making at state level. The case law agrees to such thesis (*X v. Tokyo Metropolitan Government*, Judgment of Supreme Court (Grand bench) on 26 January 2005, 59 (1) Minshu https://www.courts.go.jp/app/hanrei_en/detail?id=732).

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

No formal restriction exists.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

One of the most serious issues is urgent medical care. Until around 1990, the expense of medical care was covered by medical assistance (Art. 15, Public Assistance Act, Act No. 144 (1950) <https://www.japaneselawtranslation.go.jp/en/laws/view/24>), even for undocumented migrants

who could not pay the expense. Based on an oral instruction of the then Ministry of Health and Welfare, the practice has been changed to no protection for not only undocumented workers, but also non-nationals with activity-based statuses. In such situations, medical services are frequently rejected for non-nationals who have no private medical insurance.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

The primary and first half of secondary education (nine years) is free even for non-nationals. By the newly established High School Tuition Support Fund System, support for the second half of secondary education is provided to students without any distinction of nationality. Of course, in case where all family members are in irregular situations, it is difficult for them to pay tutorial fees of the second half of secondary education even with support for the Support Fund System. After graduating from high school, children without regular migratory status might well be under deportation procedure.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

No distinction exists in this field between nationals and non-nationals.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

The Public Assistance Act (cited above) provides adequate standard of living expressly to nationals. Currently, non-nationals with position-based status of residence obtain assistance benefits provided in the Act, but without any right to make objections to the decision of non- or insufficient assistance. Non-nationals with activities-based status of residence have no access to assistance benefits. One of the most serious cases is the non-nationals under provisional release or *kari-homen* regime, because it is recently established practice that they are not permitted to engage in any enumeration-earning activities.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report— Rights to stay and while staying

Country review

November 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Kosovo

Author: Iliriana Islami

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		
1967 Protocol to the Convention relating to the Status of Refugees		
1954 Convention relating to the Status of Stateless Persons		
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)	X	X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	X	X
International Covenant on Economic, Social and Cultural Rights (ICESCR)		
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	X	X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	□	
Convention on the Rights of the Child (CRC)	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)		
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		
ILO Equal Remuneration Convention (No. 100)		
ILO Discrimination (Employment and Occupation) Convention (No. 111)		

ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)	X	X
Protocols to the European Convention on Human Rights		
European Social Charter (ESC)	X	X
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	X	
American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Part I— Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

The regulation of entry and stay of foreign nationals in Kosovo operates through a dual system of short-term visas and long-term residence permits, reflecting a model inspired by EU legal frameworks. While Kosovo is not yet an EU member state, the structure of its migration legislation, particularly Law No. 04/L-219 on Foreigners¹⁰⁵², demonstrates a clear effort to harmonize domestic policies with EU standards, particularly in anticipation of deeper integration into the European legal space.

Short-term entry into Kosovo is governed primarily through the visa regime, applicable to nationals of countries subject to visa requirements. Kosovo issues two main types of visas: the air transit visa and the entry visa (*Law on Foreigners, 2013, arts. 11-14*). The entry visa may be granted for single or multiple entries and allows a stay for a maximum of 90 days within a 180-day period. A visa does not guarantee entry because border control authorities retain the discretion to assess whether all conditions for entry and stay are met.

Citizens of the following countries can enter Kosovo without a visa for short stays (typically up to 90 days within a 6-month period)¹⁰⁵³:

- All European Union (EU) member states
- United States

¹⁰⁵² Republic of Kosovo, Law No. 04/L-219 on Foreigners, Official Gazette no. 35 (2013), arts. 11–14, 31–35, 48 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8876&langid=2>

¹⁰⁵³ Full list provided at: <https://www.beinkosovo.com/kosovo-visa-requirements/>

- Canada
- Australia
- New Zealand
- Japan
- Turkey
- Balkan countries (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, North Macedonia, Romania, Serbia, and Slovenia).

Citizens of countries not listed under the visa-exempt category must obtain a visa before traveling to Kosovo. This includes, but is not limited to¹⁰⁵⁴:

- China
- India
- Russia
- South Africa
- Most African and Asian countries.

In addition to the general classification of countries that either require or are exempt from visas to enter Kosovo, there are several specific exemptions and facilitations that travelers should be aware of¹⁰⁵⁵:

1) **Schengen Visa Holders:** Individuals holding a valid multiple-entry Schengen visa or a valid biometric residence permit from a Schengen state may enter Kosovo without an additional visa for a maximum stay of 15 days.

2) **Diplomatic and Service Passports:** Holders of diplomatic or service passports from certain countries may be exempt from visa requirements or have simplified entry procedures.

For longer stays exceeding three months, residence permits are the relevant legal instrument. The law differentiates between temporary and permanent residence (*Law on Foreigners, 2013, arts. 37–40*), with eligibility determined by the individual’s purpose of stay—such as employment, study, family reunification, or humanitarian reasons. Applications for temporary residence are subject to general conditions (*Law on Foreigners, 2013, art. 48*), including possession of a valid travel document, proof of accommodation, sufficient means of subsistence, and health insurance. Once approved, temporary residence permits are typically issued for one year and may be renewed.

According to the IOM¹⁰⁵⁶ (*International Organization for Migration, 2025*), Kosovo issued 7,439 temporary residence permits in 2024, including 4,244 work permits and 4,042 first-time

¹⁰⁵⁴ Full list provided at: https://en.wikipedia.org/wiki/Visa_policy_of_Kosovo#Visa_policy_map

¹⁰⁵⁵ *Be In Kosovo*. (n.d.). Kosovo visa requirements: Exemptions and entry information. <https://www.beinkosovo.com/kosovo-visa-requirements/>

¹⁰⁵⁶ International Organization for Migration (IOM) – Kosovo Mission, Migration Snapshot: February–March 2025, internal monitoring chart, March 2025. <https://kosovo.iom.int/>

applications. In just the first months of 2025, 1,363 permits were already issued, suggesting strong institutional continuity in processing legal migration pathways.

Kosovo's system imposes a clear legal distinction between the right to **enter** the territory and the right to **reside**. Entry is governed by visa policy and border checks, while residence requires a separate administrative decision granting legal stay under specific grounds. This separation reinforces Kosovo's control over migration while also enabling legal pathways for the integration of foreign nationals who contribute socially or economically to the country.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

Temporary residence permits (*Law on Foreigners, 2013, art. 41*) in Kosovo are categorized by the purpose of stay, each allowing a non-national to reside in the country for longer than three months. The main categories of migratory status (beyond short visits) include:

1) **Family Reunification:** These are permits granted to family members (spouses, minor children, and, under certain conditions, other dependents) of a Kosovo resident or citizen. This status allows the family member to reside in Kosovo based on the sponsor's lawful residence status or citizenship.

2) **Employment (Labor):** This residence permit is for foreigners coming to work in Kosovo. This covers both standard employment and certain special categories.

Job offers or contracts and usually a labor market test or quota compliance are required before the residence permit for employment is approved.

3) **Education (Study):** This type of residence permit is for students enrolled in educational institutions in Kosovo, whether for their secondary education or university studies. These student residence permits are typically valid for one academic year at a time and are renewable. They allow the holder to reside for the purpose of study and may include some work rights (internships or part-time work subject to conditions).

4) **Scientific Research:** This is a specific type of permit for researchers or academics collaborating with Kosovo institutions. This category implements EU-aligned provisions facilitating the mobility of researchers. Applicants usually need an agreement with a research institution in Kosovo.

5) **Humanitarian Grounds:** This is a broad category covering those who cannot return to their country of origin for humanitarian reasons. This includes individuals granted international protection (refugees and persons with **subsidiary protection** under Kosovo's asylum law) as well as victims of human trafficking or smuggling who cooperate with authorities.

In addition to temporary permits, Kosovo issues a Permanent Residence Permit (valid indefinitely) to foreigners who meet the statutory requirements (generally five years of continuous temporary residence and fulfillment of integration conditions). A permanent resident enjoys the right to live and work in Kosovo without time limitation, closer to the status of a

long-term immigrant. There are also provisions for an “autonomous” residence permit for dependents: for instance, a spouse who has resided in Kosovo on a family reunification permit for a certain period may in her own right obtain an autonomous permit if needed (e.g., in case of the death of a spouse or divorce), ensuring the right to stay is not automatically lost upon a change in family circumstances.

Kosovo’s legal system contemplates bridging mechanisms in the permit process. When a temporary residence renewal or a status change is being processed, the individual is typically issued a document confirming the legality of continued stay until a decision is made. This prevents gaps in status during administrative processing. Overall, any non-national residing longer than three months in Kosovo will fall under one of the above categories of migratory status, each defined in law with its respective conditions and rights.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Although Kosovo is not a member of the United Nations and therefore not a formal signatory to the 1951 Geneva Convention Relating to the Status of Refugees or its 1967 Protocol¹⁰⁵⁷, it has developed a comprehensive domestic legal framework that aligns with these instruments in both substance and procedure. This is primarily regulated by Law No. 06/L-026 on Asylum¹⁰⁵⁸, which governs the recognition of refugee and subsidiary protection statuses, as well as related rights and residence rights under the Law on Foreigners No. 04/L-219.¹⁰⁵⁹

Kosovo’s asylum law adopts international definitions of protection. As per Article 3 of the Law on Asylum, a refugee is a person who, owing to a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group, cannot return to their country of origin. The law also recognizes protection for individuals who may not qualify as refugees but would face serious harm, such as torture or generalized violence, if returned.

The concept of serious harm is embedded in Kosovo’s Law No. 06/L-026 on Asylum (2018), which incorporates standards drawn from the EU Qualification Directive (2011/95/EU)¹⁰⁶⁰ and international human rights law. Article 3 of the law defines subsidiary protection as applicable to individuals who do not qualify as refugees but would face “*a real risk of suffering serious harm if returned to their country of origin and cannot avail themselves of that country’s protection*” (Law on Asylum, 2018, art. 3).

¹⁰⁵⁷ <https://www.unhcr.org/sites/default/files/legacy-pdf/4ec262df9.pdf>

¹⁰⁵⁸ Republic of Kosovo, Law No. 06/L-026 on Asylum, Official Gazette no. 8 (2018), arts. 2–3, 7, 31–36, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=16389&langid=2>

¹⁰⁵⁹ Republic of Kosovo, Law No. 04/L-219 on Foreigners, Official Gazette no. 35 (2013), <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8876&langid=2>

¹⁰⁶⁰ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection. Official Journal of the European Union, L 337, 9–26

Although the law does not provide an exhaustive list of what constitutes “serious harm,” Article 20(1)(2) refers to the principle of non-refoulement, emphasizing that no person shall be returned to a country where they would be exposed to “a *real risk of serious violations of their rights, including torture, inhuman or degrading treatment, or punishment*” (Law on Asylum, 2018, art. 20).

This language mirrors the prohibition of inhuman or degrading treatment under Article 3 of the European Convention on Human Rights (ECHR) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR). Although Kosovo is not a UN member and cannot formally accede to these treaties, their provisions are binding domestically through Kosovo’s Constitution, which gives direct effect to international human rights instruments (Constitution of the Republic of Kosovo, 2008, art. 22)¹⁰⁶¹.

The principle of non-refoulement is incorporated under the Law on Foreigners (No. 04/L-219)¹⁰⁶² in Article 5, which prohibits the return of individuals to a country where they would face serious threats to life or freedom. Kosovo’s Law on Foreigners expressly incorporates the non-refoulement principle and applies it to *all* foreign nationals, not just asylum-seekers. In particular, Article 2.3 of the Law on Foreigners (No. 04/L-219) states that nothing in the law may conflict with Kosovo’s international obligations, including the 1951 Refugee Convention, the principle of non-refoulement and the right to seek asylum. The law also defines a “*foreigner*” as any person who is not a citizen of the Republic of Kosovo, meaning the provisions apply to all non-citizens in Kosovo.

Crucially, Article 80 of the law (in the chapter on unlawful stay and expulsion) declares that “the Republic of Kosovo shall not expel or return a foreigner in any way to the borders of territories where his or her life or freedom would be threatened...”. In other words, Kosovo explicitly forbids returning any foreigner to a country of persecution or serious harm, regardless of whether they have formal refugee or asylum status.

This provision signals Kosovo’s commitment to human rights and humanitarian norms despite its contested statehood on the global arena.

Once international protection is granted, the individual is issued a temporary residence permit on humanitarian grounds (*Law on Foreigners, 2013, art. 41*). For refugees, the initial permit is typically valid for three years, while beneficiaries of subsidiary protection receive one-year permits, both renewable. During this period, individuals enjoy a broad set of rights, like access to education, health care, employment, legal aid, and integration services (*Law on Asylum, art. 35*). According to the Regulation (GRK) NO. 09/2019 for the Integration of Foreigners, as well as Article 41 of the Law on Asylum, foreigners, particularly those granted refugee or subsidiary protection status, are entitled to a comprehensive integration scheme. This includes access to public services, civil registration, and individual support measures such as housing, education, social protection, healthcare, vocational training, and employment (Regulation for the Integration of Foreigners, arts. 8–18). Integration services specifically include needs assessments, language and integration courses, and accommodation for up to two years

¹⁰⁶¹ Constitution of the Republic of Kosovo. (2008). Retrieved from <https://gzk.rks-gov.net/>

¹⁰⁶² Law on Foreigners No. 04/L-219. (2013). Republic of Kosovo.

(Regulation for the Integration of Foreigners, arts. 19–23). Persons with refugee or subsidiary protection status are entitled to learn the history, language, and culture of Kosovo as part of their integration process (Law on Asylum, art. 41). All services are based on principles of non-discrimination, protection of vulnerable groups, gender and ethnic equality, and the best interests of children (Regulation on the Integration of Foreigners, art. 5). Foreigners are informed of their rights and obligations in a language they understand and may access support from Employment Offices, vocational training centers, and social welfare institutions (Regulation for the Integration of Foreigners, arts. 10, 16). They are also entitled to free legal aid and may access the justice system under equal conditions (Regulation for the Integration of Foreigners, art. 17).

Additional rights affirmed by the Civil Rights Program Kosovo (CRPK) include civil registration in the municipality of residence, access to personal documents such as ID cards and travel papers, and the right to employment without a work permit. Foreigners may pursue vocational training, apply for social assistance, and initiate family reunification procedures through the Ministry of Internal Affairs. They retain freedom of thought and religion, the right to own movable and immovable property, and the right to naturalization under Kosovo's citizenship law. These rights are contingent on legal residence and compliance with national laws, including the duty to report changes of address within seven days. Together, these measures form a structured framework to support foreigners' integration into Kosovar society by ensuring equal access, participation, and long-term inclusion in the country's legal, economic, and social systems (Regulation on the Integration of Foreigners, chap. III).

Kosovo's asylum legislation explicitly provides for assistance for integration into society for recognized refugees and protected persons. In practice, this means a range of support services to help newcomers settle in. For example, the Government's Regulation No. 09/2019 on Integration of Foreigners lists integration services such as housing assistance, access to education and social welfare schemes, health care, vocational training and employment support, legal aid/access to justice, and language and cultural orientation courses. Similarly, Article 41 of the Law on Asylum guarantees that refugees can learn Kosovo's history, language and culture as part of their integration into society.

- **Language and cultural courses:** Newcomers receive free classes in local languages and orientation about Kosovo's history and customs.
- **Housing and social support:** They are entitled to accommodation support or access to social welfare programs (e.g. social assistance and elementary shelter) under integration scheme.
- **Education and training:** Refugee children attend local schools, and adults may take vocational training courses. Formal education and professional training programs are provided to help integration.
- **Healthcare:** Beneficiaries of protection have the right to receive the same health services under the same conditions as Kosovo citizens as part of integration support.
- **Employment support:** The integration services include help finding work or job training (vocational programs) to improve employment prospects.

- **Legal aid and justice:** Free or subsidized legal advice and assistance with administrative procedures are available, ensuring access to the justice system
- They are also eligible for family reunification (*Law on Foreigners, 2013, art. 52*), often with waived financial or accommodation requirements in recognition of their vulnerable status.

In addition to refugee and subsidiary protection, Kosovo's legal framework also provides for humanitarian protection for individuals who do not meet the criteria for international protection but are nonetheless unable to return to their countries. Under Article 41 of the Law on Foreigners, temporary residence permits may be granted on humanitarian grounds, including in cases of natural disasters, force majeure, or serious individual vulnerabilities such as medical emergencies, unaccompanied minors, or victims of trafficking (Law on Foreigners, 2013, art. 41). The same law permits visa extensions free of charge in such situations (Law on Foreigners, 2013, art. 36). Furthermore, Kosovo's Law on Asylum includes a provision for temporary protection in the event of mass influx, aligning with the EU Temporary Protection Directive (Law on Asylum, 2018, art. 44). Though not yet activated in practice, this mechanism could apply in large-scale displacement scenarios, such as those caused by armed conflict or environmental catastrophes.

A specific framework also exists for victims of trafficking in persons, regulated by Law No. 04/L-218 (Law on Trafficking in Human Beings, 2013)¹⁰⁶³. Identified or presumed victims are entitled to immediate access to protection, medical and psychosocial support, shelter, and legal aid—none of which are conditional upon cooperation with law enforcement (GRETA, 2021). They are granted a reflection period of up to 90 days and may be issued a renewable temporary residence permit on humanitarian grounds regardless of whether they testify against traffickers (Law on Foreigners, 2013, art. 41). These services are provided free of charge, either by the state or licensed NGOs operating under official protocols (GRETA, 2021)¹⁰⁶⁴.

However, IOM (*International Organization for Migration, 2025*) data suggests that the implementation of this system is modest in practice. Kosovo remains largely a transit country rather than a destination for international protection seekers. In February 2025, only 2 individuals applied for asylum, compared to 41 migrants who entered under the 15-day transit scheme. As of March 2025, the cumulative total of asylum applications stands at just 12 for the year, despite the presence of a comprehensive legal framework. Even though the legal infrastructure for protection exists, it remains underused due to Kosovo's limited appeal as a country of long-term settlement.

Most migrants transiting Kosovo originate from North African countries, particularly Morocco (45%), Egypt (22%), and Libya (33%), according to recent migration monitoring reports. These

¹⁰⁶³ Law on Preventing and Combating Trafficking in Human Beings and Protecting Victims of Trafficking No. 04/L-218. (2013). Republic of Kosovo.

¹⁰⁶⁴ Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA). (2021). Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Kosovo. Strasbourg: Council of Europe.

individuals seldom apply for asylum in Kosovo, instead viewing the country as a passage toward the Schengen Zone.¹⁰⁶⁵

Kosovo's legal system for international protection is well-formulated and aligned with European and humanitarian norms. Yet, the low rate of asylum applications demonstrates that Kosovo serves more as a "corridor" than a destination.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Migration for family reunification is regulated under Kosovo's domestic law (*Law on Foreigners, 2013, art. 49*). The law provides that a foreign national who is lawfully residing in Kosovo has the right to request reunification with certain family members under defined conditions. This reflects Kosovo's implementation of principles like the EU Family Reunification Directive 2003/86/EC.¹⁰⁶⁶

Eligible family members typically include the spouse of the sponsor and their minor children (under 18). According to the Law on Foreigners (2013), Article 50 defines family members eligible for family reunification to include not only the spouse but also the unmarried partner of the sponsor (Law on Foreigners, 2013, art. 50(1.1)). For an unmarried partnership to qualify, the law requires that it be a heterosexual relationship, where both individuals are unmarried and have lived together for at least three years, or less if they have a child together (Law on Foreigners, 2013, art. 50(5)). Same-sex partnerships are not recognized under this provision.

Regarding polygamous marriages, Kosovo explicitly prohibits the reunification of more than one spouse. If a sponsor is already residing in Kosovo with one spouse, reunification with additional spouses is not authorized (Law on Foreigners, 2013, art. 50(3)). This aligns with Kosovo's adherence to European norms and principles on family unity, ensuring consistency with non-discriminatory and human rights-based standards, while upholding Kosovo's legal recognition of monogamy only. Additionally, family reunification is not permitted if the spouse or partner is married or in a long-term relationship with another person (Law on Foreigners, 2013, art. 50(4)).

On the other hand, the law does not explicitly extend this right to adult children, even if they are financially or health-wise dependent, nor to other relatives such as parents, siblings, or cousins. While adult dependent children or elderly parents may be admitted in exceptional humanitarian or discretionary cases, such as serious illness, disability, or lack of other caregivers, these situations fall outside the standard family reunification provisions and require separate legal consideration. Therefore, Kosovo's legal framework maintains a narrow definition of eligible family members for reunification, focusing on nuclear family unity and leaving broader family members to be considered only under special or alternative immigration categories.

¹⁰⁶⁵ International Organization for Migration (IOM) – Kosovo Mission, Migration Snapshot: February–March 2025, internal monitoring chart, March 2025. <https://kosovo.iom.int/>

¹⁰⁶⁶ <https://eur-lex.europa.eu/eli/dir/2003/86/oj/eng>

In the case of a Kosovo citizen sponsoring family, these categories apply, and in the case of a foreign resident sponsoring relatives, the law may require the sponsor to hold at least a one-year temporary residence permit (and have a prospect of continued legal stay) before being eligible to bring in family members, in line with European practice. The sponsor must file an application with the DCAM (Department for Citizenship, Asylum, and Migration within the Ministry of Internal Affairs) on behalf of the family member, who may then receive a temporary residence permit for family reunification if conditions are met.

The **conditions** for family reunification are aimed at ensuring the sponsor can support the family member in Kosovo. The sponsor is generally required to provide proof of sufficient financial means, appropriate housing, and health insurance for the family member so that the incoming family member will not become a burden on social assistance.

Additionally, both the sponsor and the spouse must typically be above the minimum age (usually 18, to prevent forced marriages). Kosovo's regulations also consider public order and security considerations. A family reunification request can be refused or revoked if, for example, it was based on a fraudulent marriage or if the foreign family member is deemed a security risk.

Once granted a family reunification permit, the family member has the right to reside and, in most cases, to work or study in Kosovo on the same basis as other temporary residents. These permits are usually valid for one year at a time, renewable if the sponsor's status remains in effect (or, if the sponsor is a citizen, if the family relationship continues).

Kosovo's law also includes facilitated pathways to integration for reunited families. After a certain period of continuous residence under a family reunification permit, the family member may become eligible for an autonomous residence permit independent of the sponsor.

For instance, a foreign spouse who has resided in Kosovo for three years with a resident sponsor might obtain an autonomous permit, which ensures they can continue to reside in Kosovo even if the marriage ends. Family members are also on track towards permanent residence: a spouse and children can count their years in Kosovo toward the five-year requirement for permanent residency, and in the case of marriage to a Kosovo citizen or a foreigner with permanent residence, the required residence period for permanent status is often shorter (the law provides that three years of continuous residence may suffice in such cases).

This aligns with the practice of many countries to slightly ease the timeline for family members of long-term residents or citizens.

There have not been widespread reports of abuse or dysfunction in the family reunification system; given that Kosovo is not a major destination for migrants, the volume of family reunification cases is manageable. Proposed legal amendments aim to codify clearer rules and align with EU standards, for example, by specifying deadlines for decision-making and ensuring appeals procedures, as well as integrating any relevant case-law guidance.

In summary, Kosovo's legal framework does allow foreigners and citizens to reunite with close family from abroad under regulated conditions, viewing family unity as a key aspect of the right to stay, balanced with integration requirements and state oversight.

5. What are the conditions for naturalization in the reviewed state?

Gaining Kosovo citizenship by naturalization is governed by the Law on Citizenship of Kosovo No. 04/L-215¹⁰⁶⁷. In general, a foreign national must fulfill several conditions to naturalize as a citizen of Kosovo. One fundamental requirement is a long-term legal residence in Kosovo; the standard residency period required is approximately ten years in practice.

This usually entails first living in Kosovo continuously for at least five years to obtain a permanent residence permit and then holding permanent resident status for an additional five years. In other words, the law requires five years of continuous residence before and after attaining permanent residency, amounting to roughly ten years of total residence. During this period, the applicant should not have significant interruptions in their stay; the law allows only limited absences to count toward the requirement (commonly interpreted as needing an average of 10 months per year of physical presence).

Key naturalization criteria (*Law on Citizenship of Kosovo, 2013, art. 10*) include:

1) **Language Proficiency:** Applicants must demonstrate an adequate command of at least one of Kosovo's official languages. The usual standard is a basic conversational level in Albanian or Serbian. This requirement is meant to ensure integration into society. Language proficiency for naturalization in Kosovo is attested through a formal test as regulated by Article 11 of Administrative Instruction No. 05/2020.¹⁰⁶⁸ Applicants must undergo an exam consisting of appropriate questions related to language, culture, and the social organization of the Republic of Kosovo, conducted in one of the official languages being Albanian or Serbian, at the applicant's choice. The test is designed and administered by the Ministry of Internal Affairs, in cooperation with relevant institutions, and is available in both official languages to ensure fairness. While the law emphasizes a basic conversational level, the test is the primary method for verifying this proficiency, and there is no indication that alternative proofs (such as language course certificates or interviews) are accepted in lieu of the test.

2) **No Security Threat:** The law requires that the applicant have no serious criminal history and pose no threat to public order or national security. In practice, this involves background checks for any past convictions or involvement in activities against the constitutional order. Serious crimes or evidence of terrorism links, for example, would bar naturalization. The applicant **must also be of legal adult age (18 or older)** and capable of acting on their own behalf.

3) **Sustainable Livelihood:** Although it is not explicitly stated, in practice the authorities will consider whether the applicant has means of support (employment or other income) and is not likely to become an expense of the government. Proof of employment, business, or sufficient financial resources may be requested as part of the application to show the person is integrated economically.

¹⁰⁶⁷ Republic of Kosovo, Law No. 04/L-215 on Citizenship of Kosovo, Official Gazette no. 33 (2013), arts. 10–16, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8873&langid=2>

¹⁰⁶⁸ Republic of Kosovo, Administrative Instruction (MIA) 05/2020 on criteria and procedures for acquiring the citizenship of the Republic of Kosovo, Official Gazette (2020), art.11, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=31136>

4) **Dual Citizenship:** Kosovo allows dual citizenship, and in most cases, it does not require applicants to renounce their original citizenship. This liberal approach is in line with Kosovo's effort to engage its diaspora and to not force people to give up previous nationalities.

Additionally, applicants must take an oath of allegiance to the Republic of Kosovo upon being granted citizenship, pledging to respect the Constitution and laws. There is currently no formal civics or history exam beyond the language test.

In addition to the general route, Kosovo provides facilitated naturalization in special cases:

1) **Naturalization through Marriage** (*Law on Citizenship of Kosovo, 2013, art. 11*):

A foreign spouse of a Kosovo citizen can qualify for citizenship on a faster timeline. If the foreigner has been married to and living with a Kosovo citizen for at least three years, they can apply after only one year of residence in Kosovo. All other criteria still apply, but the residency requirement is significantly reduced to promote family unity for citizens.

2) **Diaspora and Ethnic Ties** (*Law on Citizenship of Kosovo, 2013, art. 16*):

Kosovo's law recognizes the concept of acquiring citizenship by origin for ethnic or diasporic connections. Ethnic Albanians or other persons of Kosovar origin who are part of the Kosovo diaspora can naturalize more easily. For example, someone born in Kosovo but residing abroad, or a first-generation descendant of a Kosovo citizen, may be granted citizenship without meeting the full 5-year residence rule, provided they can prove their connection (birth in Kosovo, parentage, or, in some cases, "special contribution" or economic ties to Kosovo). The law thus opens a path for diaspora members to "reclaim" nationality.

3) **Refugees and Stateless Individuals** (*Law on Citizenship of Kosovo, 2013, art. 14-15*):

Kosovo facilitates naturalization for recognized refugees and stateless individuals. Refugees can count the years they resided in Kosovo under international protection toward the residency requirement. Typically, a refugee who has lived in Kosovo for 5 years after recognition can apply for citizenship, and the language requirement might be relaxed for elderly or disabled persons. Stateless persons are protected by provisions aiming to avoid statelessness; for example, a child born in Kosovo who would otherwise be stateless is entitled to Kosovo citizenship by law.

In terms of procedure, applications for naturalization are submitted to the Ministry of Internal Affairs¹⁰⁶⁹ (Department of Citizenship) with all supporting documents (birth certificate, proof of residence, etc.). There is an Administrative Instruction No. 05/2020¹⁰⁷⁰ that details the criteria and process for acquiring citizenship, ensuring transparency in how language tests are administered and what evidence of integration is needed. Decisions can take several months and are subject to appeal if denied.

¹⁰⁶⁹ <https://mpb.rks-gov.net/?culture=en-gb>

¹⁰⁷⁰ Ministry of Internal Affairs, *Administrative Instruction No. 05/2020 on Acquisition of Citizenship of Kosovo by Naturalization* (Prishtina: Government of Kosovo, 2020). [https://mpb.rks-gov.net/Uploads/Documents/Pdf/AL/334/UDH%C3%8BZIM%20ADMINISTRATIV%20\(MPB\)%20Nr.%2005-2020%20P%C3%8BR%20KRITERET%20DHE%20PROCEDURAT%20%20E%20F....pdf](https://mpb.rks-gov.net/Uploads/Documents/Pdf/AL/334/UDH%C3%8BZIM%20ADMINISTRATIV%20(MPB)%20Nr.%2005-2020%20P%C3%8BR%20KRITERET%20DHE%20PROCEDURAT%20%20E%20F....pdf)

The effectiveness of the naturalization framework in Kosovo has been generally positive for those who clearly meet the criteria, but it is noted that the overall number of naturalizations is not high, partly because Kosovo is a small country with a modest immigrant population.

Kosovo's alignment with European norms means the 10-year residency rule, language test, and other integration requirements are comparable to those in many countries. There have been no significant reports of discrimination in the naturalization process; for instance, dual citizenship is broadly permitted, which encourages uptake of Kosovo citizenship by eligible individuals.

One challenge has been the requirement of proving continuous residence and navigating the bureaucracy, which the government is working to make more efficient.

In conclusion, the conditions for naturalization in Kosovo are clearly defined by law: an applicant must become a long-term resident, integrate linguistically and socially, and respect the legal order. Kosovo also welcomes dual nationality and provides for faster access to citizenship in special cases. Ongoing reforms and discussions indicate a commitment to improving the efficiency of this framework, ensuring that the right to stay can eventually translate into the right to fully belong for those who make Kosovo their home.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a) temporary and permanent resident migrants;*
- b) regular migrants benefiting from more favorable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c) undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d) refugees;*
- e) asylum seekers;*
- e) other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The Constitution of the Republic of Kosovo establishes equality before the law for all persons in its territory and prohibits discrimination on any grounds. Although Kosovo does not have a single, comprehensive anti-discrimination statute exclusively regulating the treatment of non-nationals, the domestic legal framework that applies to foreigners incorporates binding non-discrimination guarantees.

More specific protections for non-nationals appear in Kosovo's migration and integration legislation. The Regulation for the Integration of Foreigners requires that integration measures, public services, and all related procedures for foreigners be provided on the basis of non-discrimination, protection of vulnerable groups, gender and ethnic equality, and the best interests of the child. These principles apply equally to refugees, beneficiaries of subsidiary protection, and other categories of foreigners residing legally in Kosovo.

Additionally, the Law on Asylum and the Law on Foreigners ensure that individuals granted international protection enjoy equal access to essential rights, including education, healthcare, employment, legal aid, and integration support, without discrimination based on nationality or migration status. Foreigners must also be informed of their rights and obligations in a language they understand, reinforcing equal treatment in administrative and legal procedures.

Thus, while not consolidated in a single anti-discrimination statute dedicated to migrants, Kosovo's constitutional framework and migration-related legislation collectively provide a domestic legal basis prohibiting discrimination against non-nationals and safeguarding their equal access to public services and rights.

I.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Non-nationals are not permitted to vote in any elections in Kosovo, whether at the municipal, parliamentary, or presidential levels. Electoral participation is constitutionally reserved for Kosovo citizens only. Likewise, non-nationals cannot run for elected office or hold political mandates that require citizenship.

However, Kosovo's legal framework does not restrict foreigners from participating in public life in a broader sense. Non-nationals may freely join associations, civil society organizations, labour unions, and community groups, and may participate in public consultations or civic activities organized by government institutions. Nothing in the migration or asylum legislation prohibits foreigners from expressing their views, taking part in peaceful assemblies, or engaging in advocacy on issues affecting their communities.

Thus, while formal political rights—such as voting and standing for election—are limited exclusively to citizens, non-nationals retain the general civil freedoms necessary to engage in public discourse and associative life in Kosovo, consistent with the principles of equality and non-discrimination reflected in Kosovo’s legal framework.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Aside from the right to vote, Kosovo law places no general restriction on the ability of non-nationals to enjoy civil and political rights. The Constitution guarantees that “human rights and fundamental freedoms are guaranteed to everyone” and that these rights “apply equally to all persons within the territory of the Republic of Kosovo”, regardless of citizenship (art. 21(1)–(2)).¹⁰⁷¹ The Constitution further prohibits discrimination on any ground, including national origin or status (art. 24).¹⁰⁷²

Kosovo’s Law on Foreigners affirms that foreigners enjoy fundamental rights and freedoms in Kosovo in accordance with the Constitution and international human rights instruments applicable in the country (art. 5).¹⁰⁷³ Likewise, the Law on Protection from Discrimination applies to “every person within the Republic of Kosovo”, including non-nationals, and prohibits discrimination in access to public life, services, and legal protection (art. 2, art. 4).¹⁰⁷⁴ Under the Law on Asylum, asylum seekers and persons granted international protection must be guaranteed access to courts, legal aid, freedom of movement, and protection of family life under the same conditions applicable to others (arts. 20–23).¹⁰⁷⁵

In relation to freedom of movement, Kosovo does not impose internal geographic restrictions based on migratory status. Foreigners legally residing in Kosovo may move freely within the territory, consistent with art. 35 of the Constitution, which guarantees liberty of movement to “everyone lawfully residing in Kosovo.”¹⁰⁷⁶ Asylum seekers must remain available to the authorities for procedural purposes, but, once granted protection or residence, no regional or municipality-specific residence obligations apply. There are no restrictions comparable to sponsored-regional visas found in Australia.

Foreigners also enjoy the right to access courts and legal remedies. The Law on the Ombudsperson explicitly guarantees that “every person”—including non-nationals—may lodge complaints for violations of rights by public authorities (art. 16).¹⁰⁷⁷ Free legal aid is

¹⁰⁷¹ Constitution of the Republic of Kosovo (2008), art. 21(1)–(2).

¹⁰⁷² Constitution of the Republic of Kosovo (2008), art. 24.

¹⁰⁷³ Law No. 04/L-219 on Foreigners (2013), art. 5.

¹⁰⁷⁴ Law No. 05/L-021 on Protection from Discrimination (2015), arts. 2, 4.

¹⁰⁷⁵ Law No. 06/L-026 on Asylum (2018), arts. 20–23.

¹⁰⁷⁶ Constitution of the Republic of Kosovo (2008), art. 35.

¹⁰⁷⁷ Law No. 05/L-019 on the Ombudsperson (2015), art. 16.⁵ Constitution of the Republic of Kosovo (2008), art. 46.

extended to foreigners under the Law on Free Legal Aid, provided standard eligibility criteria are met.

Overall, Kosovo's legal framework ensures that non-nationals, irrespective of their migratory category, enjoy civil rights—such as freedom of expression, assembly, association, movement, access to justice, and protection against discrimination—on an equal basis with nationals. The principal distinction concerns political rights, which remain constitutionally reserved for citizens.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Kosovo's Constitution guarantees the right to property to “*everyone*” within its jurisdiction, without distinction between nationals and non-nationals (art. 46).¹⁰⁷⁸ The legal framework does not impose broad, nationality-based prohibitions on foreigners acquiring movable or immovable property. As a general rule, non-nationals with legal residence in Kosovo may buy, own, inherit, and dispose of property under the same conditions applicable to Kosovo citizens, subject to standard registration and cadastral requirements.

The Law on Foreigners provides that foreigners enjoy fundamental rights and freedoms, including property rights, in accordance with the Constitution and applicable laws (art. 5). Kosovo property legislation does not contain restrictions comparable to those in certain other jurisdictions where foreign ownership of land is limited or subject to prior government approval. Foreigners may enter into contracts, purchase real estate, and register ownership in the Kosovo Cadastral Agency, provided they hold valid identification and legal residence status.

Certain administrative conditions apply uniformly to all purchasers, regardless of nationality—such as cadastral registration, verification of ownership history, and compliance with spatial planning or construction requirements—but these are not limitations specific to non-nationals.

There are no statutory prohibitions preventing foreigners from owning residential or commercial property, agricultural land, or apartments, nor are there percentage caps or geographic restrictions based on foreign status. Additionally, foreigners may inherit property in Kosovo under the Law on Inheritance, which applies to all persons unless an international agreement provides otherwise.

Accordingly, Kosovo does not maintain special limitations on the right of non-nationals to buy or own property beyond the general legal requirements that apply to all property transactions.

¹⁰⁷⁸ Law No. 04/L-219 on Foreigners (2013), art. 5.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

The conditions under which non-nationals may engage in formal employment in Kosovo are regulated primarily by Law No. 04/L-219 on Foreigners. Foreigners may work in Kosovo only if they hold a valid temporary residence permit for employment purposes, issued on the basis of a concrete job offer or employment contract (art. 54). In practice, employment authorization requires that the employer submit evidence of the job position, the employment contract, and compliance with applicable labour standards.

Before a foreign national may begin work, a residence permit for employment must be approved by the Ministry of Internal Affairs. The application must include evidence of professional qualifications, proof of sufficient financial means, and a verified employment offer (arts. 51–54). Certain categories of work may also require sector-specific licensing, depending on the profession.

Foreigners may not begin working until the residence permit for employment has been issued; holding only a visa or short-term entry permit is insufficient for access to the labour market. The law also provides that employers must comply with labour and social protections applicable to all workers in Kosovo, ensuring equal treatment of national and non-national employees in terms of working conditions, rights, and obligations.

Overall, the fundamental conditions for lawful employment are the possession of (1) a valid purpose-based residence permit and (2) a formal employment contract meeting legal standards, with employers bearing responsibility for compliance with immigration and labour regulations.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Kosovo does not impose numerical quotas that limit the percentage of foreign workers a business may employ. Unlike jurisdictions that restrict companies to a fixed ratio of national versus non-national employees, Kosovo's legislation contains no provisions establishing percentage caps or mandatory labor-market quotas for foreign workers.

However, the Law on Foreigners does require that a foreign national may be employed only on the basis of a valid employment-based residence permit, which must be supported by an employment contract and other documentation submitted by the employer (arts. 51–54).⁹ While this procedure requires employers to justify the employment relationship by submitting evidence of the job offer and professional qualifications, Kosovo's legislation does not mandate

a formal labor market test or require employers to prove that no citizen was available to fill the position.

Employers must comply with general labor standards and maintain full responsibility for ensuring that the employment of a foreign national is lawful, including adherence to immigration, tax, and labor regulations. No additional sector-specific or economy-wide restrictions apply exclusively to the hiring of non-nationals.

Overall, Kosovo's legal framework does not include quotas, percentage caps, or mandatory labor-market testing for the employment of foreigners. The primary condition is that the foreign worker must hold a residence permit for employment and meet the administrative requirements set out in the Law on Foreigners.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Kosovo's legal framework does not contain broad, sector-wide prohibitions on the employment of non-nationals in the private sector. Foreigners with valid employment-based residence permits may work in most economic sectors under conditions similar to nationals, provided they meet professional qualification and licensing requirements applicable to all workers.

However, public sector employment is restricted. The Law on Civil Service of the Republic of Kosovo requires that civil servants be Kosovo citizens, which effectively excludes non-nationals from holding permanent civil service positions.¹⁰⁷⁹ This includes employment in ministries, independent agencies, and most public administrative bodies. Foreigners may be engaged as consultants or external experts, but not as civil servants.

Similarly, positions that involve the exercise of sovereign authority or functions tied to public office such as police, security forces, judicial functions, diplomatic posts, or other constitutionally designated roles—are reserved exclusively for citizens under various sector-specific laws and constitutional provisions.¹⁰⁸⁰

In the media sector, Kosovo law does not impose nationality-based restrictions on journalism, broadcasting, or editorial work. Foreign nationals may work in print, online, or broadcast media provided they meet employment and residency requirements. There is no equivalent restriction to those found in some other jurisdictions that require media ownership or editorial responsibility to be held by nationals.

Overall, while the private sector remains fully open to foreign workers with valid permits, non-nationals are generally barred from careers in civil service or other public functions linked to state authority.

¹⁰⁷⁹ Law No. 03/L-149 on the Civil Service of the Republic of Kosovo (2010), arts. 4–5 (civil servant status reserved for Kosovo citizens).

¹⁰⁸⁰ Constitution of the Republic of Kosovo (2008), art. 84; see also sectoral laws governing police, security services, judiciary, and diplomatic service, all requiring Kosovo citizenship for official appointment.

Rights in work

8. To what extent, compared to nationals, do labor protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Kosovo's labor legislation applies equally to nationals and non-nationals who are lawfully employed in the country. The Labor Law provides that employment relationships are regulated uniformly without distinguishing between workers on the basis of nationality or citizenship, and its guarantees—such as minimum wage, maximum working hours, overtime pay, maternity leave, occupational safety, and termination protections—apply to “employees” generally, without limitation.¹⁰⁸¹

Foreign workers who hold a valid employment-based residence permit under the Law on Foreigners enjoy the same statutory protections as nationals, including the right to written employment contracts, regulated working hours, rest periods, annual leave, and compensation rights.¹⁰⁸² Employers are obligated to ensure equal treatment in working conditions and remuneration and must comply with all labour and social insurance obligations when employing foreign nationals.

Additionally, the Law on Protection from Discrimination prohibits unequal treatment on grounds including ethnicity, nationality, or social status in employment and occupation (arts. 4–5), ensuring that non-nationals receive protection from discriminatory practices in hiring, working conditions, and dismissal.¹⁰⁸³

There are no provisions in Kosovo's labour framework that reduce or limit the rights of foreign workers compared to nationals once the employment relationship is lawfully established. The primary distinction relates not to labour protections themselves but to **access to employment**, which requires foreign nationals to obtain an appropriate residence permit for work under the Law on Foreigners. Once this requirement is met, the substantive labour rights are identical.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Kosovo's legal framework ensures that non-nationals with lawful residence have access to public health services under essentially the same conditions as nationals. The Law on Health states that “*every person has the right to health care*” in accordance with the principles of equality and non-discrimination, without distinguishing between citizens and foreigners (art. 3). Similarly, the Law on Protection from Discrimination prohibits discriminatory treatment in access to health services on grounds such as nationality, ethnic origin, or immigration status (arts. 4–5).

¹⁰⁸¹ Law No. 03/L-212 on Labour (2010), arts. 3–5, 20–29.

¹⁰⁸² Law No. 04/L-219 on Foreigners (2013), arts. 51–54.

¹⁰⁸³ Law No. 05/L-021 on Protection from Discrimination (2015), arts. 4–5.

For foreigners granted international protection (refugees and subsidiary protection beneficiaries), the Law on Asylum guarantees equal access to health care under the same conditions as provided to Kosovo citizens (art. 35). Beneficiaries of protection also have the right to integration support, which includes access to public health institutions as part of the broader integration framework established under Regulation No. 09/2019.

Asylum seekers have the right to emergency health care and essential treatment during the asylum procedure, as provided by the Law on Asylum (arts. 23–24). Access beyond emergency care may be granted depending on vulnerability assessments conducted by the authorities or in coordination with health institutions.

Foreigners with a valid residence permit—including workers, students, family members, and other long-term residents—may access the public health system under the same administrative conditions as nationals. They must be registered with relevant health authorities and, where applicable, enrolled in mandatory health insurance schemes or contribute through their employers, consistent with general requirements that apply to all residents.

Overall, Kosovo does not impose nationality-based restrictions on the substantive right to health services. Differences in access relate primarily to immigration status (e.g., asylum seekers vs. recognized refugees) rather than nationality. Once a foreigner holds a legal status that entitles them to residence, their access to public health care aligns with that of Kosovo citizens.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Kosovo’s legal framework guarantees broad access to public education for non-nationals, particularly for children, and applies the principle of equality regardless of nationality or migration status. The Law on Pre-University Education provides that “*every child has the right to education*” and that public primary and lower secondary education is mandatory and free for all children residing in Kosovo (arts. 3–5), without distinguishing between citizens and foreigners.²⁰ This ensures that non-national children whether holding residence permits, seeking asylum, or granted protection are entitled to attend public schools under the same conditions as nationals.

For asylum seekers and beneficiaries of international protection, the Law on Asylum expressly guarantees the right of minors to access the public education system under the same terms as Kosovo citizens (art. 35).²¹ Integration measures under Regulation No. 09/2019 further require authorities to facilitate school enrollment, language support, and adaptation to the school environment for foreign children.²²

At the secondary education level, non-nationals with lawful residence may enroll in public schools following the same administrative requirements applicable to nationals, such as documentation of prior education and residence registration. There are no nationality-based

restrictions in Kosovo law that would prevent foreign minors from pursuing secondary studies in public institutions.

Access to tertiary education (universities and higher education institutions) is also open to non-nationals, subject to standard admission procedures. The Law on Higher Education permits foreign students to enroll in public universities provided they meet academic requirements, submit recognized educational certificates, and comply with residence and visa obligations.²³ Tuition fees for foreign students may differ from those applied to nationals, as is standard practice internationally, but there are no legal prohibitions restricting their admission based on citizenship.

Overall, Kosovo does not impose substantive limitations on non-nationals' access to public education. Primary and secondary education are fully guaranteed to all children residing in the country, and higher education is accessible under the same academic criteria as for nationals, with only administrative enrollment requirements tailored to foreign documentation and residence status.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Kosovo's social security system applies differently to non-nationals depending on their residence status and the type of benefit. The Law on Pension Funds obliges *all employees*, including foreign nationals with valid employment-based residence permits, to participate in the mandatory pension savings scheme under the same conditions as Kosovo citizens (art. 6). Employers must contribute for foreign workers in identical form and proportion, ensuring equal access to individual pension accounts and retirement savings.

Access to social assistance is more limited. The Law on Social Assistance primarily covers citizens and persons who meet strict residency and vulnerability criteria; foreign nationals with temporary residence permits are generally not eligible unless another law explicitly grants them access. Beneficiaries of international protection—including refugees and subsidiary protection holders—are entitled to social assistance and integration support on equal terms with nationals pursuant to the Law on Asylum (art. 35) and the Regulation on the Integration of Foreigners, which guarantees access to social services and material support.

Asylum seekers receive a narrower set of benefits: they are entitled to basic material reception conditions, such as accommodation, food, and essential medical and social services during the asylum procedure, but they do not have access to the broader social security schemes, including pension benefits or income-based assistance.

In summary, Kosovo provides equal pension rights to non-national workers who are lawfully employed, and offers social assistance and integration support to those granted international protection. Broader social security entitlements, however, remain reserved primarily for citizens and permanent residents, with temporary residents and asylum seekers receiving only limited or status-specific benefits.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programs? For example, financial aid, food aid, subsidized housing, among others

Access to welfare programs for non-nationals in Kosovo depends primarily on their legal residence status and the type of benefit. Kosovo does not grant all welfare benefits to all categories of foreign nationals, and access is more limited than in the areas of health or education.

Foreign nationals who hold permanent residence or who have been granted international protection (refugee or subsidiary protection status) may access certain welfare programs under conditions comparable to nationals. The Law on Asylum guarantees that beneficiaries of international protection are entitled to social assistance and integration support, including financial and material aid provided through public institutions (art. 35). The Regulation on the Integration of Foreigners further requires authorities to provide integration measures such as access to social services, counselling, and support for basic needs.

By contrast, foreign nationals with temporary residence permits—such as workers, students, and short-term residents—are generally not eligible for Kosovo’s income-based social assistance schemes. The Law on Social Assistance typically ties eligibility to citizenship or long-term residency combined with specific vulnerability criteria, meaning most temporary residents cannot receive financial aid, food assistance, or monthly cash benefits unless another law explicitly grants such access.

Asylum seekers receive only basic material reception conditions during the asylum procedure, such as accommodation, food, and essential services, but they are not entitled to broader welfare programs available to citizens or protection beneficiaries. They do not have access to financial aid or subsidized housing beyond what is provided in reception facilities.

Kosovo’s legal framework therefore provides full or near-equal access to welfare programs only for non-nationals with permanent residence or those granted international protection, while temporary residents and asylum seekers have significantly more limited entitlements.

Are there any final observations you would like to make? Please write below

Kosovo’s legal framework provides a generally comprehensive set of rights to non-nationals across core areas such as education, health, employment, and access to justice. The Constitution guarantees equality before the law and prohibits discrimination on grounds including nationality, which establishes an overarching principle of equal treatment for all persons within Kosovo’s jurisdiction. Sector-specific laws further extend substantive protections to non-nationals, particularly to those who possess lawful residence or are granted international protection.

At the same time, access to certain social and economic rights remains conditioned by immigration status, reflecting a structured approach that differentiates between temporary residents, permanent residents, and beneficiaries of international protection. While foreign workers enjoy equal labour protections and full participation in the pension system, eligibility for welfare programmes and social assistance is more limited and primarily linked to long-term residence or protection status. Asylum seekers, in particular, receive a more restricted package of rights focused on basic reception conditions.

No nationality-based quotas exist in the labour market, and Kosovo does not impose restrictions on foreign ownership of property or participation in most private-sector professions. However, consistent with international practice, non-nationals remain excluded from civil service positions and other roles connected to the exercise of public authority.

Overall, Kosovo's framework reflects a combination of strong constitutional guarantees, equal treatment in essential public services, and a status-based approach to social benefits. Continued harmonization with European standards—especially in integration, social protection, and administrative procedures—remains important as Kosovo further develops its migration governance system.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

February 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Libya (under the rule of the UN recognized Government of National Unity)

Author: Canberk Taze

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		
1967 Protocol to the Convention relating to the Status of Refugees		
1954 Convention relating to the Status of Stateless Persons		X
1961 Convention on the Reduction of Statelessness		X
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		X
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		X
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		
ILO Equal Remuneration Convention (No. 100)		X

ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		X
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		X
Convention governing the Specific Aspects of Refugee Problems in Africa		X
African Charter on the Rights and Welfare of the Child		X
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		
American Convention on Human Rights (ACHR)		

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Due to irregular migration from Libya, to Italy in particular, the governments of Italy and Libya have signed the 2008 Treaty of Friendship, Partnership and Cooperation as a wide-ranging strategic partnership instrument for infrastructure and cooperation.¹⁰⁸⁴ The agreement has a very specific migration pillar in Article 19, where the parties commit to intensifying cooperation against “illegal migration” and building a land-border control system for Libya to be implemented by Italian companies, with Italy covering 50% of the cost and the parties seeking EU funding for the remaining 50%, to reduce irregular migration.¹⁰⁸⁵

Building on this, a memorandum of understanding was signed between the UN-recognized Government of National Unity and Italian Republic dated 2 February 2017 (“MoU”).¹⁰⁸⁶ The MoU operationalizes cooperation around migration control where Italy commits technical and technological support for Libyan border/coast-guard bodies, development programmes in regions affected by irregular migration and completion of southern border controls (explicitly referencing the 2008 Treaty framework). The MoU has entered into force upon signature, with

¹⁰⁸⁴ <https://security-legislation.ly/latest-laws/law-no-2-of-2009-on-ratifying-the-treaty-of-friendship-and-cooperation-between-the-great-socialist-peoples-libyan-arab-jamahiriya-and-the-republic-of-italy/>.

¹⁰⁸⁵ Ibid, Article 19.

¹⁰⁸⁶ https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf

three-year duration and renewal unless notice is given.¹⁰⁸⁷ At the time of reporting, the MoU is still in force, with human rights groups calling for its termination.¹⁰⁸⁸

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

As Libya is currently split under the rule of the UN recognized Government of National Unity (also referred to as the Government of National Accord) (hereinafter referred as “GNU”) and the Government of National Stability (“GNS”), there are different approaches to migration and international movement. GNU has continued to apply existing laws in accordance with the Article 35 of the Constitutional Declaration of 2011¹⁰⁸⁹, whereas GNS has enacted Law No. 24 of 2023 Concerning the Prevention of Settlement of Foreigners in Libya. This law, passed in August 2023, aims to prohibit long-term settlement of foreigners in the eastern region of Libya under the government of GNS. It explicitly defines “settlement” as a foreigner’s intention to make Libya a permanent home (whether entering legally or illegally). The law criminalizes anyone who enters with the intent to settle, with imprisonment and a fine of at least 1,000 Libyan dinars (equivalent to USD 185). It also penalizes those who facilitate illegal stay¹⁰⁹⁰.

Libya, under the rule of GNU, regulates entry and exit from the Libyan territory under a visa obtained from the competent authorities (Art. 1 of Law No. 6 of 1987 on Organising the Entry, Residence and Exit of Foreigners in Libya (hereinafter referred as “Law No. 6”))¹⁰⁹¹. Law No. 6 regulates an entry visa, which permits entry for the purpose stated in the visa and grants the bearer the right to stay in Libyan territory for a period of three months from the date of entry. If the visa holder has obtained a residency visa, they must refer to the General Directorate of Passports and Nationality or one of its branches or offices within one month from the visa’s date of issuance in order to obtain a residency permit (Art. 13 of Law No 6). Persons who enter Libyan territory must also obtain an exit visa in order to exit Libyan territory (Art. 1 of Law No. 6). An exit visa, valid for 30 days at least and 60 days at most shall be granted to foreigners who are in possession of a residency visa and who wish to leave the country definitely, if the following conditions are met:

¹⁰⁸⁷ Ibid, Article 8.

¹⁰⁸⁸ <https://www.hrw.org/news/2025/10/13/italy-end-border-control-pact-with-libya>
<https://www.sosmediterranee.org/whats-the-italy-libya-deal-and-why-is-it-so-harmful/>

¹⁰⁸⁹ Constitutional Declaration of 2011, available at <https://security-legislation.ly/latest-laws/constitutional-declaration-of-2011-consolidated/>

¹⁰⁹⁰ <https://lawsociety.ly/en/legislation/law-no-24-of-2023-concerning-the-prevention-of-the-settlement-of-foreigners-in-libya/>

¹⁰⁹¹ https://security-legislation.ly/wp-content/uploads/2021/07/1214-Law-No.-6-of-1987_EN.pdf

- The applicant must submit their exit-visa application according to the form designated for this purpose;
- The employer must agree to the requested visa;
- There should be no countervailing factors preventing the applicant from obtaining the visa;
- The applicant must prove that they paid all their financial dues.¹⁰⁹²

A multiple exit and re-entry visa may be granted to foreigners legally residing in Libya. In such a case:

- The nature of the applicant's job must require applying for such a visa.
- The company CEO must agree to the visa, in the case of employees working at foreign companies.
- The applicant must have a recommendation from the public authority regulating the sector in which he works.
- The applicant must prove they paid all accrued financial dues to the public authorities, or these authorities must give their approval to granting the visa.
- There should be no impediment preventing the applicant from obtaining the visa.¹⁰⁹³

All foreign nationals must obtain an entry visa from a Libyan consulate before arrival. That said, citizens of Arab countries shall have the right to enter Libyan territory using personal ID cards (Art 3. of Law No 6 and Law No. 10 of 1989 concerning the Rights and Duties of Arab Citizens in the Libyan Arab Jamahiriya)¹⁰⁹⁴. In practice, this exemption is provided to a very limited number of countries including Algeria, Tunisia and Mauritania¹⁰⁹⁵. Libya additionally exempts Turkish, Malaysian and Beninese citizens from the requirement to obtain a visa as well. Turkish citizens are only exempt from obtaining a visa if they are under 16 or older than 55 years old¹⁰⁹⁶.

If a foreigner fails to comply with the period of stay stipulated in the entry, exit or transit visa or their residence permit, this violation renders the stay unlawful under Article 19 of Law No. 6 and may lead to criminal penalties reinforced under Law No. 19 of 2010 on Combating Illegal Immigration ("Law No. 19"). Under Article 6 of the Law No. 19, the

¹⁰⁹² According to a November 2023 report prepared by the International Centre for Migration Policy Development ("ICMPD"), Decree No. 125 of 2005 on the Executive Regulation of Law No. 6 is the regulation implementing the Law No 6. Since the executive regulation is not available through online access, the ICMPD report was used instead of the main legal text.

ICMPD report p. 49, available at https://www.icmpd.org/file/download/61089/file/ICMPD%20Legal%20Guide_2nd%20Edition_EN.pdf

¹⁰⁹³ ICMPD 2023, p. 50-51

¹⁰⁹⁴ Law No 6, Article 3; Law No. 10 of 1989 concerning the Rights and Duties of Arab Citizens in the Libyan Arab Jamahiriya, available at https://security-legislation.ly/wp-content/uploads/2021/07/959-Law-No.-10-of-1989_AR.pdf.

Please note that some of the legislation used in this report is only available in Arabic. The author of this report does not speak Arabic and has used machine translation for the purposes of this report.

¹⁰⁹⁵ <https://evisa.gov.ly/user/visa-eligibility>

¹⁰⁹⁶ Ibid

punishment for foreign illegal immigrants is detention with hard labour or a fine up to 1000 Libyan dinars (approx. USD 185)¹⁰⁹⁷.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Under Law No. 6, a foreign national may enter the country under three visas: namely, entry, transit and residency visas. Entry visa shall permit the entry for the purpose stated in the visa for a period that does not exceed 45 days from the date of issuance. This visa shall grant the bearer the right to stay in Libyan territory for a period of three months from the date of entry. Transit visa shall permit the entry for purpose of crossing the Libyan territories to reach the territory of another country. A transit visa grants the bearer the right to stay in Libyan territory for a maximum of 15 days from the date of entry. Lastly, the residency visa shall permit the bearer to stay in the Libyan territories for the period and purpose specified therein.¹⁰⁹⁸ Residency visa holders shall be obligated to obtain a residency permit within one month from the visa's date of issuance by applying to the General Directorate of Passports and Nationality or one of its branches or offices in order to receive a residency permit.¹⁰⁹⁹

Law No. 6 or regulations regarding migration for work purposes do not specifically list the reasons for obtaining residency visas and residency permits for stays longer than 90 days. However, from the secondary legislation regarding the fees required for visas, resident visas and extension visas, it is understood that a visa may be obtained for tourism, family reunification, official service, study, visits and work purposes¹¹⁰⁰.

The General Directorate of Passports and Nationality may, when granting residency visas for work and study purposes, ask the employer or the guardian to submit a security deposit or a letter of guarantee regarding the amount needed to cover for the deportation of the migrant worker or student to his country of origin. In this regard, the director of the General Directorate shall issue a decree with rules and procedures explaining how to submit the security deposit or letter of guarantee, when to pay the amount of money and how to recover it, in addition to other relevant matters.¹¹⁰¹

Additionally, according to a Human Rights Watch interview in 2005, Libyan immigration officials require the following for a foreigner to work legally in the country:

¹⁰⁹⁷ https://security-legislation.ly/wp-content/uploads/2021/07/510-Law-No.-19-of-2010_EN.pdf

¹⁰⁹⁸ Law No 6, Article 5.

¹⁰⁹⁹ ICMPD 2023, p. 47

¹¹⁰⁰ ICMPD 2023, p. 52

¹¹⁰¹ ICMPD 2023, p. 85.

- 1) proof that a Libyan could not do the job the foreigner is proposed to do;
- 2) contract with an employer;
- 3) registration with the tax authorities;
- 4) health certification proving that the foreigner does not have any contagious diseases, including HIV/AIDS¹¹⁰².

Residency visas are of two types, namely, work residency and no-work residency granted for a purpose other than work, which shall be specified in the visa.

Work residency visas are granted for the duration stipulated in the employment authorization or according to an employment contract concluded pursuant to relevant laws and regulations. The said visa may be extended in accordance with the period stipulated in the renewed authorization or contract, provided that it does not stretch beyond the validity of the travel document¹¹⁰³.

Work and non-work residency visas may be granted for the period of five years, without stretching beyond the validity of the travel document. The visa may be renewed for the same length of time, for the following categories:

- (a) Individuals who legally entered and resided in Libya for a period of ten consecutive years, during which they had an uninterrupted stay in Libya.¹¹⁰⁴
- (b) Full-time students registered in universities or at one of the educational institutions in Libya. The validity of the visa shall be determined according to the length of their university terms, with a maximum limit of ten years.
- (c) Foreigners whose stay is deemed important for the interests of Libya, given certain economic or international considerations.
- (d) Family members of the previous categories, such as the wife, minor children, unmarried daughters, parents, siblings and other legal dependents.
- (e) Citizens' non-Libyan spouses and children¹¹⁰⁵.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Libya has no domestic asylum law or formal refugee status determination system. Libya is not a party to the 1951 United Nations Convention Relating to the Status of Refugees¹¹⁰⁶ or its 1967

¹¹⁰² https://www.hrw.org/reports/2006/libya0906/9.htm#_ftn236

¹¹⁰³ ICMPD, 2023, p. 48

¹¹⁰⁴ According to Article 14 of the Law No 6., a foreigner's legal residency right shall be revoked if they are absent from Libyan territory for a period that exceeds three months.

¹¹⁰⁵ Ibid.

¹¹⁰⁶ <https://www.unhcr.org/media/states-parties-including-reservations-and-declarations-1951-refugee-convention>

Protocol¹¹⁰⁷ (together referred as “1951 Refugee Convention and its Protocol”). It is, however, a state party to the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa¹¹⁰⁸ (“African Refugee Convention”).

The African Refugee Convention retains the core “well-founded fear of being persecuted” criterion from the 1951 Refugee Convention and its Protocol, but expands the definition to cover individuals escaping “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country.” Under Article 1(6), it is clearly the duty of each Contracting State to assess whether someone qualifies as a refugee, which is often carried out in cooperation with UNHCR in practice. As with the 1951 Refugee Convention and its Protocol, refugee status is not something a State “grants” at its discretion; rather, any person who meets the Convention’s criteria is by definition a refugee, and States must honour their rights regardless of how domestic law labels them. Crucially for Libyan law and practice, Article 2(3) of the African Refugee Convention protects the principle of non-refoulement. Accordingly, no one may be turned away at the border, returned, or expelled to a place where their life, safety, or freedom would be at risk¹¹⁰⁹.

Additionally, although there are no domestic laws regarding the protection of refugees or humanitarian help, Libyan constitution directly prohibits the extradition of political refugees (Art. 11 of Constitution Proclamation of Libya)¹¹¹⁰. However, since there is no centralized organization overseeing such matters, it is not exactly possible to review whether Libya abides by the principles in the Constitution Proclamation of Libya or the African Refugee Convention.

Most recently, Libya has banned ten international non-governmental groups with an accusation of a plan to settle migrants from other parts of Africa into Libya. The Norwegian Refugee Council, Doctors Without Borders (MSF) and eight other groups were ordered to suspend operations in Libya and their offices in Tripoli were shut¹¹¹¹.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Family reunification is a recognized category of migration in Libya’s system, for family members, such as the spouse, minor children, unmarried daughters, parents, siblings and other legal dependents (if they are dependents to and reside with the applicant) both for foreign residents and Libyan citizens. The regulations provide for an entry visa specifically “for the purpose of family reunification”, again initially valid 45 days (entry) and allowing a 90-day stay¹¹¹².

¹¹⁰⁷ <https://www.unhcr.org/media/states-parties-including-reservations-and-declarations-1967-protocol-relating-status-refugees>

¹¹⁰⁸ https://au.int/sites/default/files/treaties/36400-treaty-36400-treaty-oau_convention_1963.pdf

¹¹⁰⁹ Ibid. <https://www.hrw.org/reports/2006/libya0906/9.htm>

¹¹¹⁰ <https://www.refworld.org/legal/legislation/natlegbod/1969/en/20816>

¹¹¹¹ <https://www.newarab.com/news/libya-bans-international-ngos-hostile-support-migrants>

¹¹¹² https://www.icmpd.org/file/download/61089/file/ICMPD%20Legal%20Guide_2nd%20Edition_EN.pdf

The foreigner's spouse, minor children, unmarried daughters, and parents and minor siblings for which he provides shall be granted the same residency that has been granted to him (Article 10 of Law No 6)¹¹¹³.

Family reunification visas may be granted for the period of five years, without stretching beyond the validity of the travel document. The family reunification visa includes Libyan citizens' non-Libyan spouses and children as well¹¹¹⁴.

5. What are the conditions for naturalization in the reviewed state?

Conditions for naturalization and citizenship is regulated under Law No. 24 of 1378 FDP / 2010 AD on Provisions of Libyan Nationality ("Law No. 24")¹¹¹⁵. According to Article 9 of the Law No. 24, Libyan nationality may be granted to those who wish to acquire it by virtue of a decision by the General People's Committee based on a proposal by the Secretary of the General People's Committee for General Security, if the following conditions are met:

- (a) The person shall have attained the age of majority and enjoy full capacity.
- (b) He must have entered the Great Jamahiriya legally by virtue of a valid travel document issued by the official authorities of the state whose nationality he holds.
- (c) He must be a continuous legal resident of Libya for ten years from his date of entry, and have a legal and proven source of income.
- (d) He must be of good character and conduct, and he may not have been convicted of any felony or misdemeanour or a misdemeanour of moral turpitude or that undermines security, unless he has been rehabilitated.
- (e) He must be free of infectious or communicable diseases.
- (f) He must not be older than fifty years old at the time the application is submitted.

According to the same article, citizenship may not be granted to Palestinians except for Palestinian women who are married to Libyans.

Additionally, according to Article 10 of the Law No. 24, persons of the following categories are exempted from the abovementioned conditions through (b) to (f):

- (a) Persons with special expertise or higher qualifications that Libya needs.
- (b) Foreign women who are married to Libyan men, provided that the marital relationship has continued for a period of no less than two years at the time the application is submitted.
- (c) Widows and divorcees of Libyan citizens.
- (d) Children who have attained the age of majority and who were not listed on their father's citizenship certificate.

¹¹¹³ https://security-legislation.ly/wp-content/uploads/2021/07/1214-Law-No.-6-of-1987_EN.pdf

¹¹¹⁴ https://www.icmpd.org/file/download/61089/file/ICMPD%20Legal%20Guide_2nd%20Edition_EN.pdf

¹¹¹⁵ https://security-legislation.ly/wp-content/uploads/2021/07/30-Law-No.-24-of-2010_EN.pdf

- (e) Anyone who provides distinguished service to the Great Jamahiriya (Libya).

According to Article 13, Libyan nationality may be withdrawn from any non-Libyan who obtained it under the provisions of Law No. 24 within ten years following his obtaining it, in the following circumstances:

- (a) If he performs actions that undermine the security of Libya or harms its interests.
- (b) If he resides outside of Libya for two consecutive years during the ten years following his acquisition of Libyan nationality, without an excuse accepted by the General People's Committee for General Security.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- g. *temporary and permanent resident migrants;*
- h. *regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- i. *undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- j. *refugees;*
- k. *asylum seekers;*
- l. *other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The Libyan Constitution of 2011 guarantees equality regarding civil and political rights, have the same opportunities, and be subject to the same public duties and obligations, without discrimination due to religion, sect, language, wealth, sex, kinship, political opinions, social

status, and tribal, provincial or familial affiliation for Libyan citizens.¹¹¹⁶ There is no general legislation in force that prohibits discrimination on grounds of nationality or race in all settings.

That being said, the Law No. 12 of 2010 on Labour Relations and Its Bylaw introduces an equality for citizens and non-citizens. According to the article 2 under the introduction, “labour in the Great Jamahiriya shall be a right and duty for all male and female citizens. It shall be based on the principle of equality in employment among citizens or among citizens and other foreigners residing legally in the Great Jamahiriya.”¹¹¹⁷

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Law No. (4) of 2012 on Electing the General National Congress¹¹¹⁸ (“Law No. 4”) and Law No. (1) of 2021 Promulgated by the Libyan Parliament¹¹¹⁹ (“Law No. 1”) govern the political participation to Libya elections.

Article 9 of the Law No. 4 states that in order to exercise the right to vote, the voter must be a Libyan citizen possessing legal capacity. Article 10 of the Law No. 4 regarding the candidates for the general national council states that the candidate must be a Libyan citizen in accordance with the provisions of Law No. (24) of 2010 on the Provisions of Libyan Nationality. Accordingly, a foreigner that has become a Libyan citizen can participate in the elections.

Law No. 1 sets up the rules regarding the elections for the president. Article 6 of the Law No. 1 states that a person exercising the right to vote must be a Libyan citizen. Article 9 of the Law No. 1 regarding the right to candidacy states that the candidate for the position of President of the State must be a Libyan Muslim of Libyan Muslim parents, must not hold the nationality of another country upon their candidacy and must not be married to a non-Libyan.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

In cases where the non-national holds a work and non-work residency visa, a foreigner’s legal residency right shall be revoked if they are absent from Libyan territory for a period that exceeds

¹¹¹⁶ Constitutional Declaration of 2011 - <https://security-legislation.ly/latest-laws/constitutional-declaration-of-2011>

¹¹¹⁷ Law No. (12) Of 2010 On Labour Relations And Its Bylaw available at <<https://security-legislation.ly/latest-laws/law-no-12-of-2010-on-labour-relations-and-its-bylaw/>

¹¹¹⁸ <https://security-legislation.ly/latest-laws/law-no-4-of-2012-on-electing-the-general-national-congress/>

¹¹¹⁹ https://liasinstitute.com/PDFs/HoR_Law_No_1_2021.pdf

three months.¹¹²⁰ Eligibility for renewal on the extended term basis is contingent on the individual having resided in Libya for ten consecutive years, with continuous residence throughout that period.

In addition, Libyan law subjects departures from the country to administrative control through an exit-visa requirement. Under Law No. 6, a non-national must obtain an exit visa from the competent authorities before leaving Libyan territory.

In terms of access to justice, foreign nationals shall have the right to seek legal counsel through the branches and offices of the Popular Advocacy Department, in exchange for a fee determined by the General People's Committee on Justice in the Law No. 4 of 1981 on the Establishment of the Public Advocacy Department¹¹²¹. The Secretary of the General People's Committee on Justice can, as per the request of the president of the department or the stakeholders, reduce or waive the fees, if warranted.¹¹²²

Subject to the provisions of Article 4 of Law No. 87 of 1971 on Administration of Justice Cases, national and foreign companies and facilities shall have the right to seek legal counsel through the branches and offices of the department, in legal actions which they bring on others or which are brought against them, in exchange for a fee determined in the executive regulation and after paying necessary court fees.¹¹²³

In regards to religion, formally, the interim constitutional framework guarantees non-Muslims freedom to practice religious rituals; however, in practice freedom of religion or belief is heavily constrained by criminal-law provisions and security-actor enforcement, particularly regarding conversion, proselytization, and expression deemed contrary to endorsed interpretations of Islam.¹¹²⁴

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

According to a 2025 report prepared by the United States Department of State, the ownership of real estate in Libya is restricted to Libyan nationals and wholly owned Libyan companies.¹¹²⁵ The Investment Law permits the ownership of real estate in Libya by locally established project vehicles of foreign investors. However, such ownership is limited to ownership of a lease agreement only. Foreign investors are allowed to lease property from public holdings and private Libyan citizens, according to Article 17 of the Investment Law.¹¹²⁶

¹¹²⁰ Article 14 of the Law No. 6

¹¹²¹ ICMPD Report, p. 21

¹¹²² Ibid, p. 21

¹¹²³ Ibid, p. 21

¹¹²⁴ <https://www.uscifr.gov/sites/default/files/2023-12/2023%20Factsheet%20Libya.pdf>

¹¹²⁵ <https://www.state.gov/reports/2025-investment-climate-statements/libya>

¹¹²⁶ Ibid.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Non-nationals may engage in formal employment in Libya only under a restrictive, permit-based system grounded mainly in Law No. 12 of 2010 On Labour Relations and Its Bylaw¹¹²⁷ (“**Law No. 12**”) and immigration legislation on entry and residence of foreigners. To work legally, a foreign national must have lawful entry into Libya, a valid residence permit, and a work permit issued by the Ministry of Labour. Work permits are employer-specific and time-limited. Work permit applications are submitted to the General Directorate of Passports by the employers in line with Decree of 1980 on Organising the Entry, Exit and Residence of Foreigners.¹¹²⁸ If the necessary conditions are met, the work permit is issued to the employees.

Additionally, according to a Human Rights Watch interview in 2005, Libyan immigration officials require the following for a foreigner to work legally in the country:

- 1) proof that a Libyan could not do the job the foreigner is proposed to do;
- 2) contract with an employer;
- 3) registration with the tax authorities;
- 4) health certification proving that the foreigner does not have any contagious diseases, including HIV/AIDS¹¹²⁹.

According to Article 5 of the Law No. 107 of 1975 On Workers’s Syndicates, non-Arab workers are excluded from trade union membership, limiting their ability to engage in collective representation or bargaining.¹¹³⁰ According to the same article, the right of syndicate membership may be granted to foreign non-Arab workers under the terms and conditions set out in a decree issued by the Minister of Labour and Civil Service, by agreement with the general federation of workers’ syndicates. That being said, no mention of a decree was mentioned by the 2010 Annual Survey of violations of trade union rights prepared by the UNHCR.¹¹³¹

In summation, even through legal migration, migrant workers lack specific rights under Libyan law. Under the General People’s Congress Order No. 260 of 1989 concerning employment conditions, Libyan law gives employment priority to Libyans and Arabs and employment of foreigners is conditional upon approval by the Central Employment Bureau.¹¹³² Accordingly,

¹¹²⁷ <https://security-legislation.ly/latest-laws/law-no-12-of-2010-on-labour-relations-and-its-bylaw/>

¹¹²⁸ <https://security-legislation.ly/latest-laws/decreed-of-1980-on-organising-the-entry-exit-and-residence-of-foreigners/>

¹¹²⁹ https://www.hrw.org/reports/2006/libya0906/9.htm#_ftn236

¹¹³⁰ <https://security-legislation.ly/latest-laws/law-no-107-of-1975-on-workers-syndicates/?utm>

¹¹³¹ <https://www.refworld.org/reference/annualreport/ituc/2010/en/74345?utm>

¹¹³² https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=9242&cs=12xsi5tcOQJLMI7WU01AAaoh-Jmpbh5VcaD9lbhs3zAi4ktaj27dG0mISxpVPtA0R-pdLTgxxpeiKXi1MtqsA

Article 4 of the General People's Congress Order No. 238 of 1989 concerning foreign employees ("Order No. 238") requires the positive assessment of the Central Employment Bureau to complete the work permit application.¹¹³³

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Law No. 12 sets a statutory "nationalization" quota through Article 51: Accordingly, all employers (national or foreign) must use national elements in their activities, and the national workforce "shall not be less than (75%) of the total workforce of any employer". Accordingly, non-nationals should not exceed 25% of the workforce. The competent authority may temporarily reduce the 75% national threshold for certain employers when the required qualifications/technical competencies are not available among nationals.

In addition, Article 81 links foreign hiring to a training obligation: an employer must accept jobseekers for training equal to 20% of the total number of its foreign workers, either training them directly or bearing the costs of training them in specialized institutions.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Article 128 of Law No. 12 effectively closes the core public civil service to non-nationals: it requires that any candidate filling a post in the "cadre of administrative units" (i.e., public functions in state administrative bodies) "must hold the nationality of the Great Socialist People's Libyan Arab Jamahiriya" and not be married to a foreigner unless authorised by the legally competent authority. As a result, non-nationals cannot be appointed as civil servants in administrative units.

Apart from the general reasons for termination such as voluntary resignation, retirement, physical unfitness etc., according to Article 172 of the Law No. 12, an administrative employee's employment agreement may be terminated for loss of Libyan nationality and marriage to a foreigner, unless authorised by the legally competent authority.

Additionally, according to the ICMPD report, Law No. 6 of 2023 on the reorganization of the Internal Security Service requires personnel of the internal security service to have Libyan nationality of origin from Libyan parents who have that nationality without naturalisation and brings an absolute ban to the personnel to not to be married to a non-Libyan woman.¹¹³⁴ At the date of the report, the Law No. 6 of 2023 is not available to online access.

¹¹³³ https://security-legislation.ly/wp-content/uploads/2021/07/1142-Decree-No.-238-of-1989_AR-1.pdf
<https://www.hrw.org/reports/2006/libya0906/9.htm?utm>

¹¹³⁴ ICMPD Report, p. 16

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Equality between non-nationals and nationals in Libya is protected by Article 2 of the Law No. 12. Accordingly, labour is based on the principle of equality in employment among citizens or among other foreigners residing legally in Libya. Obligatory labour, forced labour, and manifestations of injustice and exploitation was prohibited with the same article. There is no protection stipulated in the aforementioned law regarding migrants who have entered Libya through illegal means.

Once the conditions for a work permit is met, legally employed non-nationals are entitled to equal labour protections under Libyan law, including equal pay for equal work, regulated working hours, leave entitlements, and occupational safety standards, with discrimination in employment formally prohibited on grounds including nationality. These protections, however, apply only to foreigners who are legally resident and formally employed.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Under Article 14 of the General People's Committee Decree No. 98 of 2007 on Guidelines and Mechanisms Organizing Work and Residence in Libya and Approving Other Provisions¹¹³⁵ and changes brought to it with Decree No. (612) Of 2007 Amending Decree No. (98) Of 1375 FDP (2007 AD) On Controls And Mechanisms Regulating Work And Residence In The Great Jamahiriya¹¹³⁶, health services for all non-Libyan workers shall be limited to private and non-governmental health institutions and facilities, with the exception of health services for those contracting with public bodies directly funded by the general budget, if their employment agreement includes such services.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Under Article 14 of the General People's Committee Decree No. 98 of 2007 on Guidelines and Mechanisms Organizing Work and Residence in Libya and Approving Other Provisions and changes brought to it with Decree No. (612) Of 2007 Amending Decree No. (98) Of 1375 FDP (2007 AD) On Controls And Mechanisms Regulating Work And Residence In The Great

¹¹³⁵ <https://security-legislation.ly/latest-laws/decree-no-98-of-2007-on-guidelines-and-mechanisms-for-organizing-work-and-residence-in-libya-and-adopting-other-provisions/>

¹¹³⁶ <https://security-legislation.ly/latest-laws/decree-no-612-of-2007-amending-decree-no-98-of-1375-fdp-2007-ad-on-controls-and-mechanisms-regulating-work-and-residence-in-the-great-jamahiriya/>

Jamahiriya, educational services for all non-Libyan workers shall be limited to private and non-governmental educational institutions and facilities, with the exception of educational services for those contracting with public bodies directly funded by the general budget, if their employment agreement includes such services.

According to the article, non-Libyans may study at public institutions in regions where there are no private educational institutions, for the amount of eight hundred Libyan dinars (approx. USD 150) per year.

There are no distinctions in the law for primary, secondary, and tertiary education.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

According to the report “Social Assistance Programs and Delivery in Libya” prepared by the World Bank Group and World Food Programme, the Law No. 13 on Social Security, which is the foundation for Libya’s social protection system, extends social protections for social insurance, basic pension and social services to non-nationals.¹¹³⁷

Article 78 of the Law No 12 entitles non-nationals to a lump sum payment for their service, calculated on the basis of a half a month’s remuneration for each year up to the end of the fifth year and one month’s remuneration for each additional year, provided that the worker is not a beneficiary of social security plans provided for in the legislation in force.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Ongoing instability has severely strained Libya’s food security and livelihoods, leaving the country facing widespread hardship. According to the World Bank Report, the average household income reported by the Libya Vulnerability, Shocks, and Coping Mechanisms Survey (“VSCM-S”) was 224 Dinars, equivalent to USD 49 per person per month.¹¹³⁸ Additionally, about 14 percent of the VSCM-S respondents reported that their houses were destroyed or seized during the conflict.¹¹³⁹

The Social Assistance Benefit programme, established in 1998, activated since 2000, provides unconditional cash assistance and in-kind transfers to vulnerable households, covering their essential/social services. The Social Assistance Benefit has an annual operating budget of 7 million Libyan dinars (approx USD 1.3 million). In 2019, a total of 3 million Libyan dinars

¹¹³⁷ Social Assistance Programs and Delivery in Libya, *An Assessment Based on the IPSA Core Diagnostic Instrument (CODI)*, World Bank Group and World Food Programme, April 2022, p. 15, <https://documents1.worldbank.org/curated/en/099050006292273831/pdf/P1776930ba6a30000909306dca0ae8bec.pdf>, access date 14 December 2025

¹¹³⁸ World Bank Report, p. 9

¹¹³⁹ Ibid, p. 11

(approx USD 550.000) was disbursed through this programme to 15,000 internally displaced persons, both Libyans and non-Libyans. In 2021, the GNU announced a plan to substantially increase benefit levels and coverage for the Social Assistance Benefit, adding 7,000 households, and increasing benefits to 1,000 Libyan dinar (approx. USD 185) yearly. This would be achieved by increasing programme funding from the current 7 million Libyan dinars (approx USD 1.3 million) to 16 million Libyan dinars (approx. USD 3 million) by the end of 2021, with 7 million Libyan dinars (approx. USD 1.3 million) allocated for cash transfers, 1 million Libyan dinars (approx. USD 185.000) for emergencies, and 8 million Libyan dinars (approx USD 1.5 million) for in-kind transfers. However, no updates on the increase were available at time of the World Bank Report.¹¹⁴⁰

The Wives' and Children's Grant was introduced in 2013, suspended in 2014, and later reinstated in 2021. It is designed to support wives (or otherwise unemployed women) and children under 18, as well as girls until they marry. Eligibility is limited to: (i) all Libyan children under 18; (ii) married women over 18 who have no income from employment or other sources; (iii) women married to non-Libyans, provided they have no income from work or other sources, and their children under 18; and (iv) unmarried Libyan women over 18 who have no income from employment or other sources.¹¹⁴¹

The programme previously did not extend to non-Libyan children. It also excluded certain children who are Libyan but lack formally recognised paternity and therefore cannot obtain a national ID and citizenship. In effect, these children are left without access to any government social assistance.¹¹⁴² More recently, the GNU decreed that children of Libyan women married to foreigners "must enjoy the same rights as Libyan citizens." According to the decree, the children have the right to "access free healthcare and education inside the country, and acceptance at Libyan schools abroad." The decree also waived visa requirements for the group. Children born to Libyan women were deprived of these rights by laws issued in 2012.¹¹⁴³

Are there any final observations you would like to make? Please write below.

¹¹⁴⁰ Ibid, p. 24

¹¹⁴¹ Ibid, p.26

¹¹⁴² Ibid, p.26

¹¹⁴³ <https://libyareview.com/28257/government-grants-children-of-libyan-women-more-rights-what-are-they/#:~:text=The%20Libyan%20Government%20of%20National,%E2%80%9D>

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

July 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Mongolia

Author: Ochirbal Ragchaa

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	No	No
1967 Protocol to the Convention relating to the Status of Refugees	No	No
1954 Convention relating to the Status of Stateless Persons	No	No
1961 Convention on the Reduction of Statelessness	No	No
International Covenant on Civil and Political Rights (ICCPR)		Yes 1974
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		Yes 1991
International Covenant on Economic, Social and Cultural Rights (ICESCR)		Yes 1974

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		Yes 2010
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	No	No
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		Yes 2002
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		Yes 2015
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		Yes 1969
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		Yes 1981
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		Yes 2002
Convention on the Rights of the Child (CRC)		Yes 1990
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		Yes 2003
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		Yes 2004
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		Yes 2015
Convention on the Rights of Persons with Disabilities (CRPD)		Yes 2009
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		Yes 2009
ILO Forced Labour Convention (No. 29)		Yes 2005
2014 Protocol to the ILO Forced Labour Convention (No. 29)		No
ILO Migration for Employment Convention (Revised) (No. 97)	No	No

ILO Equal Remuneration Convention (No. 100)		Yes 1969
ILO Discrimination (Employment and Occupation) Convention (No. 111)		Yes 1969
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	No	No

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	n/a	n/a
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	n/a	n/a
Convention governing the Specific Aspects of Refugee Problems in Africa	n/a	n/a
African Charter on the Rights and Welfare of the Child	n/a	n/a
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	n/a	n/a
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	n/a	n/a
European Convention on Human Rights (ECHR)	n/a	n/a
Protocols to the European Convention on Human Rights (list which ones):	n/a	n/a
European Social Charter (ESC)	n/a	n/a
European Convention on the Legal Status of Migrant Workers	n/a	n/a
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	n/a	n/a
American Convention on Human Rights (ACHR)	n/a	n/a

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	n/a	n/a
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	n/a	n/a
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	n/a	n/a
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	n/a	n/a
Inter-American Convention against All Forms of Discrimination and Intolerance	n/a	n/a
Inter-American Convention Protecting the Human Rights of Older Persons	n/a	n/a

If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:

Multilateral agreement

- *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (Palermo Protocol), ratified by Mongolia in 27 June 2008.¹¹⁴⁴

Bilateral agreement

To date, Mongolia has concluded a free trade agreement, formally known as the Economic Partnership Agreement (EPA), only with Japan.¹¹⁴⁵

Mongolia has entered into intergovernmental agreements on social protection with the following countries:¹¹⁴⁶

¹¹⁴⁴ UN Treaty Collection, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-a&chapter=18#:~:text=The%20Protocol%20was%20adopted%20by,York%20until%2012%20December%202002.

¹¹⁴⁵ Ministry of Foreign Affairs of Mongolia, available at <https://www.gov.mn/en/organization/mfa/service?documentId=2&serviceId=04f19d25-be64-4050-b020-cff0dbb4bafc>

¹¹⁴⁶ Ministry of Family, Labour and Social Protection, available at <https://mlsp.gov.mn/page/detail/2916>

- South Korea (2006)
- Hungary (2011)
- Poland (2018)
- Turkey (2018)
- the Czech Republic (2019),
- Kazakhstan (2024).

Part I – Rights to stay

In Mongolia, the right to stay is primarily regulated by the Law on the Legal Status of Foreign Nationals,¹¹⁴⁷ adopted by the State Great Khural on 8 July 2010, and implemented through the Regulation on the Issuance of Mongolian Visas¹¹⁴⁸ and the Regulation on the Residence and Registration of Foreign Nationals in Mongolia,¹¹⁴⁹ adopted by Government of Mongolia in 2021. However, Mongolia has not acceded to key international treaties and conventions related to the protection of refugees and migrant workers, and domestic legislation on these issues remains insufficient. As a result, the protection of the economic, social, and cultural rights of refugees and irregular migrants, including their labour rights, as well as their rights to health care and education, remains weak. While Mongolia has ratified the key international human rights treaties, including ICCPR, CAT, ICERD, significant legal gaps remain in the protection of refugees and irregular migrants. Furthermore, Article 14(1) of the Constitution of Mongolia¹¹⁵⁰ stipulates that “All persons lawfully residing within Mongolia shall be equal before the law and the Court,” which constitutes an important provision in determining the legal status of irregular migrants in Mongolia. It is recommended that Mongolia take effective measures to strengthen the legal and institutional framework to guarantee full respect for the rights of refugees and irregular migrants, including their access to employment, health care, and education.¹¹⁵¹

1. What is the general structure of the visa and migratory permits system in the reviewed state?

¹¹⁴⁷ Law on the Legal Status of Foreign Nationals (Mongolia), 08 July 2010, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail/211>> (accessed on 10 January 2026).

¹¹⁴⁸ *Монгол Улсын Виз олгох журам*, [Regulation on the Issuance of Mongolian Visas, adopted by the Government of Mongolia on 07 July 2021 (Resolution № 192)], available at <<https://legalinfo.mn/mn/detail?lawId=16230721365191>> (accessed on 10 January 2026).

¹¹⁴⁹ *Гадаадын иргэн Монгол улсад оршин суух болон түүнийг бүртгэх журам*, [Regulation on the Issuance of Mongolian Visas, adopted by the Government of Mongolia on 07 July 2021 (Resolution № 194)], available at <<https://legalinfo.mn/mn/detail?lawId=16230721400211>> (accessed on 10 January 2026).

¹¹⁵⁰ The Constitution of Mongolia, dated 13 January 1992, both English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail?lawId=367>>

¹¹⁵¹ Mongolia, Combined Twenty-Third and Twenty-Fourth Periodic Reports under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (Report, Committee on the Elimination of Racial Discrimination, 12 November 2018) CERD/C/MNG/23-24, [48], available at <<https://digitallibrary.un.org/record/1652527?v=pdf>> (accessed on 13 January 2026).

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed. After the entry

In Mongolia, visas and residence permits are regulated separately, and the validity period of a residence permit is not determined by the duration of the visa (Article 19.1.13, Law on the Legal Status of Foreign Nationals). As a general rule, a visa is required to enter Mongolia (Article 11, Law on the Legal Status of Foreign Nationals); however, nationals of 91 countries may enter without visa for short-term stays based on reciprocal bilateral agreements.¹¹⁵² Mongolian law clearly distinguishes a visa from a visa permit, treating them as separate legal documents. While a visa grants the right of entry and temporary stay (Article 5.1.11, Law on the Legal Status of Foreign Nationals), a visa permit serves as prior administrative approval for the issuance of a visa and does not, by itself, grant any rights of entry or residence. The visa permit can be issued either by the Immigration Agency of Mongolia or by the Ministry of Foreign Affairs of Mongolia, authorizing a Mongolian diplomatic mission abroad or a border port to issue a visa to a foreign national (Article 5.1.12, Law on the Legal Status of Foreign Nationals). In several cases, such as border-area tourists (K3) or tourist visas for up to 30 days (K2), a visa may be issued without a visa permit.¹¹⁵³

Visa is issued according to the purpose of entry and stay. Main categories of Mongolian visas include (Article 2, Regulation on the Issuance of Mongolian Visas):

- (1) Diplomatic and official visa;
- (2) Investor visa;
- (3) Work visa,
- (4) Study visa;
- (5) Family visa;
- (6) Immigration visas;
- (7) Visas for private purposes;
- (8) Religious visas; and
- (9) Temporary visas.

Visas may be issued for single, double, or multiple entries and may allow entry, re-entry, or transit (Article 11.5, Law on the Legal Status of Foreign Nationals). Single- and double-entry visas are valid for entry within 150 days, while multiple-entry visas issued to temporary visitors are valid for 183 or 365 days, with a maximum permitted stay of 30 days in Mongolia (Article 18.1, 18.2, Law on the Legal Status of Foreign Nationals).

The permitted length of stay in Mongolia varies by visa type. Single-or double-entry visas allow up to 90 days, multiple-entry visas up to 30 days, transit visas up to 10 days, border-area tourist

¹¹⁵² <https://isf.mn/mn/home>

¹¹⁵³ Types of visa that do not require visa permission, available at <<https://immigration.gov.mn/mn/vizijn-zvshrl/vizijn-zvshrlgj-viz-medleh/>> (accessed on 1 February 2026).

visas up to 3 days, while entry visas issued for official or private purposes do not set a maximum stay (Article 3.3, Regulation on the Issuance of Mongolian Visas).

Foreign nationals who stay in Mongolia for more than 180 days in a calendar year are required to apply for a residence permit within 21 days of entry (Article 3.4, Regulation on the Issuance of Mongolian Visas).

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

A foreign national who intends to stay in Mongolia for a long period for personal reasons must apply for a residence permit for private purposes. This permit can be granted for one of the following purposes (Article 27.2, Law on the Legal Status of Foreign Nationals):

- (1) Family reunification;
- (2) Immigration;
- (3) work;
- (4) investment;
- (5) Study, training, internships, academic or research activities and other personal reasons.

‘Other private purposes’ refers to foreign nationals who have made outstanding contributions to Mongolia, or who possess professional qualifications or expertise that are of particular importance to Mongolia, or who have achieved exceptional results in a specific field of science, as well as their dependent family members (Article 4.1, Regulation on the Residence and Registration of Foreign Nationals in Mongolia).

The application must be submitted to the state authority responsible for foreign nationals within 21 days of arrival. A residence permit for private purposes is issued up to five years by the authority responsible for foreign nationals and may be extended for up to three additional years upon request and recommendation by the relevant state bodies (Article 27.1, Law on the Legal Status of Foreign Nationals).

However, the conditions, required documents, and duration for issuing a residence permit in Mongolia vary depending on the purpose of stay. For example, a residence permit for immigration in Mongolia can initially be issued for up to one year during the first two years, with the option to renew for up to two more years. Applicants must meet the following criteria

(Article 9, Regulation on the Residence and Registration of Foreign Nationals in Mongolia).¹¹⁵⁴:

- earn a monthly income of at least five times the national minimum wage;
- have higher education or professional skills that are critically needed in Mongolia;
- have no criminal convictions;
- have not been deported from Mongolia or had entry restrictions; and
- have legally lived in Mongolia for at least the past three years.

For investment purposes, a residence permit can be issued for up to one year and renewed for periods of up to three years, taking into account whether the foreign national provides employment for Mongolian citizens, pays taxes, and maintains stable business operations.¹¹⁵⁵

Under Mongolian law, the total number of foreign nationals staying in the country for private long-term purposes is limited to three percent of the Mongolian citizen population, with no more than one percent from any single country. (Article 27.4, Law on the Legal Status of Foreign Nationals). As of 31 December 2025, Mongolia had 34,272 foreign nationals from 136 countries registered for long-term residence for official or private purposes, with the largest groups from China (19,952), Russia (3,001), India (2,278), South Korea (1,693), the United States (1,124), and 6,224 from other countries.¹¹⁵⁶ Foreign nationals residing in Mongolia for private purposes represent 0.9% of the total population, with the largest groups from China (0.56%), Russia (0.09%), India (0.06%), South Korea (0.04%), and the United States (0.03%). By purpose of stay, the registered foreign nationals include 560 for official purposes, 17,168 for employment, 5,213 for study, 5,329 for investment, 1,767 for immigration, 134 for religious activities, 3,022 for family reunification, and 1,079 for other personal reasons.¹¹⁵⁷

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Mongolian law does not comprehensively regulate international protection for non-nationals and lacks specific provisions on refugee status or humanitarian visas. Under the Constitution of Mongolia (Article 18.4) and the Law on the Legal Status of Foreign Nationals (Article 9.1), foreign nationals have the right to seek political asylum, which is decided by the President.

¹¹⁵⁴ Foreign nationals applying for an immigration residence permit must attach documents to their application, including, but not limited to, an official invitation; a certificate from the local governor confirming the applicant's registered address; the applicant's passport; passport-sized photographs; a three-generation family record; a certificate from the relevant authority or police confirming no criminal convictions; medical certificates, such as tests for immunodeficiency, sexually transmitted diseases, tuberculosis, and a statement on mental health; proof of financial means; and copies of educational certificates, diplomas, or degrees with certified translations.

¹¹⁵⁵ Article 5, Regulation on the Residence and Registration of Foreign Nationals in Mongolia (n 3).

¹¹⁵⁶ Албан болон хувийн хэргээр оршин суугч гадаадын иргэдийн тоо өмнөх оноос 7.4 хувиар өсжээ [The number of foreign nationals residing in Mongolia for official and private purposes increased by 7.4% compared to the previous year] (Immigration Agency of Mongolia), available at <<https://immigration.gov.mn/en/articles/539/>> (accessed on 12 Jan 2026).

¹¹⁵⁷ Ibid.

However, the law lacks detailed regulation of the procedures. Several applications have been submitted,¹¹⁵⁸ but none have been granted to date. Mongolia is not a party to the 1951 Refugee Convention, yet generally respects the principle of non-refoulement and has maintained commitments to protect the rights of asylum-seekers and refugees within its territory.¹¹⁵⁹ In the absence of a government-run asylum system, UNHCR manages registration, refugee status determination, and provides assistance.¹¹⁶⁰ UN bodies, including UNHCR and CERD, have recommended that Mongolia accede to the 1951 Refugee Convention and establish national asylum legislation, but little progress has been made in protecting refugees' rights.¹¹⁶¹

Law on Citizenship¹¹⁶² and Law on the Legal Status of Foreign Nationals do not provide specific protections for stateless persons, and as Mongolia is neither a party to the 1954 Convention Relating to the Status of Stateless Persons nor the 1961 Convention on the Reduction of Statelessness, the legal protection of stateless persons' rights remains limited. The Government of Mongolia explains that stateless persons have the same rights and obligations as foreign nationals.¹¹⁶³ However, there is currently no comprehensive legal or policy framework for the protection of stateless persons' rights in Mongolia, and no systematic study has been conducted on their situation. Estimates of the stateless population in Mongolia vary considerably. While some sources suggest that the number may reach several tens of thousands, official statistics report only a very small number of stateless persons residing in the country.¹¹⁶⁴

Under Article 7.5 of the Law on Citizenship, a child born in Mongolia to stateless parents permanently residing in Mongolia does not automatically acquire Mongolian citizenship at birth but may acquire it, at the child's request, after reaching the age of 16. The UN Special Rapporteur on Extreme Poverty and Human Rights and UNHCR have recommended that Mongolia accede to the 1954 and 1961 Statelessness Conventions, conduct a comprehensive review of national laws and policies to prevent and reduce statelessness, and work with UNHCR

¹¹⁵⁸ In 2023, a citizen of the Republic of Kalmykia of the Russian Federation applied for political asylum in Mongolia. However, the application was not decided on the grounds that Mongolia is not a party to the UN Refugee Convention. The Minister of Foreign Affairs of Mongolia publicly stated that assistance was instead provided to facilitate the applicant's travel to a third country. Available at <<https://www.facebook.com/watch/?v=230272649397429>> (accessed on 15 January 2026); <<https://www.inews.mn/a/31390>> (accessed on 15 January 2026).

¹¹⁵⁹ UN High Commissioner for Refugees, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report — Universal Periodic Review: Mongolia* (UPR Submission, April 2010), available at <<https://www.refworld.org/policy/upr/unhcr/2014/en/104741>> (accessed on 14 January 2026).

¹¹⁶⁰ Ibid.

¹¹⁶¹ Mongolia, *Combined Twenty-Third and Twenty-Fourth Periodic Reports under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination* (Report, Committee on the Elimination of Racial Discrimination, 12 November 2018) CERD/C/MNG/23-24, [48], available at <<https://digitallibrary.un.org/record/1652527?v=pdf>> (accessed on 13 January 2026).

¹¹⁶² Law on Citizenship (Mongolia), 05 June 1995, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail/525>> (accessed on 10 January 2026).

¹¹⁶³ Ibid.

¹¹⁶⁴ UN High Commissioner for Refugees (n 11).

to improve registration systems and simplify procedures for restoring nationality.¹¹⁶⁵ However, little progress has been made in implementing these recommendations.

Mongolia ratified the United Nations Convention against Transnational Organized Crime and its supplementary protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), the Protocol against the Smuggling of Migrants by Land, Sea and Air, and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, in 2008.

At the national level, the Law on Combating Human Trafficking (2012)¹¹⁶⁶ serves a core legal framework for addressing human trafficking and protecting victims' rights. In addition, the Government of Mongolia adopted the National Program on Combating Human Trafficking in 2017. However, the program expired in 2021 and has not been renewed. It is generally reported that Government of Mongolia does not fully meet the minimum standards for the elimination of trafficking.¹¹⁶⁷

All laws, regulations, and standards concerning the protection of human trafficking victims apply equally to foreign nationals and stateless persons. Notably, the Law on Combating Human Trafficking includes specific safeguards for foreign nationals and stateless persons who are victims of trafficking. Article 11 strictly prohibits deportation on the grounds of violations of travel, residence, or immigration rules when a foreign national or stateless person is identified as a victim of human trafficking. It further provides that the Immigration Agency shall issue a residence permit, enabling the victim to remain in Mongolia until the criminal case is examined and resolved by a court.

Under the Procedure for Providing Legal Assistance to Victims of Human Trafficking, adopted by the Minister of Justice and Internal Affairs, foreign nationals and stateless persons are entitled to receive legal assistance in English or another available language.¹¹⁶⁸ Victims of human trafficking are entitled to a range of free assistance and services, including medical and psychological rehabilitation, access to employment and vocational training, As well as legal assistance (Article 12, Law on Combating Human Trafficking).

¹¹⁶⁵ UN High Commissioner for Refugees (UNHCR), *UNHCR Submission for the Universal Periodic Review – Mongolia – UPR 22nd Session* (UPR Submission, 2015) [3-4], available at <<https://www.refworld.org/policy/upr/unhcr/2015/en/104741>> (accessed on 14 January 2026).

¹¹⁶⁶ Law on Combating human trafficking] (Mongolia), 19 January 2012, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail/554>> (accessed on 16 January 2026).

¹¹⁶⁷ Regarding the report on Mongolia's system for combating human trafficking, please see: Department of State, 2024 Trafficking in Persons Report: Mongolia (Document #2111722), available at <https://www.ecoi.net/en/document/2111722.html> (accessed on 15 January 2026), and also: International Organization for Migration (IOM), Final Evaluation Report: Strengthening Mongolia's Efforts to Prevent and Respond to Human Trafficking, available at <https://evaluation.iom.int/sites/g/files/tmzbd1151/files/docs/resources/Final%20evaluation%20report%20CN10_P0504%20%20PX.0134.pdf> (accessed at 15 January 2026).

¹¹⁶⁸ Хүн худалдаалах гэмт хэргийн хохирогчид хууль зүйн туслалца үзүүлэх журам [the Procedure for Providing Legal Assistance to Victims of Human Trafficking, adopted by the Annex to Order No. A/399 of the Minister of Justice and Internal Affairs] (Mongolia), dated 20 November 2023, available at <<https://legalinfo.mn/mn/detail?lawId=16960401473551>> (accessed on 15 January 2026).

In terms of implementation, the Immigration Agency of Mongolia is responsible for preventing and monitoring the involvement of foreign nationals and stateless persons in human trafficking (Article 5.10, Law on Combating Human Trafficking).

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

As noted above, family reunification is recognized as a category under both Mongolian visas and residence permits for private purposes. For family reunification purposes, Mongolia issues F-category visas to foreign nationals (Article 2.5, Regulation on the Issuance of Mongolian Visas), including:

- F1 visas to those legally married to Mongolian citizens (regardless of whether the marriage is registered in Mongolia or abroad);
- F1-1 visas to parents, grandparents, and children of foreign national who is legally married to a citizen of Mongolia
- F2 visas to former Mongolian nationals;
- F2-1 visas to the dependent¹¹⁶⁹ of former Mongolian nationals;
- F3 visas to foreign nationals born to Mongolian citizens; and
- F3-1 visas to dependents of such persons.

In terms of marriages, Mongolia does not recognize de facto marriages or same-sex marriages under its domestic law.¹¹⁷⁰

A residence permit may be granted to dependent of a foreign national married to a Mongolian citizen or holding a residence permit for private purposes, with the validity period linked to that of the principal permit holder. In certain cases, foreign nationals aged 55 or over may be granted an indefinite permit based on the principle of reciprocity. The competent authority may refuse, cancel, or decline to extend such permits where the marriage is fraudulent or has been legally dissolved (Article 28, Law on the Legal Status of Foreign Nationals).

5. What are the conditions for naturalization in the reviewed state?

Under Article 6 of the Law on Citizenship of Mongolia, Mongolian citizenship may be acquired on the following four grounds: (1) by birth; (2) through naturalization; (3) by restoration of citizenship; and (4) on the grounds provided for in international treaties of Mongolia.

In terms of acquiring citizenship by birth, Mongolia follows the principle of *jus sanguinis*. Thus, a child born to two Mongolian citizens shall be considered a Mongolian citizen regardless of place of birth. A child born in Mongolia to one Mongolian parent and one foreign parent shall

¹¹⁶⁹ "Dependent" means a foreign national's spouse, partner, father, mother, grandfather, grandmother or child, article 5.1.14, Law on the Legal Status for Foreign Nationals.

¹¹⁷⁰ Article 3.1.1, Law on Family] (Mongolia), 11 June 1999, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail/226>> (accessed on 10 January 2026).

also be considered a Mongolian citizen, while the citizenship of a child born abroad to such parents shall be determined by a written agreement between the parents (Article 7.2, Law on Citizenship). A child born to a Mongolian citizen and a stateless person shall be considered a Mongolian citizen irrespective of place of birth. A child found in Mongolia whose parents are unknown shall be deemed a Mongolian citizen (Article 7.4, Law on Citizenship).

Foreign citizens and stateless persons may acquire Mongolian citizenship if they meet the following requirements (Article 9, Law on Citizenship).:

- (1).having a reliable means of livelihood;
- (2).possessing knowledge of Mongolian customs, the official language, and the Constitution.
There is no official examination to assess these requirements; in practice, applicants' knowledge is evaluated through questions asked during an interview;
- (3).having resided in Mongolia continuously for at least five years prior to applying;
- (4).meeting any additional requirements set by the relevant government authority;
- (5).not having committed an intentional criminal offence during their stay; and
- (6).ensuring that granting citizenship does not harm Mongolia's international relations or national interests.

In accordance with Annex 1 to Order No. A/476 dated 19 December 2023 issued by the Head of the Immigration Agency of Mongolia, applicants must attach additional documents to their application. These include (Article 1.1.11, List of Documents Required for Resolving Mongolian Citizenship Matters):

- (1).a three-generation family history
- (2).a copy of the residence permit in Mongolia
- (3).birth certificate
- (4).national ID
- (5).foreign passport
- (6).a copy of the child's birth certificate for applicants with children under 16
- (7).marriage certificate or an official document confirming divorce if applicable, and
- (8).a medical certificate regarding mental or infectious diseases, including HIV.¹¹⁷¹
- (9).to demonstrate adequate means of livelihood, applicants must provide a salary certificate from their organization or enterprise together with a copy of their social insurance book, a copy of any immovable property ownership certificate, and other relevant documents that verify their sources of income.

¹¹⁷¹ Монгол Улсын иргэний харьяаллын асуудлыг шийдвэрлэхэд шаардлагатай баримт бичгийн жагсаалт [List of Documents Required for Resolving Mongolian Citizenship Matters, approved by the Head of the Immigration Agency of Mongolia, Annex 1 to Order No. A/476 dated 19 December 2023], available at <<https://legalinfo.mn/mn/detail?lawId=17047847343401&showType=1>> (accessed on 13 January 2026).

Between 2010 and 2021, a total of 116 individuals acquired Mongolian citizenship.¹¹⁷² Among them, 37 percent were citizens of China, 9 percent were citizens of Kazakhstan, 9 percent were citizens of India, 9 percent were citizens of Russia, and 36 percent were stateless.¹¹⁷³

Law on Citizenship of Mongolia does not recognize dual nationality (Article 4, Law on Citizenship). Despite this, there is no legal mechanism to require individuals holding dual nationality to renounce one of their citizenships or to choose a single nationality. As a result, cases of dual nationality continue to increase in Mongolia. According to the 2025 report, 1,175 individuals obtained citizenship of the Republic of Kazakhstan without giving up their Mongolian citizenship.¹¹⁷⁴ The prevalence of dual nationality among ethnic Kazakh individuals may pose certain risks, including potential statelessness or difficulties in restoring Mongolian citizenship for those unable to complete the restoration of citizenship process.¹¹⁷⁵

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. *temporary and permanent resident migrants;*
- b. *regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. *undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. *refugees;*
- e. *asylum seekers;*
- f. *other beneficiaries of international protection, if applicable.*

¹¹⁷² Гадаадын иргэн, харьяатын газар, 2001-2021 Үйл ажиллагааны статистикийн эмхэтгэл, [Immigration Agency of Mongolia, ‘*Statistical Compilation of Activities, 2001–2021*’] (2022), 20, available at <<https://immigration.gov.mn/static/images/hr/statistic%20emhtgel%202022.12.09.pdf>> (accessed on 14 January 2026).

¹¹⁷³ Ibid.

¹¹⁷⁴ Гадаадын иргэн, харьяатын газар, Байгууллагын 2025 оны эхний хагас жилийн эрсдэлийн үнэлгээний тайлан, [Mid-Year 2025 Risk Assessment Report of the Immigration Agency of Mongolia] (2025), available at <https://immigration.gov.mn/media/filer_public/0c/4c/0c4c5cae-d802-4a1f-a408-f04131c28744/ersdel_tailan.pdf> (accessed on 15 January 2026).

¹¹⁷⁵ UN Human Rights Committee, *Concluding observations on Mongolia* (101st Session, 2 May 2011) CCPR/C/MNG/CO/5, available at <https://upr-info.org/sites/default/files/documents/2015-04/unhcr_upr22_mng_e_main.pdf> (accessed on 16 January 2026).

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

There is no specific law on non-discrimination in Mongolia. Article 14.2 of the Constitution of Mongolia provides that ‘No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and position, religion, opinion and education. Everyone shall be a person before the law’. Beyond the Constitution, anti-discrimination and equality are included in a wide range of legislation, including the Law on Labour (2021), the Law on Ensuring Gender Equality (2011), the Law on Civil Service, the Law on State and Religious Relations, and the Law on the Rights of Persons with Disabilities. A 2019 assessment by the National Legal Institute of Mongolia found that over 80 laws contain provisions promoting equality and prohibiting discriminatory practices.¹¹⁷⁶

The relevant United Nations treaty bodies, including the UN Human Rights Committee and Committee on Economic, Social and Cultural Rights, have consistently recommended that Mongolia adopt a comprehensive anti-discrimination law applicable to both the public and private sectors, with detailed provisions and effective judicial and administrative remedies.¹¹⁷⁷ In June 2025, certain Members of Parliament drafted the Law on the Right to Live Free from Discrimination and Harassment and on Prevention;¹¹⁷⁸ however, at the time of preparation of this report, the draft law had not been adopted.

Non-nationals are protected against discrimination under several laws in Mongolia. For instance, Article 4.1.3 of the Law on Labour of 2021 defines an “employee” as any person working under an employment relationship, including Mongolian citizens, foreign nationals, and stateless persons.¹¹⁷⁹ This provision ensures that foreign and stateless employees are afforded the same protections under the Law on Labour as Mongolian employees. Law on Labour also strictly prohibits discrimination in employment and labour relations based on ethnicity, nationality, language, skin color, age, gender, social origin, marital status, property status, religion, beliefs, political opinion, trade union membership, health status, pregnancy or

¹¹⁷⁶ National Legal Institute of Mongolia, *Preliminary Needs Assessment on Whether to Develop a Dedicated Law with Specific Provisions to Prevent and Prohibit Discrimination*, 2019, available at <<https://legaldata.mn/buteel/pdf?id=1788>> (accessed on 16 January 2026).

¹¹⁷⁷ Regarding the recommendations, please see: UN Human Rights Committee, Concluding observations on the sixth periodic report of Mongolia [CCPR/C/MNG/CO/6], available at <https://www.ecoi.net/en/file/local/1411578/1930_1507800516_g1724345.pdf>; Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Mongolia [E/C.12/MNG/CO/4], available at <<https://intersexrights.org/un/e-c-12-mng-co-4/>>.

¹¹⁷⁸ The draft law, Law on the Right to Live Free from Discrimination and Harassment and on Prevention (June 2025), available at <<https://lawforum.parliament.mn/draft/829/>> (accessed on 17 January 2026).

¹¹⁷⁹ Law on Labour (Mongolia), dated 02 July 2021, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail?lawId=16230709635751>> (accessed on 17 January 2026).

maternity, sexual orientation or gender identity, expression, disability, or appearance, whether direct or indirect. The law further explicitly obliges all employers to ensure a work environment free from discrimination. (Article 6, Law on Labour).

The Law on Labour Force Migration, adopted on 24 December 2021, regulates the employment of Mongolian citizens abroad and of foreign nationals and stateless persons in Mongolia, as well as the relations concerning the protection of their rights and legitimate interests. However, the law does not include specific provisions prohibiting discrimination.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Article 18.7 of the Constitution of Mongolia provides that the rights of non-nationals in Mongolia may be restricted by law to ensure national and population security and to protect public order. These restrictions, however, do not apply to inalienable human rights guaranteed under international treaties to which Mongolia is a party.

Foreign nationals and stateless persons do not have the right to vote or to stand for election,¹¹⁸⁰ or participate in referenda in Mongolia (Article 8.1.2, Law on the Legal Status of Foreign Nationals). In addition, they may not organize assemblies or demonstrations, but are allowed to participate in them (Article 4.2, Law on the Procedure on Conducting Demonstration and Assembly).¹¹⁸¹ Furthermore, they are prohibited from engaging in political activities, including establishing or joining organizations, providing support to them, undermining national unity, promoting cruel or inhumane religious doctrines, conducting religious activities in ways that violate human rights or the law (Article 8.1, Law on the Legal Status of Foreign Nationals).

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Non-nationals may freely move within the territory of Mongolia for the duration of their visa or residence permit. However, under Article 7.4.5 of the Law on the Legal Status of Foreign Nationals, they are required to carry their passport or residence permit issued by the competent

¹¹⁸⁰ Pursuant to Articles 3.1.3 and 3.1.7 of the Law on the Election of the State Great Khural, the rights to vote and to stand for election are reserved exclusively for citizens of Mongolia. Both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail/14869>> (Accessed on 17 January 2026).

¹¹⁸¹ Law on the Procedure on Conducting Demonstration and Assembly (Mongolia), dated 07 July 1994, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail/252>> (accessed on 17 January 2026).

Mongolian authorities at all times. In addition, a citizen, business entity, or organization that provides accommodation to a foreign national is required to register key passport information with the state administrative authority responsible for foreign nationals within 48 hours (Article 2.3, Regulation on the Residence and Registration of Foreign Nationals in Mongolia). These obligations establish a formal administrative framework for recording and monitoring the presence of foreign nationals within the territory of Mongolia. Except for the above specific limitations, foreign nationals and stateless persons enjoy all other civil and political rights on an equal footing with Mongolian citizens, in accordance with Article 7.2 of the Law on the Legal Status of Foreign Nationals.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

The Constitution of Mongolia¹¹⁸² and Law on Land¹¹⁸³ impose strict limitations on the rights of non-nationals to own or possess land in Mongolia. While land ownership and possession are reserved exclusively for Mongolian citizens, foreign nationals and stateless persons who permanently reside in Mongolia (i.e., for more than 183 days) may only use land for a period of up to five years, with the contract renewable once for a period not exceeding five years (Article 44.4, Law on Land). The maximum land area for use for private houses or residential plots shall not exceed 0.05 hectares, and for growing vegetables, fruits, or berries, the maximum shall not exceed 0.1 hectares (Article 44.6, Law on Land). However, the law does not restrict the ownership of immovable property other than land. Non-nationals may own apartments, buildings and other immovable property, but not land. Under Mongolian law, rights to land and rights to buildings or other immovable property are closely linked¹¹⁸⁴ but generally registered separately.¹¹⁸⁵ As a result, the holder of land rights and the owner of the building or other immovable property situated on that land may be different persons.

If a Mongolian citizen, business entity, or organization allows a foreign national, stateless person, or legal entity to use land without the approval of the competent authorities, the land use or ownership agreement may be terminated (Article 44.7, Law on Land).

¹¹⁸² Article 6.5 of the Constitution of Mongolia provides that the State may allow foreign citizens, legal persons and stateless persons to use land for a specified period of time and fee under conditions and procedures as provided for by law.

¹¹⁸³ Газрын тухай хууль [Law on Land] (Mongolia), dated 07 June 2002, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail/216>> (accessed 17 January 2026).

¹¹⁸⁴ Article 85.2 of Civil Code (Mongolia), dated 10 January 2002, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail?lawId=299>> (accessed 01 July 2026).

¹¹⁸⁵ Article 10.2, Law on State Registration of Property Rights, dated 21 June 2018, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail/13589>> (accessed 01 July 2026).

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Compared to countries such as Australia, Mongolia applies a more restrictive approach to the employment of non-nationals. Only non-nationals who have entered Mongolia under a work visa category or have been granted a residence permit for employment purposes are legally entitled to engage in employment in Mongolia. By contrast, non-nationals who hold a residence permit for study purposes are not permitted to work. If such persons engage in employment, this constitutes engaging in activities inconsistent with the purpose of entry and stay, which constitutes grounds for deportation from Mongolia (Article 37.1.7, Law on the Legal Status of Foreign Nationals).

Employment involving non-nationals in Mongolia is specifically regulated by the Law on Labour Force Migration.¹¹⁸⁶ Under this law, the number and proportion of foreign workers permitted to work in Mongolia, disaggregated by sectors of economic activity, are determined annually by the Government no later than 1 October (Article 22.1). Only employers who have obtained a permit to employ foreign workers from the Ministry of Labour can recruit and employ foreign nationals (Article 24).

To be eligible for employment in Mongolia, non-nationals are generally required to possess skills and qualifications that are in high demand in the country. Under the Law on Labour Force Migration, foreign employees' workplaces are categorized into management, executive, and supporting positions.

Management positions include general directors, CEOs, foreign investors and their representatives, chairpersons or members of boards of directors, executive directors of business entities, and managers of branches or representative offices of international and foreign non-governmental organizations (Article 21.2).

Executive positions encompass employees and volunteers of international and foreign NGO offices, specialists in scientific, educational, health, cultural, and sports organizations under government agreements, experts in sectors designated by the Government, medical specialists, highly qualified foreign engineers employed for periods specified in investment or development agreements, as well as teachers and researchers with bachelor or higher degrees (Article 21.3).

Supporting positions include employees with professional or vocational qualifications recognized in Mongolia and temporary employees working in the country for up to six months (Article 21.4).

¹¹⁸⁶ Law on Labour Force Migration (Mongolia), dated 24 December 2021, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail?lawId=16390388880621>> (accessed on 17 January 2026).

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Mongolian law does not establish a fixed statutory percentage limiting the proportion of foreign employees a company may hire. However, the Government annually determines the total number and sector-specific proportion of foreign workers permitted to work in Mongolia. The Law on Labour Force Migration establishes two mechanisms to restrict the employment of foreign workers and prioritize domestic labour forces. First, employers are required to obtain a permit from the Ministry of Labour before hiring any foreign worker. Second, for each foreign worker employed, the employer must pay the Government a monthly fee equivalent to twice the minimum wage (article 32.1, The Law on the Regulation of Labour Migration). Employers hiring medical doctors, researchers, professional teachers, or coaches under contracts in education, science, health, cultural, and sports organizations are exempted from paying the monthly fee for foreign workers (Article 32.3). In addition, the Government may reduce or waive the fee for foreign workers employed in projects or programs financed through foreign concessional loans or grants, as well as in strategic infrastructure, industrial projects, or the development of new urban areas (Article 32.4).

An employer operating in Mongolia may apply for permission to employ a foreign worker only after advertising the vacant position in the Employment Registration and Information Database and failing to recruit a domestic worker within 14 working days (Article 23.4, Law on Labour Force Migration). The law further prohibits employers from imposing excessively high qualification or skill requirements for the purpose of recruiting foreign workers, or from unjustifiably refusing to employ a Mongolian citizen who meets the job requirements (Article 23.3).

In order to safeguard the labour rights of non-nationals, the law clearly defines multiple legal grounds for revoking an employer's permit to employ foreign workers. The Ministry of Labour is empowered to revoke an employer's permit to employ foreign workers where the employer fails to ensure mandatory training or health examinations, retains foreign workers' personal documents or wages, assigns foreign workers to work outside the purpose or location specified in the permit, or does not comply with the agreed terms of the employment contract, including wages, working conditions, and working and rest time arrangements (Article 26.1, Law on Labour Force Migration).

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Mongolian law generally does not prohibit non-nationals from working in particular private-sector professions. Under the Law on Civil Service,¹¹⁸⁷ only Mongolian citizens are eligible to

¹¹⁸⁷ Law on Civil Service (Mongolia), dated 7 December 2017, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail/13025>> (accessed on 17 January 2026).

hold positions in the civil service, which prevents non-nationals from being employed in State administration (Article 7.1.4, 22.1.1).

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Under the Article 4.1.3, Law on Labour, “employee” includes Mongolian citizens, foreign nationals, and stateless persons. This means that non-nationals enjoy the same labour protections as Mongolian citizens, including rights to minimum wage, overtime, annual leave, and maternity leave. However, protection of irregular migrants’ rights in employment remains weak, largely because Mongolia has not ratified the relevant international treaties on refugees and enforces strict restrictions on the right of non-nationals to work.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Non-nationals in Mongolia are not prohibited from accessing public health services. However, Mongolia’s health sector laws, including the Health Act (2011) and the Law on Medical Care and Services (2016), do not specifically regulate such access for non-nationals. For foreign workers arriving in Mongolia, the Law on Labour Force Migration requires a medical examination and testing under a specific procedure. This includes screening for HIV/AIDS, syphilis, hepatitis B and C, chest X-rays for tuberculosis, and mental health assessments, with the results compiled into a consolidated report.¹¹⁸⁸ The purpose of this examination is to assess whether a worker has any health conditions that could prevent them from performing their duties, rather than to provide health care. The costs of these medical examinations and tests are borne by the employers (Article 4.2, Procedure for Medical Examination and Testing of Foreign Workers upon Arrival in Mongolia).

Although there are no legal provisions restricting the right of non-nationals and irregular migrants to access health care, in practice the availability and accessibility of health services is a challenge even for Mongolian citizens. UN relevant treaty bodies, including the Committee on the Elimination of Racial Discrimination, are concerned that asylum seekers, refugees, and stateless persons in Mongolia, particularly those who are not registered, may face difficulties accessing State-provided services such as health care, social security, and education, especially in the absence of national legislation on refugees.¹¹⁸⁹

¹¹⁸⁸ Procedure for Medical Examination and Testing of Foreign Workers upon Arrival in Mongolia, adopted by the Joint Order No. A/483 and A/220 issued on 28 December 2023 by the Minister of Health and the Minister of Labour and Social Protection of Mongolia, available at <<https://legalinfo.mn/mn/detail?lawId=17048100328621&showType=1>> (accessed 16 January 2026).

¹¹⁸⁹ Combined Twenty-Third and Twenty-Fourth Periodic Reports under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (n 13).

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

The Constitution of Mongolia guarantees the right to education for everyone and obliges the State to provide free general education (Article 16.7, the Constitution of Mongolia). Under the Law on Education,¹¹⁹⁰ general education comprising preschool, primary, basic, and upper secondary education (twelve-year) is compulsory for all learners. Accordingly, public kindergartens and general education schools are fully funded by the State and provide education free of charge, while private educational institutions operate on a tuition-based system.

Neither the Law on Education nor the Law on Preschool and General Education include specific provisions addressing the right to education of children of non-nationals. However, the Law on the Rights of the Child¹¹⁹¹ guarantees every child the right to free primary, basic, and upper secondary education, and explicitly provides that these rights apply equally to children of foreign nationals and stateless persons residing in Mongolia. However, for irregular migrants and their children, access to education is severely limited due to the absence of legal residence documents.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Mongolia provides social security through two main systems: social insurance and social welfare. The social insurance system includes five types of insurance: pension insurance, benefit insurance, unemployment insurance, industrial accident and occupational disease insurance, and health insurance. According to the General Law on Social Insurance,¹¹⁹² an “insured” is defined as a Mongolian citizen, foreign national, or stateless person who contributes premiums to the social insurance fund in order to receive pensions, benefits, and health care or rehabilitation services. Accordingly, non-nationals legally residing in Mongolia have full access to social insurance services, whereas irregular migrants do not. Social insurance in Mongolia is provided through both mandatory and voluntary schemes. Mongolian citizens and non-nationals employed in formal work in Mongolia shall be compulsorily insured under pension insurance, benefit insurance, unemployment insurance, and industrial accident and occupational disease insurance (Article 7.2, General Law on Social Insurance). Foreign

¹¹⁹⁰ General Law on Education (Mongolia), dated 07 July 2023, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail?lawId=16759958962301>> (accessed 17 January 2026).

¹¹⁹¹ Law on Children’s Rights (Mongolia), dated 5 February 2016, both the English and Mongolian versions are available at <https://legalinfo.mn/mn/detail/11709> (accessed on 17 January 2026).

¹¹⁹² General Law on Social Insurance (Mongolia), dated 7 July 2023, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail?lawId=16760148379551>> (accessed 18 January 2025).

nationals engaged in formal employment in Mongolia shall be mandatorily insured under health insurance, while other foreign nationals may be insured on a voluntary basis.¹¹⁹³

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

According to the Law on Social Welfare,¹¹⁹⁴ the social welfare system in Mongolia is designed to provide pensions, allowances, and specialized services to citizens and household members who are unable to live independently or without assistance, including those with poor health, family care needs, or other special requirements. Social welfare benefits are categorized into four main types (Article 6, Law on Social Welfare):

- (1).social welfare pensions
- (2).social welfare allowances
- (3).social welfare services
- (4).social development services

These benefits are available to Mongolian citizens, as well as foreign nationals and stateless persons who are legally and permanently residing in Mongolia, provided they meet the conditions and eligibility criteria established by law. However, there is no publicly available information or statistics on the number of non-nationals receiving social welfare benefits in Mongolia.

Are there any final observations you would like to make? Please write below.

¹¹⁹³ ILO, 'Analysis of Mongolia's Social Protection System: From Program-Based to System-Based Approaches', 2023, 40, available at <https://www.ilo.org/sites/default/files/2024-09/wcms_895739.pdf> (accessed on 17 January 2026).

¹¹⁹⁴ Law on Social Welfare (Mongolia), dated 19 January 2012, both the English and Mongolian versions are available at <<https://legalinfo.mn/mn/detail/393>> (accessed on 17 January 2026).

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: The Kingdom of the Netherlands

Authors: Hester Kroeze, Mayela Celis Aguilar, Leontine Bruijnen and Marta Pertegás Sender

Reviewers' note: The Kingdom of the Netherlands consists of 4 countries: Aruba, Curaçao, Sint Maarten, and the Netherlands. The Netherlands also includes 3 public bodies located in the Caribbean region: Bonaire, Sint Eustatius and Saba. The following information relates to the **Netherlands (in Europe) only**. Please see below for further information on how to obtain information about the Caribbean part of the Kingdom of the Netherlands.

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified / Accepted (A) / acceded (a)
1951 Convention relating to the Status of Refugees	28 Jul 1951	3 May 1956
1967 Protocol to the Convention relating to the Status of Refugees	-	29 Nov 1968 a
1954 Convention relating to the Status of Stateless Persons	28 Sep 1954	12 Apr 1962
1961 Convention on the Reduction of Statelessness	30 Aug 1961	13 May 1985

International Covenant on Civil and Political Rights (ICCPR)	25 Jun 1969	11 Dec 1978
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	25 Jun 1969	11 Dec 1978
International Covenant on Economic, Social and Cultural Rights (ICESCR)	25 Jun 1969	11 Dec 1978
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	24 Sep 2009	-
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	-	-
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	4 Feb 1985	21 Dec 1988
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	3 Jun 2005	28 Sep 2010
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	24 Oct 1966	10 Dec 1971
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	17 Jul 1980	23 Jul 1991
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	10 Dec 1999	22 May 2002
Convention on the Rights of the Child (CRC)	26 Jan 1990	6 Feb 1995 A
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	7 Sep 2000	23 Aug 2005
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	7 Sep 2000	24 Sep 2009
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	-	-
Convention on the Rights of Persons with Disabilities (CRPD)	30 Mar 2007	14 Jun 2016
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	-	-

ILO Forced Labour Convention (No. 29)	-	31 Mar 1933
2014 Protocol to the ILO Forced Labour Convention (No. 29)	-	08 Aug 2017
ILO Migration for Employment Convention (Revised) (No. 97)	-	20 May 1952
ILO Equal Remuneration Convention (No. 100)	-	16 Jun 1971
ILO Discrimination (Employment and Occupation) Convention (No. 111)	-	15 Mar 1973
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	-	-

Regional treaties:

Treaty	Signed	Ratified / acceded
African Charter on Human and Peoples' Rights (ACHPR)	-	-
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	-	-
Convention governing the Specific Aspects of Refugee Problems in Africa	-	-
African Charter on the Rights and Welfare of the Child	-	-
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	-	-
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	-	-
European Convention on Human Rights (ECHR)	04/11/1950	31/08/1954
Protocols to the European Convention on Human Rights (list which ones) – As indicated on the ECtHR's website, "the text of the [ECHR] contains the basic version as amended by Protocols 11, 14 and		

15, and seven other protocols: the Additional Protocol (also called "Protocol No. 1") and Protocols Nos. 4, 6, 7, 12, 13 and 16." The list below focuses on these instruments and does not include all the protocols to the ECHR as some have been superseded or had a temporary validity.		
Protocol No. 1 to the ECHR (ETS No. 009)	20/03/1952	31/08/1954
Protocol No. 4 to the ECHR (ETS No. 046)	15/11/1963	23/06/1982
Protocol No. 6 to the ECHR (ETS No. 114)	28/04/1983	25/04/1986
Protocol No. 7 to the ECHR (ETS No. 117)	22/11/1984	-
Protocol No. 11 to the ECHR (ETS No. 155)	11/05/1994	21/01/1997
Protocol No. 12 to the ECHR (ETS No. 177)	04/11/2000	28/07/2004
Protocol No. 13 to the ECHR (ETS No. 187)	03/05/2002	10/02/2006
Protocol No. 14 to the ECHR (CETS No. 194)	13/05/2004	02/02/2006
Protocol No. 15 to the ECHR (CETS No. 213)	22/10/2013	01/10/2015
Protocol No. 16 to the ECHR (CETS No. 214)	07/11/2013	12/02/2019
European Social Charter (ESC)	23/01/2004	03/05/2006
European Convention on the Legal Status of Migrant Workers	24/11/1977	01/02/1983
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	14/11/2012	18/11/2015
American Convention on Human Rights (ACHR)	-	-
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	-	-
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	-	-
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	-	-

Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	-	-
Inter-American Convention against All Forms of Discrimination and Intolerance	-	-
Inter-American Convention Protecting the Human Rights of Older Persons	-	-

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Agreement between the Kingdom of the Netherlands and the Republic of Turkey concerning the migration, the recruitment and the employment in the Netherlands of Turkish workers	EIF: 19-08-1964
Agreement between the Kingdom of the Netherlands and the Spanish State concerning the migration, the recruitment and the employment in the Netherlands of Spanish workers (if compatible with subsequent EU legislation)	EIF: 08-04-1961
Agreement between the Kingdom of the Netherlands and the Portuguese Republic concerning the migration, the recruitment and the employment in the Netherlands of Portuguese workers (if compatible with subsequent EU legislation)	EIF: 22-11-1963
Treaty of Friendship, Commerce and Navigation between the Kingdom of the Netherlands and the United States of America	EIF: 05-12-1957
Treaty of Commerce and Navigation between the Kingdom of the Netherlands and Japan	EIF: 09-10-1913
Treaty of commerce between the Kingdom of the Netherlands and the Republic of Bolivia	EIF: 12-10-1932
Agreement establishing an Association between the European Economic Community and Turkey	EIF: 01-12-1964

Information relating to all 4 countries of the Kingdom of the Netherlands (incl. the Caribbean part) is available by searching the relevant treaty on the website: <https://verdragenbank.overheid.nl/en>. A breakdown will appear such as the one that follows:

Koninkrijksdeel	Provisional application	Entry into force	Retroactive effect	Termination
Netherlands (in Europe)				
Netherlands (Bonaire)				
Netherlands (Sint Eustatius)				
Netherlands (Saba)				
Aruba				
Curaçao				
Sint Maarten				

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

The Dutch legal system has both a visa and a residence permit. The rules on visas and residence rights have been largely harmonised at the EU level.

Visas

At the EU level, there is a common policy on the conditions that Member States, including the Netherlands, must adhere to regarding the crossing of the EU's internal and external borders by EU citizens and third-country nationals. Based on the Schengen Agreement and Convention, citizens of the participating countries can cross the internal borders of this area without internal border controls. The Schengen area comprises twenty-five EU Member States (all EU Member States except Cyprus and Ireland), as well as Iceland, Liechtenstein, Norway and Switzerland.

The Schengen Borders Code (SBC) requires for stays not exceeding 90 days in any 180-day period that a non-EU-country national: possession of a valid travel document; possession of a valid visa, if required; justification of the purpose of the intended stay; sufficient means of subsistence; not having an alert issued for them in the Schengen Information System; not being considered a threat to public policy, internal security, public health or the international relations of EU countries.

Nonetheless, it should be noted that the SBC allows Member States to temporarily reintroduce border controls at the internal borders in the event of a serious threat to public policy or internal security. This was done by the Netherlands in 2024, as indicated by the Royal Netherlands Marechaussee (the police branch of the Netherlands armed forces): “The Netherlands has implemented temporary border controls at its internal borders with other Schengen countries. These controls, carried out by the Royal Netherlands Marechaussee, commenced on December 9, 2024, at the direction of the Ministry of Asylum and Migration to combat irregular migration and cross-border crime. Initially introduced for a six-month period, these temporary border controls have now been extended and will remain in place until December 9, 2025.”

The conditions for EU citizens to travel between EU Member States are more favourable than for non-EU citizens. Based on the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (hereafter: Citizenship Directive), and the Dutch Aliens Act 2000 (Vreemdelingenwet 2000) and Dutch Aliens Decree (Vreemdelingenbesluit 2000), more favourable conditions also apply to family members of EU citizens, as well as to family members of citizens of Liechtenstein, Norway (EEA-states) and Switzerland. These citizens can legally enter and reside in the territory of EU Member States,

including the Netherlands, for a period of up to three months after entry, provided that they hold a valid identity card or passport, without requiring a visa or a residence permit.

In principle, third-country nationals who intend to enter and stay in the Schengen area (which includes the Netherlands) for no more than 90 days in any 180-day period require a visa. A Schengen visa is generally valid for all States in the Schengen area. Some nationalities are exempted from the visa requirement for such short stay.¹¹⁹⁵

Residence

Third-country nationals who require a visa and who intend to stay for more than 90 days in the Netherlands need to apply for a provisional residence permit (MVV). The MVV is a multiple-entry visa, which consists of a visa sticker (Type D) that is placed in the passport. An MVV is issued to travel to the Netherlands with the purpose of taking up residence. The decision on the approval of residence is included in the decision on the MVV. Holders of an MVV can pick up their residence card on arrival. The application procedure to obtain the MVV and residence is combined in the entry and stay procedure or in Dutch ‘Toegang en Verblijf (TEV)’. Some specific nationalities do not require an MVV, such as Australia and the United States.¹¹⁹⁶

The requirements to obtain an MVV depend on the type of residence the applicant aims to obtain. For entry as a knowledge migrant or a student, the requirements are less stringent than for entry as a self-employed or low-skilled worker. For family reunification, the requirements are dependent on the sponsor of the application. The most important requirements that can be imposed for legal residence are the availability of sufficient means, taking out health insurance, not being a threat to public order, and sometimes migrants are required to pass a language exam before their application gets approved.

For EU citizens and their family members, residence longer than three months is regulated by the Citizenship Directive. If they fulfil the requirements in EU law, Member States cannot oblige them to obtain an MVV or impose additional requirements for residence, such as passing a language exam.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

¹¹⁹⁵ REGULATION (EU) 2018/1806 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement

¹¹⁹⁶ Mvv-vrijstellingen | IND

In the Netherlands, a regular residence permit, i.e. a residence right not based on international protection and which is valid for more than three months but is not indefinite, is always linked to a specific purpose of stay. Different conditions apply to each purpose of residence. Purposes of residence are listed in Article 3.4 (1) of the Aliens Decree 2000 (in Dutch: Vreemdelingenbesluit 2000).

The most important reasons to stay longer than three months, but not indefinitely are:

- a. Residence as a family member of an EU-citizen or a lawfully resident third-country national (family reasons visa);
- b. Residence as a worker (in employment):
 - As an EU-worker;
 - As a high-skilled worker;
 - As a researcher (incl. short-term mobility of researchers);
 - As a seasonal worker;
 - As a scarce worker;
 - As a job seeker (EU citizen or orientation year (after graduation, doctorate or research));
 - As intern or apprentice;
- c. Residence as self-employed:
 - As an EU-worker;
 - As an artist;
 - With a convincing business plan (point system);
 - Based on an international Treaty (US / Japan / Turkey / Bolivia);
- d. Residence as a cross-border worker:
 - As an EU-citizen who provides cross-border services;
 - Intra-corporate transfer;
 - Posted worker;
- e. Residence for study reasons or exchange, including *au pairs*;
- f. Residence for humanitarian reasons (temporary), such as being a victim of trafficking or domestic violence or being in need of medical treatment or while waiting for an application under Section 17 of the Netherlands Nationality Act (in Dutch: Rijkswet op het Nederlanderschap);
- g. For public security reasons (paid employment in the military);

As regards the right of residence for more than three months, EU citizens can benefit from more favourable rules than third-country nationals. EU citizens from other EU Member States can exercise their right to free movement by moving to the Netherlands. If they fulfil the conditions set out in Article 7 of the Citizenship Directive, their right to reside in another EU Member State for more than three months arises by operation of law. It follows from article 7 of the Citizenship Directive and from section B.10 of the Aliens Circular 2000 that all EU citizens have the right to reside in the territory of the Netherlands if they:

- a) are workers or self-employed persons in the Netherlands;
- b) are economically inactive, but have sufficient resources for themselves and their family members not to become a burden on the Dutch social assistance system during their period of residence and have comprehensive sickness insurance cover in the Netherlands;
- c) are enrolled as a student in the Netherlands and have comprehensive sickness insurance cover in the Netherlands and can assure that they have sufficient resources for themselves and their family members not to become a burden on the Dutch social assistance system during their period of residence;
- d) are family members accompanying or joining an EU-citizen who satisfies the conditions referred to in points (a), (b) or (c).

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

In the Netherlands, asylum and refugee law is mainly governed by the 1951 Convention relating to the Status of Refugees, the 1967 Protocol to the Convention relating to the Status of Refugees, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights, and the soon to be applied – as of 2026 – EU Pact on Migration and Asylum. The most important EU instruments in this pact include the Asylum and Migration Management Regulation, the Asylum Procedure Regulation, the Return Border Procedure Regulation, the Crisis and Force Majeure Regulation, the Screening Regulation, the Qualification Regulation and the Reception Conditions Directive). Domestic migration legislation is also relevant, which includes the Dutch Aliens Act 2000 (in Dutch: Vreemdelingenwet 2000), the Dutch Aliens Decree (in Dutch: Vreemdelingenbesluit 2000), the Aliens Regulation 2000 (in Dutch: Voorschrift Vreemdelingen 2000), Aliens Circular 2000 (in Dutch: Vreemdelingencirculaire 2000) and Regulation on benefits for asylum seekers and other categories of foreigners 2005 (in Dutch: RegelingRegeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005).

Dutch legislation only provides the protection that the Netherlands is obliged to provide under international and EU standards. International protection can be granted on the basis of refugee status or subsidiary protection. In principle, there is a single asylum procedure in the Netherlands, which begins at a registration center (aanmeldcentrum (AC) Ter Apel if the person

entered the Netherlands by land -through Belgium or Germany- or AC Schiphol if the person arrived by plane or boat and did not go through customs yet). Subsequently to the registration stage, asylum seekers are distributed to reception centers (the so-called AZC's) in the Netherlands. Within this procedure, there are different 'tracks' for countries of origin that are deemed safe (lower chance of being recognized as a refugee) and those that are deemed more dangerous (higher chance of being recognized as a refugee).

A foreign national seeking protection in the Netherlands can apply for a temporary asylum residence permit. This can be granted on the basis of refugee status, i.e. there is a well-founded fear of being persecuted in the country of origin for reasons of race, religion, nationality, political opinion or membership of a particular social group. A temporary asylum residence permit can also be granted on the basis of subsidiary protection according to EU Council Directive 2004/83/EC, i.e. because there is a real risk of inhuman, degrading or cruel treatment in the country of origin. A family member of a person who already holds an asylum residence permit can apply for a derived temporary asylum residence permit.

The temporary asylum residence permit is issued for a maximum of five consecutive years. After five years, the foreigner with a temporary asylum residence permit can apply for a permanent residence permit. The Dutch government intends to abolish the possibility to obtain a permanent asylum residence permit in pending new legislation or alternatively when the European asylum pact comes into force. This does not make it impossible for beneficiaries of international protection to obtain permanent residence, but it will require them to meet additional conditions, such as the availability of sufficient means and the fulfilment of certain integration requirements.

Regarding victims of domestic violence, it is necessary for the victim to notify or report domestic violence to the police. This does not apply to children fleeing domestic violence. For more information, click [here](#).

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

In the Netherlands, family reunification is mainly governed by EU directives containing rules on family reunification.¹¹⁹⁷ The migration of mobile EU citizens and their family members is governed by the Citizenship Directive. Third-country national family members of EU citizens may enjoy a derived residence right on the basis of the Citizenship Directive.

The position of static EU citizens, i.e. citizens who have not exercised their right to free movement by residing (temporarily) in an EU Member State other than the Member State of their nationality, and their family members is, in principle, covered by the migration legislation of the Member States. However, in some Member States, the more favourable rules for mobile EU citizens also apply to static nationals. In addition, the Court of Justice of the European

¹¹⁹⁷ According to Article 288 of the Treaty on the Functioning of the European Union, a directive is binding as to the result to be achieved but leaves the choice of form and methods to the national authorities of the EU Member States.

Union has ruled that family reunification with a static EU citizen may, under certain circumstances, be influenced by EU law.

The conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the EU Member States with their family members are set out in the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Based on a judgment of the Dutch Council of State of 17 December 2014, the rules of the Family Reunification Directive also apply to family reunification with a Dutch citizen who has not exercised his/her right to free movement and who wishes to be reunited with his/her third-country national family members. In addition, the provisions of the Family Reunification Directive are applied by analogy to beneficiaries of subsidiary protection in the Netherlands.

Where possible, the Netherlands restricts the possibility for family reunification to the nuclear family, which consists of the partner and children of the sponsor in the Netherlands. The Netherlands does have a very liberal understanding of the partner of a Dutch citizens or legally resident third country national, which includes the spouse, registered partner and even the non-married or registered partner with whom there is a durable relationship.¹¹⁹⁸ Parents, adult children and otherer non-nuclear family members are not normally eligible for family reunification, unless there is a more than normal emotional relationship of dependency with a family member, which authorizes family reunification on the basis of article 8 ECHR. This is a separate category of family reunification. For family reunification between parents and adolescent adult children, the Netherlands adopted the ‘young adult’ policy, or ‘jongvolwassenenbeleid’.¹¹⁹⁹

The definition of EU citizens’ family members who are eligible for family reunification is based on the Citizenship Directive and includes the spouse, registered partner, durable partner, children, dependent adult children and parents, as well as other dependent family members.¹²⁰⁰

5. What are the conditions for naturalization in the reviewed state?

The conditions for acquiring Dutch nationality by naturalisation are laid down in Articles 7 to 13 of the Nationality Act (in Dutch: Rijkswet op het Nederlanderschap). It follows from Article 8 (1) of this Act that it is required that:

- a) The applicant has reached the age of majority;
- b) There are no objections to the permanent residence of the applicant in the Kingdom of the Netherlands;
- c) The applicant has been admitted and has had their main residence in the Kingdom of the Netherlands for at least five years immediately preceding the application;

¹¹⁹⁸ Paragraph B7/3.1-3.2 Vb 2000.

¹¹⁹⁹ Paragraph B7/3.8.1 Vb 2000.

¹²⁰⁰ Articles 2(2) and 3(2) of the Citizenship Directive.

- d) The applicant has fulfilled the integration requirement; and
- e) The applicant is willing to make the declaration of solidarity during the naturalisation ceremony. In this declaration, the applicant declares that they are aware that the laws of the Kingdom of the Netherlands also apply to them.

Even if the applicant fulfils the above conditions, an application may be refused if the applicant's conduct gives rise to a serious suspicion that they are a danger to public order, morals or the security of the Kingdom of the Netherlands, or if the applicant, who has another nationality, has not given up this other nationality, unless this cannot reasonably be required from the applicant.

Finally, the Nationality Act (in Dutch: Rijkswet op het Nederlanderschap) allows the Minister of Justice and Security, after consulting the Council of State, to grant Dutch nationality in special cases, even if the conditions for naturalisation are not met.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The right to equality is one of the central values in the Dutch legal order. This right is enshrined in Article 1 of the Dutch Constitution, which states:

‘All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination based on religion, beliefs, political conviction, race, sex, disability, sexual orientation or any other ground is not permitted.’

Article 1 has been implemented in separate legislation. Most notable is the Equal Treatment Act. Article 1 of the Equal Treatment Act states that it precludes both direct and indirect unequal treatment based on religion, beliefs, political conviction, race, sex, nationality, sexual orientation or civil status. It further clarifies that discrimination based on sex also includes different treatment based on gender identity and gender expression, pregnancy, giving birth and motherhood.

Article 2 of the Equal Treatment Act mentions a few exceptions to the general prohibition to discriminate. Unequal treatment based on nationality, for instance, is allowed when the nationality is a justified selection criterion, such as for certain government jobs.

The Equal Treatment Act is further elaborated upon in lower legislation, in the Equal Treatment Decree. This decree, among others, indicates when unequal treatment based on sex is justified, including in professional sports competitions that relevantly distinguish between men's and women's competitions.

Additionally, the Netherlands has a law that specifically addresses the equality of men and women.

The Dutch Human Rights Court (College voor de rechten van de mens) is established by law to evaluate complaints about discrimination at work, in education or as a consumer.

Additionally, the Netherlands has to comply with EU legislation on equal treatment. The two main legislative instruments align with the two Dutch laws on equality. First, there is the Council Directive (2024/1499) on equal treatment, which addresses discrimination based on racial or ethnic origin, religion or belief, disability, age, sex or sexual orientation. Secondly, there is Council Directive (2024/1500), which focuses on equal treatment and equal opportunities for men and women in matters of employment and occupation. The Dutch legislative framework and application of equal treatment law should be in accordance with this European framework. The Dutch Human Rights Court assesses this matter, though other courts are also competent to evaluate discrimination in a given case and take appropriate measures.

The Dutch human rights framework is applicable to all persons in the Netherlands and does not distinguish between Dutch nationals and migrants. This does not preclude that some rights are reserved for Dutch citizens (such as parliamentary voting rights), for lawfully resident migrants (such as access to labour), or citizens and lawfully resident migrants with a specific status (social security rights). This means that unlawfully resident migrants cannot, in principle, claim equal treatment rights in respect of labour, education or social security. The general human rights framework does apply to them as well, so if those rights are in jeopardy, they can file a complaint at the Human Rights Court as well.

EU-citizens from other Member States have a privileged position. Article 18 of the Treaty on Functioning of the European Union (TFEU) determines that any discrimination [between EU-citizens] on grounds of nationality shall be prohibited. This means that their access to social

security rights, for instance, is more favorable than for non-EU migrants. This prohibition is not absolute either and the application thereof depends, for instance, on the economic status of an EU-citizen in the host Member State.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Voting rights in the elections for the national parliament and for the provincial councils are reserved for Dutch nationals who have reached the age of 18 years old (article 54 Dutch Constitution and article B1-B2 of the Dutch Electoral Act). For the water management councils and local elections, lawfully resident non-Dutch citizens are allowed to vote as well. For the water management council, everyone who is lawfully resident and has reached the age of 18 years old, is allowed to vote (article B2A of the Dutch Electoral Act). For municipality elections, EU-citizens and their family members are allowed to vote from the first moment of their registration in the Dutch civil registry. Other lawfully resident non-EU citizens are allowed to vote after five years of legal residence (article B3 of the Dutch Electoral Act).

Additionally, everyone has the right to petition all layers of the government (Article 5 of the Dutch Constitution) or to file a complaint at the Dutch Ombudsman. These rights also extend to unlawfully resident migrants and even to non-residents.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

In general, the law does not distinguish between civil and political rights of nationals and non-nationals. In addition to the political rights that were mentioned above, the Dutch Constitution enshrines the right to freedom of religion (article 6), press freedom (article 7), freedom of association (articles 8-9), the right to private life and protection of one's privacy (article 10), the right to inviolability of the body (article 11), protection of domestic space (article 12), the right to private communication (article 13), the right to property (article 14), the right not to be deprived of one's freedom (article 15) and the right to a fair trial (article 17-18). All of these rights apply equally to nationals and non-nationals.

The Netherlands is furthermore bound to protect the rights as enshrined in the International Covenant on Civil and Political Rights and the European Convention on Human Rights. When implementing EU law, it is also bound by the rights and obligations in the EU Charter. In the protection of these rights, neither these instruments nor Dutch practice distinguishes between nationals and non-nationals.

The only exception is that non-nationals do not enjoy the same political rights as Dutch nationals, as was explained in the answer to the previous question.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Dutch law does not set any restrictions for non-nationals to buy property in the country, as long as the formal procedures for selling and transfer of the property have been fulfilled. This procedure mostly concerns a proper conveyance of the property from the old to the new owner in accordance with Dutch law. In this transfer, a notary must perform the necessary formalities. Lawfully resident migrants in the Netherlands, as well as non-Dutch nationals who do not reside in the Netherlands, can buy property. The possibility of establishing a mortgage on the property, on the other hand, is reserved for residents of the Netherlands, regardless of their nationality. The establishment of the mortgage furthermore requires transparency of income or other means to ensure that the mortgage beneficiary can repay the debt.

If property is bought without a mortgage, residence in the Netherlands is not a requirement, but the notary will probably verify the origin of the means that are used to complete the transaction, to avoid money laundering. In addition, there are some governmental costs that need to be paid. If those requirements can be met, there are no restrictions relating to the nationality or residence of the buyer.

It must be added that, despite the irrelevance of nationality, buying property in the Netherlands as a non-resident is becoming less attractive. Due to the housing crisis in the Netherlands, governments aim to introduce restrictions on foreign investment. Municipalities can, for instance, impose an obligation to reside in a newly bought property or at least rent it out.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Most of the rules about access to employment for migrants are laid down in the Foreign Nationals Employment Act. For this report, it is not possible to discuss them exhaustively; however, key observations are provided below.

The main condition for non-nationals to be able to engage in formal employment is lawful residence on Dutch territory. There are, however, differentiations in the exact rights of non-nationals, depending on their status and the purpose of their stay. If a migrant arrives for the purpose of employment, such as a knowledge migrant or a seasonal worker, they will usually need a work permit in addition to a residence permit (TWV). This work permit must be requested by the employer at the Employee Insurance Agency (UWV). If the migrant is not in the Netherlands yet, the employer will usually apply for a combined residence and work permit

(GVVA) for them. If the migrant is already in the Netherlands, but not free to work for any employer, he only needs a work permit in addition to his residence permit. The work permit is usually issued for only one employer, so if the migrant wants to change jobs, the new employer needs to request a new work permit. If a migrant wants to work in the Netherlands without residing there, they are allowed to come on a tourist visa and work in the Netherlands for a maximum of 90 days, provided that the employer requests a work permit for them as well.

Students who came with the purpose of following an education in the Netherlands are allowed to work for a maximum of 16 hours a week, and only if the employer obtains a designated work permit for them. Family migrants receive the same right to access the labor market as the sponsor who brings them to the Netherlands. The family member of a Dutch citizen is thus free to access the labor market without an additional work permit, whereas family members of labor migrants need their potential employer to request a work permit in the same way as for their sponsor.

In most cases, migrants' access to the labor market extends according to the duration of their stay. Usually, after 5 years of residence, they are eligible for permanent residence or long-term EU resident status, which allows them to take up or change employment without losing their residence permit. Special rights are reserved for Turkish migrants. To get access to employment, they need to go through the normal procedure, but based on an agreement between the EU and Turkey, they can already change from employers after three years instead of five.

Most residence-and-work applications are processed while the applicant is still outside of the Netherlands. If they then obtain a GVVA, they are allowed to immediately start working upon their arrival in the Netherlands. When the migrant is already in the Netherlands and then asks for a permit that could enhance his right to work, the question arises whether he is already allowed to access the labor market pending the application. An example is when someone wants to change their residence title from student to family member of a Dutch national. If the previous residence right has not expired, the migrant continues to enjoy the same working rights as before, until a decision on the application has been issued. If that residence title has expired, the migrant enjoys procedural legal residence to await the decision, but in most cases, this does not allow the person to work pending the application.

Asylum seekers enjoy an exception to this rule, though their situation has evolved significantly over the last few years. On the basis of European law, they should have access to employment pending their application as well (art. 26 of the Qualification Directive). Up until a few years ago, this right to work in the Netherlands was restricted to a limited number of days and hours in a year, which made it very difficult to find employment. The Dutch Council of State then ruled in a judgment (ECLI:NL:RVS:2023:4341) that this limitation of rights undermined the effectiveness of the right of access to employment for asylum seekers which is enshrined in EU law. This judgment opened up the labor market for asylum seekers after a six-month waiting period without restrictions on the number of hours they are allowed to work, provided that their employer requests a work permit for them. Most recently, furthermore, some regions in the Netherlands have started to grant asylum seekers access to employment from the moment of their first application, so they no longer need to take into account the six-month waiting period.

Once asylum seekers receive international protection, they also obtain free access to the labor market, which means their employer no longer needs to request a work permit.

EU citizens have a privileged position, because they are beneficiaries of EU rules on free movement of workers and entrepreneurs. This means they are allowed to engage in formal employment on the Dutch labour market, regardless of where they reside (articles 45, 49 and 56 TFEU). Their employer does not need to request a work permit for them either.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

There are no quotas that limit businesses from hiring non-nationals. There are, however, strict conditions to comply with. To hire a knowledge migrant, the provided salary should meet a certain threshold. The reasoning is that a high salary reflects the scarcity of the migrants' qualities, which are in demand at the Dutch labor market.

For regular labor migrants, low-skilled and seasonal migrants who do not meet the high salary threshold, a company needs to prove that it tried to recruit a worker within the Netherlands and the EU first, before it proceeded to contract someone from outside of the EU. The burden of proof to fulfill this requirement is quite high and requires extensive administrative discipline. Furthermore, there are salary requirements for lower-skilled workers as well, but they are not as high as for knowledge migrants.

The strict requirements to contract labor migrants do not apply to EU citizens, family members of nationals or lawfully resident migrants, students, asylum seekers, or recognized beneficiaries of international protection. For those who are concerned (see question nr. 5 *supra*), this does not take away the fact that their employer needs to obtain a work permit at the Employee Insurance Agency.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Most professions in the Netherlands are open to be filled in by nationals and non-nationals alike. The national and European non-discrimination laws that were mentioned before actually strongly prevent discrimination in the workplace and access to work without being discriminated on the aforementioned grounds, including nationality. There are a few exceptions for so-called 'protected professions', including dentists, lawyers, and architects. These professions are open for Dutch nationals and EU-citizens, but not for third-country nationals from outside the EU. Very few professions are reserved for Dutch nationals only, including members of parliament or ministers in the Dutch cabinet. The same applies to most jobs at the Ministry of Defense for which you have to be a Dutch national.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

The most important labor protection laws in the Netherlands are the Labor Circumstances Act, the Minimum Wage Act and the Act on Labor and Care. The Labor Circumstances Act is about safety in the workplace, working hours, the company doctor, and other rights of employees in the workplace. The Minimum Wage Act determines the minimum wage for employment in the Netherlands. The Labor and Care Act determines the rules on leave, including maternity leave and care leave. All of these laws apply without distinction to all employees who work for a company that is subject to Dutch labor law. Labor protection laws thus fully apply to nationals and non-nationals, and they enjoy the rights in these laws without distinction.

There is a complexity in the Netherlands and in other Member States of the European Union as well. This is the situation of posted workers, which is an outflow of the freedom of establishment and the freedom to provide services in the EU. This allows companies to establish themselves in a Member State with lower employment law obligations and then to provide services from there to other Member States. If they rent out workers for services or projects in other Member States, these workers principally remain subject to the labour laws in the Member State of establishment, even if they are posted in another Member State for a long time. This means that workers can be durably employed in a Member State without being subject to the labour laws of that Member State. It is furthermore not only about posted workers, but also about workers who move around between countries, such as truck drivers. The inequality in labour rights can lead to significant problems and even amount to exploitative practices. Fortunately, law- and policy makers in the EU and the Member States are well aware of these practices and they are looking for ways to address them without undermining the principles of free movement of establishment and services in the European Union. One example is the existence of a bureau for posted workers in the Netherlands, where employers should report the posting of workers, and any interested parties can report abuses or exploitation that might occur.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

The Dutch Health Care Act determines that everyone who is insured on the basis of the Long-Term Care Act is obliged to obtain health insurance for basic health care and health facilities. The Long-Term Care Act is applicable to all residents of the Netherlands and those who are not resident, but employed under Dutch law and therewith subjected to Dutch tax law. Based on the European Union Social Security Regulation, residents of the Netherlands who are employed outside of the Netherlands and subject to the tax law of that country are exempted from the Long-Term Care Act and therewith from the Dutch Health Care Act. In that case, they are expected to obtain health insurance in the country where they are employed.

The Health Care Act and the Long-Term Care Act apply to all residents of the Netherlands, without distinction based on nationality. The criterion to determine residence is registration in the Dutch Registry of Persons (Basis registratie personen – BRP). This means that migrants who are awaiting the decision on their residence application are also subjected to the obligation to have health insurance. The only exception is for asylum seekers, who receive care that is paid for by the government. This is part of the rights that European law grants to them (art. 30 of the Qualification Directive). Once they obtain a residence right based on international protection, they have to contract a health insurance as well.

Short-term visitors of the Netherlands who stay no longer than three months are exempt from the obligation to obtain Dutch health insurance. They must, however, be insured in another Member State or obtain a short-term international health insurance. This is part of the requirements to access the Schengen zone, including the Netherlands (art. 15 of the Schengen Visa Code).

Anyone who is obliged to obtain health insurance but not able to afford it can obtain a health care subsidy to help pay for the premium.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

All children in the Netherlands have the obligation and the right to follow primary and secondary education, subsidized by the government. This means that they do not have to pay a tuition fee, although schools can ask for a contribution for voluntary activities or certain school materials. The right to education extends to all children who are resident in the Netherlands, including those whose residence permit is still pending. Children who do not have sufficient knowledge of the Dutch language must receive additional Dutch classes to bring them to the required level for their classes. The rules for access to primary and secondary education are laid down in the Primary Education Act and the Secondary Education Act.

Children of asylum seekers and beneficiaries of international protection also fall within the reach of these laws and should in principle, have access to primary and secondary education. In practice, there are often practical hurdles that deprive children in the asylum procedure or even after obtaining a protection status of actual access to education. This breach of the right to education is partly because the Netherlands does not have sufficient structural reception facilities for asylum seekers and beneficiaries of international protection. Children are thus often moved around (with their parents) from one temporary reception facility to another, and they do not always have access to educational facilities.

Tertiary education is, in principle, open for everyone as well, which means that nationals and non-nationals have equal access to enroll for vocational or academic education. Different than primary and secondary education, tertiary education is not free of charge, and students need to pay a tuition fee. The height of this tuition fee is dependent on the nationality and residence

status of the student. Dutch students, EU-citizens and beneficiaries of international protection pay a statutory tuition fee, which is significantly lower than for students who come from outside of the EU and are not beneficiaries of international protection. They pay the institutional fee for tertiary education, which is 6 to 10 times higher than the statutory tuition fee.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

The Dutch social security system distinguishes between two types of social security. The first type is the availability of general social security facilities, including a minimal social assistance benefits (*bijstand*), disability benefits and retirement pension. The second type is the availability of work-related social security facilities. For all types of benefits, there are conditions that must be met.

The minimal social assistance benefit is awarded to people who have no income and no or only limited capital and who cannot provide for their own living costs (*Bijstandswet*). To retain the benefit after it has been awarded, they must regularly apply for jobs and thus attempt to improve their income to the extent that they do not need benefits anymore. Disability benefits are meant to provide an income for those who are unable to work due to a disability, under more lenient conditions than the minimal social assistance benefit (*WIA/Wajong*). There is no equal obligation to apply for jobs, and beneficiaries are allowed to have more property without losing the benefit.

The general retirement pension scheme applies to all residents of the Netherlands (*AOW*). The height of the pension is determined by the number of years that the beneficiary has resided in the Netherlands, even if they worked in another country or did not work at all. Absence from the Dutch Registry of Persons results in a discount on the pension, but for the years that a person resided in the Netherlands, he receives the percentage of retirement he built up in those years.

Work-related social security facilities are based on the payment of premiums in employment. These premiums are calculated and paid by the employer and then deducted from the gross salary of the employee. The most important work-related social security facilities include sickness (*Ziektewet*), unemployment (*WW*) and pregnancy and parenthood benefits (*Wet arbeid en zorg*).

Work-related benefits are awarded based on fulfillment of these conditions, without distinction based on nationality or even to some extent, residence. Nationals and non-nationals have equal rights in this respect, provided that they meet the criteria to receive them. The duration of their eligibility to receive benefits is dependent on the years of employment they have had in the Netherlands, during which they paid their premium for the employees' insurances that underpin these benefits. This means that on average, nationals will probably have more extended rights than non-nationals, but this is situation-specific and dependent on the individual's job history.

General social security benefits are also available for nationals and non-nationals alike, provided that the requirements to obtain these benefits are fulfilled. Applying for these benefits

can, however, affect the continued enjoyment of residence in the Netherlands. Until they have obtained permanent residence, most non-nationals' right to stay is dependent on them or their sponsor being able to foresee in their own living costs, so they do not become a burden on the social security system of the country. If they apply for and obtain general social security benefits, the person no longer fulfills this criterion and may lose their residence right. In most cases, the loss of a residence right also forfeits the right to the benefit.

Once a non-national obtains permanent residence, usually after five years, residence is no longer dependent on being self-sufficient and not burdening the social security system of the Netherlands. This ensures equal access to all social security benefits, provided that the conditions to obtain a benefit have been fulfilled.

Not all non-permanent residence rights are dependent on being self-sufficient and not becoming a burden to the social security system. Based on EU law, economically active EU citizens have equal rights to social benefits as Dutch citizens (art. 18 TFEU), even before they obtain permanent residence. The same is true for the parents of minor children with Dutch nationality, also based on EU law (art. 20 TFEU). The reception of social benefits does not affect their residence status. Beneficiaries of international protection also enjoy the same rights as Dutch nationals, even if they do not have permanent residence yet (art. 29 Qualification Directive). Non-recognized asylum seekers who are still in the asylum procedure have a right to basic provisions and housing, but not to general social security benefits (Reception Directive).

Another exception to the loss of non-permanent residence due to obtaining benefits is the receipt of a retirement pension. A retirement pension is awarded to everyone who has resided some years in the Netherlands. The height of the pension is dependent on the length of residence in the Netherlands. Residence rights of non-nationals, even without a permanent residence right, are not dependent on the receipt of this pension. The rights of nationals and non-nationals are thus the same, although the calculation of the pension will often lead to higher pensions for nationals than for non-nationals because the number of years of residence in the Netherlands tends to be higher for the former than for the latter. However, if a person is not entitled to the full retirement pension due to some years of absence during their working life, and their income then falls below a minimum, they are still entitled to additional social assistance benefits. This additional social assistance benefit is again only available for migrants whose residence rights are not dependent on economic self-sufficiency.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Access to welfare programs in the Netherlands is not dependent on nationality. Nationals and non-nationals can register for financial aid, food aid, or subsidized housing, provided that they meet the requirements to enter these programs. For some programs, there is a waiting list. In particular, subsidized housing is difficult to get, with waiting lists up to 20 years long. Although some groups, such as beneficiaries of international protection, can be shortlisted and obtain

priority in subsidized housing. The programs do not qualify as governmental social security, so enrollment does not affect the residence status of a migrant in the Netherlands.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

December 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Aotearoa-New Zealand

Authors: Marnie Lloyd, Natalie Baird, and Lili Song

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		Acceded 30 Jun 1960 * Declaration made
1967 Protocol to the Convention relating to the Status of Refugees		Acceded 06 Aug 1973
1954 Convention relating to the Status of Stateless Persons	--	--
1961 Convention on the Reduction of Statelessness		Acceded 20 Sep 2006 * Declaration made
International Covenant on Civil and Political Rights (ICCPR)	12 Nov 1968	28 Dec 1978

First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP)	Accepted individual complaints procedures 26 May 1989	
International Covenant on Economic, Social and Cultural Rights (ICESCR)	12 Nov 1968	28 Dec 1978
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP)	--	--
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	--	--
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	14 Jan 1986	10 Dec 1989
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT-OP)	23 Sep 2003	14 Mar 2007 * Territorial exclusion made (Tokelau)
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	25 Oct 1966	22 Nov 1972
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	17 Jul 1980	10 Jan 1985
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW-OP)	07 Sep 2000	07 Sep 2000 * Declaration made (Tokelau)
Convention on the Rights of the Child (CRC)	01 Oct 1990	06 Apr 1993
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	07 Sep 2000	20 Sep 2011

Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	07 Sep 2000	12 Nov 2001
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		Acceded 22 Sep 2022 * Territorial exclusion made (Tokelau)
Convention on the Rights of Persons with Disabilities (CRPD)	30 Mar 2007	25 Sep 2008
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		Acceded 4 Oct 2016 * Territorial exclusion made (Tokelau)
ILO Forced Labour Convention (No. 29)		29 Mar 1938
2014 Protocol to the ILO Forced Labour Convention (No. 29)		13 Dec 2019
ILO Migration for Employment Convention (Revised) (No. 97)		10 Nov 1950
ILO Equal Remuneration Convention (No. 100)		03 Jun 1983
ILO Discrimination (Employment and Occupation) Convention (No. 111)		03 Jun 1983
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	--	--

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	--	--
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	--	--

Convention governing the Specific Aspects of Refugee Problems in Africa	--	--
African Charter on the Rights and Welfare of the Child	--	--
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	--	--
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	--	--
European Convention on Human Rights (ECHR)	--	--
Protocols to the European Convention on Human Rights (list which ones):	--	--
European Social Charter (ESC)	--	--
European Convention on the Legal Status of Migrant Workers	--	--
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	--	--
American Convention on Human Rights (ACHR)	--	--
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	--	--
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	--	--
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	--	--
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	--	--
Inter-American Convention against All Forms of Discrimination and Intolerance	--	--
Inter-American Convention Protecting the Human Rights of Older Persons	--	--

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

The Australia-New Zealand immigration agreement, known as the Trans-Tasman Travel Arrangement (TTTA), established in 1973, allows citizens of either country to freely visit, live, and work in the other without restrictions. New Zealand citizens are granted a Special Category Visa (subclass 444) (SCV) upon arrival, which allows them to stay and work indefinitely.¹²⁰¹ Similarly, Australian citizens and permanent residents can visit, work, and live in New Zealand without needing a visa beforehand.¹²⁰²

From 1 July 2023, New Zealand citizens living in Australia for four years or more can apply directly for Australian citizenship without first becoming permanent residents.¹²⁰³

New Zealand also has a number of free trade agreements in force, which can facilitate temporary entry of foreign citizens for business purposes.¹²⁰⁴ For example, the NZ-UK Free Trade Agreement, which came into effect on 31 May 2023, facilitates the temporary entry into New Zealand of certain UK citizens as business visitors.¹²⁰⁵ Being for trade/economic purposes, they do not create paths for permanent residency or citizenship.

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

New Zealand citizens may enter and be in New Zealand at any time (s 13 Immigration Act 2009).¹²⁰⁶

¹²⁰¹ Australian Government Department of Home Affairs, 'Subclass 444 Special Category visa (SCV)', available at <<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/special-category-visa-subclass-444>>.

¹²⁰² New Zealand Immigration, 'Australian Resident Visa', available at <<https://www.immigration.govt.nz/visas/australian-resident-visa/>>.

¹²⁰³ Australian Government Department of Home Affairs, 'Direct pathway to Australian citizenship for New Zealand citizens from 1 July 2023' (News, 22 April 2023), available at <<https://immi.homeaffairs.gov.au/news-media/archive/article?itemId=1047>>.

¹²⁰⁴ New Zealand Foreign Affairs and Trade, 'Free Trade Agreements in Force', available at <<https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/>>.

¹²⁰⁵ New Zealand Immigration, 'Temporary Entry of UK Business Persons Under the New Zealand - United Kingdom Free Trade Agreement (NZ-UK FTA)' (Visa Pak Issue 547 — 2 June 2023) available at <<https://www.immigration.govt.nz/assets/inz/documents/visa-paks/visa-pak-547-nz-uk-fta.pdf>>.

¹²⁰⁶ Immigration Act available at <<https://www.legislation.govt.nz/act/public/2009/0051/latest/dlm1440303.html>>.

Both the Cook Islands and Niue are self-governing states in ‘free association’ with New Zealand.¹²⁰⁷ This means that they are part of the Realm of New Zealand,¹²⁰⁸ and Cook Islanders and Niueans are New Zealand citizens (Citizenship Act 1977¹²⁰⁹) and can therefore move freely to New Zealand.¹²¹⁰ Both countries generally conduct their own internal affairs. The Cook Islands also conducts its own international relations but New Zealand has certain constitutional responsibilities to respond to requests for assistance with foreign affairs, disasters and defence.¹²¹¹ Regarding Niue, a statement of Partnership between New Zealand and Niue sets out how cooperation will occur – New Zealand provides certain economic and administrative assistance to Niue, as well as assistance with foreign affairs, defence and security if requested. There are also obligations for regular consultation.¹²¹²

Tokelau is a non-self-governing territory within the Realm of New Zealand and its people are also New Zealand citizens (Citizenship Act 1977) and can move freely to New Zealand.¹²¹³ Tokelau has its own political institutions including a national legislative body, as well as a judicial system and public services, and engages in some regional and international organisations. New Zealand retains responsibility for Tokelau’s international obligations, defence and security, and the management of its Exclusive Economic Zone.

A person who is not a New Zealand citizen may travel to New Zealand only if the person is the holder of a visa granted under the Immigration Act and the travel is consistent with the conditions of the visa; or is a person to whom a visa waiver applies (s 14 Immigration Act 2009). The granting of a visa does not of itself entitle the holder to be granted entry permission, except in specific circumstances (s 46 Immigration Act). A visa (other than a transit visa) granted outside New Zealand indicates that the holder of the visa has permission to travel to

¹²⁰⁷ New Zealand Foreign Affairs and Trade, ‘Cook Islands’, available at <<https://www.mfat.govt.nz/en/countries-and-regions/australia-and-pacific/cook-islands>> and ‘Niue’, available at <<https://www.mfat.govt.nz/en/countries-and-regions/australia-and-pacific/niue>>. See also Alison Quentin-Baxter, ‘Niue’s Relationship of Free Association with New Zealand’ (1999) 30 Victoria University of Wellington Law Review 589.

¹²⁰⁸ The realm of New Zealand is the entire region over which the Queen of New Zealand is sovereign, and includes New Zealand, the Cook Islands, Niue, Tokelau and the Ross Dependency in Antarctica. See Kate McMillan and Anna Hood, Report on Citizenship Law: New Zealand, EUDO Citizenship Observatory, European University Institute, Florence, July 2016, p. 3.

¹²⁰⁹ Citizenship Act available at <<https://www.legislation.govt.nz/act/public/1977/0061/latest/whole.html>>.

¹²¹⁰ Conversely, New Zealand citizens who are not Cook Islanders may obtain a visitor’s permit on arrival in the Cook Islands for up to 90 days (extendable). See Schedule 5 of the Cook Islands Immigration Regulations 2023, available <<https://mfai.gov.ck/sites/default/files/2023-06/CI%20Immigration%20Regulations%202023%20%2818042023%29.pdf#page=62>>. Non-Cook Island New Zealanders do not have a right to permanent residence in the Cook Islands. See McMillan and Hood, above note 1208, p. 11.

New Zealand citizens who are not Niueans or descendants of Niueans can enter Niue without a visa for short stays of up to 30 days. See ‘Traveling to Niue’ available at <<https://www.niueisland.com/discover-niue/travelling-to-niue#:~:text=Entry%20Visa,maximum%20stay%20of%2030%20days>> and Niue’s Immigration Act 2011, available at <<https://www.gov.nu/information>>.

¹²¹¹ New Zealand Foreign Affairs and Trade, ‘Cook Islands’, available at <<https://www.mfat.govt.nz/en/countries-and-regions/australia-and-pacific/cook-islands>>.

¹²¹² New Zealand Foreign Affairs and Trade, ‘Niue’, available at <<https://www.mfat.govt.nz/en/countries-and-regions/australia-and-pacific/niue>>.

¹²¹³ New Zealand Foreign Affairs and Trade, ‘Tokelau’, available at <<https://www.mfat.govt.nz/en/countries-and-regions/australia-and-pacific/tokelau>>. Conversely, New Zealand citizens who are not Tokelauan wishing to visit Tokelau do not require a permit to enter Tokelau, but may stay only up to 10 days and may not work unless holding a suitable permit. See s. 4 Tokelau Immigration Regulations 1991.

New Zealand in accordance with the conditions of the visa (if any); and apply for entry permission; and at the time the visa is granted, there is no reason to believe that the holder will be refused entry permission if the holder's travel is consistent with the conditions of the visa relating to travel; and if the holder is granted entry permission, the holder has permission to stay in New Zealand in accordance with the conditions of the visa (if any) (s 43 Immigration Act).

As noted above, Australian citizens and permanent residents can visit, work, and live in New Zealand without needing a visa beforehand because of the Trans-Tasman Travel Arrangement (TTTA) between Australia and New Zealand.

There are various types of visas (see question 2 below). Visas may be subject to conditions (s 49 Immigration Act 2009) and be granted for various lengths of time (visas may be granted until a specified date, until a specified event on the occurrence of which the visa expires, or for a specified period of time (see s 77 Immigration Act 2009 re: temporary entry class visas).

Persons must leave New Zealand before the expiry of their visa. A person who is unlawfully in New Zealand has an obligation to leave New Zealand and becomes liable for deportation if failing to meet that obligation (ss 18–19 Immigration Act 2009).¹²¹⁴ A person in those circumstances is liable for arrest and detention but this is not a mandatory system and residence and reporting requirements could be agreed to (ss 309–315 Immigration Act 2009).¹²¹⁵

Previously, New Zealand had a two-document system, with a 'visa' for travel to New Zealand and a 'permit' for entry and staying in New Zealand. This was changed to the above integrated visa framework with the 2009 Immigration Act.¹²¹⁶

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

The following classes of visa may be granted under New Zealand's Immigration Act 2009:

- (a) residence class visas, consisting of—

¹²¹⁴ See also Immigration NZ, 'Deportation', available at <<https://www.immigration.govt.nz/about-us/news-centre/deportation/>>; Community Law Manual, 'Deportation: Being made to leave New Zealand', available at <<https://communitylaw.org.nz/community-law-manual/test/deportation-being-made-to-leave-new-zealand/the-deportation-process/>>.

¹²¹⁵ See also Doug Tennent with Katy Armstrong and Peter Moses, *Immigration and Refugee Law* (3rd ed. LexisNexis 2017), at 12.13.

¹²¹⁶ See Tennent with Armstrong and Moses, above note 1215, at 4.2.

(i) permanent resident visas;

(ii) resident visas;

Note that a resident visa is also indefinite but can have certain travel conditions and the residency may be lost, for example, if the person does not spend enough time in New Zealand. In contrast, permanent residency does not have travel conditions - the person can come and go freely from New Zealand. Holding a resident visa for a sufficient period of time can lead to the person being able to gain permanent residency.

(b) temporary entry class visas, consisting of—

(i) temporary visas;

(ii) limited visas;

(iii) interim visas;

(c) transit visas.

(s 70 Immigration Act 2009)¹²¹⁷

Under New Zealand's Immigration Instructions (also known as the 'Operational Manual'), residence visas are categorised by their different reasons, primarily: Generic residence, Business, Family, Skilled Migrant, Residence from Work, as well as Special Categories (which includes Refugee and Protection category, Special residence category (victims of family violence, refugee family support, refugee quota family reunification, community organisation refugee sponsorship category, Afghan Emergency resettlement category, Ukraine resident visa, victims of people trafficking), and special directions.¹²¹⁸

Temporary entry class visas can be Visitor, Work, Interim, Student, Limited, Military or Special temporary (diplomatic, consular and official staff).¹²¹⁹

Regarding the above Special Residence Category, those related to family reunification are discussed further under Question 4 below. Others related to humanitarian protections are discussed further under Question 3 below.

Regarding the provision made for migrants whose visa depends on their partner, and their relationship ends due to family/domestic violence, there are two special visa categories for migrants who experience family/domestic violence. A migrant who is a victim of family violence in New Zealand can apply for a residence visa if their immigration status depends on an abusive partner who is a New Zealand citizen or resident; or a work visa if their immigration status depends on an abusive partner who is a New Zealand citizen or resident, or who is in New Zealand on a temporary visa.

¹²¹⁷ See also Tennent with Armstrong and Moses, above note 1215, at 4.8.

¹²¹⁸ See Operational Manual, 'Residence', available at <https://www.immigration.govt.nz/opsmanual/#37570.htm>.

¹²¹⁹ See Operational Manual, 'Temporary entry class visa', <https://www.immigration.govt.nz/opsmanual/#34382.htm>.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

New Zealand has three main avenues for granting international protection: 1) recognition as a refugee; 2) recognition as a protected person; 3) humanitarian protection achieved through citizenship or other visas.

New Zealand is party to the 1951 Refugee Convention and its 1967 Protocol, and the language of the 1951 Convention is included as Schedule 1 to its Immigration Act 2009. Decisions on refugee status must be made in accordance with the Act – the Act states that a person must be recognised as a refugee if he or she is a refugee within the meaning of the Refugee Convention (s 129 Immigration Act 2009) and to the extent that a matter relating to a refugee or a person claiming recognition as a refugee is not dealt with in the Act, in a way that is consistent with New Zealand's obligations under the Refugee Convention (ss 127, 193 Immigration Act). A refugee and protection officer will determine the claim. Appeals can be made to New Zealand's Immigration and Protection Tribunal (s 194 Immigration Act 2009).

Where a person has been recognised as a refugee outside New Zealand and brought to New Zealand under a government mandated programme on the basis of that recognition (so-called 'quota refugees'), that person is recognised as a refugee in New Zealand without the need for submission and determination of a claim under the Immigration Act (s 126 Immigration Act 2009).

A person not meeting the definition of a refugee might be recognised as a protected person under the Convention against Torture or the International Covenant on Civil and Political Rights (ss 130-131 Immigration Act 2009).

The Immigration Act 2009 also allows for special directions which allow for exceptions to non-eligibility for visa or entry permission, and which may also be on humanitarian grounds (see ss 17, 378).¹²²⁰ Section 61 allows for the granting of visas in exceptional circumstances, under absolute discretion. The discretion is a ministerial power which can be – and in practice is – delegated to specific officials.¹²²¹ Usually, all other avenues need to be exhausted first. The Act also allows for humanitarian appeals to be lodged against deportation orders (ss 154, 206; see also ss 172, 177). Section 207 sets out that the Immigration and Protection Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that—

- (a) there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and
- (b) it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.¹²²²

¹²²⁰ See also Tennent with Armstrong and Moses, above note 1215, at 4.10. Absolute discretion is set out in s 11 of the Immigration Act 2009.

¹²²¹ Section 380 Immigration Act 2009. See also Tennent with Armstrong and Moses, above note 1215, at 4.9.

¹²²² See also Tennent with Armstrong and Moses, above note 1215, at 9.8 and 11.6.

Victims of people trafficking meeting certain eligibility criteria can remain in New Zealand where they cannot return home because they will be endangered, at risk of being re-victimised or at risk of suffering significant social stigma and financial hardship as a result of being trafficked. The eligibility criteria include holding certification from the New Zealand Police that they are believed to be a victim of people trafficking and that they have not obstructed the police investigation of their trafficking case.¹²²³

The Afghan Emergency Resettlement Category provided a time-limited humanitarian residence category for Afghan citizens who evacuated from Afghanistan to New Zealand before 12 September 2021, and who had been granted a Critical Purpose Visitor visa between key dates in 2021 and 2022 or because they met other defined resettlement criteria. Once in New Zealand, those evacuated were able to apply for a permanent resident visa under the Afghan Emergency Resettlement Category if meeting certain requirements.¹²²⁴

The Ukraine Resident Visa provides a residence pathway for those who arrived in New Zealand via the 2022 Special Ukraine Visa category and have since settled there, provided they meet the other requirements of the visa (health and character requirements for residence). The 2022 Special Ukraine visa allowed the grant of temporary visas to sponsored persons ordinarily resident in the Ukraine (i.e. Ukrainian citizens with family members resident in New Zealand), in the context of the Russian invasion of Ukraine.¹²²⁵

Finally, citizenship can also be granted for humanitarian reasons. Section 9 of the Citizenship Act 1977 allows the Minister of Internal Affairs to grant New Zealand citizenship ‘if the Minister is satisfied that granting a certificate of New Zealand citizenship to the applicant would be in the public interest because of exceptional circumstances of a humanitarian or other nature relating to the applicant’. See further below under Question 5.¹²²⁶

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Migration for the purposes of family reunification is regulated under the Immigration Act 2009. Section 3 of that Act sets out the purpose of the Act which includes to develop immigration instructions (which set rules and criteria for the grant of visas and entry permission) to meet objectives determined by the Minister, which may include “supporting families.” The immigration instructions make detailed provision for family unity under different visa categories.¹²²⁷

¹²²³ See further, Operational Manual, S4.15, available at <https://www.immigration.govt.nz/opsmanual/#41488.htm>.

¹²²⁴ See further, Operational Manual, S4.35, available at <https://www.immigration.govt.nz/opsmanual/#76241.htm>.

¹²²⁵ See further, Operational Manual, H8, available at <https://www.immigration.govt.nz/opsmanual/#76975.htm> and S4.40 available at <https://www.immigration.govt.nz/opsmanual/#82035.htm>.

¹²²⁶ See further Tennent with Armstrong and Moses, above note 1215, at 3.2.6(c). For a case example, see Claudia Geiringer, ‘Citizenship as humanitarian relief: the case of Roland Kun (2017) 27(4A) *New Zealand Universities Law Review* 872.

¹²²⁷ The immigration instructions are set out in the Immigration New Zealand Operational Manual, available here: <https://www.immigration.govt.nz/opsmanual/#35439.htm>

Many visa categories permit family unity to some degree. However, each visa category is subject to different and very specific requirements. The family categories for residence class visas are the most generous in terms of family unity, with the objectives of these categories described as being to “strengthen families and communities, while reinforcing the Government's overall objectives” and to “contribute to New Zealand's economic transformation and social development”.¹²²⁸ The family categories for residence allow applications from partners (married, civil union, de facto), parents, dependent children, adult children and siblings. Specific provision is also made for inter-country adoption. There are specific requirements for each of these categories. For example, applications under the parent category are assessed via a two-stage process. An initial expression of interest is submitted into a ballot; if selected from the ballot, then the second stage is an invitation to apply for a resident visa. At this second stage, there are a number of specific requirements to be met including health, character, English language, relationship between sponsor and parent, and sponsorship requirements (eg minimum income threshold). There is no family balance test. The number of approvals under the parent category is currently limited to 2,500 people per year, with demand for parent category visas far exceeding the available places. A chronological processing queue is being considered as an alternative to the existing ballot system.¹²²⁹

Access to family unity for temporary entry class visa holders such as visitors, students and temporary workers is more limited, and depends on the particular visa category. For example, student visa holders are able to bring some family members with them to New Zealand, as are those holding work visas, but temporary workers under the “Recognised Seasonal Employer” (RSE) scheme are not. The RSE scheme is a temporary worker scheme whereby accredited employers are able to bring temporary workers from 13 Pacific Island nations to work in New Zealand’s horticulture and viticulture industries, to help fill labour gaps during peak seasons. The RSE Limited Visa is a short-term visa (typically 7-9 months), and although workers are able to return in future years, they are not able to bring their family members.¹²³⁰

Specific provision is made for family reunification of refugees, with two special visa categories. The first is the refugee family support residence category which enables a refugee with citizenship or residence in New Zealand to sponsor some of their family for residence.¹²³¹ The purpose of this category is to facilitate the successful resettlement of refugees by providing them with an opportunity to sponsor family members who do not otherwise qualify for residence. A two-tier queue system is used under this category. Under tier 1, a refugee sponsor has no other family in New Zealand, and, if selected, is eligible to bring one family member (including a parent, grandparent, grandchild, uncle, aunt, nephew, niece, adult sibling or adult child) and that family member’s partner and dependent children. Under tier 2, a refugee sponsor will already have some immediate family in New Zealand, and is able to bring a parent, adult sibling, adult child, or grandparent (if that grandparent is the sponsor’s legal guardian) under the

¹²²⁸ New Zealand Immigration Instructions, F1, <https://www.immigration.govt.nz/opsmanual/#30874.htm>.

¹²²⁹ “Chronological queue under consideration for parent resident visa applications” (RNZ 12 December 2025), <https://www.rnz.co.nz/news/chinese/581675/chronological-queue-under-consideration-for-parent-resident-visa-applications>

¹²³⁰ See <https://www.immigration.govt.nz/visas/recognised-seasonal-employer-limited-visa/>

¹²³¹ <https://www.immigration.govt.nz/opsmanual/#68925.htm>

refugee family support residence category, and that family member's partner and dependent children. The refugee family support category is capped at 600 people per year and is currently only accepting tier one sponsor registrations.

The second special visa category for refugees is the refugee quota family reunification category.¹²³² This is available to former refugees who came to New Zealand under New Zealand's annual quota of 1,500 UNHCR-mandated refugees, to enable them to sponsor immediate family members (partner or dependent child, or parent if refugee is a dependent child) to join them in New Zealand. The places available under this category are incorporated into the annual quota of 1,500 UNHCR-mandated refugees accepted by New Zealand.

5. What are the conditions for naturalization in the reviewed state?

Citizenship by grant is the term used for naturalization in the current New Zealand Citizenship Act.¹²³³ There are essentially two categories of citizenship by grant: ordinary and special cases.

The Minister of Internal Affairs (the Minister) may authorize the grant of New Zealand citizenship to any person who meets all the following requirements.

1. Having attained the age of 16 years, being of full capacity and applying for citizenship in the prescribed manner. The Minister has the discretion to waive the age requirement. (ss 8(1) and 9(1)(a), Citizenship Act)
2. Being of good character (s 8(2), Citizenship Act). Being of good character means more than just an absence of criminal conviction.¹²³⁴ The onus is on the applicant to show that they are of good character.
3. Holding the right to be in New Zealand indefinitely and having been present in New Zealand with that right: (i) for a minimum of 1350 days during the 5 years immediately preceding the date of the application for citizenship, and (ii) for at least 240 days in each of those 5 years. The Minister, if satisfied that there are exceptional circumstances, has the discretion to reduce the presence requirement to no less than 450 days during the 20-month period immediately preceding the date of the application for citizenship. (ss 8(2)&(7), Citizenship Act)
4. Having sufficient knowledge of the privileges and obligations attaching to the New Zealand citizenship and the English language. The Minister has the discretion to waive the language requirement if the requirement will cause undue hardship to the

¹²³² <https://www.immigration.govt.nz/opsmanual/#46521.htm>

¹²³³ See ss 8-10, Citizenship Act 1977 (1977 No 61), available at:

<<https://www.legislation.govt.nz/act/public/1977/0061/latest/whole.html>> accessed 15 December 2025.

¹²³⁴ In *Shandil v Attorney General* (High Court, Auckland, M 2192/91, 30 April 1997), the applicant, a Fijian citizen, was a prime suspect for the murder of his partner in Fiji and was wanted for questioning by the Fijian authority. No charges had been made against him, but there was strong circumstantial evidence against him. The applicant denied the allegation, but failed to provide a detailed explanation and declined to attend an interview to be conducted by New Zealand authorities. The court found that "[a]n allegation of murder supported by information from the appropriate authorities is a sufficient basis for the Minister to determine that the plaintiff is not of good character, particularly where the plaintiff is unable or unwilling to discharge the onus on him to satisfy the Minister to the contrary" (p 11).

applicant due to their age or standard of education or any other personal reasons. (ss 8(2)&(8), Citizenship Act)

5. Having the intention to either (i) continue to reside in New Zealand or (i) work for Crown service under the New Zealand Government, or an international organisation of which the New Zealand Government is a member, or a person, company, society, or other body of persons resident or established in New Zealand. (s 8(1)-(2), Citizenship Act)

Notwithstanding the abovementioned ordinary requirements, the Minister may, at their discretion, authorize the grant of New Zealand citizenship, as special cases, to any person (s 9(1), Citizenship Act):

1. who has not yet attained the age of 16 years (s 9(1)(a)); or
2. whose father or mother was, at the time of that person's birth, a New Zealand citizen by descent (s 9(1)(b)); or
3. if the Minister is satisfied that granting New Zealand citizenship to the person would be in the public interest because of exceptional circumstances of a humanitarian or other nature relating to the applicant (s 9(1)(c));¹²³⁵ or
4. if the person would otherwise be stateless (s 9(1)(d)).

In considering whether to authorise the grant of New Zealand citizenship to any person as a special case, the Minister must have regard to the disqualifying convictions described below (s 9(2), Citizenship Act).

Persons who have been convicted of an offence in any of the following circumstances are disqualified from New Zealand citizenship by grant (s 9A, Citizenship Act).

1. Having been sentenced on conviction to: (i) a term of imprisonment of 5 years or more; or (ii) an indefinite term of imprisonment capable of running for 5 years or more.
2. Within the preceding 7 years, having been subject to a sentence of imprisonment of less than 5 years or having been subject to release under subpart 2 of Part 1 of the New Zealand Parole Act 2002.
3. Within the preceding 3 years, having been convicted of an offence but did not receive a sentence of imprisonment.

However, the Minister, if satisfied that there are exceptional circumstances relating to the conviction, has the discretion to authorize the grant of New Zealand citizenship to any person

¹²³⁵ For an example of New Zealand citizenship granted under s 9(1)(c) of the Citizenship Act 1977, see Matt Nippert "Citizen Thiel", The New Zealand Herald, available at: <<https://www.nzherald.co.nz/indepth/national/how-peter-thiel-got-new-zealand-citizenship/>> accessed 15 December 2025. See also Ministry of Internal Affairs "New Zealand Citizenship of Mr Peter Thiel (updated 25 January 2018)", available at: <<https://www.dia.govt.nz/citizenship-of-mr-peter-thiel>> accessed 15 December 2025, including the numbers of applications received and approved from 2012 and 2016 under s 9(1)(c) of the Citizenship Act 1977.

disqualified by the abovementioned convictions who otherwise meets the ordinary requirements or the special case criteria (s 9A(2), Citizenship Act).

The current Citizenship Act further provides for a specific category of cases in which New Zealand citizenship is granted as of right (s 10). The Minister must authorize the grant of New Zealand citizenship to any applicant who was born before 1 January 1978 if, at the time of that person's birth, their mother was a New Zealand citizen otherwise than by descent (s 10(1), Citizenship Act), with the exception of those who have previously been deprived of New Zealand citizenship under s 16 or s 17, or renounced their citizenship under s 15 of the Citizenship Act 1977 (s 10(2), Citizenship Act).

A person who is a New Zealand citizen by descent can apply for New Zealand citizenship by grant (s 8(1), Citizenship Act).¹²³⁶

The Citizenship (Western Samoa) (Restoration) Amendment Act 2024 enables certain individuals whose New Zealand citizenship was removed under the Citizenship (Western Samoa) Act 1982 to apply to restore, as of right, New Zealand citizenship.¹²³⁷ It is estimated that only approximately 3,500 people may be eligible under the Citizenship (Western Samoa) (Restoration) Amendment Act 2024,¹²³⁸ namely those who were born between 13 May 1924 and 1 January 1949 in Western Samoa (a non-self-governing territory administered by New Zealand from 1920 to 1 January 1965), and in some limited circumstances, their wives and children (item 6, Citizenship (Western Samoa) (Restoration) Amendment Act 2024; s 7A, Citizenship (Western Samoa) Act 1982 (as amended)).

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

a. *temporary and permanent resident migrants;*

¹²³⁶ New Zealand citizenship by descent is provided under s 7, Citizenship Act 1977: “7(1) Every person born outside New Zealand on or after 1 January 1978 is a New Zealand citizen by descent if, at the time of the person's birth,—

(a) his or her mother or father was a New Zealand citizen otherwise than by—(i) descent; or (ii) grant under section 7A of the Citizenship (Western Samoa) Act 1982; or (b) his or her mother or father was a New Zealand citizen by descent, and the person would otherwise be stateless.”

¹²³⁷ Citizenship (Western Samoa) (Restoration) Amendment Act (2024 No 48), available at: <<https://www.legislation.govt.nz/act/public/2024/0048/latest/whole.html>> accessed 15 December 2025; Citizenship (Western Samoa) Act 1982, available at:

<<https://www.legislation.govt.nz/act/public/1982/0011/latest/whole.html>> accessed 15 December 2025. For background of the Citizenship (Western Samoa) Act 1982, see New Zealand History “Privy Council rules on Samoan citizenship”, available at: <https://nzhistory.govt.nz/privy-council-rules-samoan-citizenship> accessed 15 December 2025.

¹²³⁸ Department of Internal Affairs “Samoan Citizenship Bill passes into Law”, available at: <<https://www.dia.govt.nz/press.nsf/d77da9b523f12931cc256ac5000d19b6/22e06bc3232e4ea1cc258be000779920!OpenDocument>> accessed 15 December 2025.

- b. *regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. *undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. *refugees;*
- e. *asylum seekers;*
- f. *other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 set out New Zealand's non-discrimination framework. The Bill of Rights Act provides that "everyone" has the right to freedom from discrimination on 13 prohibited grounds.¹²³⁹ The Bill of Rights Act applies to public actors (the legislature, the executive and the judiciary) and any actor undertaking a 'public' function, power or duty.¹²⁴⁰ The Human Rights Act 1993 also applies to public actors, and makes provision for remedies where an act or omission of a public actor is inconsistent with the right to freedom from discrimination under the Bill of Rights Act.¹²⁴¹ In addition, the Human Rights Act prohibits discrimination by private actors in particular contexts, such as employment, access to places, provision of goods and services, provision of housing and accommodation, and access to educational establishments.¹²⁴² Racial harassment and inciting racial disharmony (including against non-nationals) are also prohibited.¹²⁴³

The 13 prohibited grounds of discrimination in the Bill of Rights Act and the Human Rights Act are the same, and include sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status, and sexual orientation.¹²⁴⁴ Notably, discrimination on the grounds of immigration status is not prohibited; nor is there an 'any other status' catch-all ground which might enable protection on

¹²³⁹ New Zealand Bill of Rights Act 1990, s 19.

¹²⁴⁰ New Zealand Bill of Rights Act 1990, s 3.

¹²⁴¹ Human Rights Act 1993, Part 1A.

¹²⁴² Human Rights Act 1993, Part 2.

¹²⁴³ Human Rights Act 1993, ss 61 and 63.

¹²⁴⁴ Human Rights Act 1993, s 21; New Zealand Bill of Rights Act 1990, s 19.

the grounds of immigration status. Nevertheless, the non-discrimination provisions of the Bill of Rights Act and the Human Rights Act generally apply to “everyone” and so apply to non-nationals as well as nationals.

However, a notable limitation in the application of New Zealand’s non-discrimination framework to non-nationals is that complaints about the Immigration Act 2009 and associated regulations and immigration instructions cannot be the subject of a complaint to the Human Rights Commission.¹²⁴⁵ Similarly the Human Rights Commission cannot bring any proceedings concerning the Act.¹²⁴⁶ The Act explains this by noting that it “recognises that immigration matters inherently involve different treatment on the basis of personal characteristics.”¹²⁴⁷ This limitation has been raised with New Zealand by international human rights monitoring mechanisms which have recommended full or partial repeal so as to enable immigration-related complaints to be lodged with the Human Rights Commission.¹²⁴⁸

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

The right to vote in the New Zealand Bill of Rights Act is only extended to New Zealand citizens.¹²⁴⁹ However, New Zealand does grant voting rights to non-citizen residents in local and national elections.¹²⁵⁰ Under the Electoral Act 1993, permanent residents are able to vote in New Zealand local and national elections after one year of continuous legal residence.¹²⁵¹ New Zealand is one of only a handful of countries to extend voting rights to non-citizens.

In 2023, the Independent Electoral Review Panel recommended extending the time that permanent residents must live in New Zealand before being able to vote from one year to three years, effectively one electoral cycle.¹²⁵² The Panel noted that the current timeframe created risks including that some migrants can vote after only one year in New Zealand even if they are not committed to a long-term future in New Zealand. In addition, one year may not be sufficient to become acquainted with the political system so as to enable responsible voting. The third concern was described as a need to future-proof against the ‘growing threat of foreign interference in elections,’ including non-nationals being influenced to vote a certain way.¹²⁵³

¹²⁴⁵ Immigration Act 2009, s 392(1).

¹²⁴⁶ Immigration Act 2009, s 392 (2).

¹²⁴⁷ Immigration Act 2009, s 392(3).

¹²⁴⁸ See for example CRPD/C/NZL/CO/2-3 (2022), para 38(c).

¹²⁴⁹ New Zealand Bill of Rights Act 1990, s 12.

¹²⁵⁰ Kate McMillan, ‘From “the Commonwealth’s Most Dutiful Daughter” to “Young Multicultural Nation”: Non-citizen Voting Rights and New Zealand’s Citizenship Regime’ in J Mann J (ed), *Citizenship in Transnational Perspective: Australia, Canada and New Zealand* (Springer 2018).

¹²⁵¹ Electoral Act 1993, ss 60, 74.

¹²⁵² Independent Electoral Review ‘Final Report: Our Recommendations for a Fairer, Clearer, and More Accessible Electoral System’ (Wellington 2023).

¹²⁵³ Independent Electoral Review ‘Final Report: Our Recommendations for a Fairer, Clearer, and More Accessible Electoral System’ (Wellington 2023).

However, despite 2025 amendments to the Electoral Act, Parliament has not made any changes to the voting rights of non-citizens.

Only New Zealand citizens are qualified for membership of the House of Representatives (Parliament).¹²⁵⁴

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

Civil and political rights are generally accorded to ‘everyone’ including non-nationals. However, there are some exceptions where non-nationals are not entitled to a particular right, and where there are extra protections for non-nationals.

In relation to freedom of movement, s 18(2) of the Bill of Rights Act provides that only “every New Zealand citizen” has the right to enter New Zealand. On the other hand, section 18(4) provides that non-nationals who are lawfully in New Zealand shall only be required to leave New Zealand “under a decision taken on grounds prescribed by law.”

Section 20 of the Bill of Rights Act extends additional protection to minorities, many of whom will be non-nationals. It protects the rights of ethnic, religious and linguistic minorities “to enjoy the culture, to profess and practice the religion, or to use the language, of that minority”.¹²⁵⁵

4. Are there any limitations to non-nationals’ right to buy and own property within the reviewed state?

The right to property is not protected in the New Zealand Bill of Rights Act 1990. Rather the ability of non-nationals to buy property is regulated by the Overseas Investment Act 2005.

New Zealand citizens and permanent residents who are ‘ordinarily resident’ in New Zealand can buy property without restrictions. Being ‘ordinarily resident’ means holding a residence class visa, having lived in New Zealand for at least the previous 12 months, been present in New Zealand for at least 183 days of the previous 12 months, and being a tax resident of New Zealand.¹²⁵⁶ Australian and Singaporean citizens are also permitted to buy residential or lifestyle land that is not ‘otherwise sensitive’ (eg next to a river).

In other situations, it may be possible for non-nationals to buy property, but the consent of Land Information New Zealand | Toitū Te Whenua will be required. Consent will be required for people who are not ordinarily resident but have a New Zealand residence class visa; for Australian or Singaporean permanent residents; and for Australian or Singaporean citizens buying ‘otherwise sensitive’ land.¹²⁵⁷

¹²⁵⁴ New Zealand Bill of Rights Act 1990, s 12(b); Electoral Act 1993, s 47(3).

¹²⁵⁵ New Zealand Bill of Rights Act 1990, s 20.

¹²⁵⁶ Overseas Investment Act 2005, s 6(2).

¹²⁵⁷ Overseas Investment Act 2005, Part 2, Subpart 1; See ‘Haumitanga tāwāhi / Overseas investment’, Toitū Te Whenua/ Land Information New Zealand website, <https://www.linz.govt.nz/guidance/overseas-investment>.

Non-nationals on a work visa, student visa, work-to-residence visa, working holiday visa or visitor visa cannot buy property in New Zealand.

Overseas persons are generally not able to buy property. However, a 2025 amendment to the Overseas Investment Act will allow certain overseas based investors (those with an ‘Active Investor Plus’ residency visa – known colloquially as ‘golden visa’ holders) to buy or build a house valued at NZ\$5 million or more, with plans to be submitted to the Overseas Investment Office.¹²⁵⁸

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Generally, non-New Zealand citizens need a valid New Zealand visa with work rights to work in New Zealand (s 14, Immigration Act 2009). As mentioned in Part I (Q1) above, Australian citizens and permanent residents can normally live and work in New Zealand without needing a visa beforehand because of the Trans-Tasman Travel Arrangement (TTTA) between Australia and New Zealand.¹²⁵⁹

The Immigration Act 2009 only provides broad-brush provisions on the class of visas with work rights: (1) the holder of a residence class visa is *entitled* to work (ss 73&74); (2) the holder of a temporary entry class visa *may* work to the extent that the conditions of their visa allow (s 77). Immigration policy sets the rules and criteria for the grant of visas (s 3(2)(b), Immigration Act 2009). The main immigration policy document is the Immigration New Zealand Operational Manual,¹²⁶⁰ which is updated from time to time.

A wide range of New Zealand visas allows non-citizens to work in New Zealand. To contextualise, the Immigration Act 2009 recognises that one of the objectives of New Zealand immigration policy is to contribute “to the New Zealand workforce through facilitating access to skills and labour” (s 3(2)(b)(i), Immigration Act 2009).

¹²⁵⁸ Overseas Investment (National Interest Test and Other Matters) Amendment Act 2025; ‘Reform of the Overseas Investment Act’, Toitū Te Whenua/ Land Information New Zealand website, <https://www.lin.govt.nz/our-work/overseas-investment-regulation/reform-overseas-investment-act#:~:text=Overseas%20investment%20regulation,to%20New%20Zealand's%20national%20interest.>; Overseas investment factsheets, Toitū Te Whenua/ Land Information New Zealand website, <https://www.lin.govt.nz/guidance/overseas-investment/overseas-investment-factsheets#c-0-s-0>.

¹²⁵⁹ Upon arrival at New Zealand borders, they will normally be given a New Zealand resident visa. Australian permanent residents will normally need a New Zealand Electronic Travel Authority (NZETA) before travelling to New Zealand, see: Immigration New Zealand (INZ) “Australian citizens and permanent residents travelling to New Zealand” <https://www.immigration.govt.nz/visit/what-you-need-to-visit-new-zealand/australian-citizens-and-permanent-residents-travelling-to-new-zealand/>.

¹²⁶⁰ INZ *Operational Manual*, <https://www.immigration.govt.nz/opsmanual/#35439.htm>.

Residence class visa (including permanent resident visa and resident visa) holders can work in any job and for any employer,¹²⁶¹ subject to what is discussed in Q7 below. There are many different types of residence class visas.¹²⁶² The criteria for obtaining different types of work visas vary significantly.

Temporary entry class visa with work rights can be broadly divided into the following categories:

a) Work visas. There are many subcategories of work visas, including but not limited to accredited employer work visas, entrepreneur work visa, partnership-based work visas, seasonal work visas, trainee work visa, religious work visas, entertainers, talent or specific purpose work visas, and work visas for people who have been exploited or mistreated (such as victims of human trafficking and domestic violence).¹²⁶³

The criteria for obtaining different types of work visas vary significantly. For example, while applicants for an accredited employer work visa are required to have a full-time job offer from an accredited employer, applicants for a partner work visa do not.

b) Working holiday visas. This category of visas is open to citizens of countries that have a working holiday agreement with New Zealand who are aged 18 to 35. In most cases, working holiday visa holders can work for up to 12 months and are not allowed to take a permanent job. The conditions of their employment will vary depending on where they are from.

c) Student and visitor visas. Depending on the conditions of their visa, student visa holders may be allowed to work. Some visitor visas, including but not limited to academic visitor visa, business visitor visa, super yachts visitor visa, sports events visitor visa, arts and music festival visitor visa, and media visitor visa, allow holders to work in their field or do business in New Zealand for a short time. The criteria for obtaining different types of student and visitor visas vary significantly.

Nationals of the self-governing territories of the Cook Islands and Niue, which are in free association with New Zealand, as well as nationals of Tokelau, a non-self-governing territory administered by New Zealand, are New Zealand citizens for the purpose of the New Zealand Citizenship Act (s 2) and therefore can work in New Zealand on an equal footing with other New Zealand citizens.

Recognised refugees and protected persons are normally eligible for a permanent resident visa, which enables them to work.¹²⁶⁴ Claimants to refugee or protection status who wish to work while awaiting a decision on their claim need to obtain a special work visa. They must show evidence of the need to work, which may take the form of a bank statement confirming that the claimant has insufficient funds to survive.¹²⁶⁵

¹²⁶¹ INZ, “Visas for working in New Zealand”, <https://www.immigration.govt.nz/work/visas-for-working-in-new-zealand/>.

¹²⁶² For a full list of various types of residence class visas and the relevant criteria, see INZ *Operational Manual*, <https://www.immigration.govt.nz/opsmanual/#37570.htm>; see also INZ, “Visas for working in New Zealand”.

¹²⁶³ For a full list of various types of work visas, see INZ *Operational Manual*, <https://www.immigration.govt.nz/opsmanual/#34384.htm>; see also INZ, “Visas for working in New Zealand”.

¹²⁶⁴ INZ *Operational Manual*, S3.10, <https://www.immigration.govt.nz/opsmanual/#46716.htm>.

¹²⁶⁵ INZ *Operational Manual*, WI6.1, <https://www.immigration.govt.nz/opsmanual/#43678.htm>.

New Zealand law makes no specific provisions on stateless persons' right to work.¹²⁶⁶

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Generally, New Zealand law does not impose any quotas or limitations on businesses relating to the hiring of non-nationals. Employers who violate employment law and/or immigration law may be banned (stood down) from supporting further visas for non-national workers for a period of time.¹²⁶⁷

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Foreigners are not allowed to act as an operator of, or invest in, a commercial sex business unless they are a New Zealand permanent resident or an Australian citizen (s 19 Prostitution Reform Act 2003).¹²⁶⁸ Foreigners are not allowed to work as sex workers in New Zealand unless they hold a New Zealand permanent resident or resident visa (ibid).¹²⁶⁹

Other than what is mentioned in the paragraph immediately above, New Zealand law does not impose a blanket citizenship or residence requirement for any sector or profession, but certain public service positions require New Zealand citizenship. For example, only New Zealand citizens are qualified to be candidates or members of Parliament (s 47(3)) Electoral Act 1993). In practice, most roles in the Ministry of Foreign Affairs and Trade require New Zealand citizenship.¹²⁷⁰

¹²⁶⁶ Natalie Baird "Stateless People in New Zealand: Fixing the Protection Gap" (2023) New Zealand Universities Law Review 30(2):521-548.

¹²⁶⁷ INZ "Immigration Employment Infringement Scheme", 26 Aug 2025, https://www.immigration.govt.nz/about-us/news-centre/immigration-employment-infringement-scheme/?utm_source=chatgpt.com.

¹²⁶⁸ See also Ministry of Justice "Apply for a brothel operator certificate" <https://www.justice.govt.nz/licences-certificates/brothel-operator-certification/apply-for-a-brothel-operator-certificate/>.

¹²⁶⁹ See also Ministry of Business, Innovation & Employment "Sex work in New Zealand", <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/employment-legislation-reviews/sex-work-in-new-zealand>; "Brothel Operator Certificate (Official Information Act 1982 request and response)", 28 October 2020, <https://fyi.org.nz/request/14046/response/52711/attach/4/84301%20John%20response%20sent.pdf>.

¹²⁷⁰ Ministry of Foreign Affairs and Trade "Applying for a role with us" <https://www.mfat.govt.nz/en/about-us/work-with-us/applying-for-a-role-with-us#:~:text=The%20standard%20for%20all%20Ministry,to%20get%20a%20Diplomatic%20Passport.>

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Non-nationals generally have the same labour protections as New Zealand nationals (see generally Employment Relations Act 2000, Accident Compensation Act 2001, Holidays Act 2003, Minimum Wage Act 1981, Wage Protection Act 1981, Parental Leave and Employment Protection Act 1987, Health and Safety at Work Act 2015, and Equal Pay Act 1972). In addition, the Worker Protection (Migrant and Other Employees) Act 2023 established an offence and penalty regime designed to deter employers of temporary migrant workers from non-compliance with their obligations.

New Zealand law does not explicitly include or exclude migrant workers without proper immigration status from labour protections, and New Zealand is not a party to the ICRMW as of February 2026. However, it is an offence under the Immigration Act 2009 (sections 351(1)(a) and (8)) if an employer hires an employee without proper immigration status and commits a serious failure to pay the employee according to the Holidays Act 2003, or a serious default under the Minimum Wage Act 1983, or a serious contravention of the Wages Protection Act 1983. That suggests that those three statutes apply to migrant workers without proper immigration status. Additionally, the New Zealand Employment Relations Authority, an independent investigative tribunal established by the Employment Relations Act 2000,¹²⁷¹ has determined that “as a matter of public policy” foreign employees who work illegally in New Zealand are “entitled to the protection of the Employment Relations Act and related employment legislation”.¹²⁷² Employment New Zealand, a government agency responsible for providing guidance and services relating to employment rights and responsibilities, also states that migrant workers, including those working illegally, have the same minimum employment rights as New Zealand workers.¹²⁷³

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

New Zealand’s domestic legal framework does not include an express right to health. However, compliance with obligations under the ICESCR and other international instruments are

¹²⁷¹ The Employment Relations Authority is not a court, but a “lay authority” whose members are not required to be, and many are not, qualified and trained in law, see *Credit Consultants Debt Services NZ Ltd v Wilson (No 2)*, EMC Wellington WC12C/07, 3 July 2007 [14]; *BDM Grange Ltd v Parker* [2006] 1 NZLR 353, 380.

¹²⁷² *Khan v Ali (t/a Mod Fab)* ERA Auckland AA278/02, 16 September 2002; *Yeleswaram v Lal t/a Glomax Super Tailors*, ERA Auckland AA24/09, 29 January 2009 [5]. See also *Rena Keightley v Hon LY t/a Taumarunui Bakery* [2011] NZERA Auckland 77 5272712, in which the Authority ordered an employer to make payment in accordance with Minimum Wage Act 1983 and the Holidays Act 1981/2003 to foreign employees who worked illegally in New Zealand.

¹²⁷³ Employment New Zealand “Migrant exploitation”, 26 January 2026, <https://www.employment.govt.nz/resolving-problems/migrant-exploitation>.

protected by a range of health-related laws including certain aspects of the right to health protected by the NZ Bill of Rights Act 1990.¹²⁷⁴

Eligibility for publicly-funded health care and disability services in New Zealand is decided by the Ministry of Health and is set out in the Health and Disability Services Eligibility Direction 2011, which is itself made pursuant to s 32 of the New Zealand Public Health and Disability Act 2000.¹²⁷⁵ Other directives are sometimes made on an ad hoc basis, as required, such as the Covid-19 Vaccine Eligibility Direction 2021.¹²⁷⁶

In general terms, most non-nationals who live in New Zealand, i.e. those who have resident visas, can get publicly funded health care (free or subsidised). Evidence of eligibility will be required, for example showing the health care provider proof of an e-Visa letter.

In contrast, people with only temporary visas to visit, study and work in New Zealand generally cannot get publicly funded health care in New Zealand. People who are not eligible for publicly funded health care may still make use of these services at their own cost. Alternatively, they may pay for private health care services. In those circumstances, official advice recommends health insurance and evidence of health insurance is required for some visas.¹²⁷⁷

More specifically, eligibility for public health services includes: a NZ citizen or permanent resident, work visa holders who are eligible to be in NZ for at least two years, and interim visa holders who were eligible immediately before they got their interim visa. There are also some particular circumstances allowing eligibility: a New Zealand Aid Programme student receiving official development assistance funding, a Commonwealth Scholarship student and a foreign language teaching assistant. Further, a pregnant partner of an eligible person, and a child under 17 years old whose parent or guardian is eligible, will both be eligible.¹²⁷⁸

¹²⁷⁴ See discussion in 'Right to Health', NZ Human Rights Commission website, <https://tikatangata.org.nz/human-rights-in-aotearoa/right-to-health>.

¹²⁷⁵ Health and Disability Services Eligibility Direction 2011, <https://www.tewhaturora.govt.nz/assets/Our-health-system/Eligibility-for-publicly-funded-services/eligibility-direction-2011.pdf>; New Zealand Public Health and Disability Act 2000, s 32, <https://www.legislation.govt.nz/act/public/2000/0091/latest/DLM80833.html>. See also 'Eligibility explained', Health NZ website, <https://www.tewhaturora.govt.nz/corporate-information/our-health-system/eligibility-for-publicly-funded-health-services/eligibility-explained>.

¹²⁷⁶ Available:

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://bills.parliament.nz/download/Paper/fec3937f-7e47-4893-bf14-bd6b82f75203&ved=2ahUKEwi8soflj6ePAxUMcGwGHf4wNlwQFnoECBYQAQ&usg=AOvVaw2ShBNC3rxLs8WgTPtjJbG->

¹²⁷⁷ 'Who can get public health care', Immigration NZ website, <https://www.immigration.govt.nz/process-to-apply/applying-for-a-visa/providing-evidence-and-documents-to-support-your-visa-application/health-requirements/who-can-get-public-health-care/>; 'Get publicly funded health services', New Zealand Government website, <https://www.govt.nz/browse/health/public-health-services/getting-publicly-funded-health-services/>. See also Ministry of Health, 'Eligibility and Entitlement for Enrolment', Powerpoint presentation, <https://www.pinnaclepractices.co.nz/assets/Resource-files/191105-Eligibility-and-Entitlement-for-Enrolment.pdf>.

¹²⁷⁸ 'Get publicly funded health services', New Zealand Government website, <https://www.govt.nz/browse/health/public-health-services/getting-publicly-funded-health-services/>; 'Guide to eligibility for public health services', Health NZ website, <https://www.tewhaturora.govt.nz/corporate-information/our-health-system/eligibility-for-publicly-funded-health-services/guide-to-eligibility-for-public-health-services>.

Persons in need of protection are also eligible: a refugee or protected person or someone in the process of applying or appealing for refugee or protection status, or a victim or suspected victim of people trafficking, can visit a participating healthcare provider for free consultations for up to ten years.¹²⁷⁹

Treatment for people living with HIV is available free of charge, irrespective of immigration status or eligibility for publicly-funded health care.¹²⁸⁰ Likewise, children are eligible for publicly funded vaccinations on the Immunisation Schedule, and WellChild/Tamariki Ora services irrespective of their immigration status. People on remand and in prison are also eligible for publicly funded health and disability services that are not provided by the prison health system irrespective of immigration status.¹²⁸¹

Australian citizens or permanent residents are eligible for the same publicly-funded medical treatments as New Zealanders.¹²⁸² There are also reciprocal health agreements with Australia and the United Kingdom, such that temporary visitors from Australia or the United Kingdom can get urgent and necessary treatment publicly-funded (but not non-urgent GP visits or services).¹²⁸³

Everyone in New Zealand, whether residents or visitors, are covered by New Zealand's Accident Compensation Scheme (ACC), which provides no-fault personal injury cover for accidents occurring in New Zealand (as well as accidents occurring overseas for New Zealand residents). That cover can contribute to certain medical, health and treatment costs although injured people may still need to pay part of the cost.¹²⁸⁴

NZ has a free helpline for health system advice, and interpreters can help if English is not someone's first language.¹²⁸⁵

Non-governmental organisations provide other health services to refugees such as specialist refugee mental health services.¹²⁸⁶

¹²⁷⁹ 'Access to healthcare for former refugees and current asylum seekers', Health NZ website, <https://info.health.nz/services-support/asian-migrant-and-refugee-health/access-to-healthcare-for-former-refugees-and-current-asylum-seekers>.

¹²⁸⁰ 'Information for people living with HIV migrating to Aotearoa New Zealand', Burnett Foundation website, <https://www.burnettfoundation.org.nz/life-with-hiv/immigration/>.

¹²⁸¹ 'Guide to eligibility for public health services', Health NZ website, <https://www.tewhatauora.govt.nz/corporate-information/our-health-system/eligibility-for-publicly-funded-health-services/guide-to-eligibility-for-public-health-services>.

¹²⁸² 'Guide to eligibility for public health services', Health NZ website, <https://www.tewhatauora.govt.nz/corporate-information/our-health-system/eligibility-for-publicly-funded-health-services/guide-to-eligibility-for-public-health-services>.

¹²⁸³ 'Reciprocal health agreements', Health NZ website, <https://www.tewhatauora.govt.nz/corporate-information/our-health-system/eligibility-for-publicly-funded-health-services/reciprocal-health-agreements>.

¹²⁸⁴ 'What we cover', ACC website, <https://www.acc.co.nz/im-injured/what-we-cover>; 'If you're a visitor injured in New Zealand', ACC website, <https://www.acc.co.nz/im-injured/what-we-cover/if-youre-a-visitor-injured-in-new-zealand>.

¹²⁸⁵ 'Healthline', Health NZ website, <https://info.health.nz/services-support/online-phone-healthcare/healthline>.

¹²⁸⁶ 'Specialist refugee mental health services', NZRC website, <https://www.redcross.org.nz/get-help/help-for-refugees/specialist-refugee-mental-health-services>; Refugee Health and Wellbeing website, <https://rasnz.co.nz/>;

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Children must attend school (or be home-schooled) from age 6 to 16 years. Most start at age 5 years. Early childhood education services prior to a child starting primary school are available but not compulsory. 20 hours per week are fully funded by the NZ government for all children aged 3 and 4 years who are enrolled in a participating teacher-led service.¹²⁸⁷

Children can be enrolled in school as domestic students, or if ineligible, as international students. A domestic student is generally a NZ citizen, or a New Zealand resident or permanent resident. A parent on a temporary visa can apply for a student visa for their children, which will allow that child to enroll as a domestic student. People wishing to enroll a child may need to provide the school with evidence of the child's immigration status¹²⁸⁸

Primary and secondary education is free in New Zealand at state schools from age 5 to 19 for domestic students, although there can be some minor costs or the school might ask for donations from parents.¹²⁸⁹ Other types of primary and secondary schools, such as private schools, generally have fees.¹²⁹⁰

There are some opportunities for tertiary study that is free of charge, but tertiary study would otherwise typically involve fees, albeit with regulated maximums. Student loans and allowances are available.¹²⁹¹ Both loans (need to be repaid) and allowances (do not need to be repaid) have residency requirements, generally meaning eligibility is restricted to New Zealand citizens, or people ordinarily resident in New Zealand who have held a residence class visa and lived in New Zealand for at least 3 years.¹²⁹²

¹²⁸⁷ 'Childcare, schools and higher education', Immigration NZ website, <https://www.immigration.govt.nz/live/setting-up-your-life-in-new-zealand/childcare-schools-and-higher-education/>.

¹²⁸⁸ 'Childcare, schools and higher education', Immigration NZ website, <https://www.immigration.govt.nz/live/setting-up-your-life-in-new-zealand/childcare-schools-and-higher-education/>.

¹²⁸⁹ Education and Training Act 2020, s 33, https://legislation.govt.nz/act/public/2020/0038/latest/LMS171365.html?search=ts_act%40bill%40regulation%40deemedreg_Education+and+Training+Act+2020_resel_25_a&p=1%2f.

¹²⁹⁰ 'Childcare, schools and higher education', Immigration NZ website, <https://www.immigration.govt.nz/live/setting-up-your-life-in-new-zealand/childcare-schools-and-higher-education/>; 'Primary and secondary education', Ministry of Education, <https://www.education.govt.nz/our-work/about-us/education-new-zealand/our-education-system/primary-and-secondary-education>.

¹²⁹¹ 'Tertiary education' Ministry of Education website, <https://www.education.govt.nz/our-work/about-us/education-new-zealand/our-education-system/tertiary-education>; Education and Training Act 2020, ss 256, 259 and 353, https://legislation.govt.nz/act/public/2020/0038/latest/LMS267028.html?search=ts_act%40bill%40regulation%40deemedreg_Education+and+Training+Act+2020_resel_25_a&p=1%2f.

¹²⁹² For people not meeting those residency requirements, there are some other residency criteria. See 'Student Allowance', Ministry of Social Development website, <https://www.studylink.govt.nz/products/a-z-products/student-allowance/index.html> and 'Student Loan', Ministry of Social Development, <https://www.studylink.govt.nz/products/a-z-products/student-loan/index.html>.

From 1 January 2025, the NZ Government amended the previous first-year fees free policy, such that eligible tertiary students can claim their fees for their final year of study in their first, and eligible, qualification ('final-year fees free policy').¹²⁹³ Tertiary education institutions, such as universities, generally have differentiated fees for people meeting their criteria for domestic students and those considered international students, although may also offer scholarships or partial fees rebates.¹²⁹⁴ At Victoria University of Wellington, for example, a domestic student includes a New Zealand citizen (or a citizen of Niue, Cook Islands, or Tokelau Islands), a New Zealand resident or permanent resident, an Australian citizen or permanent resident and a diplomat or consular assigned to live in New Zealand, or their immediate dependent.¹²⁹⁵ As refugees gain residency in NZ, refugee-background learners are domestic students.¹²⁹⁶ Most international students would need a student visa before being able to study in New Zealand.¹²⁹⁷

Best practice guidelines and handbooks exist for education institutions at all levels with ESOL, migrant and refugee background learners.¹²⁹⁸ Education institutions sometimes have services aiming to support people from refugee backgrounds, and occasionally offer targeted academic scholarships.¹²⁹⁹ The Ministry of Education can support schools with funding for the provision of English language support for migrant, New Zealand born students of migrant parent(s) and former refugee students with the highest English language learning needs.¹³⁰⁰ Learning Community Hubs provide information and support for ethnic families to engage with the New

¹²⁹³ 'Final-year fees free', Tertiary Education Commission website, <https://www.tec.govt.nz/funding/funding/fund-finder/final-year-fees-free>.

¹²⁹⁴ See, for example, 'Fees for international students', Victoria University of Wellington website, <https://www.wgtn.ac.nz/students/money/fees/international>.

¹²⁹⁵ 'Admissions', Victoria University of Wellington website, <https://www.wgtn.ac.nz/study/apply-enrol/admissions>.

¹²⁹⁶ See also Sara Kindon et al, 'Enhancing Refugee Background Learner Journeys in Tertiary Education in Aotearoa, New Zealand', Te Herenga Waka Victoria University of Wellington, 2004, https://www.wgtn.ac.nz/_data/assets/pdf_file/0020/2250344/Refugee-background-learners-in-tertiary-education-Sara-Kindon-et-al.pdf, p. 6.

¹²⁹⁷ 'Visas for studying in New Zealand', Immigration NZ website, <https://www.immigration.govt.nz/study/study-visas/visas-for-studying-in-new-zealand/>.

¹²⁹⁸ See, for example, Tertiary Education Commission, 'Best Practice Guidelines to Support Refugee-Background Tertiary Learners in Aotearoa New Zealand', <https://www.tec.govt.nz/assets/Oritetanga/Best-Practice-Guidelines-to-Support-Refugee-Background-Tertiary-Learners.pdf>.

¹²⁹⁹ See, for example, 'Pathways to University for students from refugee backgrounds', University of Auckland website, <https://www.auckland.ac.nz/en/students/student-support/personal-support/students-refugee-backgrounds/support-students-staff-refugee-backgrounds.html>; 'Refugee-background students', Victoria University of Wellington website, https://www.wgtn.ac.nz/students/student-life/communities/refugee-background-students?fbclid=IwY2xjawIGaI9leHRuA2FlbQlXMAABHeOukBG_HAx85P7W-ZRgXShWkgViE89Po1IbP3Ao0PkKOhxQR25yASKBbA_aem_yaPhRmmcSBCHU_9pIH5GJA; Sara Kindon et al, 'Enhancing Refugee Background Learner Journeys in Tertiary Education in Aotearoa, New Zealand', Te Herenga Waka Victoria University of Wellington, 2004, https://www.wgtn.ac.nz/_data/assets/pdf_file/0020/2250344/Refugee-background-learners-in-tertiary-education-Sara-Kindon-et-al.pdf, p. 15.

¹³⁰⁰ 'ESOL funding and Ministry of Education support', Ministry of Education website, <https://nzcurriculum.tki.org.nz/System-of-support-incl.-PLD/Learner-initiated-supports/ESOL-funding-and-MoE-support>; 'English for Speakers of Other Languages (ESOL) funding', Ministry of Education website, <https://www.education.govt.nz/education-professionals/schools-year-0-13/funding-and-financials/english-speakers-other-languages-esol-funding>; 'Supporting students from a refugee background', Ministry of Education website, <https://www.education.govt.nz/education-professionals/schools-year-0-13/funding-and-financials/supporting-students-refugee-background>.

Zealand education system.¹³⁰¹ Part of the Tertiary Education Commission's Tertiary Education Strategy (TES) involves 'barrier-free access'.¹³⁰² It also has a Refugee English Fund to support refugees to gain employment or undertake vocational or degree-level education.¹³⁰³ English Language Partners is a not-for-profit organisation which offers free and paid English Language education for migrants and people with a refugee background.¹³⁰⁴ Refugee background learners meeting the criteria can receive weekly payments of Student Allowance like any other domestic student and can also apply for a student loan.¹³⁰⁵ Despite these services, access to and participation in tertiary education still remains unequal for people with a refugee background and can vary geographically.¹³⁰⁶

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Relevant law and policy related to questions 11 and 12 is set out in the New Zealand Superannuation and Retirement Income Act 2001, Social Security Act 2011 and other Acts, Ministerial Directives, programmes and other instruments.¹³⁰⁷

NZ Superannuation is available from age 65 years for people meeting the eligibility criteria. Eligible people include citizens, permanent residents, people holding a NZ residence class visa, who are ordinarily resident in NZ at the time of applying, and who have lived for the required length of time in New Zealand.¹³⁰⁸ Special guidance is available for people with a refugee or protected person background around the residency criteria.¹³⁰⁹

¹³⁰¹ 'Learning Community Hubs', Ministry of Education website, <https://www.education.govt.nz/parents-and-caregivers/schools-year-0-13/available-assistance/learning-community-hubs>.

¹³⁰² 'Refugee background learners', Tertiary Education Commission website, <https://www.tec.govt.nz/learner-success/learner-success/resources-to-help-support-your-learners/refugee-background-learners>.

¹³⁰³ 'Refugee English Fund', Tertiary Education Commission website, <https://www.tec.govt.nz/funding/funding/fund-finder/refugee-english>. See, for example, 'Refugee English Fund', Victoria University of Wellington website, <https://www.wgtn.ac.nz/lals/centres-and-institutes/eli/esol-study-grants>. See also Sara Kindon et al, 'Enhancing Refugee Background Learner Journeys in Tertiary Education in Aotearoa, New Zealand', Te Herenga Waka Victoria University of Wellington, 2004, https://www.wgtn.ac.nz/_data/assets/pdf_file/0020/2250344/Refugee-background-learners-in-tertiary-education-Sara-Kindon-et-al.pdf, pp. 12-13.

¹³⁰⁴ <https://www.englishlanguage.org.nz/>.

¹³⁰⁵ Sara Kindon et al, 'Enhancing Refugee Background Learner Journeys in Tertiary Education in Aotearoa, New Zealand', Te Herenga Waka Victoria University of Wellington, 2004, https://www.wgtn.ac.nz/_data/assets/pdf_file/0020/2250344/Refugee-background-learners-in-tertiary-education-Sara-Kindon-et-al.pdf, pp. 11-12.

¹³⁰⁶ Ibid, p. 10.

¹³⁰⁷ See 'Legislation', Work and Income website, <https://www.workandincome.govt.nz/map/legislation/index.html>.

¹³⁰⁸ 'Who can get NZ Super?', Work and Income website, <https://www.workandincome.govt.nz/eligibility/seniors/superannuation/who-can-get-it/index.html>. Note there is also a Veteran's Pension. See 'Veteran's Pension', Work and Income website, <https://www.workandincome.govt.nz/eligibility/seniors/veterans-pension/index.html>.

¹³⁰⁹ 'Refugees or protected persons residence criteria to get NZ Super and Veteran's Pension', Work and Income website, <https://www.workandincome.govt.nz/eligibility/seniors/superannuation/who-can-get-it/refugee-protected-person.html>.

New Zealand's JobSeeker Support provides a weekly payment to eligible people who are looking for work or who cannot work.¹³¹⁰ General eligibility is for NZ citizens, permanent residents and those with a residence class visa, who have lived continuously in NZ for at least two years since either becoming a NZ citizen, permanent resident, or getting a residence class visa, and who are ordinarily resident in NZ. Refugees and migrants with permanent residency are exempt from the usual two-year residence requirement that applies to those without permanent residency.¹³¹¹ There is also a hardship exception for those not meeting the length of residency requirement.¹³¹²

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Various forms of financial support are available for costs associated with raising children, after emergencies such as natural disasters, for health and disability costs, and living expenses.¹³¹³

Support is also available regarding housing. This includes help with short-term emergency housing,¹³¹⁴ public housing rented out by Kāinga Ora (used to be Housing New Zealand) and other Community Housing Providers where the Government covers part of the rent,¹³¹⁵ or support for existing housing costs or moving.¹³¹⁶ Eligibility usually requires two years of residency. However, people recognised as refugees or protected persons (whether through New Zealand's Refugee Quota Programme or through a determination process after arrival will qualify for social housing on residency grounds from the time they get that refugee or protected

¹³¹⁰ 'Jobseeker Support', Work and Income website, <https://www.workandincome.govt.nz/products/a-z-benefits/jobseeker-support.html>.

¹³¹¹ 'Moving to New Zealand', Work and Income website, <https://www.workandincome.govt.nz/eligibility/moving-to-nz/index.html>. Although see also the following which provides different rules/advice, seemingly inaccurately: 'Refugees or protected persons residence criteria to get NZ Super and Veteran's Pension', Work and Income website, <https://www.workandincome.govt.nz/eligibility/seniors/superannuation/who-can-get-it/refugee-protected-person.html>.

¹³¹² 'Qualifications', Work and Income website, <https://www.workandincome.govt.nz/map/income-support/main-benefits/jobseeker-support/qualifications.html>.

¹³¹³ 'Children', Work and Income website, <https://www.workandincome.govt.nz/eligibility/children/index.html>; 'Emergencies', Work and Income website, <https://www.workandincome.govt.nz/eligibility/emergencies/index.html>; 'Health and Disability', Work and Income website, <https://www.workandincome.govt.nz/eligibility/health-and-disability/index.html>; 'Help with Living Expenses', Work and Income website, <https://www.workandincome.govt.nz/eligibility/living-expenses/index.html>. For a full list of possible support payments, see 'A-Z benefit payments', Work and Income website, <https://www.workandincome.govt.nz/products/a-z-benefits/index.html>.

¹³¹⁴ 'Emergency Housing', Work and Income website, <https://www.workandincome.govt.nz/housing/nowhere-to-stay/emergency-housing/index.html>.

¹³¹⁵ 'Find a House', Work and Income website, <https://www.workandincome.govt.nz/housing/find-a-house/index.html>.

¹³¹⁶ 'Living in your home', Work and Income website, <https://www.workandincome.govt.nz/housing/live-in-home/index.html>; 'Moving house', Work and Income website, <https://www.workandincome.govt.nz/housing/move-house/index.html>.

person status.¹³¹⁷ Other exceptions apply to people receiving Christchurch Mosques Attack payments.¹³¹⁸

Financial support for seniors includes the Accommodation Supplement (for help with rent, board, or cost of owning a home), Disability Allowance (for regular, ongoing costs because of a disability), Temporary Additional Support (if the person does not have enough money to cover their essential living costs), and Community Services Card (to pay less on health care and public transport). People needing long-term residential care in a hospital or rest home may be able to get a Residential Care Subsidy or a Residential Care Loan (to help them keep their home for a period of time).¹³¹⁹ Those over 65 years can also apply for a ‘SuperGold Card’ (or ‘Veteran SuperGold Card’) which gives free off-peak public transport and other discounts such as on groceries and services.¹³²⁰ Various criteria apply to these forms of support (citizenship, residency, length of residency) and it is hard to find detailed information regarding waivers for each individual form of support. However, it can be said generally that the usual two-year stand-down period for accessing welfare payments is waived for quota refugees who obtain permanent residency upon resettlement to New Zealand.

Are there any final observations you would like to make? Please write below.

Aotearoa-New Zealand’s geography and location means that entry into New Zealand is almost always regular. Still, some practical issues can exist for people from a refugee background without access to necessary legal identity documents, for example, when needing to set up a bank account. Recent research showed that groups most likely to find it difficult to open a bank account included recent migrants, including refugees. ‘The most common barriers reported by participating staff include[d] lack of proof of address, complex paperwork, lack of photo identification, language barriers and lack of access to a bank branch.’¹³²¹ At least one bank is trialing a new basic bank account with fewer set-up requirements.¹³²²

¹³¹⁷ ‘Client recognised as a refugee or a protected person in New Zealand’, Work and Income website, <https://www.workandincome.govt.nz/map/social-housing/assessment-of-eligibility/client-recognised-as-a-refugee-or-a-protected-person-in-new-zealand.html>.

¹³¹⁸ ‘Resided continuously in New Zealand for at least 2 years at any one time since becoming a resident’, Work and Income website, <https://www.workandincome.govt.nz/map/social-housing/assessment-of-eligibility/resided-continuously-in-new-zealand-for-at-least-2-years-at-any-one-time-since-becoming-a-resident.html>.

¹³¹⁹ ‘Other payments for seniors’, Work and Income website, <https://www.workandincome.govt.nz/eligibility/seniors/other-payments/index.html>.

¹³²⁰ ‘SuperGold Card’, Work and Income website, <https://www.workandincome.govt.nz/eligibility/seniors/supergold-card/index.html>.

¹³²¹ Reserve Bank of New Zealand, ‘Report calls for collective action to improve access to bank accounts’, 25 March 2025, <https://www.rbnz.govt.nz/hub/news/2025/03/new-report-suggests-that-collective-action-is-needed-to-improve-access-to-bank-accounts>.

¹³²² Amanda Gillies, ‘Basic banking help for the vulnerable’, 22 April 2025, <https://www.rnz.co.nz/news/thedetail/558729/basic-banking-help-for-the-vulnerable>.

ILA Committee on Migration Governance and International Law

Second interim report – Rights to stay and while staying

Country review

May 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Nigeria

Authors: Aderomola Adeola and Funmilola Abioye

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons		X
1961 Convention on the Reduction of Statelessness		X
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		X
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		X
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		X
ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X

ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		X

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		X
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		X
Convention governing the Specific Aspects of Refugee Problems in Africa		X
African Charter on the Rights and Welfare of the Child		X
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		X
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)	n/a	n/a
Protocols to the European Convention on Human Rights (list which ones):	n/a	n/a
European Social Charter (ESC)	n/a	n/a
European Convention on the Legal Status of Migrant Workers	n/a	n/a
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	n/a	n/a
American Convention on Human Rights (ACHR)	n/a	n/a
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	n/a	n/a

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	n/a	n/a
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	n/a	n/a
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	n/a	n/a
Inter-American Convention against All Forms of Discrimination and Intolerance	n/a	n/a
Inter-American Convention Protecting the Human Rights of Older Persons	n/a	n/a

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

1. United Nations Charter: Founding member of the United Nations
2. Geneva Conventions: Ratified the Geneva Conventions Relative to the Protection of Civilian Persons in Time of War and the Geneva Convention Relative to the Treatment of Prisoners of War
3. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD): Ratified in 1969
4. Convention on the Rights of the Child (CRC): Ratified in 1991
5. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Ratified in 1985
6. Immigration Agreement between Nigeria and South Africa: Signed on March 28, 2002
7. Agreement on Immigration between Nigeria and Italy: Signed on September 12, 2000
8. Memorandum of Understanding on Cooperation to Prevent, Suppress and Punish Trafficking in Persons with the United Kingdom: Signed on November 17, 2004
9. Cooperation Agreement to Prevent, Suppress and Punish Trafficking in Persons with Emphasis on Trafficking in Women and Children with Benin Republic: Signed on June 9, 2005
10. Agreement on Transfer of Sentenced Persons with the United Arab Emirates: Signed on January 18, 2016
11. International Covenant on Civil and Political Rights (ICCPR): Ratified in 1993
12. International Covenant on Economic, Social and Cultural Rights (ICESCR): Ratified in 1993

13. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT): Ratified in 2001
14. Rome Statute of the International Criminal Court: Ratified in 2001
15. United Nations Convention against Transnational Organized Crime: Ratified in 2001
16. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children: Ratified in 2001
17. Protocol Against the Smuggling of Migrants by Land, Sea and Air: Ratified in 2001
18. ECOWAS Protocol on Free Movement of Persons: Although not explicitly mentioned, Nigeria's participation can be inferred as a member of ECOWAS

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

The visa and migratory permits system in Nigeria is primarily governed by the Nigeria Immigration Service (NIS)¹³²³, which is responsible for issuing visas and permits. While visas are generally for short stay visits, permits are granted to do a specific activity for a longer period (for example, working or residing). For example, permits are issued for temporary residence and for work and business purposes and can be issued for a period not exceeding two years.¹³²⁴ The NIS is structured into various directorates and units, focusing on both regular and irregular migration. The system is supported by laws such as the Immigration Act, 2015 (and its Reg of 2017), and the Nigerian Visa Policy¹³²⁵, 2020, which outline the procedures and regulations for obtaining visas and permits. The NIS also plays a crucial role in monitoring non-Nigerians in the country and enforcing immigration laws. The potential for migration in Nigeria is also evident in the remittances, valued as USD 19.5 billion in 2023.¹³²⁶ Recently, the Federal Government has unveiled the plans ongoing on revising the 2015 National Migration Policy, for the sake of addressing the root causes of irregular migration while promoting safe, orderly, and legal migration pathways.¹³²⁷

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of

¹³²³ Nigerian Immigration Services | Passport. The NIS is a department in the Ministry of Interior and headed by the Minister of Interior.

¹³²⁴ S. 37(2) of the Immigration Act, 2015

¹³²⁵ Nigeria Immigration Service lists 13 visa categories eligible for e-visa platform ; see also Nigeria Visa Policy, 2020 at <https://ngembassy.info/page/visa-policy-2020>.

¹³²⁶ Tina Abeku 'IOM calls for better protection of migrants as Nigeria's remittances reach \$19.5b' *The Guardian* 29 April 2025.

¹³²⁷ NIS Structure - Nigeria Immigration Service.

these categories. For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

In Nigeria, non-nationals can reside for more than three months under the following categories of migratory status:

First is the Temporary Residence Visa (TRV). Sections 20 and 37 of the Immigration Act lists the categories of visas and migratory permits that can be issued for periods exceeding 3 months, but not more than 2 years.¹³²⁸ These are temporary residence visas and can be issued for the following reasons:

- business
- residence
- visit
- transit
- work (temporary work permits -6 months, diplomatic visa, expatriate visa)
- study (student visa, academic exchange program visa)
- visa on arrival for businesspeople based on self-recognizance

Second is the Permanent Residence Visas (PRV) which are provided for in section 37 of the Immigration Act and additionally by the Nigerian Immigration Service. These allow the issuance of permanent residence visas to:

- foreign nationals married to Nigerians,
- investors with a prescribed minimum capital amount,
- highly skilled migrants
- retirees (either from non-nationals retiring in Nigeria or retiring from abroad).
- Nigerians by birth who have renounced Nigerian citizenship in the past.¹³²⁹

Non-nationals intending to do business and work must do so in compliance with the provisions of the Act. Section 36 of the Act deals with entry requirements for businesses purposes and adds a proviso that such persons cannot be employed to work in Nigeria without the written consent of the Comptroller General of Immigrations (CGI), who is the head of the Nigerian Immigration Services.

It is important to note that Nigeria is a member of Economic Community of West African States (ECOWAS) and a signatory to the ECOWAS Protocol on the Free Movement of Persons¹³³⁰, and thus the provisions outlined above relating to the requirements of visas and permits do not apply to nationals of ECOWAS 12 member states.¹³³¹ By virtue of the protocol, this category

¹³²⁸ S. 20 of the Immigration Act, 2015.

¹³²⁹ <https://immigration.gov.ng/nigerian-visa/>.

¹³³⁰ <https://africanlii.org/akn/aa-ecowas/act/protocol/1979/free-movement-of-persons-residence-and-establishment/eng@1979-06-15>.

¹³³¹ ECOWAS member states include: Benin, Cabo Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Nigeria, Senegal, Sierra Leone and Togo.

of persons are exempt from entry visas, and are allowed to reside, work and do business in member states provided, in the case of Nigeria, they register with the NIS as nationals of ECOWAS.¹³³² These fall into what is now termed the visa-free category, under the New Visa Policy, 2020.¹³³³ Other visa-free groups under the new policy are: citizens of Chad and Cameroon (bilateral visa waivers); holders of official travel documents from international organizations (AU Commission, UN, AfDB), and holders of diplomatic passports from selected countries based on bilateral or multilateral agreements.¹³³⁴

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Nigeria's legal framework for granting international protection to non-nationals is grounded in various national and international laws. Here are some key legal pathways available:

1. Constitution of the Federal Republic of Nigeria 1999¹³³⁵ : Guarantees fundamental human rights, including the right to life, dignity, personal liberty, fair hearing, and private life.
2. Child's Rights Act 2003¹³³⁶: Protects the rights of children, including refugee children.
3. Violence Against Persons (Prohibition) Act 2015: Safeguards against violence and abuse.
4. African Charter on Human and Peoples' Rights: A regional human rights instrument ratified by Nigeria, promoting human and peoples' rights.
5. Refugee Protection: National Commission for Refugees, Migrants and Internally Displaced Persons Act, 2022 (NCFRMI Act) creates the National Commission for Refugees, Migrants and IDPs (NCFRMI) which is responsible for coordinating refugee and IDP protection in Nigeria. There is also the National Emergency Management Authority.

The Act incorporates the UN Refugee Convention and its Protocol, as well as the AU Refugee Convention, in ensuring the protection and management of asylum seekers and refugees. The Act further prohibits the refusal of entry or the expulsion or extradition/return of persons seeking refuge in Nigeria, until the determination of their status and a reasonable period after the exhaustion of the process.¹³³⁷ An applicant for refugee status applies to the Refugee Eligibility Committee for a determination of their

¹³³² S. 37(13) of the Immigration Act.

¹³³³ <https://interior.gov.ng/visa-policy/>.

¹³³⁴ This is based on the principle of reciprocity, and thus countries such as Brazil, China, Cuba, Kenya, Namibia, Mauritius, Rwanda, South Africa, Singapore, Sudan, Tanzania, Turkey and Venezuela.

¹³³⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹³³⁶ Child's Rights Act 2003.

¹³³⁷ S. 17 of the NCFRMI Act.

status.¹³³⁸ Pending the outcome of such application, the applicant is granted full protection within Nigeria. Right to appeal (if the outcome is not favorable) to the Appeals Board created by the Act.¹³³⁹

6. Humanitarian Visas: While there is no specific law on humanitarian visas, Nigeria's immigration laws allow for discretionary issuance of visas on humanitarian grounds.

7. Human Rights: National Human Rights Commission (NHRC): Mandated to promote and protect human rights, including those of non-nationals.

The trafficking of persons is a criminal offence in Nigeria.¹³⁴⁰ Specifically, the acts of sex and labour trafficking of persons is criminalized by virtue of the act. While Nigeria does not provide a specific permission to stay for victims of trafficking in persons and there is no special immigration pathway for this category of persons; the country as part of its obligations domestically and under international human-rights protection regimes, has systems in place that protect the rights of trafficking victims, and this includes a 'right to assistance and to seek for residence'.¹³⁴¹ A key part of these systems is the National Agency for the Prohibition of Trafficking in Persons (NAPTIP)¹³⁴², which is empowered to investigate and prosecute cases of trafficking in Nigeria. It is key to note that the cases of trafficking of Nigerian citizens, out of Nigeria to other countries are more prevalent, and thus, government efforts are concentrated on ensuring safe return and rehabilitation of such victims.

Since Nigeria does not have a distinct immigration / residence pathway for victims of trafficking, there is no evidence of residence approval being tied to cooperation with the authorities or payment of fees.¹³⁴³

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Migration for family reunification in Nigeria is regulated through various pathways, including:

Family-Based Immigration Sponsorship: This process allows Nigerian citizens or residents to sponsor their family members, such as spouses, children, or parents, to join them and reside in Nigeria. This visa often leads to longer-term residence or other pathways, subject to Nigerian immigration guidelines.¹³⁴⁴

¹³³⁸ S. 14 & 16 of the Act.

¹³³⁹ S. 15 of the Act.

¹³⁴⁰ The Trafficking in Persons Law Enforcement and Administration Act (TIPLEAA) 2015 (Amendment).

¹³⁴¹ See "2025 Trafficking in Persons Report: Nigeria" available at <https://www.state.gov/reports/2025-trafficking-in-persons-report/nigeria/> (accessed 30 Jan 2026);

¹³⁴² Created by the National Agency for the Prohibition of Trafficking in Persons Act (NAPTIP Act).

¹³⁴³ 'Access to Justice for Trafficked Persons in Nigeria' available at https://gaatw.org/publications/AtJHandbook_Final.pdf.

¹³⁴⁴ <https://immigration.gov.ng/nigerian-visa/#:~:text=Temporary%20Residence%20Visa-.Permanent%20Residence%20Visas,as%20some%20categories%20of%20retirees>

Visa Application Assistance: Families can seek assistance with visa applications for their loved ones, ensuring they meet the necessary documentation requirements.

Spousal and Family Visas: If you have a family member who is a citizen or legal resident of another country, you might be eligible for a family reunification visa. This process involves the family member sponsoring the applicant.

International Cooperation: The International Organization for Migration (IOM) in Nigeria provides support for migration management, including family reunification. IOM Nigeria works with the government to enhance migration management capacities.

In summary, Nigeria allows for family reunification based on spousal visas and dependent children visas. These are visa categories provided for by the Nigerian Immigration Act and regulated by the Nigerian Immigration Services. These are considered Permanent Residence visas (PRVs) discussed above. To successfully apply for these, there must be proof of a genuine and subsisting relationship, financial capability, accommodation and medical wellness. These types of visas allow the spouses to work in Nigeria, or to qualify to apply for a work permit, and is a pathway to citizenship.

Research indicates that siblings of Nigerian citizens or residents can also be considered for a Family Reunification Visa, but it is an arduous task. Unmarried partners are entitled to reunification as long as they are in a ‘recognized’ partnership with Nigerian citizen or resident.

It should be noted that Nigeria does not recognise LGBTQIA2s+ rights, and thus this is not a bases to confer family reunification rights. Adult children, parents and siblings are permitted bases to apply.

Requirements and Procedures:

To reunify with family in Nigeria, applicants typically need to meet specific requirements, such as:

- Sponsorship: The sponsor must meet certain eligibility criteria and demonstrate financial capability to support the family member.
- Documentation: Applicants must provide required documents, including proof of relationship, identification, and medical certificates.
- Visa Application: The sponsored family member must apply for a visa, which may involve an interview and background checks.

Additional Considerations include;

- DNA Sample Collection: IOM Nigeria provides DNA sample collection services for family reunification applications to certain countries, like Canada and Italy.¹³⁴⁵

¹³⁴⁵ Provided by The Migration Health Assessment Centre of the IOM Nigeria. Available at <https://nigeria.iom.int/migration-health-assessment-centre-mhac>.

- Pre-Consular Support: IOM Nigeria also offers pre-consular support services and document verification for countries like New Zealand, Australia, and Canada.

5. What are the conditions for naturalization in the reviewed state?

In Nigeria, the conditions for naturalization are outlined in the Constitution of the Federal Republic of Nigeria 1999 (sections 25-32). To be eligible for naturalization, an applicant must generally demonstrate:

1. Residency: Have resided in Nigeria for a continuous period of 15 years.
2. Good Character: Be of good character, demonstrated through various means, including police records and community references.
3. Intent: Show a clear intention to be domiciled in Nigeria and demonstrate a reasonable knowledge of the Nigerian way of life and customs.
4. Oath of Allegiance: Take the oath of allegiance prescribed in the Seventh Schedule to the Constitution.
5. Renunciation: applicants must renunciate former citizenship, if it was acquired in any manner otherwise than by birth.

Additionally, the applicant must:

1. Meet the requirements: Comply with any additional requirements specified by law or regulations, such as the provision of a Tax Clearance Certificate, evidence of means of livelihood, details of guarantors, and others.¹³⁴⁶
2. Application Process: Submit an application to the Minister of Interior, providing required documentation and information.

The Minister of Interior has discretion to grant or refuse citizenship, and the process may involve an investigation into the applicant's background and character. Once naturalization is granted, the individual is entitled to all rights and privileges of a Nigerian citizen.

Section 28 of the Constitution requires the applicant to renounce any other citizenship of other countries that they may have previously acquired, except the citizenship that they acquired by birth. Thus, it is possible to have dual citizenship in Nigeria, as a Nigerian citizen does not lose citizenship upon acquisition of another citizenship. Nigerian citizens are allowed dual citizenship.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

¹³⁴⁶ <https://candb.interior.gov.ng/wp-content/uploads/2025/05/CB-Citizenship-Requirements.pdf>.

- a. *temporary and permanent resident migrants;*
- b. *regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. *undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. *refugees;*
- e. *asylum seekers;*
- f. *other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

a. Temporary and Permanent Resident Migrants

- Temporary Resident Visa: Issued for specific purposes like work, business, education, or tourism, typically valid for a limited period.
- Resident Permit: Granted to foreigners who intend to stay in Nigeria for an extended period, often tied to employment, investment, or business activities.
- Combined Expatriate Residence Permit and Aliens Card (CERPAC): Mandatory for foreign nationals working in Nigeria, combining residence and work permits.
- Regulations: Governed by the Immigration Act and regulations set by the Nigeria Immigration Service.

b. Regular Migrants Benefiting from More Favourable Treatment

ECOWAS Protocol: As a member of the Economic Community of West African States (ECOWAS), Nigeria allows citizens of other ECOWAS member states to enjoy certain privileges, including; visa-free travel. ECOWAS citizens can enter Nigeria without a visa for a specified period.

Residence and work permits: ECOWAS citizens may have easier access to residence and work permits in Nigeria.

Bilateral agreements: Nigeria maintains bilateral agreements with other countries that provide more favourable treatment for citizens of those countries.¹³⁴⁷

c. Undocumented Migrants

Regularization: Undocumented migrants may be eligible for regularization programs through the NIS, which allow them to regularize their stay in Nigeria. The most recent examples of these programs are the “Expired Visa Initiative” of 2025, and followed by the ‘Post-Amnesty Voluntary Return and Documentation Programme (PAVRDP).¹³⁴⁸

Voluntary return programs: Nigeria may participate in voluntary return programs, which assist undocumented migrants in returning to their countries of origin. Whilst in Nigeria, undocumented migrants are entitled to basic human rights protection, including access to healthcare¹³⁴⁹ and protection from exploitation.

These frameworks are subject to change and may be influenced by various factors, including national security, economic conditions, and international agreements.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Section 42 of the 1999 Constitution (as amended) provides for the protection of ‘citizens of Nigeria’ from discrimination on the basis of ethnic group, place or origin, sex, religion and political opinion. This is a constitutional protection that is however limited to citizens and does not expressly extend to non-nationals. However, Nigeria, as part of the international legal order is bound by fundamental human rights provisions which apply to all persons. The Universal Declaration on Human Rights protections against discrimination are thus binding on Nigeria.¹³⁵⁰ Nigeria has domesticated international provisions in Chapter IV of the Constitution, which deals with fundamental human rights, and evinces these fundamental human rights applying to all ‘persons’ within Nigeria. Also, article 2 of the African Charter¹³⁵¹ guarantees rights to “every individual” without distinction of national origin. This provides a legal basis for the protection of non-nationals from discrimination.

¹³⁴⁷ Countries such as the United Kingdom, Switzerland, Canada, ECOWAS member states. See for example: https://international-partnerships.ec.europa.eu/countries/nigeria_en#;

https://www.international.gc.ca/country_news-pays_nouvelles/2024-09-20-nigeria.aspx?lang=eng;

¹³⁴⁸ See https://www.bloomfield-law.com/sites/default/files/2025-10/nigeria_immigration_service_launches_post-amnesty_voluntary_return_and_documentatio_copy.pdf. This

aims to provide a streamlined framework for the regularization or voluntary departure of affected foreign nationals.
¹³⁴⁹ As will be discussed subsequently, due to the systemic problems in Nigeria’s healthcare system, this service is mostly provided to undocumented migrants by non-governmental agencies working in the sector.

¹³⁵⁰ See ‘Fundamental Human Rights of a Nigerian and Universal Human Rights’ by the Senate Committee on Constitution Review, available at <<https://sccr.gov.ng/constitutional-rights/>>.

¹³⁵¹ Article 2 of the African Charter (Ratification and Enforcement) Act, domesticated in the African Charter on Human and Peoples Rights Act (Cap 10, Laws of the Federation of Nigeria.)

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Temporary and Permanent Resident Migrants

No Voting Rights: Temporary and permanent resident migrants do not have the right to vote in Nigerian elections. Voting is a privilege granted to registered citizens of Nigeria. They may not participate in political activities, such as joining political parties or running for public office.

Non-nationals may have some rights, such as freedom of expression and assembly, but these do not extend to political participation.¹³⁵²

Regular Migrants Benefiting from More Favourable Treatment

Whilst citizens of ECOWAS member states may have some privileges, these do not necessarily include political participation rights.

No Special Political Rights: Even with favourable treatment, regular migrants do not have special political rights, such as voting or running for office.¹³⁵³

Undocumented Migrants

No Political Rights: Likewise, undocumented migrants have no political rights, including voting or participating in political activities. Limited Access: They may face challenges accessing basic services and rights, let alone political participation. In summary, none of these categories have significant political participation rights in Nigeria. The country's political framework generally reserves these rights for citizens.¹³⁵⁴

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

In Nigeria, distinctions exist in the enjoyment of civil and political rights between nationals and non-nationals. Here's an overview of the framework for each category:

¹³⁵² Nigeria Immigration Service

¹³⁵³ Microsoft Word - ECOMIG Version English Jan 2008_1.doc

¹³⁵⁴ Nigeria - Trade Agreements.

a. Temporary and Permanent Resident Migrants

Freedom of Movement: Generally, resident migrants have freedom of movement within Nigeria, but their movement may be restricted by the terms of their residence permits.¹³⁵⁵ This means that while migrants can move within the country, they are required to comply with the purpose of their stay (expatriate employment, schooling, as dependants) and significant changes in location / employment will need to be reported to the immigration services.

Access to Justice: Resident migrants have access to the Nigerian justice system but may face challenges in navigating the system or accessing certain services. This is primarily due to systemic issues like lengthy investigations and court processes, lack of sufficient avenues for legal aid, and lack of awareness of the existing legal aid options.

Employment and Business: They may have restrictions on employment or business activities, depending on the terms of their residence permits.¹³⁵⁶

b. Regular Migrants Benefiting from More Favourable Treatment

ECOWAS Citizens: As ECOWAS citizens, they enjoy certain privileges, including: Visa-free travel: They can enter Nigeria without a visa for a specified period.

Residence and work permits: They may have easier access to residence and work permits in Nigeria.

Other Nationalities: Nigeria may have bilateral agreements with other countries that provide more favourable treatment for citizens of those countries, but these would be specific to each agreement. To mention a few, there are existing agreements with Italy, Ireland, South Africa, and Spain.¹³⁵⁷

c. Undocumented Migrants

Undocumented migrants face significant challenges accessing basic services, including:

- a lack of access to public healthcare services or they may face great difficulties accessing these services. In certain situations, they may access health services via non-governmental organizations making it freely available,
- face challenges accessing the justice system and may be more vulnerable to exploitation and abuse,
- exploitation in the workplace and may not have access to protections under Nigerian labour laws.

¹³⁵⁵ Governed under the Immigration Act, 2015, these restrictions are managed by the Combined Expatriate Residence Permit and Aliens Card (CERPAC) system. See <https://immigration.gov.ng/combined-expatriate-residence-permit-and-aliens-card-cerpac/>.

¹³⁵⁶ <https://bscholarly.com/fundamental-human-right-nigeria/>

¹³⁵⁷ See generally, 'Bilateral Immigration Treaties' available at <https://lawnigeria.com/2019/11/28/treaties-of-nigeria-bilateral/> . These agreements are targeted at facilitating favorable migration regimes for citizens of both countries.

In summary, while nationals and non-nationals share some rights, distinctions exist in the enjoyment of civil and political rights, particularly for undocumented migrants. Temporary and permanent resident migrants, as well as regular migrants with favourable treatment, have some rights, but may still face challenges and restrictions.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

In Nigeria, there are limitations to non-nationals' right to buy and own property. Here's an overview of the framework for each category:

a. Temporary and Permanent Resident Migrants

Land Use Act: The Land Use Act of 1978¹³⁵⁸ vests all land in the state, and non-nationals can obtain property rights through statutory occupancy rights or leasehold interests.

Consent Requirement: Non-nationals may need to obtain prior written consent from the State governor to lawfully acquire, transfer, alienate any interest in land in Nigeria.¹³⁵⁹ It should be noted that the requirement of consent applies to both Nigerian citizens and foreigners. It is however a strict legal barrier for non-nationals by virtue of additional legislature.¹³⁶⁰

Restrictions: Further on the restrictions, the Supreme Court of Nigeria¹³⁶¹ has adopted a rigid approach taking the view that the Land Use Act limits ownership of land to Nigerians, however the Court also recognised that subsistence of other laws with restrictions on the rights of non-nationals to own land particularly, the Acquisition of Lands by Alien Law of Lagos State, which makes acquisition of land by non-nationals possible, but subject to the approval of the Governor. Some states in Nigeria may have specific restrictions or requirements for non-nationals acquiring property.

b. Regular Migrants Benefiting from More Favourable Treatment

ECOWAS Citizens: As ECOWAS citizens, they may enjoy some privileges, but property ownership rights are generally subject to Nigerian laws and regulations.

Bilateral Agreements: Nigeria may have bilateral agreements with other countries that provide more favourable treatment for citizens of those countries regarding property ownership, but these would be specific to each agreement.¹³⁶²

¹³⁵⁸ <https://lawsofnigeria.placng.org/print.php?sn=228>.

¹³⁵⁹ Section 22 of the Land Use Act.

¹³⁶⁰ See generally, the Acquisition of Lands by Aliens Laws (ALAL) in each state. In Lagos State, the ALAL, 1971 requires foreigners to obtain prior written consent of the Governor to acquire a land interest.

¹³⁶¹ *Huebner v A.I.E. & P.M. Co. Ltd* (2017) 14 NWLR (pt. 1586) 397 per KUMAI BAYANG AKA'AHS, J.S.C.

¹³⁶² Olaide A Adedokun 'Country reports on the ratification of the UN Convention on Migrants' available on UNESCO Digital library website at unesdoc.unesco.org/ark:/48223/pf0000139534.

c. Undocumented Migrants

Limited Access: Undocumented migrants face significant challenges accessing property ownership, as they may not have the necessary documentation or legal status to acquire property.¹³⁶³

Risk of Exploitation: They may be vulnerable to exploitation or abuse in property transactions due to their undocumented status.

In summary, non-nationals in Nigeria face limitations and restrictions on buying and owning property, with varying degrees of access depending on their status and nationality. Temporary and permanent resident migrants may have some access to property ownership (subject to approval), while undocumented migrants face significant challenges.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

In Nigeria, conditions for non-nationals to engage in formal employment vary depending on their status. Here's an overview of the framework for each category:

a. Temporary and Permanent Resident Migrants

Non-nationals desiring to work in Nigeria need to obtain a valid work permit or a Combined Expatriate Residence Permit and Aliens (CERPAC card to work in Nigeria. The CERPAC is a resident permit issued to non-nationals residing or employed in Nigeria. This would usually be for longer termed residencies. It serves as a legal proof of residency and identification for non-nationals in Nigeria. The CERPAC card is applicable to those wishing to reside in Nigeria for a period not less than one year. It could either be temporary or permanent resident. Both types of documents are issued by the Nigerian Immigration Services.¹³⁶⁴

In order to employ a non-national, an employer needs to demonstrate that the skills required for the job cannot be found locally, and that the non-national's (expatriate's) employment will benefit Nigeria. This is one of the requirements to grant a non-national a work permit or a CERPAC card. Work permits and CERPACs are typically renewable, subject to meeting the necessary requirements.¹³⁶⁵

¹³⁶³ 7 of the Biggest Challenges Immigrants and Refugees Face in the US.

¹³⁶⁴ <https://immigration.gov.ng/combined-expatriate-residence-permit-and-aliens-card-cerpac/>.

¹³⁶⁵ Immigration Law in Nigeria: What to Know.

b. Regular Migrants Benefiting from More Favourable Treatment

Dispensations granting favourable treatment to migrants are usually based on bi-lateral or multi-lateral engagements. For ECOWAS, a protocol entered into in 1979, established a visa-free travel regime among member states.¹³⁶⁶ Nigeria, as a member of ECOWAS thus grants visa-free entry to ECOWAS citizens for a specified period of 90 days. They are however required to have valid travel documents for this purpose.

Other categories of visa-free entry exist. Countries like Cameroon and Chad, whose governments have a Visa Abolition Agreement with Nigeria can travel to Nigeria for a maximum of 90-days without a visa. They however will require the necessary permit for employment or business purposes.¹³⁶⁷

Holders of official travel documents from international organisations such as the United Nations, African Union Commission, etc, can enter Nigeria under visa waivers agreed to with these organisations. Such entry are single entry purposes for a maximum of 90-days. The same goes for holders of diplomatic passports from selected countries, based on bilateral or multilateral agreements.¹³⁶⁸

When it comes to residence and work permits, ECOWAS citizens while enjoying a 90 day visa free visit to Nigeria, are also allowed a long-term residence and work via an ECOWAS Residence Card (ERC).¹³⁶⁹ Of all the visa-free categories discussed above, an attempt to convert to a work or residence status will have to apply for any of the applicable work permit or residence permits based on their particular circumstances. for that purpose

c. Undocumented Migrants

Undocumented migrants are not legally protected by Nigerian labour laws and may face exploitation and abuse in the workplace. By law, undocumented migrants are not permitted to work and may be deported if discovered by authorities. This group of migrants are also open to exploitation because they may not have access to formal employment opportunities.

In summary, temporary and permanent resident migrants can engage in formal employment with a valid work permit or CERPAC, while regular migrants with favourable treatment may have easier access to employment opportunities. Undocumented migrants, however, face significant challenges and risks in accessing formal employment. In order to address the issue of undocumented migrants, the Nigerian government in 2025 provided a temporary, special amnesty dispensation for this class to migrants to access formal employment by regularizing

¹³⁶⁶ See 1979 ECOWAS Protocol Relating to Free Movement of Persons, Residence and Establishment.

¹³⁶⁷ Nigeria Visa Policy (NVP).

¹³⁶⁸ *ibid.*, countries such as Brazil, China, Cuba, Kenya, Namibia, Mauritius, Rwanda, South Africa, Singapore, Sudan, Tanzania, Turkey and Venezuela.

¹³⁶⁹ *ibid.*, the visa policy recognizes visa free categories and identifies ECOWAS as one of the classes of visa free categories.

their status, but they cannot legally access formal employment *while* remaining undocumented.¹³⁷⁰

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

In Nigeria, there are regulations and quotas for businesses hiring non-nationals. Here's an overview of the framework for each category:

a. Temporary and Permanent Resident Migrants

Expatriate Quota: Businesses must obtain an expatriate quota¹³⁷¹, which specifies the number of non-national positions allowed. This quota is issued by the Ministry of Interior. The quota must be approved by the Nigeria Immigration Service (NIS) and the Ministry of Interior. It allows companies/organizations to engage the services of expatriate personnel with skills and competences in fields that are in short supply or not available locally. The duration of these grants would usually be for 3 years initially, and renewable twice within a seven-year period.¹³⁷² Employers must demonstrate that the skills required for the job cannot be found locally.

b. Regular Migrants Benefiting from More Favourable Treatment

ECOWAS citizens may enjoy certain privileges but are still bound by negotiated expatriate quota requirements. Similarly, other categories of favourable treatment are provided for in bilateral and multilateral agreements referred to above. These agreements provide negotiated expatriate quotas and limitations.

Undocumented migrants are not eligible for formal employment and would actually face deportation if discovered. Since they are not authorized to work, there is no quota or limitation for businesses hiring undocumented migrants, as it is not permissible.

In summary, businesses in Nigeria must adhere to expatriate quota requirements and approval processes when hiring non-nationals, with some potential exceptions or additional requirements for ECOWAS citizens or those with bilateral agreements. Undocumented migrants are not eligible for formal employment.¹³⁷³

¹³⁷⁰ See Expired Visa Initiative (Amnesty) at <https://immigration.gov.ng/expired-visa-holders/> (note that this amnesty period has now been extended in 2026).

¹³⁷¹ 'Handbook on Expatriate Quota Administration Revised 2022' drafted by the Ministry of Interior, at <https://candb.interior.gov.ng/wp-content/uploads/2025/05/CB-Business-HANDBOOK.pdf>.

¹³⁷² Handbook, p. 3.

¹³⁷³ [Expatriate Quota in Nigeria: A Complete Guide for Foreign Companies | Work Permits & Immigration - trustedadvisorslaw.com](https://www.trustedadvisorslaw.com/expatriate-quota-in-nigeria-a-complete-guide-for-foreign-companies-work-permits-immigration/)

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

In Nigeria, certain professions or sectors may be restricted or reserved for nationals. Here's an overview of the framework for each category:

a. Temporary and Permanent Resident Migrants

Reserved Occupations: The public sector/civil service generally does not admit migrants for labour purposes. This restriction runs across federal, state and local government branches in all government ministries, agencies and parastatals.

There are other sectors where restrictions operate to reserve those trades and fields for Nigerians. These are generally entry-level, low-skilled and administrative positions, such as artisanal trades, and small-scale businesses. Non-nationals may also face additional requirements or restrictions in certain specialized sectors, such as law, medicine, and engineering. For these professions, additional registration and certification requirements are put in place from the relevant Nigerian professional bodies (e.g. Medical and Dental Council of Nigeria, Council for the Regulation of Engineering in Nigeria) which often requires recognizing foreign qualifications.

This restriction carries on to security-sensitive sectors (armed forces and other para-government agencies), where non-nationals may face additional scrutiny or restrictions in those sectors. Also, sectors dealing with key-infrastructure, like works and housing, transport, communications etc, impose additional requirements or restrictions before non-nationals can work in those sectors.¹³⁷⁴

b. Regular Migrants Benefiting from More Favourable Treatment

ECOWAS Citizens: As ECOWAS citizens, they may enjoy some privileges, but certain restrictions may still apply.

Bilateral Agreements: Nigeria may have bilateral agreements with other countries that provide more favourable treatment for citizens of those countries regarding employment in specific sectors.

c. Undocumented Migrants

No Formal Employment: Undocumented migrants are not eligible for formal employment and may face deportation if discovered.

¹³⁷⁴ 'Local Content Requirements for Companies with Foreign Ownership in Nigeria' at <https://www.goldsmithsllp.com/local-content-requirements-for-companies-with-foreign-ownership-in-nigeria/#:~:text=Local%20content%20obligations%20under%20the,%2C%20shipyards%2C%20and%20maritime%20professionals.>

No Sector-specific Access: They do not have access to any specific sectors or professions, as their employment is not authorized.

In summary, while non-nationals can work in various sectors, certain occupations or sectors may be restricted or reserved for nationals. Temporary and permanent resident migrants may face sector-specific requirements or restrictions, while undocumented migrants are not eligible for formal employment. Regular migrants with favourable treatment may have some advantages, but specific restrictions may still apply.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

In Nigeria, labour protections for non-nationals vary depending on their status. Here's an overview of the framework for each category:

a. Temporary and Permanent Resident Migrants

Labour Act: Temporary and permanent resident migrants are generally covered by the Labour Act¹³⁷⁵, which provides protections such as: minimum wage entitlement, overtime pay entitlement, maternity leave entitlement, in addition with other benefits such as annual leave and sick leave. In general, migrant workers are entitled to equal treatment with nationals in terms of labour protections.

b. Regular Migrants Benefiting from More Favourable Treatment

ECOWAS Citizens: As ECOWAS citizens, they may enjoy some privileges, but labour protections would generally be governed by Nigerian laws.

Bilateral Agreements: Nigeria may have bilateral agreements with other countries that provide more favourable treatment for citizens of those countries regarding labour protections.

c. Undocumented Migrants

Limited Protections: Undocumented migrants have limited access to labour protections, and may face:

Exploitation: They may be vulnerable to exploitation and abuse in the workplace.

No access to benefits: They may not have access to benefits such as minimum wage, overtime pay, or maternity leave.

¹³⁷⁵ Labour Act, Chapter L1, Laws of the Federation of Nigeria (“LFN”) 2004 <https://afribary.com/law/nigeria-labour-act>

Risk of deportation: They may face deportation if discovered, which can further limit their access to labour protections.

In summary, temporary and permanent resident migrants generally have access to labour protections under Nigerian law, while regular migrants with favourable treatment may have some advantages. Undocumented migrants, however, face significant challenges and limited access to labour protections.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

In Nigeria, access to public health services for non-nationals varies depending on their status. Generally, however, migrants (including refugees and asylum seekers, can access public health services, even though, similar to citizens, most services require out of pocket payments. Here is an overview of the framework for each category:

a. Temporary and Permanent Resident Migrants

Access to Public Health Services: Temporary and permanent resident migrants can access public health services but may be required to pay for some services.¹³⁷⁶ Beyond the public healthcare system, access to private healthcare is also available through health insurance plans. These plans are usually workplace benefits.

b. Regular Migrants Benefiting from More Favourable Treatment

ECOWAS Citizens: As ECOWAS citizens, they may enjoy some privileges, including access to healthcare services in Nigeria.¹³⁷⁷ The same thing goes for bilateral agreements, which provide some form of favourable treatment for citizens, and access to healthcare.

c. Undocumented Migrants

Limited Access: Undocumented migrants face significant challenges accessing public health services. These include the constant fear of their undocumented status being discovered if they seek healthcare services. As already discussed, the cost of healthcare is a challenge and much more for undocumented migrants who would be expected to pay out-of-pocket for healthcare services.

¹³⁷⁶ IOM Migration Health Services in Nigeria, at <https://nigeria.iom.int/sites/g/files/tmzbd11856/files/documents/2024-04/iom-nigeria-migration-health-factsheet-april-2024.pdf>

¹³⁷⁷ By virtue of the ECOWAS Protocol on Free Movement of Persons, Residence, and Establishment, the rights of entry, and the right to reside. These rights generally extend to accessing public services, including healthcare on similar terms to local residents.

Their undocumented status means that they may have limited access to preventive care, which can exacerbate health issues.

In summary, temporary and permanent resident migrants can access public health services, while regular migrants with favourable treatment may have some advantages under their respective dispensations. Undocumented migrants however face significant challenges and limited access to public health services.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

In Nigeria, access to public education services for non-nationals varies depending on their status. Here's an overview of the framework for each category:

a. Temporary and Permanent Resident Migrants

Primary and Secondary Education: Temporary and permanent resident migrants can access primary and secondary levels of education if they have the necessary permits to study in Nigeria, but may face challenges in terms of:

Admission requirements: They may need to meet specific admission requirements.

Fees: They may be required to pay fees, which can be a challenge.

Tertiary Education: They may face more challenges accessing tertiary education, including:

Admission requirements: They may need to meet specific admission requirements, including quotas for non-nationals.

Fees: They may be required to pay higher fees compared to nationals.

b. Regular Migrants Benefiting from More Favourable Treatment

ECOWAS Citizens: ECOWAS citizens may enjoy easy access to education services in Nigeria. This is pursuant to the community agreements entered into by member states.¹³⁷⁸

¹³⁷⁸ 1979 Protocol on Free Movement of Persons, Right of Residence and Establishment (Protocol A/P.1/5/79) and its subsequent revisions and supplementary protocols have produced a system whereby ECOWAS citizens are recognised across board in ECOWAS member states, and they are entitled to treatment as though they were citizens of the particular state. The protection extends to access to social services such as education. Overall, these legal instruments mandate the abolition of visa requirements, the right to seek employment, and equal treatment compared to nationals in matters of establishment. See: The Free Movement Protocol (1979) and its Amendments; the Revised ECOWAS Treaty, 1993 (art. 59); supplementary protocols on Residence and Establishment (1986/1990), and ultimately, the ECOWAS Travel Certificate.

Bilateral Agreements: Similar to rights discussed above, favourable treatment on the question of access to education, may be granted to citizens of countries with which Nigeria has bilateral agreements.

c. Undocumented Migrants

Limited Access: Undocumented migrants may face significant challenges accessing public education services. These include in the area of admission requirements where they may find it difficult to provide the necessary documentation for admission. However, the constant fear of deportation might make it difficult to seek out education services due to the risk of deportation. This can have a consequential effect on social and economic challenges that such groups face.

In summary, temporary and permanent resident migrants can access public education services, but may face challenges, while regular migrants with favourable treatment may have some advantages. Undocumented migrants face significant challenges and limited access to public education services.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

In Nigeria, access to social security benefits for non-nationals varies depending on their status. Here's an overview of the framework for each category:

a. Temporary and Permanent Resident Migrants

Migrants with regular, documented status, whether temporary or permanent residents, will generally have access to social security benefits, including government-funded health services. Access to formal schemes such as pension funds, social insurance programs may be limited to permanent residents or those with long-term work arrangements.¹³⁷⁹ For temporary migrants, they may face barriers to accessing social protection due to administrative hurdles or a 'lack of portability', while undocumented migrants will be mostly excluded from these formal social protection systems by virtue of their undocumented status.¹³⁸⁰ This will be further strengthened by the mandatory requirement of a national ID number to access social security.¹³⁸¹ introduction of These may find some form of support with civil society organisations.

¹³⁷⁹ 'Migration Governance Indicators' available at <https://publications.iom.int/system/files/pdf/MGI-Nigeria-2021.pdf>.

¹³⁸⁰ *ibid.*

¹³⁸¹ 'Nigeria makes national ID number mandatory for access to social services' available at <https://idtechwire.com/nigeria-makes-national-id-number-mandatory-for-access-to-social-services/>.

When it comes to pension or retirement contributory schemes, permanent residents will be able to contribute to such and to benefit from such. Same cannot be said of temporary residents who cannot get the benefit of such schemes.

b. Regular Migrants Benefiting from More Favourable Treatment

As already mentioned, ECOWAS migrants, along with migrants from countries that Nigeria has bilateral Agreements with, enjoy favourable treatment. For ECOWAS, the General Convention on Social Security of member States requires member states to guarantee social security rights for migrant workers, including portability of benefits, accumulation of contribution periods, and payment of benefits abroad.¹³⁸² Again, the countries with which Nigeria has preferred treatment bilateral agreements with, are provided favourable treatment for their citizens regarding access to social security benefits.

c. Undocumented Migrants

Undocumented migrants do not have formal access to social security benefits, such as social insurance, retirement benefits, and other possible benefits.

In summary, temporary and permanent resident migrants may have limited access to social security benefits, while regular migrants with favourable treatment may have some advantages. Undocumented migrants do not have formal access to social security benefits.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

In Nigeria, access to national welfare programs is generally restricted to citizens, and while non-nationals' access is limited, it varies based on their status. At the risk of sounding repetitive, here is an overview of the framework for each category:

a. Temporary and Permanent Resident Migrants

The National Social Investment Program¹³⁸³ coordinates government programs of financial aid, case transfers and food aid. This is a program primarily designed for vulnerable Nigerian citizens and delivers its programs through the National Social Register.¹³⁸⁴ These programs mostly have strict eligibility requirements such as proof of residential address and/or business registration within a Local Government Area for Nigerians to access the benefits. This by implication would exclude undocumented migrants, and possibly temporary migrants.

¹³⁸² 2013 Supplementary Act A/SA.5/07/13 relating to the General Convention on Social Security of member States of ECOWAS.

¹³⁸³ See: The National Social Safety Net Coordinating Office at <https://nassp.gov.ng/>

¹³⁸⁴ <https://nassp.gov.ng/nsr/how-the-nigeria-social-register-works>.

Permanent migrants may be eligible for such initiatives based on the permanency of their stay in Nigeria.

b. Regular Migrants Benefiting from More Favourable Treatment

Bilateral Agreements: Based on existing bilateral agreements with other countries, some of which have been indicated above, favourable treatment may be granted to for citizens of those countries, Nigeria would extend access to welfare programs. For example, ECOWAS instruments promote access to essential services and social protections for ‘people on the move’ and regional migrants. These operate to harmonize, strengthen and expand on social safety nets across West Africa, and to improve access to essential services, reduce poverty and support vulnerable populations.¹³⁸⁵

c. Undocumented Migrants

As indicated above, undocumented migrants do not have access to these formal programs. Any assistance they receive will be from non-governmental humanitarian, organisations.

In summary, temporary and permanent resident migrants may have limited access to welfare programs, while regular migrants with favourable treatment may have some advantages. Undocumented migrants are unlikely to have access to welfare programs.

Are there any final observations you would like to make? Please write below.

¹³⁸⁵ See ECOWAS Framework for Social Protection, Operational Plan, 2023; <https://africa24tv.com/the-economic-community-of-west-african-states-ecowas-launches-regional-social-protection-framework-and-operational-plan-in-abuja#>.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

February 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Pakistan

Author: Mahwish Moazzam

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	No	No
1967 Protocol to the Convention relating to the Status of Refugees	No	No
1954 Convention relating to the Status of Stateless Persons	No	No
1961 Convention on the Reduction of Statelessness	No	No
International Covenant on Civil and Political Rights (ICCPR)	17 April 2008	23 June 2010
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	No	No
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	3 November 2004	17 April 2008

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	No	No
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	No	No
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	17 April 2008	23 June 2010
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	No	No
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	19 September 1966	21 September 1966
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		12 Mar 1996 (a)
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	No	No
Convention on the Rights of the Child (CRC)	20 September 1990	12 November 1990
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	26 September 2001	5 July 2011
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	26 September 2001	17 November 2016
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	No	No
Convention on the Rights of Persons with Disabilities (CRPD)	25 September 2008	5 July 2011
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	No	No

ILO Forced Labour Convention (No. 29)	23 December 1957	23 December 1957
2014 Protocol to the ILO Forced Labour Convention (No. 29)		14 March 2025
ILO Migration for Employment Convention (Revised) (No. 97)	No	No
ILO Equal Remuneration Convention (No. 100)	11 October 2001	11 October 2001
ILO Discrimination (Employment and Occupation) Convention (No. 111)	24 January 1961	24 January 1961
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	No	No

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	N/A	N/A
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	N/A	N/A
Convention governing the Specific Aspects of Refugee Problems in Africa	N/A	N/A
African Charter on the Rights and Welfare of the Child	N/A	N/A
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	N/A	N/A
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	N/A	N/A
European Convention on Human Rights (ECHR)	N/A	N/A
Protocols to the European Convention on Human Rights (list which ones):	N/A	N/A

European Social Charter (ESC)	N/A	N/A
European Convention on the Legal Status of Migrant Workers	N/A	N/A
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	N/A	N/A
American Convention on Human Rights (ACHR)	N/A	N/A
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	N/A	N/A
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	N/A	N/A
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	N/A	N/A
Inter-American Convention against Racism, Racial Discrimination, and related Forms of Intolerance	N/A	N/A
Inter-American Convention against All Forms of Discrimination and Intolerance	N/A	N/A
Inter-American Convention Protecting the Human Rights of Older Persons	N/A	N/A

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

South Asian Regional Treaties (SAARC)

Treaty	Signed	Ratified
SAARC Agreement on South Asian Free Trade Area (SAFTA)	6 Jan 2004	Ratified (Entry into force: 1 Jan 2006)
SAARC Social Charter	4 Jan 2004	Ratified

SAARC Convention on Regional Arrangements for Child Welfare in South Asia	5 Jan 2002	Ratified
SAARC Convention on Trafficking in Women and Children	5 Jan 2002	Ratified
SAARC Convention on Suppression of Terrorism	4 Nov 1987	Ratified
Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism	6 Jan 2004	Ratified

For Afghan Nationals

Treaty	Signed	Ratified/ Status
Cooperation Agreement between the Government of Pakistan and UNHCR	1993	In Force
Tripartite Agreement(s) Pakistan-Afghanistan-UNHCR for Voluntary Repatriation	First Signed in 2003 and subsequently extended multiple times	Operational
Afghanistan-Pakistan Transit Trade Agreement (APTTA)	2010 (replaced 1965 ATTA)	In Force

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries, such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Pakistan's immigration framework operates through a legislative hierarchy in which an Act of Parliament establishes the overarching framework and delegates rule-making authority to the Federal Government, which then issues Orders and Rules containing the operational detail. The Foreigners Act 1946 is the parent statute which defines a "foreigner" as "a person who is not a citizen of Pakistan" (Section 2(a)) and grants the Federal Government broad powers to regulate the entry, presence, movement, and departure of all foreign nationals.¹³⁸⁶ The Foreigners Order 1951 is the principal piece of delegated legislation issued under these powers.¹³⁸⁷ The Order contains the detailed operational rules on entry at designated ports, leave to enter, conditions of stay, duration permits, movement restrictions, and departure procedures. Separately, the Registration of Foreigners Act, 1939¹³⁸⁸ and Registration of Foreigners Rules, 1966¹³⁸⁹ govern the obligation to register with police authorities.

A. Entry Authorisation

The specific modes of authorised entry are as follows.

(i) **Pre-Travel Online Authorisation (E-Visa and Visa Prior to Arrival).** Since 1 January 2021, all visa applications must be submitted through the Pakistan Online Visa System.¹³⁹³ The system is open to nationals of over 190 countries across 11 consolidated visa categories,

¹³⁹³ <https://visa.nadra.gov.pk>

including tourist/visit, family visit, business, work, study, religious tourism, official/diplomatic, NGO/INGO, and medical. Under the standard e-visa track, processing time is typically 7–10 working days, subject to security clearance, and the applicant receives a full visa electronically before departure.

A second, expedited track within the same portal operates under the designation "Visa Prior to Arrival" (VPA), formerly known as "Visa in Your Inbox." Under the VPA track, the applicant receives an Electronic Travel Authorization (ETA) within 48–96 hours, which is then presented at immigration on arrival for stamping in the passport. The VPA is available in both tourist and business sub-categories.

Both tracks operate through the same online platform and are administered under the national visa policy framework, though they differ in processing modality and issuance stage. The DGI&P has clarified that the VPA, notwithstanding its earlier designation as "visa on arrival," requires pre-travel online application and should not be confused with a visa issued at port of entry.¹³⁹⁴

(ii) **Visa-Free Entry.** A limited number of nationalities may enter Pakistan without any visa or prior authorisation. This category comprises two principal groups. First, citizens of the six Gulf Cooperation Council (GCC) states (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE) may enter for business or tourism for up to 90 days by presenting a valid passport at any port of entry, with no ETA or online application required.¹³⁹⁵ Second, holders of diplomatic and/or official passports from states with which Pakistan has bilateral visa abolition agreements may enter for periods ranging from one to three months.¹³⁹⁶

Separately, holders of a Pakistan Origin Card (POC) or a passport bearing a "visa exempt" stamp are also exempt from visa requirements.¹³⁹⁷

(iii) **Visa Issued at Port of Entry.** Pakistan also maintains a facility under which a visa may be issued at the port of entry without submission of an individual prior online visa application. This facility is available in limited circumstances. Group tourists from designated "Tourist Friendly Countries" may receive a one-month visa at the port of entry provided they travel through a DTS-approved Pakistani tour operator. Businessmen from countries on the Business Visa List (BVL), may also receive a 30-day single-entry business visa at the port of entry on production of a recommendation letter from a chamber of commerce, trade organisation, or the Board of Investment.¹³⁹⁸

B. Post-Arrival Requirements

¹³⁹⁴ DGI&P, 'Visa Categories,' <https://dgip.gov.pk/visa/categories.php>. Ministry of Foreign Affairs, 'The Pakistani Government Has Launched the Visa Prior to Arrival (VPA) Category,' <https://mofa.gov.pk/press-releases/the-pakistani-government-has-launched-the-visa-prior-to-arrival-vpa-category-2>.

¹³⁹⁵ Ministry of Foreign Affairs, 'Exemption of Visa for GCC Citizens,' <https://mofa.gov.pk/press-releases/gcc-citizens-now-enjoy-visa-free-travel-to-pakistan-for-business-and-tourism>.

¹³⁹⁶ NADRA, 'Visa Abolition List,' <https://visa.nadra.gov.pk/visa-abolition-list>.

¹³⁹⁷ <https://www.nadra.gov.pk/identityDocument/pakistan-origin-card-poc-0165e34c>

¹³⁹⁸ DGI&P, 'Visa Categories,' <https://dgip.gov.pk/visa/categories.php>.

- **Registration:**

Under the Registration of Foreigners Act 1939 and the Registration of Foreigners Rules 1966, certain foreign nationals are required to register with the police after arrival.¹³⁹⁹ This requirement is not universal; it applies only to individuals specifically directed by immigration authorities at the port of entry.¹⁴⁰⁰ The requirement operates as a security-based monitoring mechanism administered by the district police.¹⁴⁰¹ Its function is to track the presence and movement of designated foreign nationals within the country.

C. Stay Extension

A foreign national who wishes to remain in Pakistan beyond the period authorised by the original visa may apply for an extension through the Pakistan Online Visa System (POVS), provided the applicant holds a valid Pakistani visa and is residing in Pakistan at the time of application.¹⁴⁰² A foreign national who remains in Pakistan after the expiry of a visa without obtaining an extension must apply for an exit permit through the POVVS. Exit permits for overstays of up to one year are processed online, while overstays exceeding one year are processed manually by the Ministry of Interior upon payment of penalty.¹⁴⁰³

D. Temporary Visas, Long-Term Residency

All standard visa categories are time-limited. Generally, Pakistan does not formally classify visas as "permanent" or "temporary" however, the Foreigners (Long Term Residency) Order, 2025 has introduced a residency-by-investment scheme for foreign nationals from eligible countries. The scheme offers tiered residency for 5, 7, or 10 years, linked to prescribed fees and a minimum investment commitment.¹⁴⁰⁴

The LTR does not confer permanent status or citizenship.¹⁴⁰⁵ Citizenship has a separate legal track under the Pakistan Citizenship Act 1951 and the Naturalization Act 1926.¹⁴⁰⁶

¹³⁹⁹ Registration of Foreigners Act 1939 <https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/37909/PAK37909%202016.pdf>); Registration of Foreigners Rules 1966 <https://nasirlawsonline.com/laws/fregrule.htm>

¹⁴⁰⁰ DGI&P, Visa Categories — Registration of Foreigners with Police (<https://dgip.gov.pk/visa/categories.php>)

¹⁴⁰¹ <https://islamabadpolice.gov.pk/foreigner.php>

¹⁴⁰² NADRA, Pakistan Online Visa System, <https://visa.nadra.gov.pk>.

¹⁴⁰³ NADRA, 'Exit Permit,' <https://visa.nadra.gov.pk/exit-permit/>.

¹⁴⁰⁴ Foreigners (Long Term Residency) Order, 2025. Board of Investment, 'Pakistan's Long-Term Residency (LTR) — A Gateway for Global Investors,' <https://invest.gov.pk/long-term-residency>; Board of Investment, 'FAQs on Long Term Residency,' <https://invest.gov.pk/long-term-residency/FAQs>.

¹⁴⁰⁵ Board of Investment, FAQs on Long Term Residency: <https://invest.gov.pk/long-term-residency/FAQs>

¹⁴⁰⁶ Pakistan Citizenship Act 1951: <https://www.refworld.org/legal/legislation/natlegbod/1951/en/97165>; DGI&P, Citizenship: <https://dgip.gov.pk/immigration/citizenship.php>

Principal Statutes and Instruments:

- *Foreigners Act, 1946* (parent statute; defines "foreigner" as "a person who is not a citizen of Pakistan," Section 2(a); grants rule-making powers to the Federal Government, Section 3).¹⁴⁰⁷
- *Foreigners Order, 1951* (principal delegated legislation made under Section 3 of the Foreigners Act 1946; contains detailed rules on entry, stay, movement, and departure).¹⁴⁰⁸
- *Registration of Foreigners Act, 1939* (parent statute for the registration regime; requires certain categories of foreigners to register with police authorities).¹⁴⁰⁹
- *Registration of Foreigners Rules, 1966* (delegated legislation under the Registration of Foreigners Act 1939; prescribes registration procedures, Form C, residential permits, and hotel reporting obligations).¹⁴¹⁰
- *Passport Act, 1974* (governs issuance, renewal, and impounding of travel documents).¹⁴¹¹
- Naturalization Act, 1926 (prescribes the procedure for granting certificates of naturalization to aliens; Section 9 of the Pakistan Citizenship Act 1951 cross-references this Act).¹⁴¹²
- Federal Investigation Agency Act, 1974 (establishes the FIA and designates offences under the Foreigners Act 1946 as scheduled offences within FIA jurisdiction, Schedule I, Item 4).¹⁴¹³
- Exit from Pakistan (Control) Ordinance, 1981 (empowers the Federal Government to prohibit any person's departure from Pakistan; legal basis for the Exit Control List).¹⁴¹⁴

Regulatory Authorities:

- **Policy:** Ministry of Interior (MoI)
- **Enforcement:** Federal Investigation Agency (FIA)
- **Passports/Citizenship:** Directorate General of Immigration & Passports (DGI&P)
- **E-visa Operations:** National Database and Registration Authority (NADRA)
- **Foreign Processing:** Ministry of Foreign Affairs (MOFA) and missions abroad.

¹⁴⁰⁷ The Pakistan Code (Ministry of Law & Justice): <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJiW-sg-jjjjjjjjjjjj>.

¹⁴⁰⁸ <https://www.refworld.org/legal/decrees/natlegbod/1951/en/14123>

¹⁴⁰⁹ <https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/37909/PAK37909%202016.pdf>

¹⁴¹⁰ <https://nasirlawson.com/laws/fregrule.htm>

¹⁴¹¹ <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-bpuUY2lp-sg-jjjjjjjjjjjj>

¹⁴¹² The Pakistan Code: <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-ap6b-sg-jjjjjjjjjjjj>; DGIP consolidated text: <https://dgip.gov.pk/downloads/Acts%20And%20Rules.pdf>

¹⁴¹³ The Pakistan Code: <https://pakistancode.gov.pk/pdffiles/administratordf187919a2c974a87c531b9e0acd032.pdf> Code:

¹⁴¹⁴ The Pakistan Code: <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-bZ+Y-sg-jjjjjjjjjjjj>; FIA official text: <https://fia.gov.pk/files/act/20.pdf>

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, a visa/permit for labour, educational, or health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer-sponsored visas, skilled visas, and refugee visas. Temporary visas (TR) include student and employer-sponsored visas, among others. There are also bridging visas in addition to PR and TR.

Pakistan classifies visas by purpose of entry rather than by duration. Unlike systems that formally distinguish between "permanent" and "temporary" visas (such as Australia's PR and TR categories), Pakistan's statutory framework contains no permanent-residence visa. All visas are purpose-specific and time-limited, subject to periodic extension by the Ministry of Interior. The principal visa categories for stays exceeding three months are as follows.

A. Work/ Employment Categories (temporary; renewable)

For employment with Pakistani entities requires a work permit. Work visas are initially granted for up to 3 months (single-entry) by Pakistan Missions abroad and may be extended for up to 2 years (multiple-entry) by the Ministry of Interior upon recommendation of the relevant competent authority (including the Board of Investment, where applicable).¹⁴¹⁵

Government of Pakistan grants up to five-year multiple-entry business visas to nationals of countries on the Business Visa List (BVL). The five-year period is the window within which the holder may make multiple entries, while the permitted duration of each stay is three months.¹⁴¹⁶ Nationals of countries not on the BVL may be granted business visas of up to one year, subject to enhanced documentation requirements and longer processing times.¹⁴¹⁷

B. Family Categories

Missions abroad are authorised to grant family visit visas with five-year validity and one-year stay per entry, with multiple entries, to foreign nationals of Pakistani origin and their foreign spouses.¹⁴¹⁸ Extensions within Pakistan are governed by the applicant's eligibility: the NADRA portal provides that family visit visas of Pakistani-origin foreigners are extendable for up to two years, while for other foreigners extension is granted on a yearly basis or as per relevant rules and policy.¹⁴¹⁹ There is no standalone dependent visa category in the current visa framework. Foreign workers may, however, include accompanying family members within the work visa

¹⁴¹⁵ DGI&P, 'Visa Categories,' <https://dgip.gov.pk/visa/categories.php>.

¹⁴¹⁶ DGI&P, 'Visa Categories,' <https://dgip.gov.pk/visa/categories.php>.

¹⁴¹⁷ NADRA, 'Business Visa,' <https://visa.nadra.gov.pk/business-visa/>.

¹⁴¹⁸ 'Visa Categories,' <https://dgip.gov.pk/visa/categories.php>; NADRA, 'Family Visit Visa,' <https://visa.nadra.gov.pk/family-visit-visa/>.

¹⁴¹⁹ NADRA, 'Family Visit Visa,' <https://visa.nadra.gov.pk/family-visit-visa/>.

and related categories, subject to documentation requirements including sponsorship and invitation letters specifically extended to cover family members.¹⁴²⁰

C. Education

Foreign nationals seeking to pursue higher education in Pakistan may apply for a study visa through the POVS. A study visa is granted for up to two years, subject to clearance by security agencies within a stipulated period of 30 days, and requires a No Objection Certificate (NOC) from the relevant ministry, such as the Higher Education Commission (HEC), the Ministry of Education, or the Health Ministry, as applicable.¹⁴²¹ The DGI&P visa categories page also describes a process under which Pakistani missions abroad may grant a three-month single-entry study entry visa after NOC and security clearance, with subsequent extensions granted within Pakistan on a yearly basis upon production of required documents.¹⁴²²

D. Special Categories

Pakistan's visa framework includes several specialised categories that are subject to distinct procedural and institutional requirements.

- **Missionary Visa**

The missionary visa is available to Christian citizens of all countries who wish to carry out missionary work in Pakistan.¹⁴²³ Applications are processed by the Ministry of Interior, which authorises Pakistani missions abroad to grant a one-year entry visa with one re-entry after obtaining clearance from the provincial government and security agencies.¹⁴²⁴

- **Journalist Visa**

The journalist visa distinguishes between Pakistan-based and non-based media representatives. Pakistani missions abroad are authorised to grant visas to accredited, Pakistan-based journalists for the duration of their assignment, processed in consultation with Press Attachés and Link offices. Non-based journalists who are not on the negative list may be granted three-month validity and stay with multiple entries, but restricted to Karachi, Lahore, and Islamabad. Travel to other cities requires application through the Ministry of Information and Broadcasting, which also processes long-term visa requests, with security agencies required to provide clearance within four weeks.¹⁴²⁵

¹⁴²⁰ NADRA, 'Important Terms,' <https://visa.nadra.gov.pk/important-terms/>; NADRA, 'Other Visa,' <https://visa.nadra.gov.pk/other-visa/>.

¹⁴²¹ NADRA, 'Student Visa,' <https://visa.nadra.gov.pk/student-visa/>; DGI&P, 'Visa Categories,' <https://dgip.gov.pk/visa/categories.php>.

¹⁴²² DGI&P, 'Visa Categories,' <https://dgip.gov.pk/visa/categories.php>.

¹⁴²³ 'Missionary Work Visa,' <https://visa.nadra.gov.pk/missionary-work-visa/>.

¹⁴²⁴ DGI&P, 'Visa Categories,' <https://dgip.gov.pk/visa/categories.php>.

¹⁴²⁵ DGI&P, 'Visa Categories,' <https://dgip.gov.pk/visa/categories.php>.

- **Diplomatic and Official Visa**

The diplomatic and official visa categories are treated as related but distinct. Diplomatic visas for foreign diplomats are approved by MOFA and issued on a gratis basis. On arrival, diplomats are required to be accredited with MOFA's Protocol Division. Official visas are available to government officials of foreign governments holding official passports and are valid for the entire tenure of the official assignment. Officials and persons working for or on behalf of UN agencies and international organisations may also apply under this category with a letter of recommendation from the Economic Affairs Division, MOFA, or the relevant ministry.¹⁴²⁶

E. Identity and Citizenship Instruments Operating Outside the Visa System

Pakistan does not have a standalone permanent residence permit or intermediate long-term residence status between a temporary visa and full citizenship. The instruments discussed below operate outside the visa system and serve distinct functions: the Pakistan Origin Card (POC) provides indefinite lawful stay and associated rights to foreign nationals of Pakistani heritage or marital connection; the National Identity Card for Overseas Pakistanis (NICOP) enables Pakistani citizens holding foreign nationality to exercise citizenship rights and travel visa-free to Pakistan; and the Commonwealth citizenship route under Section 20 of the Pakistan Citizenship Act 1951 provides a pathway to citizenship by registration for qualifying Commonwealth citizens.

- **Pakistan Origin Card (POC)**

An identity card (not a visa) issued by NADRA under the NADRA Ordinance 2000 to foreign nationals of Pakistani origin, or foreign spouses of Pakistani citizens, whose parents or grandparents were Pakistani nationals. The POC grants visa-free entry, indefinite stay with exemption from police registration, rights to purchase and dispose of property, to open and operate bank accounts, and to obtain employment. It functions as Pakistan's closest equivalent to a permanent residence instrument in other systems, although it is technically an identity card, and eligibility is limited to persons of Pakistani heritage or with marital ties to Pakistani citizens. Citizens of India, Israel, and states not recognized by Pakistan are ineligible. The POC is valid for seven years and is renewable.¹⁴²⁷

- **National Identity Card for Overseas Pakistanis (NICOP)**

NICOP is issued to Pakistani citizens who reside abroad and hold nationality of a country with which Pakistan has a dual nationality arrangement. Unlike the POC, the NICOP does not create rights for non-nationals but rather enables Pakistani citizens holding foreign passports to travel to Pakistan visa-free on those foreign passports and to exercise citizenship rights, including property transactions, bank account access, eligibility for Pakistani passports, and voting rights

¹⁴²⁶ NADRA, 'Official Visa,' <https://visa.nadra.gov.pk/official-visa/>; MOFA Brasilia, 'Visa for Pakistan,' <https://mofa.gov.pk/brasil-visa-for-pakistan>.

¹⁴²⁷ <https://www.nadra.gov.pk/identityDocument/pakistan-origin-card-poc-0165e34c>

while in Pakistan. The NICOP is processed through NADRA's online Pak Identity system and is not handled by Pakistani missions abroad.¹⁴²⁸

- **Commonwealth Citizenship Route**

Under Section 20 of the Pakistan Citizenship Act 1951, read with the Pakistan Citizenship Rules 1952 (SRO 369(K), 1960), Commonwealth citizens may apply for Pakistani citizenship by registration. The conditions for such applications are prescribed by S.R.O. 369(K) of 1960, issued under the Pakistan Citizenship Rules 1952. The current administrative requirement, as listed by the DGI&P, is transfer of foreign exchange equivalent to Rs. 5 million through State Bank channels. Under the Rules, the applicant must first obtain an immigrant visa from the relevant Pakistani mission abroad, following consultation with the Federal Government. The grant of the immigrant visa does not itself confer citizenship but provides the means of lawful residence so that the citizenship application can be duly considered through the ordinary process of law. Notably, this pathway leads directly to citizenship by registration rather than to an intermediate permanent-residence status, as Pakistan's legal framework contains no such intermediate category. The grant of citizenship under Section 20 remains discretionary and subject to the completion of codal formalities prescribed by the DGI&P.¹⁴²⁹

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Pakistan lacks a domestic refugee statute and has not acceded to the 1951 Refugee Convention, the 1967 Protocol, the 1954 Convention Relating to the Status of Stateless Persons, or the 1961 Convention Relating to the Status of Statelessness. In the absence of a national legal framework, all non-citizens, including those seeking refuge, fall under the Foreigners Act 1946, which treats unauthorized entry and overstay as criminal offences. The practical management of refugee protection has therefore developed through institutional arrangements with UNHCR and ad hoc executive policy rather than through legislation.¹⁴³⁰

A. UNHCR Mandate and the 1993 Cooperation Agreement

UNHCR conducts refugee status determination (RSD) in Pakistan under its own Statute (General Assembly Resolution 428(V), 1950) and on behalf of the Government of Pakistan pursuant to the 1993 Cooperation Agreement between the Government of Pakistan and UNHCR.¹⁴³¹ Pakistan generally accepts UNHCR decisions on refugee status and permits both asylum-seekers undergoing the procedure and recognized refugees to remain in the country pending the identification of a durable solution. However, this arrangement operates entirely at

¹⁴²⁸ <https://www.nadra.gov.pk/identityDocument/national-identity-card-for-overseas-pakistanis-nicop-5afd06aa>

¹⁴²⁹ Pakistan Citizenship Act 1951, s. 20; Pakistan Citizenship Rules 1952, S.R.O. 369(K) (9 April 1960), <https://www.refworld.org/legal/legislation/natlegbod/1951/en/49552>; DGI&P, 'Grant of Pakistan Citizenship,' <https://dgip.gov.pk/immigration/citizenship.php>.

¹⁴³⁰ <https://www.unhcr.org/pk/what-we-do/protection/asylum-system-pakistan>

¹⁴³¹ <https://www.unhcr.org/pk/what-we-do/protection/asylum-system-pakistan>

the executive level. UNHCR-recognized refugees have no statutory right of stay and remain technically subject to the Foreigners Act 1946.

B. Afghan Refugees

Pakistan hosts one of the world's largest and most protracted refugee populations. The influx began in 1979 following the Soviet invasion of Afghanistan, and Pakistan initially adopted an open-door policy, granting prima facie refugee status underpinned by Cold War geopolitics and Islamic solidarity.¹⁴³² Over four decades, successive waves of displacement, including after the Taliban takeover in August 2021, have resulted in approximately three million Afghans living in Pakistan, many of whom are second- and third-generation residents who have never lived in Afghanistan.¹⁴³³ UNHCR documented 117,547 new arrivals from Afghanistan between January 2021 and February 2022 alone, though the actual number is likely substantially higher due to undocumented crossings along the porous border.¹⁴³⁴

The legal status of Afghan refugees in Pakistan has been managed through two principal documentation instruments, neither of which is grounded in domestic refugee legislation. First, following a nationwide census of Afghans in 2006 to 2007, the Government of Pakistan, in cooperation with UNHCR, issued Proof of Registration (PoR) cards to registered Afghan refugees. These cards provided temporary legal stay, freedom of movement, and exemption from the Foreigners Act 1946, and facilitated access to education, healthcare, and banking services.¹⁴³⁵ As of June 2025, approximately 1.3 million Afghans held PoR cards, with the majority residing in Khyber Pakhtunkhwa (717,945), followed by Balochistan (326,584), Punjab (195,188), Sindh (75,510), and Islamabad (43,154).¹⁴³⁶ Second, in 2017 and 2018, the Government documented previously unregistered Afghan nationals through the Afghan Citizen Cards (ACC) documentation exercise, which provided temporary permission to remain but did not confer refugee status. The ACC exercise was fully funded by the Government of Pakistan and covered approximately 840,000 individuals.¹⁴³⁷

The overarching framework for Afghan refugee management has been the Tripartite Agreement between Pakistan, Afghanistan, and UNHCR, first signed in 2003 and periodically renewed. This agreement provides the legal and operational framework for voluntary repatriation, committing the parties to ensuring that returns occur in conditions of safety and dignity.¹⁴³⁸ Under this framework, more than four million Afghans returned to Afghanistan from Pakistan

¹⁴³² <https://southasiatimes.org/afghan-refugees-in-pakistan/>

¹⁴³³ <https://www.aljazeera.com/news/2024/7/10/pakistan-says-registered-afghan-refugees-can-stay-for-one-more-year>

¹⁴³⁴ <https://www.euaa.europa.eu/news-events/euaa-publishes-report-afghan-refugees-pakistan>

¹⁴³⁵

https://help.unhcr.org/pakistan/?_gl=1%2Atr09kp%2A_gcl_au%2AMjE2MTk4NTY2LjE3NzExMjIxNTQ.%2A_rup_ga%2AMzE2OTkyNTQyLjE3NzExMjIxNTQ.%2A_rup_ga_EVDQTJ4LMY%2AczE3NzEyMTQ3MzYkbzQkZzEkdDE3NzEyMTUzODgkajYwJGwwJGgw%2A_ga%2AMzE2OTkyNTQyLjE3NzExMjIxNTQ.%2A_ga_VKDRJK044X%2AczE3NzEyMTQ3MzYkbzQkZzEkdDE3NzEyMTUzODgkajYwJGwwJGgw

¹⁴³⁶ <https://www.dawn.com/news/1928436>

¹⁴³⁷ <https://globalcompactrefugees.org/good-practices/how-pakistan-helps-afghans-get-back-their-feet>

¹⁴³⁸ <https://www.unhcr.org/news/briefing-notes/afghanistan-tripartite-agreement-pakistan;>
<https://rimap.unhcr.org/node/62641>

between 2002 and 2023.¹⁴³⁹ However, Pakistan's policy has shifted decisively toward repatriation in recent years. In September 2023, the Ministry of Interior issued the Illegal Foreigners' Repatriation Plan (IFRP), a three-phased initiative publicly announced in October 2023 to remove Afghan nationals without valid documentation. By mid-July 2025, IOM's biweekly flow monitoring reported that over 1.14 million Afghans had returned to Afghanistan from Pakistan since September 2023.¹⁴⁴⁰ In 2025, authorities also undertook the de-notification and closure of several refugee villages across the country, though no confirmed date for a nationwide closure was announced.¹⁴⁴¹

C. Non-Afghan Refugees

For non-Afghan asylum-seekers, UNHCR conducts individual Refugee Status Determination (RSD) under its mandate. Recognized refugees and those with pending applications are generally permitted to remain in Pakistan, though their status depends on continued UNHCR recognition and the Ministry of Interior's acquiescence, rather than on any statutory entitlement.¹⁴⁴²

D. Key Cases

Rahil Azizi v. The State, PLD 2024 Islamabad 231 (Islamabad High Court, 19 June 2023).¹⁴⁴³ This judgment constitutes one of the most significant judicial engagements with international refugee law in Pakistan's jurisprudence. The petitioner, an Afghan Hazara woman who had served as a Lance Corporal in the Afghan National Police, fled to Pakistan after the Taliban takeover in 2021 and was charged under Section 14(2) of the Foreigners Act 1946 for unauthorized entry. The Court held that seeking refuge to save one's life is not an "illegal purpose" under the Act, ruling that Section 14(2) must be read together with Articles 4, 9, 10-A, and 14 of the Constitution, the ICCPR, the Convention Against Torture, and Article 31 of the 1951 Refugee Convention, which the Court relied upon as persuasive interpretive guidance despite Pakistan's non-ratification. The Court directed the government to frame SOPs that enable refugees to voluntarily report upon arrival, ensure that individuals seeking refuge are not treated as ordinary undertrial prisoners solely for unauthorized entry.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Pakistan does not have a dedicated family reunification visa or a unified statutory framework governing family-based migration. Instead, family reunification operates through a combination of visa categories within the Pakistan Online Visa System (POVS), citizenship

¹⁴³⁹ <https://www.unhcr.org/news/stories/agreement-afghan-repatriation-pakistan-extended-three-years>

¹⁴⁴⁰ <https://www.dawn.com/news/1928436>

¹⁴⁴¹ <https://www.aljazeera.com/features/2025/10/22/pakistan-speeds-up-expulsion-of-afghan-refugees-amid-tensions-with-taliban>

¹⁴⁴² <https://www.unhcr.org/pk/what-we-do/protection/asylum-system-pakistan>

¹⁴⁴³ <https://www.refworld.org/jurisprudence/caselaw/pakhc/2023/en/150040>

provisions under the Pakistan Citizenship Act 1951, and, for refugees, third-country programmes facilitated by destination states. The applicable rules differ significantly depending on whether the sponsor is a Pakistani citizen, a foreign temporary migrant, or a refugee.

A. Reunification with Pakistani Citizens

Foreign nationals of Pakistani origin and their foreign spouses may obtain a Family Visit Visa through POVS, valid for up to five years with a maximum stay of one year per entry, subject to applicable policy guidelines.¹⁴⁴⁴ Pakistani citizens may also sponsor lineal relatives under the same category. There is no standalone "Dependent Visa" category within POVS; family members are accommodated within the parent visa category (work, study, or other) on the basis of invitation letters and sponsorship documentation.

Pakistan's immigration framework does not recognise unmarried partnerships, *de facto* relationships, or same-sex unions for purposes of family reunification or dependent status. Family-based immigration benefits are available exclusively to legally married spouses (as evidenced by a registered marriage certificate or *nikah nama*) and to lineal relatives. There is no civil partnership, domestic partnership, or equivalent legal framework.

below 21 years of age who have at least one Pakistani parent may be registered as citizens of Pakistan by the Federal Government upon application by a parent or guardian under Section 11 of the Pakistan Citizenship Act 1951, read with Rule 17 of the Pakistan Citizenship Rules 1952 (prescribed application Form M).¹⁴⁴⁵ For visa purposes, the Pakistan Online Visa System (POVS) defines "dependent children" as a child or stepchild who has not turned 18 years of age, or, if aged 18 or over, is a dependent, and who does not have a partner or is not engaged to be married.¹⁴⁴⁶ Pakistan does not recognise adoption in the Western legal sense. The Guardians and Wards Act 1890 provides for court-appointed guardianship under which a court may appoint a guardian for a minor, but the guardian does not acquire legal parental status, and the child retains their biological lineage and family name.¹⁴⁴⁷ A child placed under such guardianship does not automatically qualify as a "dependent child" for immigration or citizenship purposes.

B. Citizenship-Based Spousal Migration

Foreign women married to Pakistani citizens may apply for citizenship by registration under Section 10(2) of the Pakistan Citizenship Act 1951. This provision permits a married woman to apply for registration as a citizen of Pakistan, subject to the procedural and documentary requirements prescribed under the Pakistan Citizenship Rules 1952. However, foreign men

¹⁴⁴⁴ NADRA, 'Family Visit Visa', Pakistan Online Visa System, <https://visa.nadra.gov.pk>; DGI&P, 'Visa Categories', <https://dgip.gov.pk>.

¹⁴⁴⁵ Pakistan Citizenship Act 1951, s 11; Pakistan Citizenship Rules 1952, r 17, Form M; DGI&P, 'Grant of Pakistan Citizenship — Minor Children (below 21 years of Age) of Pakistan Citizen', <https://dgip.gov.pk/immigration/citizenship.php>.

¹⁴⁴⁶ NADRA 'Important Terms', Pakistan Online Visa System, <https://visa.nadra.gov.pk/important-terms/>.

¹⁴⁴⁷ Guardians and Wards Act 1890, ss 4, 7, 17. <https://nasirlawsite.com/laws/guardian.htm>

married to Pakistani women are not eligible for citizenship by registration. However, they may apply for naturalization only under Section 9 of the Pakistan Citizenship Act 1951, read with the Naturalization Act 1926. Naturalization requires, inter alia, a prescribed period of residence in Pakistan, proof of good character, intention to reside permanently, and adequate knowledge of a Pakistani vernacular language.

This gender asymmetry reflects the unamended text of the 1951 Act. However, the Lahore High Court, the Peshawar High Court, and most recently the Sindh High Court have declared Section 10(2) to be discriminatory. In *Syed Ataullah Shah Bokhari v Federation of Pakistan* (Sindh High Court, 5 March 2024), the Court held that "restricting the benefit of Section 10(2) to Pakistani men only is a clear discrimination to Pakistani women" and that the provision infringes constitutional guarantees under Article 25. The Federal Shariat Court has also declared the provision violative of Islamic injunctions relating to gender equality and directed the legislature to amend the law.¹⁴⁴⁸ While these decisions have prompted administrative reconsideration in some cases, the statutory language of Section 10 has not yet been comprehensively amended, and the legal framework remains formally gender-asymmetric.

C. Refugees and Asylum Seekers

There is no domestic mechanism for family reunification of refugees or asylum seekers within Pakistan. UNHCR is not currently facilitating family reunification applications in Pakistan.¹³ Family reunification is handled exclusively by destination countries through their own programmes. UNHCR Pakistan provides counselling and referral information on complementary pathways, including family reunification procedures in third countries, with the support of organisations such as the International Refugee Assistance Project (IRAP).¹⁴⁴⁹ Refugees seeking to reunite with family members abroad must apply directly through the relevant third-country immigration authorities.

5. What are the conditions for naturalization in the reviewed state?

Naturalization in Pakistan is not governed by a single consolidated statute but by an interlocking framework comprising the Naturalization Act 1926 (NA 1926), the Pakistan Citizenship Act 1951 (PCA 1951), the Pakistan Citizenship Rules 1952 (PCR 1952), and the Pakistan Citizenship (Amendment) Ordinance 1978.¹⁴⁵⁰

¹⁴⁴⁸ *Syed Ataullah Shah Bokhari v Federation of Pakistan* (Sindh High Court, 5 March 2024), reported in Dawn, 'Denying citizenship to foreign spouses of Pakistani women "discrimination"' (6 March 2024), <https://www.dawn.com/news/1819452>. See also HRCP, *Who Belongs: The Foreigners Act 1946 and Pakistan Citizenship Act 1951* (2024), <https://hrcp-web.org/hrcpweb/wp-content/uploads/2020/09/2024-Who-belongs.pdf> (noting that the Lahore High Court, Peshawar High Court, and Federal Shariat Court have reached similar conclusions on Section 10(2)). For the Lahore High Court ruling and the Ministry of Interior's subsequent appeal to the Supreme Court, see IRB Canada, Document No. 2024251 (2019), <https://www.ecoi.net/en/document/2024251.html>.

¹⁴⁴⁹ UNHCR, Pakistan, 'Third Country Solutions', <https://help.unhcr.org/pakistan/third-country-solutions/>.

¹⁴⁵⁰ DGI&P, 'Learn about Immigration to Pakistan', <https://dgi.gov.pk/immigration/> (listing the governing instruments as PCA 1951, NA 1926, Naturalization Rules 1961, and PCR 1952).

A. General Naturalization

Section 3 of the NA 1926, read with Section 9 of the PCA 1951, the Federal Government may grant a certificate of naturalization to any person who satisfies the following conditions: the applicant must not be a minor (defined as under 21 years of age); must be of good character; must have resided in Pakistan throughout the 12 months immediately preceding the application, and during the 7 years before that period must have resided in Pakistan for at least 4 years in aggregate; must have adequate knowledge of a vernacular language of Pakistan as notified in the official gazette; must not be a citizen of a country whose nationals are barred from naturalization in Pakistan; and must intend, if granted citizenship, to reside permanently in Pakistan or to enter or continue in the service of the Government.¹⁴⁵¹

B. Citizenship by Registration (Spousal Route)

Foreign women married to Pakistani citizens may apply for citizenship by registration under Section 10(2) of the PCA 1951, using the prescribed Form F under Rule 11 of the PCR 1952. The DGI&P requires documentary evidence of an aggregate stay in Pakistan of 5 years. Foreign men married to Pakistani women are not eligible for registration under this provision and must apply through the general naturalization process under Section 9.¹⁴⁵²

C. Commonwealth Citizen Route

Section 20 of the PCA 1951 empowers the Federal Government to register Commonwealth citizens as citizens of Pakistan, subject to conditions prescribed by S.R.O. 369(K) of 1960. The DGI&P currently requires transfer of foreign exchange equivalent to Rs. 5,000,000 through State Bank channels. Upon confirmation of the transfer, an immigrant visa is issued, and a citizenship certificate is granted after arrival in Pakistan, subject to security clearance and completion of codal formalities.¹⁴⁵³

D. Dual Nationality

Section 14 of the PCA 1951 generally prohibits dual nationality. However, under the Pakistan Citizenship (Amendment) Ordinance 1972, dual nationality is permitted with countries specified by the Federal Government through official gazette notification. Pakistan currently maintains dual nationality arrangements with approximately 21 countries, including the United Kingdom, United States, Canada, and Australia.¹⁴⁵⁴

¹⁴⁵¹ Naturalization Act, 1926 <https://www.refworld.org/legal/legislation/natlegbod/1926/en/17214>.

¹⁴⁵² <https://dgip.gov.pk/immigration/citizenship.php>

¹⁴⁵³ DGI&P, 'Grant of Pakistan Citizenship — Commonwealth Citizens', <https://dgip.gov.pk/immigration/citizenship.php>.

¹⁴⁵⁴ DGI&P, 'Grant of Pakistan Citizenship', <https://dgip.gov.pk/immigration/citizenship.php>.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants.*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g., EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. Undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Pakistan lacks a comprehensive, stand-alone domestic anti-discrimination statute applicable to all persons, including citizens and non-nationals. There is no general equality act comparable to statutory equality frameworks found in some other jurisdictions.¹⁴⁵⁵

The primary non-discrimination protections are constitutional. Article 25(1) of the Constitution guarantees equality before the law and equal protection of the law to citizens. Article 25(2) prohibits discrimination on the basis of sex, and Articles 26 and 27 address discrimination in access to public places and public employment. However, these provisions are limited in scope and do not establish a comprehensive equality regime that covers all protected grounds across the public and private spheres.¹⁴⁵⁶

¹⁴⁵⁵ There is no Pakistani equivalent of the UK Equality Act 2010 or comparable comprehensive equality statutes in other common law jurisdictions.

¹⁴⁵⁶ Constitution of Pakistan 1973, arts 25, 26, 27 : <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Fvbpw=-sg-iiiiiijiiiii>

Beyond the Constitution, anti-discrimination protections are fragmented and sector-specific. The Protection against Harassment of Women at the Workplace Act 2010 addresses workplace harassment and gender-based discrimination. Its definition of "employee" in Section 2(f) refers to "a regular or contractual employee, whether employed on a daily, weekly, or monthly or hourly basis, and includes an intern or an apprentice." This language is nationality-neutral, and because the Act extends to "the whole of Pakistan" under Section 1(2), it covers non-nationals employed in Pakistan.¹⁴⁵⁷ The Transgender Persons (Protection of Rights) Act 2018 prohibits discrimination on the basis of gender identity in specified contexts.¹⁴⁵⁸ Certain labour statutes contain limited provisions on equality. None of these laws constitutes a general anti-discrimination framework.

With respect to non-nationals, there is no specific statutory regime prohibiting discrimination on the basis of nationality or immigration status. While Articles 4 and 14 of the Constitution extend due process and dignity protections to "every person," the core equality clause in Article 25 is expressly framed in terms of "citizens." As a result, non-nationals do not benefit from an explicit constitutional equality guarantee equivalent to that provided to citizens.¹⁴⁵⁹

International treaties do not have direct effect in Pakistan's domestic law unless those are incorporated through separate implementing legislation. The Supreme Court confirmed this position in *Societe Generale de Surveillance SA v Pakistan* (2002), holding that a treaty, unless incorporated into domestic law by statute, cannot be enforced by courts at the behest of an individual.¹⁴⁶⁰ Pakistan has ratified the ICCPR (2010), ICESCR (2008), CEDAW (1996), and several ILO conventions, including the 2014 Protocol to the Forced Labour Convention, which it ratified on 14 March 2025, but has not enacted comprehensive domestic legislation to transform these treaty obligations into enforceable anti-discrimination law. Courts have nevertheless drawn on international instruments as interpretive aids when construing constitutional guarantees. In *Al-Jehad Trust v Federation of Pakistan*, the Supreme Court observed that fundamental rights under the Constitution reflect the Universal Declaration of Human Rights and may be interpreted in light of international norms where no inconsistency arises.¹⁴⁶¹ More recently, in *Rahil Azizi v The State* (2024), the Islamabad High Court read constitutional guarantees together with the principle of non-refoulement, and customary

¹⁴⁵⁷ Protection against Harassment of Women at the Workplace Act 2010 (Act IV of 2010), as amended by Act V of 2022, ss 1(2), 2(f): <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Fsap0=-sg-iiiiiiiiiiiiii>

¹⁴⁵⁸ Transgender Persons (Protection of Rights) Act 2018 (Act XIII of 2018): <https://mohr.gov.pk/Detail/NDQxYTQyM2MtZmUyNS00N2M3LWJjYTEtNTNhMGM4NjcxMzk0>; Full text also at: <https://nasirlawsite.com/laws/tppra.htm>

¹⁴⁵⁹ Constitution of Pakistan 1973, arts 4 and 14. The phrase "every person" contrasts with "every citizen" used in arts 25–27, confirming its broader application to non-nationals but limiting that application to due process and dignity rather than equality.

¹⁴⁶⁰ *Societe Generale de Surveillance SA v Pakistan* (2002) SCMR 1694, para 26. See also Ahmer Bilal Soofi, 'Pakistan' in Simon Chesterman, Hisashi Owada, and Ben Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (OUP 2019) ch 24; Ratification of International Treaties Act 2013.

¹⁴⁶¹ *Al-Jehad Trust v Federation of Pakistan* PLD 1996 SC 324. See RSIL, *International Law Benchbook for Pakistan* (2019) (<https://rsilpak.org/wp-content/uploads/2019/01/International-Law-Benchbook-for-the-Judiciary-in-Pakistan.pdf>).

international law to protect refugees from deportation.¹⁴⁶² These judicial developments represent an evolving interpretive practice, but they do not substitute for the absence of domestic implementing legislation.

Accordingly, Pakistan lacks a specific domestic legal framework on non-discrimination applicable to all persons, and does not expressly cover non-nationals as a protected category.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

The Constitution of the Islamic Republic of Pakistan (1973)¹⁴⁶³ confines political participation strictly to citizens.

- Article 51(1) and Article 106(1) provide that only citizens may be elected or appointed as members of the National and Provincial Assemblies.
- Article 17(2) guarantees the right “to form or be a member of a political party” exclusively to citizens.
- The *Elections Act 2017* (Act XXXIII of 2017)¹⁴⁶⁴, which consolidated and replaced the earlier Representation of the People Act 1976, limits voter registration, candidacy, and membership of political parties to Pakistani citizens.

Consequently, non-nationals, refugees, and stateless persons have no political rights in Pakistan, including the rights to vote, contest elections, or form or join political parties. Political participation is therefore constitutionally and statutorily citizenship-based.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders are required to stay in a specific Australian state (e.g., SA or Victoria) for 2 years, thereby restricting their mobility.

While political participation is reserved for citizens, the Constitution extends most fundamental rights to “every person,” thereby covering non-nationals within Pakistan’s jurisdiction.

¹⁴⁶² *Rahil Azizi v The State* PLD 2024 Islamabad 231. See also Arjumand Bano Kazmi, 'Pakistan's Judicial Engagement with International Refugee Law' (2025) 36(4) *International Journal of Refugee Law* 397 <https://academic.oup.com/ijrl/article/36/4/397/7994654>.

¹⁴⁶³ Constitution of Pakistan 1973, Arts 17(2), 51(1), 106(1) (<https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Fvbpw=-sg-ijiiiiiiiiiii>)

¹⁴⁶⁴ Elections Act 2017 (Act XXXIII of 2017) (<https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Npa5pkag=-sg-ijiiiiiiiiiii>)

- Article 4(1): guarantees that every person shall be dealt with in accordance with the law and entitled to its protection.
- Articles 9, 10, 10-A, 14, 23, and 24 protect the right to life, liberty, fair trial, dignity, and property of *every person*.
- Article 199(1)(c) empowers the High Courts to issue appropriate orders for the enforcement of fundamental rights on the application of any person, thus permitting foreigners to seek constitutional remedies.

Judicial interpretation has repeatedly confirmed this inclusive approach. In *Rahil Azizi v. Federation of Pakistan* (2023)¹⁴⁶⁵, the Islamabad High Court affirmed that constitutional guarantees of life and dignity extend to asylum-seekers and refugees, and that Pakistan's obligations under international law reinforce these protections.

However, several rights remain expressly citizen-specific:

- Article 15 (freedom of movement) and Article 17 (freedom of association) of Constitution of Pakistan, 1973 apply only to citizens.
- Under the Foreigners Act 1946 and the Foreigners Order 1951, the Federal Government may regulate the entry, residence, and internal movement of foreign nationals and may require registration or *no-objection certificates* for access to restricted areas.
- In recent years, administrative directives have limited inter-provincial movement of Afghan refugees and required holders of *Proof of Registration (PoR)* or *Afghan Citizen Cards (ACC)* to obtain prior clearance for travel between provinces.

Accordingly, due process, dignity, and the right to judicial remedy apply to all persons, but political participation and unrestricted movement remain constitutionally reserved for citizens.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Under Articles 23 of the Constitution, the right to acquire, hold, and dispose of property is expressly guaranteed only to citizens. Article 24, however, protects all "persons" including non-nationals against arbitrary deprivation of property already lawfully held.¹⁴⁶⁶ Non-nationals, therefore, have no constitutional entitlement to own acquire immovable property in Pakistan but cannot be arbitrarily deprived of property they lawfully hold.

Nevertheless, limited statutory mechanisms allow foreign ownership or leasehold on a conditional basis:

- The principal restriction on foreign acquisition of immovable property derives from Section 3(1) of the Foreigners Act 1946, which empowers the Federal Government

¹⁴⁶⁵ <https://www.refworld.org/jurisprudence/caselaw/pakhc/2023/en/150040>

¹⁴⁶⁶ Constitution of Pakistan, 1973, Full text at https://na.gov.pk/uploads/documents/1333523681_951.pdf.

to prohibit, regulate, or restrict the activities of foreigners.¹⁴⁶⁷ Under this authority, the Federal Government issued an Order in 1980 requiring all foreign nationals to obtain prior approval from the Ministry of Interior before acquiring any immovable property in Pakistan.¹⁴⁶⁸ Sub-registrars will not register any deed and revenue officers will not process mutation entries in a foreigner's name without Ministry of Interior clearance.¹⁴⁶⁹ Some provinces, notably Sindh and Balochistan, restrict foreign ownership of real estate entirely, and the Islamabad Capital Territory generally prohibits foreign ownership except for diplomatic missions or Board of Investment-approved companies.

- Corporate or investment-based ownership is governed by the Board of Investment framework and the Foreign Exchange Regulation Act 1947, as enforced by the State Bank of Pakistan, which regulates govern registration, capital repatriation, and reporting of foreign investment in immovable assets.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Foreign nationals may work in Pakistan only after obtaining a Work Visa, which must be sponsored by a locally registered employer and approved by the Board of Investment (BOI). Each application undergoes security clearance by the Ministry of Interior and other relevant agencies before issuance. There is no constitutional or statutory right to employment for non-nationals; their right to work derives solely from administrative authorization under the Investment Policy 2013 (as updated by the Pakistan Investment Policy 2023) and the Visa Policy 2021.¹⁴⁷⁰ The visa specifies the sector, employer, and duration of employment, and renewal requires continued sponsorship and security clearance.

¹⁴⁶⁷ Foreigners Act 1946 (Act XXXI of 1946), s 3(1)–(2). Full text at <https://fia.gov.pk/files/act/4.pdf>.

¹⁴⁶⁸ Order issued under s 3, Foreigners Act 1946, vide Notification/SRO of 1980 (Ministry of Interior). The full text is not readily accessible in public online databases. Its existence and requirements are confirmed by secondary legal commentary and administrative practice. See Kalanauri Law, 'Can Foreigners Own and Purchase Property in Pakistan?', <https://kalanauri.com/can-foreigners-own-and-allowed-to-purchase-property-in-pakistan/>.

¹⁴⁶⁹ Registration Act 1908, s 17. Provincial Land Revenue Acts (Punjab, Sindh, KP, Balochistan) requiring mutation entries.

¹⁴⁷⁰ The Visa Policy 2021 is not a single consolidated statutory instrument or published regulation. It is an internal administrative policy framework of the Ministry of Interior <https://dgip.gov.pk/visa/>; It is operationalised through a series of executive directives, inter-agency circulars, and standard operating procedures governing the issuance, extension, and conditions of visas for foreign nationals. Its provisions are implemented principally through two channels: (i) the Board of Investment's work visa portal (<https://invest.gov.pk/work-visa>), which specifies the role of the BOI Visa Committee under the Chairmanship of the Secretary BOI, documentation and employer sponsorship requirements, and the security clearance process coordinated with the Ministry of Interior; and (ii) the Pakistan Online Visa System administered by the National Database and Registration Authority (NADRA) (<https://visa.nadra.gov.pk/>), through which all visa applications have been processed since 1 January 2021. See also Board of Investment Ordinance 2001 (Ordinance No. XV of 2001) <https://invest.gov.pk/sites/default/files/2020-09/BOI%20Ordinance.pdf>, as amended by the Board of Investment (Amendment) Act 2023 <https://invest.gov.pk/about-us/boi-act>.

For refugees and asylum seekers, access to formal employment remains legally restricted, as Pakistan has no domestic refugee law granting the right to work. In practice, their employment is limited to informal or humanitarian sectors under the supervision of the United Nations High Commissioner for Refugees (UNHCR) and its implementing partners.¹⁴⁷¹

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of a company's employees to be non-nationals. In contrast, others require companies to prove they tried to hire national workers before hiring a non-national (e.g., labour market testing in Australia).

Pakistan does not impose any fixed national quota, for example, a percentage cap on the number of foreign employees a company may hire. Instead, each application for a foreign worker is reviewed individually by the Board of Investment (BOI) and the Ministry of Interior. Under Pakistan's Investment Policy 2013 (as updated by the Pakistan Investment Policy 2023) and the Visa Policy 2021, employers must demonstrate a legitimate need for foreign expertise by showing that the required skills are not readily available in the domestic labour market. Work visas are issued only after security clearance and BOI endorsement.

There is no statutory labour-market quota, but the visa system functions as a case-by-case assessment mechanism ensuring that foreign appointments are justified on technical or managerial grounds. The policy framework aims to attract foreign investment while, where possible, maintaining a preference for local employment.

By contrast, employment in public service and state offices is constitutionally reserved for citizens. Articles 240–242 of the Constitution of Pakistan (1973) establish that appointments to the civil service, including positions in government schools, government hospitals, and other state departments, are made under federal or provincial rules. Also the Rule 13(1) of the Civil Servants (Appointment, Promotion and Transfer) Rules 1973 explicitly requires that “a candidate for appointment shall be a citizen of Pakistan.”¹⁴⁷² Similar nationality requirements apply to the judiciary, the armed forces, and all public offices that require an oath of allegiance under Schedule III of the Constitution.¹⁴⁷³

Autonomous public-sector institutions, such as public universities, statutory corporations, and autonomous hospital boards, are not governed by the Civil Servants Rules but by their own constitutive statutes and service regulations. In *Muhammad Ibrahim Shaikh v Federation of Pakistan* (PLD 2019 SC 133), the Supreme Court held that the statute, rules, or constitutive

¹⁴⁷¹ Center for Global Development, 'With US Withdrawal, Rights of Afghan Refugees in Pakistan Hang in the Balance' (2021) (<https://www.cgdev.org/blog/us-withdrawal-rights-afghan-refugees-pakistan-hang-balance>) (PoR card holders cannot access formal employment; labour market access is limited). See also ICMC, 'Access of Migrants to Labor in Pakistan' (<https://icmc.net/future-of-work/report/12-pakistan/>) (Afghan refugees work predominantly in the informal economy due to undocumented status and absence of dedicated refugee law).

¹⁴⁷² Constitution of Pakistan 1973, arts 240–242 (<https://pakistancode.gov.pk/english/UY2FqaJwI-apaUY2Fqa-apaUY2Fvbpw=-sg-jijiiijiiiiiii>). Civil Servants (Appointment, Promotion and Transfer) Rules 1973, r 13(1). Government school teachers and government hospital doctors are appointed as civil servants under federal or provincial service rules and are therefore subject to the citizenship requirement.

¹⁴⁷³ Constitution of Pakistan 1973, Third Schedule (oaths of office). Pakistan Army Act 1952 (Act XXXIX of 1952), s 12 (enrolment requirements).

document applicable to each autonomous or semi-autonomous body must be examined individually to determine whether a citizenship qualification applies. In practice, most such bodies impose a comparable requirement.¹⁴⁷⁴

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Foreign nationals cannot be appointed to Pakistan's permanent civil service or to public offices that require an oath of allegiance. Rule 13 of the Civil Servants (Appointment, Promotion and Transfer) Rules 1973 provides that "a candidate for appointment shall be a citizen of Pakistan," with only narrow, case-by-case relaxation by the Establishment Division—usually for temporary postings or technical advisory roles.¹⁴⁷⁵ Provincial civil service rules contain parallel provisions: Punjab Civil Servants (Appointment and Conditions of Service) Rules 1974, Rule 19, similarly requires citizenship, with relaxation available only by Government order; and the KP Civil Servants (Appointment, Promotion and Transfer) Rules 1989 contain an equivalent eligibility clause.¹⁴⁷⁶ More broadly, the Constitution reserves the offices of President (Article 41), Prime Minister (Article 91), members of the National Assembly and Senate (Articles 62–63), and judges of the superior courts to citizens of Pakistan.

Employment Ownership in broadcasting and electronic media is also restricted. The Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance 2002 provides the enabling framework, and the detailed foreign ownership bars appear in Regulation 8 of the PEMRA (TV/Radio Broadcast Operations) Regulations 2002 and Regulation 8 of the PEMRA Cable Television (Operations) Regulations 2002. These provide that no licence shall be issued to: (i) a person who is not a citizen of Pakistan or resident in Pakistan; (ii) a foreign company organised under the laws of any foreign government; or (iii) a firm or company the majority of whose shares are owned or controlled by foreign nationals or whose management control is

¹⁴⁷⁴ *Muhammad Ibrahim Shaikh v Federation of Pakistan* PLD 2019 SC 133. The Supreme Court observed that the specific statute, law, rule, or constitutive document applicable to each autonomous or semi-autonomous statutory body, organisation, and company would need to be examined on an individual basis to identify whether there is any qualification or disqualification with reference to the nationality of its officers or employees. By way of example, the Court cited Rule 8(b) of the Pakistan WAPDA Common Cadre Administrative Posts Service Rules 1980, which requires Pakistani citizenship. See also Establishment Division, Standard Format of Service Rules in Respect of Autonomous Bodies (<https://establishment.gov.pk/SiteImage/Misc/files/Standarad%20Format%20of%20Service%20rules%20in%20Respect%20of%20Autonomous%20Bodies.pdf>), directing all autonomous bodies to frame service rules in accordance with prescribed standards, which typically include a citizenship qualification.

¹⁴⁷⁵ Civil Servants (Appointment, Promotion and Transfer) Rules 1973, Rule 13: "A candidate for appointment shall be a citizen of Pakistan: Provided that this requirement may be relaxed with the [approval of the Establishment Division]." Full text at <http://nasirlawsite.com/laws/cspromot.htm>; see also compilation at <https://aurkhhb.wordpress.com/wp-content/uploads/2012/05/civil-servant-rules-1973-recruitmentpromotion-and-seniority.pdf>.

¹⁴⁷⁶ Civil Servants (Appointment and Conditions of Service) Rules 1974, Rule 19: "No person shall be appointed to a post unless he is a citizen of Pakistan, provided that this restriction may be relaxed by Government in suitable cases." Full text at <https://www.nasirlawsite.com/laws/csacsr.htm>. KP Civil Servants (Appointment, Promotion and Transfer) Rules 1989, stating: "A candidate for appointment shall be a citizen of Pakistan and bona fide [resident]." Full text at [https://kpcode.kp.gov.pk/uploads/Civil_Servants_\(Appointment,_Promotion_and_Transfer\)_Rules_1989.pdf](https://kpcode.kp.gov.pk/uploads/Civil_Servants_(Appointment,_Promotion_and_Transfer)_Rules_1989.pdf).

vested in foreign nationals or companies. Persons or entities funded or sponsored by a foreign government or organisation are likewise ineligible. However, these restrictions concern licence ownership and media control, not employment per se. Foreign nationals may work as journalists, correspondents, producers, or technical staff in Pakistani media outlets—they are restricted from owning or controlling broadcasting licences, not from employment in the sector.¹⁴⁷⁷

Finally, certain defence-related industries and restricted geographic zones are closed to foreign personnel. The Foreigners Order 1951 restricts foreigner access through two mechanisms: Clause 8 prohibits any foreigner from visiting or residing in "prohibited places" as defined in the Official Secrets Act 1923 without the permission of the civil authority; Clause 9 empowers the Federal Government to declare "protected areas" by order, within which the civil authority may prohibit foreigners from entering or impose conditions on their presence. Work or research in such sectors areas, therefore, requires prior authorization or a no-objection certificate from the competent authorities.¹⁴⁷⁸

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, and maternity leave, among others.

Pakistan's labour legislation extends protection to all workers, regardless of nationality, provided they are legally employed. Key safeguards include:

- Minimum wage rates are established by each province.
- Maternity benefits under the West Pakistan Maternity Benefit Ordinance 1958¹⁴⁷⁹, now operating as provincial legislation (Punjab Maternity Benefit Ordinance 1958, as amended; KP Maternity Benefits Act 2013; Sindh Maternity Benefits Act 2018)¹⁴⁸⁰;
- Workplace safety is separately governed by the Factories Act 1934 and the Mines Act 1923, along with their provincial successors.
- Occupational injury and health insurance through provincial social security schemes; and
- Old-age pension and survivors' benefits under the Employees' Old-Age Benefits Act (1976).

¹⁴⁷⁷ (TV/Radio Broadcast Operations) Regulations 2002, Regulation 8; PEMRA Cable Television (Operations) Regulations 2002, Regulation 8. Full text at <http://nasirlawsite.com/laws/pemtvr02.htm> and <https://jamilandjamil.com/?p=954>. See also International Bar Association, 'Media and telecommunications framework in Pakistan', <https://www.ibanet.org/Media-and-telecommunications-frameworks-in-Pakistan>; Josh and Mak International, 'A Short Guide to the PEMRA Ordinance', <https://joshandmakinternational.com/a-short-guide-to-the-pemra-ordinance/>.

¹⁴⁷⁸ Foreigners Order 1951, Clause 8 (prohibited places, referencing Official Secrets Act 1923) and Clause 9 (protected areas). Full text at <http://nasirlawsite.com/laws/fo.htm>

¹⁴⁷⁹ <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Npa5plbA%3D%3D-sg-iiijiiijiiijiiij>

¹⁴⁸⁰ Pakistan Maternity Benefit Ordinance 1958, s 4 (12 weeks at full wages); Sindh Maternity Benefits Act 2018 (16 weeks); KP Maternity Benefits Act 2013. See Paycheck Pakistan, 'Maternity Leave and Other Benefits', <https://paycheck.pk/labour-laws/maternity-work/maternity-law>.

These protections do not depend on citizenship status, but rather on whether the employee is registered with the relevant labour and social-insurance institutions. Pakistan's ratification of the 2014 Protocol to the ILO Forced Labour Convention on March 14, 2025, along with the Maritime Labour Convention 2006 and Labour Statistics Convention 1985 (No. 160), strengthens these protections, particularly against forced labor affecting migrants.¹⁴⁸¹

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Pakistan's public health legislation does not restrict access to emergency or general medical treatment on the basis of nationality. Public hospitals are open to all persons, and there is no statutory bar on treating non-nationals. However, public hospitals may charge different fees for foreign patients, and each province regulates its own health facilities under provincial health-care commission laws.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

- **Primary and Secondary Education:** Article 25-A of the Constitution guarantees that "the State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law. The implementing federal statute, the Right to Free and Compulsory Education Act 2012, expressly extends this right to non-nationals. Section 3 provides: "Every child, regardless of sex, nationality or race, shall have a fundamental right to free and compulsory education in neighbourhood school".¹⁴⁸²
- **Higher Education:** International students may enroll in universities and professional institutions through international student admission programs overseen by the Higher Education Commission (HEC). Tuition is usually charged at international-student rates.

¹⁴⁸¹ <https://www.ilo.org/resource/news/pakistan-ratifies-three-international-labour-standards;https://pakobserver.net/pakistan-strengthens-workers-rights-with-ratification-of-three-international-labour-conventions/>

¹⁴⁸² Right to Free and Compulsory Education Act 2012, ss 3–4. See Directorate General of Basic Education Community Schools (BECS), Ministry of Federal Education and Professional Training, 'Implementation of Article 25-A,' <https://becs.gov.pk/Detail/M2E0NGRkZDAtYzE0Ny00YjcZLTg5ZTctN2JjYmI0NTc1MTEy>.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance and retirement pensions, among others.

Employment-based social insurance programs, such as provincial workers' compensation and old-age pension schemes, extend to all registered employees, regardless of nationality. However, non-employment welfare programs, including cash-transfer and poverty-alleviation initiatives, require a national identity card, which is issued only to citizens. As a result, most non-nationals are excluded from these programs.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Pakistan's welfare and subsidy programs (including income support, food assistance, and subsidized housing) are citizen-specific and are verified through the national identity card system. Non-nationals, refugees, and stateless persons are therefore not eligible unless covered by specific humanitarian or UN-administered projects.

Are there any final observations you would like to make? Please write below.

Pakistan's migration governance is characterised by a significant gap between administrative practice and its domestic legal framework. While hosting one of the world's largest refugee populations for over four decades, Pakistan does not have a statutory framework recognising refugees as a protected legal category under domestic law. This disjunction between humanitarian engagement and legal architecture has become increasingly consequential in light of policy developments during 2023–2025.

Legislative Framework and the Absence of Refugee Legislation

The principal statutory instrument governing foreign nationals remains the Foreigners Act 1946 (Act XXXI of 1946), a colonial-era law originally designed for immigration control rather than contemporary humanitarian protection. Pakistan has not ratified the 1951 Refugee Convention or its 1967 Protocol, and refugee governance is governed by executive and administrative arrangements rather than dedicated legislation. These arrangements include the 1993 Cooperation Agreement between the Government of Pakistan and UNHCR, the Proof of Registration (PoR) card system, and the Afghan Citizen Card (ACC) scheme.

Approximately three million Afghans reside in Pakistan across varying documentation categories, many without secure long-term legal status. The expiry of PoR cards on 30 June 2025, following successive extensions, and the subsequent decision not to renew them, illustrates how executive-based protection mechanisms remain contingent in the absence of statutory guarantees.

Judicial Developments and Legislative Gaps

In the absence of legislative reform, the judiciary has engaged with refugee and migration issues through constitutional interpretation. In *Rahil Azizi v The State* (PLD 2024 Islamabad 231), the Islamabad High Court interpreted constitutional protections of life and dignity under Articles 9 and 14 of the Constitution as limiting the criminalisation of individuals seeking refuge. The Court integrated these guarantees with the principle of non-refoulement and customary international law. The judgment reflects a significant development in judicial engagement within a non-signatory State, while stopping short of establishing a freestanding constitutional right to asylum.

Judicial scrutiny has also addressed gender-based distinctions in the Pakistan Citizenship Act 1951. Certain courts have questioned or criticised discriminatory aspects of spousal citizenship provisions, although the statutory framework has not undergone comprehensive legislative amendment. These developments reveal an ongoing dynamic between constitutional interpretation and legislative inertia.

Stratification of Legal Status

Pakistan's legal framework produces differentiated rights and entitlements based on citizenship and documentation status. Citizens enjoy the full range of constitutional protections, including political participation and property rights. Commonwealth citizens who meet prescribed requirements may apply for registration as citizens under Section 20 of the Pakistan Citizenship Act 1951, subject to ministerial discretion and security clearance.

Holders of Pakistan Origin Cards (POC), issued under the NADRA Ordinance 2000, are permitted visa-free entry and broad economic rights, including the ability to acquire and dispose of property, open bank accounts, and undertake employment, subject to regulatory limitations. National Identity Cards for Overseas Pakistanis (NICOPs) are issued to Pakistani citizens residing abroad and confirm their continued citizenship.

Foreign nationals employed under valid work visas benefit from labour protections irrespective of nationality, but do not possess political rights or access to social welfare entitlements linked to national identity documentation. Registered Afghan refugees holding PoR cards were granted a temporary legal stay, freedom of movement, and were not treated as undocumented foreigners under the Foreigners Act 1946; however, their status did not derive from statutory refugee recognition and did not confer long-term legal security. Undocumented individuals remain subject to enforcement measures under the Foreigners Act, including detention and removal.

This stratified structure reflects a system in which citizenship functions as the principal gateway to the full spectrum of rights, notwithstanding constitutional guarantees extending certain protections to “every person.” The ratification of ILO instruments, including the 2014 Protocol to the Forced Labour Convention on 14 March 2025, strengthens labour-related safeguards but does not alter the broader architecture linking social entitlements to citizenship and identity documentation.

The Afghan Refugee Policy Shift (2023–2025)

Pakistan's approach to Afghan refugees underwent a marked policy shift beginning in October 2023 with the announcement of the Illegal Foreigners Repatriation Plan (IFRP). The plan has been implemented in phases, targeting different documentation categories. The first phase, initiated in November 2023, focused on undocumented Afghan nationals. The second phase, beginning in April 2025, addressed holders of Afghan Citizen Cards. The third phase concerns PoR cardholders whose cards expired on 30 June 2025 and were not renewed.

According to the International Organization for Migration (IOM) reporting, over one million Afghans returned to Afghanistan from Pakistan between September 2023 and late 2025. In October 2025, federal authorities ordered the closure of several refugee villages in Khyber Pakhtunkhwa and Balochistan, including de-notification measures and land transfers to provincial authorities. These developments represent a contraction of long-standing administrative protection mechanisms and have prompted commentary from UNHCR, human rights organisations, and UN Special Rapporteurs regarding the implications for the principle of non-refoulement.

Conclusion

Pakistan's migration governance framework combines colonial-era legislation, executive discretion, administrative cooperation with international organisations, and incremental judicial interpretation. While courts have demonstrated a willingness to engage with international norms as interpretive guides, the dualist structure of Pakistan's legal system means that treaty ratification does not, by itself, create directly enforceable domestic rights absent implementing legislation.

The developments of 2023–2025, including the implementation of the IFRP, the expiry of PoR documentation, and the restructuring of refugee settlements, mark a significant evolution in migration policy. The continued absence of comprehensive domestic refugee legislation remains a central structural feature shaping Pakistan's migration governance landscape.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: The Philippines

Author: Francis Tom Temprosa

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		x
1967 Protocol to the Convention relating to the Status of Refugees		x
1954 Convention relating to the Status of Stateless Persons		x
1961 Convention on the Reduction of Statelessness		x
International Covenant on Civil and Political Rights (ICCPR)	x	x
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		x
International Covenant on Economic, Social and Cultural Rights (ICESCR)	x	x

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	x	x
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		x
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		x
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	x	x
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	x	x
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	x	x
Convention on the Rights of the Child (CRC)	x	x
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	x	x
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	x	x
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)	x	x
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		x
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		x

ILO Equal Remuneration Convention (No. 100)		x
ILO Discrimination (Employment and Occupation) Convention (No. 111)		x
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		x

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		
American Convention on Human Rights (ACHR)		

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Overall, the treaty commitments of the Philippines reflect a broad acceptance of international standards on migration and human rights. In addition to the above, the Philippines is a party to the Second Optional Protocol to the ICCPR. The Philippines has also ratified key ILO conventions on forced labor, equality, and migrant workers (Nos. 29, 105, 100, 111, 97, and 143). As a country in Southeast Asia, it is a party to the ASEAN Convention Against Trafficking in Persons, Especially Women and Children. As of this writing, the country has signed over 40 bilateral instruments with mainly destination countries (e.g., Saudi Arabia, United Arab Emirates). These treaties or executive agreements provide frameworks for safe and fair migration and access to redress.

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

The Philippine immigration system is governed by the Philippine Immigration Act of 1940 (Commonwealth Act No. 613), as amended,¹⁴⁸³ which establishes categories of visas and the authority of the Bureau of Immigration (BI) under the Department of Justice (DOJ) on immigration matters. The Philippines does not have a separate residence permit system apart from visas. Instead, a visa (whether immigrant or non-immigrant) serves as the basis for a foreign national's permission to enter and remain in the country. In practice, a foreigner admitted for long stay is issued an Alien Certificate of Registration Identity Card (ACR I-Card) by the BI as proof of visa status and registration. However, this is an identification document and not a standalone residence permit. Thus, similar to the system in countries like Australia, a valid visa is the principal requirement for lawful stay, and its terms define the non-citizen's status.

Under the Philippine Immigration Act, foreign nationals are classified broadly as either immigrants or non-immigrants. Immigrant visas confer the right of permanent or long-term residence, while non-immigrant visas are for temporary visits or stays for specific purposes. In general, a foreign national seeking to reside in the Philippines in the long-term must obtain the appropriate visa from a Philippine Embassy or Consulate abroad, which is then presented for admission at the port of entry. The Philippines, like many countries, also operates a visa-waiver program for tourists from certain states (allowing visa-free entry for short stays, usually 30 days) and a special "Balikbayan" privilege (one-year visa-free stay) for former Filipinos and their immediate family. However, stays beyond the initial period or for purposes other than tourism/business require securing a visa or permit from the BI.

Non-immigrant visas (Section 9 of the Philippine Immigration Act) include the following:

- (a) Temporary Visitor's Visa;
- (b) Transit Visa;
- (c) Seaman's Visa;
- (d) Treaty Trader/Investor Visa;
- (e) Diplomatic/Official Visa;
- (f) Student Visa;
- (g) Pre-Arranged Employment Visa.

The law also empowers the President or the DOJ to create special non-immigrant visa categories by executive issuance. Accordingly, special visa programs have been established, for example,

¹⁴⁸³ https://lawphil.net/statutes/comacts/ca1940/ca_613_1940.html

for foreign personnel of enterprises registered with the Philippine Economic Zone Authority (PEZA) or Board of Investments, and visas for foreign missionaries in religious organizations.

Immigrant visas (Section 13 of the Philippine Immigration Act) are for foreign nationals who are admitted for permanent residence. The law sets an annual quota of 50 immigrant visas per nationality. However, several classes of immigrants are exempt from the quota. These include:

- (a) the foreign spouse or unmarried minor child of a Philippine citizen;
- (b) a child born abroad to a lawfully resident alien mother (permanent resident) during the mother's temporary visit abroad;
- (c) a child born after issuance of an immigrant visa to an accompanying parent;
- (d) a woman who was formerly a Filipino citizen (and lost citizenship by marriage to a foreigner), and her minor children;
- (e) a previously lawfully-admitted permanent resident alien returning from a temporary visit abroad (a returning resident); and
- (g) a natural-born Filipino who became a foreign citizen (e.g. by naturalization abroad) and is returning to resettle, including their spouse and minor children.

These non-quota immigrant categories, especially the 13(a) marriage visa, present the typical route for family-based permanent immigration.

Thus, the Philippine visa system is a single-tier system (visa-based). Non-Filipinos are usually either admitted with an immigrant visa (permanent) or a non-immigrant visa (temporary). If on a temporary visa, they cannot convert to permanent status in-country except by departing and obtaining the proper immigrant visa abroad. There is also a registration and reporting requirement. The system is governed by national law to ensure uniform rules across the country.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

The main categories of migratory status that allow a non-national to reside in the Philippines for more than three months include those based on employment, education, family reunification, retirement/investment, and humanitarian grounds.

First, the primary work visa is the 9(g) Pre-Arranged Employment Visa, which authorizes a foreign national to live and work in the Philippines for an initial period of usually one year, although this is extendable. It requires a concrete job offer and approval by immigration authorities. There should also be a labor clearance. Similar employment-related visas include the 9(d) Treaty Trader/Investor Visa (for businesspersons from treaty countries), and 47(a)(2)

Special Non-Immigrant Visas issued under special programs (e.g., visas for technical experts, PEZA zone employees, or foreign service providers under government-approved projects). These are typically valid for longer than 3 months and are renewable. Another sub-category is the missionary or religious worker visa, which is often granted via 47(a)(2) discretion. This allows foreign clergy or aid workers to reside in the Philippines for extended periods under the sponsorship of recognized religious organizations.

Second, a 9(f) Student Visa permits a foreign student to reside in the Philippines for the duration of their studies. These are typically issued for one academic year at a time or the length of a semester/term, with extension, and the student must be enrolled full-time in an accredited institution. There is also the Special Study Permit (SSP) that foreigners below 18 years of age, or those taking non-degree courses, can avail of. It is not a visa but a permit that, combined with a tourist visa, allows study. For long-term education, the 9(f) visa is the standard route.

Third, there are family-based (non-quota immigrant) visas. Family reunification categories are a major avenue for long-term stay. The 13(a) visa is a permanent resident visa for the foreign spouse and minor children of a Filipino citizen. It grants an initial one-year probationary residence, then indefinite permanent residency upon renewal, allowing open-ended stay. Similarly, the 13(g) visa for natural-born Filipinos who lost citizenship, and their immediate family, grants permanent residency to those former citizens and their foreign spouse/children. These immigrant visas entitle the holder to reside in the Philippines permanently, but with an annual report obligation. Even in cases where the foreign spouse initially enters on a tourist visa, they can apply for 13(a) status from within the Philippines. The Filipino spouse would need to act as the petitioner.

Fourth, there are retirement and investor visas through the Special Resident Retiree's Visa (SRRV) that is administered by the Philippine Retirement Authority¹⁴⁸⁴ under BI's authority. It is a lifetime visa issued to foreign nationals and their dependents who make a qualifying time deposit or investment in the Philippines. The amount varies by age and program. This entitles the holder to multiple-entry privileges and to reside in the Philippines indefinitely. Similarly, there is a Special Investor's Resident Visa (SIRV) created by the Omnibus Investments Code¹⁴⁸⁵ for foreigners who invest a substantial amount in Philippine businesses. It grants extended residence status.

Fifth, foreign nationals granted refugee status are allowed to stay in the Philippines on humanitarian grounds. The Philippines also allows stateless persons to stay in the Philippines. The legal basis is open to interpretation to allow complementary forms of protection, although the Philippines does not have this program yet. Those who are recognized are refugees under the DOJ's Refugee Status Determination (RSD) procedure receive documentation (a refugee document or visa) permitting them to reside and work in the country. The Philippines can also grant temporary protection visas in crisis situations. For instance, it offered humanitarian visa waivers to certain nationals affected by conflicts, such as Afghans and Ukrainians, allowing them extended stay on humanitarian considerations. These are, however, usually implemented

¹⁴⁸⁴ https://lawphil.net/executive/mo/mo1987/mo_116_1987.html; <https://pra.gov.ph/SRRVisa>.

¹⁴⁸⁵ https://lawphil.net/executive/execord/eo1987/eo_226_1987.html

through executive discretion. Such a humanitarian status could be subject to review because of its discretionary nature.

It is worth noting that even a 9(a) Temporary Visitor (tourist) status can be extended in increments, and for many nationalities, can accumulate to allow continuous stay. Thus, even a tourist can stay beyond 3 months legally by securing extensions. However, this is a temporary status without the rights and the stability that the other visa categories provide.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

As noted above, the Philippines provides protection to refugees and stateless persons and could grant humanitarian visas. For visa purposes for refugees, this is ordinarily through the 47(b) visa. The Philippines is one of the few countries in Southeast Asia that is a party to the 1951 Refugee Convention and its 1967 Protocol and has a formal process for RSD. It is also a party to 1954 Statelessness Convention and the 1961 Reduction of Statelessness Convention. Although the Philippines has no stand-alone refugee act, it implements its international obligations through administrative regulations and existing law. Section 47(b) of the Philippine Immigration Act of 1940 provides that, “for humanitarian reasons and when not opposed to public interest,” the President may admit aliens who are refugees for religious, political, or racial reasons “under conditions he may prescribe.” This has been the basis for welcoming refugees even before the Philippines became a party to the 1951 Refugee Convention.¹⁴⁸⁶

The DOJ has a Refugee and Stateless Persons Protection Unit (RSPPU) and procedures for RSD and Stateless Status Determination (SSD).¹⁴⁸⁷ Under the current procedures, applicants must demonstrate their refugee claim (meeting the 1951 Refugee Convention definition) or stateless status (meeting the 1954 Statelessness Convention definition). Those recognized are not deportable and are eligible for long-term stay. The Philippines does not deport or penalize asylum seekers for illegal entry in line with the non-refoulement principle. The current procedures have additional safeguards. For example, unaccompanied minor asylum seekers receive special care, and family unity is respected. In one recent development, the Supreme Court of the Philippines promulgated a rule¹⁴⁸⁸ in order to facilitate the naturalization of refugees and stateless persons, reducing legal barriers for them to become Filipino citizens.

In addition, the anti-trafficking law also protects foreign trafficking victims, allowing them relief from deportation and temporary residency while participating in legal proceedings or recuperating.

¹⁴⁸⁶ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3121864.

¹⁴⁸⁷ <https://www.refworld.org/legal/decrees/natlegbod/2022/en/148245>.

¹⁴⁸⁸ <https://sc.judiciary.gov.ph/wp-content/uploads/2023/03/21-07-22-SC.pdf>.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

There are many avenues for family reunification migration in the Philippines. The immigration policy is generally favorable to family reunification involving Filipino citizens. First, the primary mechanism is the non-quota immigrant visa for immediate relatives of Filipino citizens. Under Section 13(a) of the Philippine Immigration Act, the foreign spouse and minor children of a Filipino citizen are entitled to permanent residence and are exempt from numerical quotas. The Filipino spouse, who must be a Filipino citizen, should petition for the 13(a) visa on behalf of the foreign family member. Likewise, an unmarried child under 21 years of age of a Filipino parent may be granted a 13(a) immigrant visa. However, it should be noted that 13(a) visas are generally issued only to nationals of countries that grant reciprocal privileges to Filipinos. In practice, exceptions may be granted. These allow families to remain united in the Philippines.

Second, family reunification is also facilitated for those of Filipino descent or origin. Under Section 13(g) of the Philippine Immigration Act, a person who was natural-born Filipino, but became a naturalized citizen of another country, may retain or reacquire residence in the Philippines. In essence, a Filipino who lost citizenship may bring his/her family to live in the Philippines on the same basis as a citizen would. Additionally, Republic Act No. 9225 or the Citizenship Retention and Reacquisition Act¹⁴⁸⁹ allows natural-born Filipinos to re-acquire Philippine citizenship outright, in which case their foreign spouse can then use the 13(a) visa route and their children can petition for recognition of Philippine citizenship, if eligible.

Third, a notable policy to encourage family visits and reunification is the Balikbayan Program (Republic Act No. 6768, as amended by Republic Act No. 9174).¹⁴⁹⁰ Balikbayan roughly translates to a “returning Filipino”. This allows former Filipino citizens and their immediate family to enter the Philippines visa-free for one year for visit or tourism purposes. The foreign spouse and children of a Filipino citizen can also avail of this visa-free stay if they are traveling to the Philippines together with the Filipino. They can also extend their stay.

Fourth, there are derivative visas tied to specific categories for the dependents of foreign residents. For instance, the spouse and minor children of a 9(g) work visa holder are allowed to accompany the principal under that same section. In practice, the BI may grant them a dependent visa or a series of tourist visa extensions.

The place of family unity and integrity is a significant aspect of Philippine migration policy, even enshrined in the 1987 Philippine Constitution. It is also important to add that the Philippines advocates for the family unity of Filipinos abroad. Republic Act No. 8042, or the Migrant Workers and Overseas Filipinos Act,¹⁴⁹¹ includes provisions to assist Filipino workers in reuniting with their families or bringing them to host countries when possible.

¹⁴⁸⁹ https://lawphil.net/statutes/repacts/ra2003/ra_9225_2003.html.

¹⁴⁹⁰ https://lawphil.net/statutes/repacts/ra1989/ra_6768_1989.html;
https://lawphil.net/statutes/repacts/ra2002/ra_9174_2002.html.

¹⁴⁹¹ https://lawphil.net/statutes/repacts/ra1995/ra_8042_1995.html.

See also

https://lawphil.net/statutes/repacts/ra2021/ra_11641_2021.html.

5. What are the conditions for naturalization in the reviewed state?

A foreign national may be granted Philippine citizenship by judicial naturalization, administrative naturalization, or through an act of Congress. First, acquiring Philippine citizenship by judicial naturalization is generally governed by the Revised Naturalization Law of 1939 (Commonwealth Act No. 473), as amended.¹⁴⁹² An interested foreign national must file a petition with the Regional Trial Court, satisfy the legal requirements, and undergo a public hearing and vetting, including the publication of the petition). The law sets strict qualifications that an applicant must meet, including the following:

- (a) Age and Residence: Must be at least 21 years old and have resided in the Philippines for a continuous period of at least 10 years up to the filing of the petition. This residence requirement can be reduced to 5 years if the applicant possesses any of the special qualifications. Notably, marriage to a Filipino reduces the required period to 5 years.
- (b) Moral Character and Integration: Must be of good moral character, and believe in the principles of the 1987 Philippine Constitution. The applicant should have conducted themselves in a proper manner during the entire residence period, with behavior showing attachment to the Philippines. They must have mingled socially with Filipinos and have a sincere desire to embrace Filipino customs.
- (c) Occupation or Property: Must have a lucrative trade, profession, or lawful occupation or own real estate in the amount stated in the law and as interpreted in jurisprudence. This is to ensure the applicant can self-support and not become a public burden or a public charge.
- (d) Language: Must be able to speak and write in English or Spanish and at least one of the major Philippine languages. Today, English and Filipino would satisfy this, as Spanish is no longer required but still listed in the old law.
- (e) Education of Children: If the applicant has minor children, they must be enrolled in schools in the Philippines where Philippine history, government, and civics are taught (and which are not limited to a particular nationality). This requirement ensures the family of the applicant is also integrated into Philippine society and imbued with civic knowledge.

There are also disqualifications under Section 4 of Commonwealth Act No. 473: persons who fall into certain categories cannot be naturalized even if they meet the above. These include: polygamists, persons with dangerous diseases, those with criminal convictions for moral turpitude, those who espouse anarchism or violence against the government, or citizens of countries at war with the Philippines, or that do not allow Filipinos to be naturalized (reciprocity).

Second, under the administrative naturalization procedure in Republic Act No. 9139,¹⁴⁹³ the Philippines introduced an administrative path to citizenship for certain aliens. This law is

¹⁴⁹² https://lawphil.net/statutes/comacts/ca1939/ca_473_1939.html.

¹⁴⁹³ https://lawphil.net/statutes/repacts/ra2001/ra_9139_2001.html.

mainly for individuals who were born and raised in the Philippines but are legally foreign. The required qualifications: the applicant must be born in the Philippines and have resided there since birth (continuous residence); at least 18 years old at the time of application; of good moral character and adherence to Constitutional principles (similar to the judicial requirements); must have completed primary and secondary education in Philippine schools where Philippine history and civics, among others, are taught (or enrolled their minor children in such schools); must have a lawful means of income or support; must be able to read, write and speak Filipino or a Philippine language; and must have embraced Filipino customs and mingled with locals. The disqualifications somehow mirror those of judicial naturalization.

Third, the 1987 Philippine Constitution allows naturalization by law. A law may be passed to confer Philippine citizenship on a foreign national.

Lastly, in line with its international protection commitments, the Philippines in recent years has also moved to make naturalization easier for refugees and stateless persons. The Supreme Court approved a special rule in 2022 to streamline this process (see also Question 3 above). This is an important integration measure, although their numbers are small.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

March 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Poland

Author: Maja Lysienia

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons	-	-
1961 Convention on the Reduction of Statelessness	-	-
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		X
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	-	-

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	-	-
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	X	
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	-	-
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		X
ILO Migration for Employment Convention (Revised) (No. 97)	-	-
ILO Equal Remuneration Convention (No. 100)		X

ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	-	-

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	-	-
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	-	-
Convention governing the Specific Aspects of Refugee Problems in Africa	-	-
African Charter on the Rights and Welfare of the Child	-	-
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	-	-
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	-	-
European Convention on Human Rights (ECHR)		X
Protocols to the European Convention on Human Rights (list which ones): all except for 12 and 16		X
European Social Charter (ESC)		X
European Convention on the Legal Status of Migrant Workers	-	-
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		X
American Convention on Human Rights (ACHR)	-	-

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	-	-
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	-	-
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	-	-
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	-	-
Inter-American Convention against All Forms of Discrimination and Intolerance	-	-
Inter-American Convention Protecting the Human Rights of Older Persons	-	-

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment – ratified, more information: [here](#).
- Convention on Action against Trafficking in Human Beings – ratified, more information: [here](#).
- Readmission agreements, list available here: [here](#), p. 23-24, and [here](#).
- EU law, *inter alia*:
 - [Charter of Fundamental Rights](#)
 - [Dublin III Regulation](#)
 - [Asylum Procedure Directive](#)
 - [Qualification Directive](#)
 - [Reception Directive](#)
 - [Temporary Protection Directive](#)
 - [Return Directive](#)
 - [Seasonal Workers Directive](#)
 - [Single Permit Directive](#)
 - [EU Long-term Residence Permit Directive](#)

- EU Blue Card Directive
- Visa Code
- Schengen Borders Code
- Free Movement Directive

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

In Poland, the rules concerning entry and stay of non-nationals differ depending on their being EU+ citizens (and their family members) or third-country nationals. Third-country nationals are defined by the European Commission as: “Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the European Union right to free movement, as defined in Art. 2(5) of the Regulation (EU) 2016/399 (Schengen Borders Code)”.

a. Third-country nationals

In Poland, both visas and residence permits are granted. Persons who come to Poland on a visa usually prolong their stay in Poland by applying for a residence permit or by returning to the country of origin and applying again for a visa.

Visas are granted for up to 90 days in 180 day-period (a Schengen visa, regulated by the EU law: Visa Code) and for up to one year (a national visa – *wiza krajowa*, under the Act on Foreigners, Art. 58-97). In principle, they can be obtained only abroad (with some minor exceptions), by submitting a visa application in a Polish consulate.

Residence permits are granted mostly while a person concerned is already in Poland. There are three main residence permits under the Act on Foreigners: temporary residence permit (*zezwoleńie na pobyt czasowy*, Art. 98-194), permanent residence permit (*zezwoleńie na pobyt stały*, Art. 195-210) and EU long-term residence permit (*zezwoleńie na pobyt rezydenta długoterminowego UE*, Art. 211-225, based on the EU law). Upon being granted one of these residence permits, a person concerned receives a document confirming their legal stay in Poland – a residence card (*karta pobytu*, Art. 240 of the Act on Foreigners).

Protection-seekers can be granted:

- a **refugee status** or a **subsidiary protection** (*status uchodźcy* and *ochrona uzupełniająca*, collectively referred to as international protection, under the Act on Protection, Art. 13-89zb, based on the 1951 Refugee Convention and the EU asylum *acquis*),
- **asylum** (*azyl*, under the Act on Protection, Art. 90-96),
- **temporary protection** (*ochrona czasowa*, under the Act on Protection, Art. 106-118a, and the Special Law, based on the EU law),
- **humanitarian or tolerated stay** (*zgoda na pobyt ze względów humanitarnych* or *zgoda na pobyt tolerowany*, under the Act on Foreigners, Art. 348-359b).

Upon being granted a refugee status, subsidiary protection or humanitarian stay, a person concerned receives a document confirming their legal stay in Poland – a residence card (*karta pobytu*, Art. 240 of the Act on Foreigners, Art. 89i of the Act on Protection). Persons who were granted a tolerated stay receive a document ‘tolerated stay’ (Art. 273 of the Act on Foreigners). Temporary protection beneficiaries receive an electronic document *Diia.pl* (under the Special Law, Art. 10) or a certificate confirming that they enjoy temporary protection in Poland (under Art. 110(5) of the Act on Protection), depending on a type of temporary protection they are eligible for.

b. EU+ citizens and their family members

Under the EU law and the Polish law, EU+ citizens are allowed to enter Poland without any visa. Their family members need a visa unless they are entitled to a visa-free movement or have a residence permit for family members of the EU+ citizens. EU+ citizens and their family members can remain in Poland for up to 3 months without any further requirements. If EU+ citizens come to Poland to seek employment, then this period is prolonged to 6 months.

The right of residence for more than 3 months is given to the EU+ citizen (and in consequence to their family members) if they:

- (a) are a worker or self-employed person in Poland; or
- (b) have sufficient resources for him/herself and family members not to become a burden on the social assistance system and has comprehensive sickness insurance cover; or
- (c) study or conduct a vocational training in Poland, have sufficient resources for themselves and family members not to become a burden on the social assistance system and have comprehensive sickness insurance cover, or
- (d) are married to a Polish citizen.

The right of permanent residence is given after 5 years of a continuous stay in Poland.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

a. Third-country nationals

1. **National visa** (*wiza krajowa*) – granted for a period starting from 91 days to 1 year, depending on the purpose of the stay. It may be granted for multiple reasons, including work, visiting family members, studying, or for humanitarian reasons.

2. **Temporary residence permit** (*zezwoleńie na pobyt czasowy*) – granted for a period from 3 months (with minor exceptions) to 3 years. Numerous reasons to grant this residence permit are listed in the Act on Foreigners (Art. 98-194), including (different kinds of) work, running a business, studying, conducting academic research or reuniting with family members. All these different types of temporary residence permits are regulated in much detail and entail numerous requirements that are often only specific to a particular type of permit.

3. **Permanent residence permit** (*zezwoleńie na pobyt stały*, Art. 195-210 of the Act on Foreigners) – is granted for an unlimited period of time (residence card - *karta pobytu* – has to be changed every 10 years) for numerous reasons and under diverse conditions to a person who:

- is a child of a Polish citizen or a third-country national who obtained a permanent residence permit or EU long-term residence permit,
- has Polish roots and wants to live permanently in Poland,
- has been married to a Polish citizen for at least 3 years (with additional conditions),
- is a human trafficking victim (with additional conditions),
- is a recognized refugee, subsidiary protection beneficiary or humanitarian stay holder living in Poland for at least 5 years,
- is a tolerated stay holder living in Poland for at least 10 years,
- is a migrant worker employed in Poland in a profession that is considered desirable for the Polish economy – after 4 years of stay in Poland (with additional conditions),
- was granted asylum (*azyl*) in Poland,
- has a “Poles Card” (*Karta Polaka* – a document confirming that a person concerned belongs to the Polish nation) and wants to live permanently in Poland,
- for citizens of the Great Britain and North Ireland (with additional conditions).

4. **EU long-term residence permit** (*zezwoleńie na pobyt rezydenta długoterminowego UE*, Art. 211-225 of the Act on Foreigners, based on the EU law) granted for an unlimited period of time (a residence card - *karta pobytu* – has to be changed every 5 years) to third-

country nationals who have resided legally and continuously within the Polish territory for five years immediately prior to the submission of the relevant application and:

- Have a stable and regular source of income,
- Have medical insurance, and
- Know Polish language.

5. **Refugee status** (*status uchodźcy*, under the Act on Protection, Art. 13-89zb, based on the 1951 Refugee Convention and the EU asylum *acquis*) granted for an unlimited period of time (a residence card - *karta pobytu* – has to be changed every 5 years).

6. **Subsidiary protection** (*ochrona uzupełniająca*, under the Act on Protection, Art. 13-89zb, based on the 1951 Refugee Convention and the EU asylum *acquis*, in particular the Qualification Directive, Art. 2(f) in conjunction with Art. 15) – granted for an unlimited period of time (a residence card - *karta pobytu* – has to be changed every 3 years).

7. **Asylum** (*azyl*, under the Act on Protection, Art. 90-96) – granted for unlimited period of time, when it is necessary to ensure protection of a non-national and when it is in the important interest of the Republic of Poland. It is a national form of protection – not based on the 1951 Refugee Convention and the EU asylum *acquis*.

8. **Humanitarian stay** (*zgoda na pobyt ze względów humanitarnych*, under the Act on Foreigners, Art. 348-359b) – granted to persons whose return to the country of origin would be incompatible with the ECHR (Art. 2-8) and CRC, for an unlimited period of time (a residence card - *karta pobytu* – has to be changed every 2 years).

9. **Tolerated stay** (*zgoda na pobyt tolerowany*, under the Act on Foreigners, Art. 351-359b) - granted to persons whose return to the country of origin would be incompatible with the ECHR (Art. 2-7), but are not eligible to be granted a humanitarian stay (e.g. when he/she is considered a security threat), as well as for undeportable persons, for an unlimited period of time (a document ‘tolerated stay’ has to be changed every 2 years).

10. **Temporary protection** (*ochrona czasowa*) – granted to persons displaced from Ukraine starting from 24th February 2022, under the EU law, based on the Council Decision, initially granted for one year in the EU and for 18 months in Poland, currently in force until 30 September 2025 (for Ukrainian nationals and their family members benefiting from temporary protection under the Special Law) or 4 March 2026 (for other temporary protection beneficiaries specified in the Council Decision, benefiting from temporary protection under the Act on Protection, Art. 106-118a).

b. EU+ citizens and their family members

Under the EU law and the Polish law, the right of residence for more than 3 months is given to the EU+ citizen (and in consequence to their family members) if they:

- (a) are a worker or self-employed person in Poland; or

- (b) have sufficient resources for him/herself and family members not to become a burden on the social assistance system and has comprehensive sickness insurance cover; or
- (c) study or conduct a vocational training in Poland, has sufficient resources for him/herself and family members not to become a burden on the social assistance system and has comprehensive sickness insurance cover, or
- (d) are married to a Polish citizen.

The right of permanent residence is given after 5 years of a continuous stay in Poland.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Under the Act on Protection, Art. 13-89zb, third-country nationals can apply for international protection and be granted a refugee status based on 1951 Refugee Convention or, if the criteria under this Convention are not fulfilled, a subsidiary protection based in the EU law. If both types of protection are denied, a negative decision is issued that entails an obligation to leave Poland in 30 days. If a person concerned does not leave Poland, return proceedings are initiated *ex officio* under the Act on Foreigners (Art. 299(6) and 302(1)).

Within the return proceedings, it is assessed whether a person concerned is eligible for a humanitarian or tolerated stay in Poland (Act on Foreigners, Art. 348-359b). The former is granted to persons whose return to the country of origin would be incompatible with the ECHR (Art. 2-8) and the CRC. The second is granted to:

- a. persons whose return to the country of origin would be incompatible with the ECHR (Art. 2-7) but are not eligible for a humanitarian stay (e.g. for security reasons),
- b. as well as for undeportable persons (e.g. stateless persons, persons whose countries of origin deny issuing them a passport).

It is also possible to obtain a humanitarian or tolerated stay after the return proceedings have been concluded (Art. 356 of the Act on Foreigners).

A non-national can be also granted in Poland asylum (*azyl*) under the Act on Protection (Art. 90-96), which is not to be mistaken with a refugee status. It is a national form of protection granted when it is necessary to ensure protection of a non-national and when it is in the important interest of the Republic of Poland. The latter criterium is not defined in law and very unclearly relied on in the jurisprudence (“...granting asylum is not based on *any* interest of the Republic of Poland, but on the interests that concern matters of fundamental importance to Poland”, these matters were however not specified by the court, see judgment of the Provincial Administrative Court in Warsaw, 29 January 2008, V SA/Wa 2289/07). In 2024, asylum was requested by 78 persons (including mostly Afghans (24) and Ukrainians (13)). Asylum was granted only to 11 Afghans, 24 third-country nationals received a negative decision and in case of 42 applicants (incl. 15 Afghans) the application was rejected without consideration.

Lastly, since 24th February 2022, persons displaced from Ukraine due to the Russian invasion are granted temporary protection (*ochrona czasowa*) in Poland (under the EU law, based on the Council Decision). There are two types of temporary protection in Poland: one based on the Special Law and another based on the Act on Protection. These acts regulate differently the rights of temporary protection beneficiaries. The Special Law applies to:

- Ukrainian nationals who came to Poland on or after 24 February 2022 due to the war in Ukraine,
- their spouses,
- Ukrainian nationals' and their spouses' children, and
- the closest family of a Ukrainian national who has a 'Poles Card'.

The Act on Protection applies to other beneficiaries specified in the Council decision:

- stateless persons, and nationals of third countries other than Ukraine who benefited from international protection or equivalent national protection in Ukraine before 24 February 2022; with their family members, and
- stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued under Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin.

All those forms of protection are available while a person concerned is in Poland. To enter Poland they need to request a humanitarian visa (under Art. 60(1)⁽²³⁾ of the Act on Foreigners, in practice issued mostly to Belarusian and Ukrainian nationals) or ask for international protection at the border (however, this has been much hampered since 2015 and even more since the beginning of the crisis at the Polish-Belarusian border in 2021). In March 2025, a new law was adopted enabling the government to suspend a right to asylum in Poland (the amendment of the Act on Protection). Immediately after, this right was suspended at the Belarusian border for 60 days (the Regulation of 27 March 2025).

Human trafficking victims can be granted a temporary residence permit valid for at least 6 months, as long as he/she stays in Poland, cooperates with state authorities, and have no contact with the traffickers. The applicant is exempted from the usual fee. This permit can be changed to a permanent residence permit after one year, if the person concerned cooperated with state authorities and his/her fears regarding return to the country of origin are justified. No fee exemption applies in this case.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

a. Third-country nationals wanting to reunite with family members

A national visa can be issued to visit family, to come to Poland as a closest family member of a repatriate (person with Polish roots who or whose ascendants were forcefully relocated from Poland to USSR) or a closest family member of a holder of a permanent residence permit issued

in connection with being issued with a “Poles Card” (Art. 60(1)⁽²⁾ and ^(18a-19a) of the Act on Foreigners). The notion of “closest family member” is not defined in law, leaving this assessment to the discretion of national visa authorities. Moreover, upon being granted a temporary residence permit for the family reunification purposes, its holder can apply for a national visa to enter Poland (Art. 60(1)⁽²⁴⁾ of the Act on Foreigners).

Under the Act on Foreigners (Art. 159), a family member (a spouse – only marriages accepted under the Polish law - or a minor child) of a third-country national staying in Poland can be granted a temporary residence permit if this third-country national has been granted:

- Permanent residence permit,
- EU long-term residence permit,
- Refugee status,
- Subsidiary protection,
- Temporary residence permit(s) for at least 2 years in total,
- Visa or temporary residence permit for academic research purposes,
- Temporary residence permit for the purpose of highly qualified employment and some other temporary residence permits listed in the Act on Foreigners,
- For nationals of the Great Britain and North Ireland.
- Humanitarian stay.

Moreover, a family member must show that they have:

- Medical insurance in Poland,
- Stable and regular source of income that is sufficient to cover expenses in Poland (no minimum amount is set by law, it is assessed by state authorities on a case-by-case basis, it can be covered by the income of a sponsor, i.e. third-country national staying in Poland), and
- Accommodation in Poland.

The latter three conditions do not apply to family members of recognized refugees and subsidiary protection beneficiaries if the application for a temporary residence permit has been submitted in 6 months from being granted international protection. Moreover, the definition of a family member is wider (includes parents, grandparents, siblings – the latter with additional conditions relating to their health) in case of minors recognized as refugees and subsidiary protection beneficiaries.

If a family member is staying abroad, the application for a temporary residence permit is made by the non-national staying in Poland (Art. 168 of the Act on Foreigners).

Moreover, other reasons to receive a temporary residence permit to reunite with family members are listed in Art. 160-161b of the Act on Foreigners.

b. Polish citizens and EU+ citizens wanting to reunite with family members

A national visa can be issued to visit family or to join a family member who is a EU+ citizen, as well as a citizen of the Great Britain and North Ireland, or to benefit from several temporary residence permits granted under Art. 160 of the Act on Foreigners (Art. 60(1)(2), (17-17a) and (24b) of the Act on Foreigners).

Under Art. 158 of the Act on Foreigners, a temporary residence permit is granted to third-country nationals:

- Married to Polish citizens (only marriages accepted under the Polish law),
- Who are minor children of the persons married to Polish citizens.

In general, as explained above, family members of EU+ citizens have a right to remain in Poland based on the Polish law following the EU law. However, the Act on Foreigners applies to some situations of family reunification not covered by these rules. For example, under Art. 160 of the Act on Foreigners, a temporary residence permit may be granted, *inter alia*, to third-country nationals:

- Who are a (nuclear and non-nuclear) family member of a Polish national or EU+ citizen not covered by the rules established under the Free Movement Act, who is staying in Poland with a Polish national or EU+ citizen due to financial dependency or health reasons (a medical insurance in Poland and stable and regular source of income are required),
- Who lead a family life in Poland within the meaning of Art. 8 ECHR with a Polish national or EU+ citizen (a medical insurance in Poland and stable and regular source of income are required),
- Who are family members of citizens of the Great Britain and North Ireland (with additional conditions).

5. What are the conditions for naturalization in the reviewed state?

There are two pathways to naturalization in Poland, both regulated in the Act on Polish citizenship.

Firstly, citizenship can be granted by the Polish President (*nadanie obywatelstwa polskiego*). Any non-national at any time can apply to President to be granted Polish citizenship; there are no specific conditions and criteria for obtaining citizenship in this procedure. The citizenship is granted free of charge. The President's denial is final and cannot be appealed.

Secondly, a non-national can be declared as a Polish citizen (*uznanie za obywatela polskiego*) if they fulfil the specific criteria that vary depending on their legal status in Poland:

1. a holder of a permanent residence permit, EU long-term residence permit and a right of permanent residence:
 - after 3 years of holding this permit, if they have a regular and stable source of income (a minimum amount is not set) and place of accommodation, or

- after 2 years of holding this permit, if they have been married to a Polish citizen for at least 3 years or are stateless, or
- who is a minor and one of their parents is Polish and the other agreed to the naturalisation; or
- who has stayed in Poland continuously and legally for at least 10 years, if they have a regular and stable source of income and place of accommodation,

2. a holder of permanent residence permit received in connection with being granted refugee status: after 2 years of holding this permit;

3. a holder of a permanent residence permit received in connection with their Polish roots or with having a “Poles Card”: after 1 year of holding this permit.

Additionally, to be declared a Polish citizen, a person concerned must show that they know Polish language at the B2 level (excl. minors whose one parent is Polish and the other agreed to the naturalisation). Knowledge of Polish language must be proven by presenting the Certificate of Polish Language Proficiency which can be obtained by passing a state exam. National language proficiency is the only integration criterium applied in the declaration proceedings.

The decision refusing declaring a person a Polish citizen can be challenged.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. *temporary and permanent resident migrants;*
- b. *regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. *undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. *refugees;*
- e. *asylum seekers;*
- f. *other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Discrimination – of any person, for any reason – is prohibited according to the Polish Constitution (Art. 32). The Anti-Discrimination Law, implementing EU law, adopted in 2010, is applicable to non-nationals, but it is rarely used in practice. It is insufficient and imprecise, e.g., it does not define intersectional/cumulative and associative discrimination.

In practice, third-country nationals are insufficiently protected against discrimination. Many migrant workers claim to be discriminated in their workplace, but they are unwilling to report it and seek protection against discriminatory practices as they are afraid of being dismissed and, consequently, losing their right to stay in Poland (see more below). Accommodation-related discrimination of third-country nationals, seen especially in case of Roma, Muslims and Africans, is not being combated or remedied by Polish authorities. Moreover, new laws were recently adopted that are deemed to violate the prohibition of discrimination, e.g. a creation of two separate support systems for persons displaced from Ukraine based on their nationality (under the Special Law and the Act on Protection, Art. 106-118a) and a temporal suspension of the right to asylum at the borders applicable to some foreigners crossing the Polish-Belarusian border (Act on Protection, Art. 33a).

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Under the Electoral Code, only Polish citizens can vote in national parliamentary and presidential elections. EU citizens can vote in the elections to the European Parliament. In some local elections (at the *gmina* level), voting is enabled for EU citizens and citizens of Great Britain and Northern Ireland.

A non-national can be elected to be:

- A member of the European Parliament – an EU citizen over 21 years old who has lived in Poland or the EU for at least 5 years,
- A member of local bodies (at the *gmina* level) – an EU citizen or a citizen of Great Britain and Northern Ireland over 18 years old permanently living in this *gmina*.

Non-nationals can participate in manifestations and associations, including labour unions (Polish Constitution, Art. 57-59). Thus, they can present their opinions concerning laws and policies, also within legislative proceedings. Moreover, some municipalities directly engaged non-nationals in the policy-making processes by creating consultative bodies consisting solely of third-country nationals (e.g. Gdańsk).

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Access to justice is generally provided to non-nationals. However, in law and practice it is hampered in case of persons considered to be a security threat. In those cases, no information about the reasons for such an assessment is given, no access to the case files is provided, and a deportation decision is executed immediately, irrespective of ongoing appeal proceedings.

Freedom of movement is generally guaranteed to non-nationals. However, it is hampered in case of some non-nationals, e.g.:

- asylum seekers – living in the reception centres, due to the rules applicable in these centres (e.g. under Act on Protection, Art. 40, leaving a reception centre for more than 7 days without justification leads to a discontinuation of asylum proceedings),
- asylum seekers – under the Dublin III Regulation, they should stay in Poland if they applied for asylum there or it was their entry point to the EU,
- some temporary protection beneficiaries – in connection with the rules under the Special Law suspending social welfare with every departure from Poland and a withdrawal of the protection upon 30 days of absence in Poland,
- persons who have their right to stay in Poland provisionally extended (e.g. those waiting for a new decision concerning their stay, or Ukrainian nationals not eligible for temporary protection whose stay in Poland was notwithstanding extended due to the Russian invasion of Ukraine) – these provisional extensions entitle them to legally stay in Poland but not to cross a border (so they can leave Poland but may not be able to come back to Poland).

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Yes, rules on buying and owning a real estate property by all non-nationals arise from a specific act. Acquiring property in Poland by a non-national must be preceded by the issuance of a special permit. This permit is issued, by way of an administrative decision, by the minister responsible for internal affairs, if the Minister of National Defence does not raise an objection, and, in the case of agricultural real estate, if the minister responsible for rural development does not raise an objection. Moreover, the permit is issued if:

- a. the acquisition of real estate by a non-national will not pose a threat to national defence, security or public order, and social policy and public health considerations do not oppose it; and
- b. the migrant proves that there are circumstances confirming their ties with Poland. Examples of these ties are specified by the law, i.e. 1) having Polish nationality or Polish origin;

2) being married to a Polish citizen; 3) having permanent residence permit, EU long-term residence permit or some of the temporary residence permits; 4) membership in the management body of some companies based in Poland; 5) conducting business or agricultural activities in Poland, in accordance with the Polish law. Other ties can be also shown during the procedure and they are assessed on a case-by-case basis.

The permit is valid for two years.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Until May 2025, work of third-country nationals was regulated under the Act on Employment Promotion, but in June 2025 a **new law** came into force: the Act on Entrusting Work to Foreigners. This new law:

- a. changed the rules concerning denial of work permits (more restrictive rules are now in force),
- b. introduced more demanding informative obligations of employers,
- c. introduced full digitalisation of the proceedings,
- d. repealed a labour market test (until May 2025, to obtain a work permit, an employer often was required to show a. that it was not possible to meet the employer's staffing needs based on the registers of unemployed and job-seeking persons (that include both Polish nationals and non-nationals entitled to work in Poland) or b. a negative result of the recruitment process organised for the employer, taking into account the priority of access to the labour market for Polish citizens and specified third-country nationals),
- e. introduced a possibility for local authorities to specify industries/professions in which migrant workers cannot be employed,
- f. established a priority for some applications for work permit (e.g. when a third-country national continues a previous employment),
- g. introduced some integration programmes for migrant workers.

a. temporary and permanent resident migrants

In general, third-country nationals must obtain a work permit to engage in formal employment in Poland. Work permit must be applied for by the employer and the employer is the only party to these proceedings. Work permits are issued for up to 3 years and can be extended. To work legally in Poland based on the issued work permit, a third-country national must also legally reside in Poland based on, *inter alia*, specified visas, almost all temporary residence permits, documents issued by other EU Member States or visa-free movement. Third-country nationals

can also apply for a work and temporary stay permit that is granted in one procedure (under Act on Foreigners, based on EU law). A seasonal work permit can be also granted for up to 9 months (based on EU law).

No work permit is required, so the full access to the Polish labour market is granted, in case of:

- holders of permanent residence permit,
- holders of EU long-term residence permits,
- holders of the specified temporary residence permits (work-related but also e.g. for spouses and children of Polish nationals),
- and in many other, very detailed exceptions.

For some nationalities (Armenia, Belarus, Georgia,¹⁴⁹⁴ Moldavia and Ukraine), a facilitated pathway to legal employment was created: employment statements (*oświadczenie o powierzeniu pracy cudzoziemcowi*). Such a statement must be registered by the employer. It entitles a person to work in Poland for up to 24 months. Employment statements are often used: in 2024, 428.188 such statements were issued (compared to 322.939 work permits).

Migrant workers profoundly depend on their employers. Work permits are issued for a specified job in a specified workplace for a specified minimal remuneration, so a migrant worker cannot change jobs or even be promoted without a new permit being issued. Moreover, migrant workers' stay in Poland is closely intertwined with their work; thus, being dismissed from work, they may also lose their right to stay in Poland. In case of dismissal, the work and temporary stay permit is revoked unless a migrant finds a new job within 30 days (Act on Foreigners, Art. 123). The close connection between work and stay strengthens the more advantageous position of employers in comparison to migrant workers. As a consequence, the latter find it difficult to assert their rights in the event of discrimination, exploitation or abuse.

b. EU+ citizens and their family members

In case of EU+ citizens and their family members, no work permit is required.

c. Protection-seekers

No work permit is required, so the full access to the Polish labour market is granted, in case of:

- Recognized refugees,
- Subsidiary protection beneficiaries,
- Holders of humanitarian stay,
- Holders of tolerated stay,

¹⁴⁹⁴ As of August 2025, a discontinuation of this entitlement for Georgian citizens is being discussed by the government.

- Temporary protection beneficiaries (however, in case of Ukrainian nationals and their family members, the start of their job must be notified to the authorities – under special notification procedure – and the work must be in coherence with rules established in the Special law, Art. 22).

Asylum seekers are not entitled to work unless the proceedings concerning their application for international protection last longer than six months and the delay is not attributed to any fault of the asylum seeker (Act on Protection, Art. 35).

d. Undocumented migrants

Undocumented migrants do not have a right to work in Poland.

e. Scale of labour migration

The number of migrant workers in Poland has been rising since 2005. At the end of 2024, there was in total 1.407.000 valid authorizations to work in Poland (so work permits, employment statements, seasonal work permits and notifications) issued to third-country nationals (47% for Ukrainian nationals). The rapidly rising number of applications for work and residence permit led to a significant backlog in the respective offices. Thus, now, applicants often wait months – if not years – to be granted a work or a residence permit.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Currently, there are no quotas and limitations in force. However, they may be introduced according to the Act on Entrusting Work to Foreigners, Art. 31, which provides for a possibility for local authorities to reduce migrant workers' employment in some industries/professions.

Labour market testing was required until May 2025 but was abolished with the entry into force of the Act on Entrusting Work to Foreigners.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Non-nationals cannot work as public servants (based on the Act on Public Servants).

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Migrant workers are, by law, similarly protected to Polish nationals. However, in practice, migrant workers who suffered discrimination, exploitation or abuse in Poland are not sufficiently assisted. They are afraid to report it due their far-reaching dependence on the employer (see above). The National Labour Inspectorate (*Państwowa Inspekcja Pracy*) is an authority that investigates the legality of migrants' work and punishes them for working without needed documents rather than offering support in the event of discrimination, exploitation or abuse.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Access to the public health services – the same as for Polish nationals – is granted, under the Act on Public Healthcare, to *inter alia*:

1. persons eligible for coverage by obligatory or voluntary public health insurance (e.g. employed non-nationals, persons running businesses, children, pensioners) and who are:
 - a. EU+ citizens with family members,
 - b. Persons staying in Poland on a basis of work or humanitarian visa, most of the temporary residence permits, permanent residence permits, EU long-term residence permits, humanitarian or tolerated stay,
 - c. Persons who were granted refugee status, subsidiary protection or temporary protection,
 - d. Asylum seekers, if they are allowed to work in Poland (see above),
 - e. Students and graduates having Poles Card or having their Polish roots officially confirmed, as well as other non-EU+ students and graduates.
2. non-nationals who were granted a refugee status or a subsidiary protection and their family members who had been granted a temporary residence permit for family reunification purposes, if they:
 - a. are living in Poland and have very low earnings,
 - b. are children (under 18 years old),
 - c. are pregnant.

In addition, some temporary protection beneficiaries – Ukrainian nationals and their family members – benefit from public healthcare system under the Special Law.

Asylum seekers and other temporary protection beneficiaries are not entitled to access public healthcare system. Under the Act on Protection, they benefit from the medical assistance of the company contracted by the Office for Foreigners – Petra Medica. Healthcare provided by this company has been criticized for years.

Other non-nationals – including undocumented migrants – must pay for healthcare services in Poland (provided within the public healthcare system or privately). Moreover, in practice, medical staff reports irregular migrants to the Polish authorities, disclosing their undocumented stay in Poland and indirectly prompting the initiation of return and/or detention proceedings. In consequence, irregular migrants are often afraid to access public healthcare system.

Costs of the medical assistance provided to non-nationals may be also covered by the Ministry of Health based on bilateral agreements. Such agreements are currently in force as regards nationals of Albania, Bosnia and Hercegovina, Montenegro, Macedonia, Serbia and Tunisia.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

1. Primary and secondary education

All children staying in Poland have a constitutional right to education. Education is mandatory until the age of 18 (Polish Constitution, Art. 70). Thus, minor non-nationals staying in Poland – irrespective of their status, so also undocumented migrants – can (and should) access Polish education system fully and at any time.

From 24th February 2022 to 1 September 2024, there was only one exception from this general rule (Regulation on education of Ukrainian pupils, §15). Ukrainian children who remotely benefitted from Ukrainian education system did not have to attend Polish schools. However, the exception was narrowed down and in the school year 2024/2025 it applied only to pupils passing final exams within the Ukrainian education system. Other Ukrainian children staying in Poland were obliged to go to the Polish school.

2. Tertiary education

All non-nationals can access tertiary education, but only some are entitled to access it free-of-charge like Polish nationals. Under the Act on Tertiary Education, those are:

1. EU+ citizens and their family members,
2. citizens of the Great Britain and North Ireland and their family members,
3. permanent residence permit holders,
4. EU long-term residence permit holders,
5. some temporary residence permit holders,
6. recognizes refugees,

7. subsidiary protection beneficiaries,
8. temporary protection beneficiaries,
9. non-nationals knowing Polish language at the level of C1 at least (duly certified),
10. Poles Card holders and persons who were issued with a decision confirming their Polish roots,
11. spouses, ascendants or descendants of Polish national that are living in Poland,
12. others according to international agreements or individual decisions.

In practice though, recognition of diplomas (and qualifications), needed in case of non-EU+ states of education, is a time-consuming and burdensome procedure.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

The Polish social insurance system consists of: old-age pension insurance, disability pension insurance, sickness insurance, accident insurance. In general, migrant workers are covered by the national social insurance system if they are employed by the Polish employer and they legally work in Poland. However, there are exceptions from this general rule (e.g. based on international agreements and EU law).

As the number of migrant workers in Poland has been steadily growing for years, their social security contributions are also increasing. According to the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych*), while in 2009-2014 the number of foreigners who were subject to pension and disability insurance increased by 59,300, in the period from December 2014 to December 2024 it increased by 1,068,600 (over nine times). Only between December 2023 and December 2024 the number of insured non-nationals increased by 65,200 (5,8%).

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Under Act on Social Assistance, non-nationals are eligible fully for social assistance if they live in Poland and they are:

1. permanent residence permit holders,
2. EU long-term residence permit holders,
3. some temporary residence permit holders,
4. recognizes refugees,
5. subsidiary protection beneficiaries,

6. EU+ citizens and their family members having right of residence or right of permanent residence in Poland.

Social assistance includes financial and non-financial support granted in different forms aimed at satisfying basic needs and dignified living conditions. That includes integration assistance granted to recognized refugees and subsidiary protection beneficiaries.

Non-nationals have limited access to social assistance if they live in Poland and they are:

1. humanitarian or tolerated stay holders – assistance is available only in form of shelter, food, necessary clothing and allowance given for a specific purpose;
2. human trafficking victims having specific documents – assistance is available only in form of crisis intervention, shelter, food, necessary clothing and allowance given for a specific purpose.

Some temporary protection beneficiaries – Ukrainian nationals and their family members – can also benefit from social assistance (under the Special Law, Art. 29). They are also entitled to live in the collective accommodation centres. However, after 120 days, they must partially cover its costs (Art. 12(17-17j)). Their accommodation by private hosts could be also publicly funded but only until July 2024 (PLN 40/day/person, Art. 13).

Other temporary protection beneficiaries, including asylum seekers, cannot access the public welfare system – they can only benefit from the limited support granted under Act on Protection (Art. 70-86): they can live in reception centres for asylum seekers or be granted a financial allowance of max. PLN 25/day. This allowance is too low to meet even the most basic needs of third-country nationals. Its amount has not been changed since 2003 and the costs of living in Poland have risen significantly since then. The situation of asylum seekers is worse than temporary protection beneficiaries, as they are not allowed to work for the first six months of asylum procedure.

Other non-nationals, especially undocumented migrants, have no access to social assistance.

In addition to social assistance, some non-nationals can also access other allowances given to Polish nationals, e.g.:

- a. 800+ allowance – a financial allowance given monthly to parents for every child they have, under the Act on State Support in Raising Children available in case of:
 - non-nationals to which the provisions on the social security coordination systems apply,
 - some visas and temporary residence permit holders,
 - persons having a residence permit (*karta pobytu*) with an annotation “access to labour market”,
 - citizens of the Great Britain and North Ireland,
 - and, under the Special Law, Art. 26, Ukrainian nationals and their family members having temporary protection (but not other temporary protection beneficiaries) if their children are enrolled to Polish schools;

b. Family benefits – granted e.g. to support low-income families as well as carers and in connection with childbirth, under the Family Benefits Act, available in cases mentioned below:

- non-nationals to which the provisions on the social security coordination systems apply,
- if this is guaranteed in bilateral and multilateral agreements,
- non-nationals staying in Poland - with their family members - on the basis of permanent residence permit, EU long-term residence permit, some temporary residence permits (with additional conditions in some cases), refugee status and subsidiary protection,
- persons having a residence permit (*karta pobytu*) with an annotation “access to labour market” (excl. holders of work permits granted for less than 6 months, students, seasonal workers, visa holders),
- and, under the Special Law, Art. 26, Ukrainian nationals and their family members having temporary protection (but not other temporary protection beneficiaries) if their children stay in Poland;

c. Good start allowance – a financial allowance of PLN 300 granted at the beginning of the school year to each pupil, available in cases mentioned below:

- EU+ citizens and citizens of the Great Britain and North Ireland,
- if this is guaranteed in bilateral and multilateral agreements,
- persons having a residence permit (*karta pobytu*) with an annotation “access to labour market” (excl. holders of work permits granted for less than 6 months, students, seasonal workers, visa holders),
- some visas and temporary residence permit holders (with additional conditions),
- and, under the Special Law, Art. 26, Ukrainian nationals and their family members having temporary protection (but not other temporary protection beneficiaries) if their children are enrolled to Polish schools.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

February 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Portugal

Authors: Emellin de Oliveira and Ana Rita Gil

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons		X
1961 Convention on the Reduction of Statelessness		X
International Covenant on Civil and Political Rights (ICCPR)	X	X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	X	X
International Covenant on Economic, Social and Cultural Rights (ICESCR)	X	X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	X	X

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	X	X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Convention on the Rights of the Child (CRC)	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	X	X
Convention on the Rights of Persons with Disabilities (CRPD)	X	X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	X	X
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		X
ILO Migration for Employment Convention (Revised) (No. 97)		X
ILO Equal Remuneration Convention (No. 100)		X

ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		X

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)	X	X
Protocols to the European Convention on Human Rights (list which ones):		1, 4, 6, 7, 11, 12, 13, 14, 15
European Social Charter (ESC)	X	X
European Convention on the Legal Status of Migrant Workers	X	X
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	X	X
American Convention on Human Rights (ACHR)		

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Treaties of Friendship and Cooperation

- Portugal and Spain: Tratado de Amizade e Cooperação entre a República Portuguesa e o Reino de Espanha
- Portugal and Cape Verde: Tratado de Amizade e Cooperação entre a República Portuguesa e a República de Cabo Verde
- Portugal and Argelia: Tratado de Amizade, Boa Vizinhança e Cooperação entre a República Portuguesa e a República Democrática e Popular da Argélia
- Portugal and Tunisia: Tratado de Amizade, Boa Vizinhança e Cooperação entre a República Portuguesa e a República Tunisina
- Portugal and Brasil: Tratado de Amizade, Cooperação e Consulta entre a República Portuguesa e a República Federativa do Brasil
- Portugal and Morocco: Tratado de Amizade, Boa Vizinhança e Cooperação entre a República Portuguesa e o Reino de Marrocos

Partnership and Cooperation Agreement between the European Union and its Member States, on the one hand, on the other:

- Republic of Singapore <https://www.ministeriopublico.pt/instrumento/acordo-de-parceria-e-cooperacao-entre-uniao-europeia-e-os-seus-estados-membros-por-um-0>
- Cuba: <https://www.ministeriopublico.pt/instrumento/acordo-de-dialogo-politico-e-de-cooperacao-entre-uniao-europeia-e-os-seus-estados>

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Within the field of Portuguese immigration law, the primary legislative instruments are:

- the Immigration Act (*Law no. 23/2007, of 4 July*);¹⁴⁹⁵ and
- Regulatory Decree no. 84/2007, of 5 November.¹⁴⁹⁶

Pursuant to Article 4 of the Immigration Act (IA), the above framework applies to foreign nationals and stateless persons. Nevertheless, and without prejudice to its subsidiary application where relevant, the IA does not apply to:

- EU/EEA citizens, and nationals of a third State with which Portugal has concluded an agreement providing for the free movement of persons;
- refugees, beneficiaries of subsidiary protection, and beneficiaries of temporary protection; and
- third-country nationals (TCNs)¹⁴⁹⁷ who are family members of a Portuguese citizen, an EU/EEA citizen, or a refugee (in the broad sense).

Portuguese immigration law distinguishes between two principal legal instruments governing entry and stay: visas (*vistas*) and residence permits (*autorizações de residência*).

Under Article 10(2) of the IA, a visa entitles its holder to present themselves at a border post and to request entry into Portugal. It is important to note that, pursuant to Article 10(1), foreign nationals seeking entry into Portuguese territory must hold a valid visa appropriate to the purpose of their travel.

Visas may be issued either:

- abroad, through Portuguese consular authorities, or

¹⁴⁹⁵ Law no. 23/2007, of July 4th, available at <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2007-67564445>

¹⁴⁹⁶ Available at <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-regulamentar/2007-116373592>

¹⁴⁹⁷ The Schengen Borders Code (Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 establishing a Union Code on the rules governing the movement of persons across borders) provides, in Article 2(6), that: “third-country national” means any person who is not a Union citizen within the meaning of Article 20(1) TFEU and who is not covered by point 5 of this Article”.

- at border posts, in the cases expressly provided for by law.

Article 45 of the IA provides for five categories of visas that may be granted abroad through Portuguese consular representations, namely:

1. Airport transit visa: the airport transit visa enables its holder, when undertaking an international connection, to access solely the international transit area of the airport. The individual must then proceed with their journey on the same or another aircraft, in accordance with the relevant transport document.
2. Short-stay visa: The short-stay visa is intended to permit entry into Portuguese territory for purposes which, although accepted by the competent authorities, do not justify the issuance of another category of visa. The visa may be issued with a validity of up to one year, for one or multiple entries. However, the uninterrupted duration of stay, or the total duration of successive stays, may not exceed 90 days within any 180-day period, counted from the date of the first crossing of an external border.
3. Temporary stay visa: The temporary stay visa authorises entry and stay in Portuguese territory for a period of less than one year.
4. Visa for obtaining a residence permit (residence visa): The residence visa enables its holder to enter Portugal for the purpose of submitting an application for a residence permit. This visa is valid for two entries and permits the holder to remain in Portuguese territory for a period of four months.
5. Qualified job-seeker visa: The qualified job-seeker visa may be granted to individuals holding specialised technical skills, allowing them to enter and remain in Portugal for the purpose of seeking qualified employment. It is issued for a period of 120 days, renewable for a further 60 days, and permits one entry into Portugal.

Article 66 of the IA provides for two categories of visas which may, in limited circumstances, be issued at border posts:

- 1) Short-stay visa (exceptional issuance at the border): At border posts subject to control, a short-stay visa may exceptionally be granted for a maximum period of 15 days to a foreign national who, due to unforeseen circumstances, was unable to apply for a visa before the competent authority. For such purposes, the applicant must:
 - hold a valid travel document permitting border crossing;
 - demonstrate possession of sufficient means of subsistence, as required under national law;
 - not be listed in the Schengen Information System, nor included in the national list of non-admissible persons; and
 - not constitute a threat to public order, national security, or the international relations of any EU Member State.
- 2) Special visa: On humanitarian grounds, or on grounds of national interest, recognised by ministerial order of the Minister of Internal Administration, a special visa may be granted to

foreign nationals who do not otherwise fulfil the legal requirements for entry and temporary stay in Portugal. This visa is valid exclusively for Portuguese territory.

A residence permit authorises the foreign national to reside lawfully in Portuguese territory, and the competent authority issues a corresponding residence title (*título de residência*).

Under Article 74 of the IA, residence permits are classified as:

- temporary residence permits; and
- permanent residence permits.

A temporary residence permit is valid for a period of two years, counted from the date of issuance of the relevant residence title, and is renewable for successive periods of three years.

Subject to any special regimes that may apply, the general cumulative requirements for the grant of a temporary residence permit, under Article 77 of the IA, include:

- possession of a valid residence visa, or a qualified job-seeker visa;
- absence of any fact which, had it been known to the competent authorities, would have prevented the granting of the visa;
- presence within Portuguese territory;
- sufficient means of subsistence, as defined by ministerial order (*portaria*);
- adequate accommodation;
- registration with social security, where applicable;
- no conviction for an offence punishable in Portugal by a custodial sentence exceeding one year;
- not being subject to an entry and stay ban, following a removal measure;
- no alert in the Schengen Information System; and
- no alert in the national internal information system (SII UCFE) for the purposes of refusing entry, stay, or return.

A permanent residence permit is not subject to a fixed period of validity. However, pursuant to Article 76 of the IA, the residence title must be renewed every five years, or whenever there is a change in the personal identification details recorded on the document.

Under Article 80 of the IA, the cumulative requirements for the grant of a permanent residence permit include:

- holding a temporary residence permit for at least five years;
- during the last five years of lawful residence in Portugal, not having been convicted of a sentence (or sentences) which, individually or cumulatively, exceeds one year of imprisonment, even where execution has been suspended, particularly in cases involving:
 - an intentional offence provided for under the IA or connected thereto;
 - terrorism-related offences; or

- violent crime, especially violent crime or highly organised crime;
- possession of sufficient means of subsistence, as defined by *portaria*;
- possession of suitable accommodation; and
- evidence of basic knowledge of the Portuguese language.¹⁴⁹⁸

It should be emphasised that the transition from a temporary residence permit to permanent residence is neither automatic nor mandatory. Provided that the relevant statutory requirements continue to be satisfied, a foreign national may renew their temporary residence permit indefinitely, through successive renewals.

Conversely, where an individual seeks permanent residence, and meets the legal and regulatory conditions, they must submit an application for the grant of a permanent residence permit, which is distinct from, and cannot be treated as, a mere renewal of temporary residence status.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

As a general matter, a foreign national may remain lawfully in Portuguese territory for a period exceeding three months either on the basis of a visa (where the relevant visa category permits a stay beyond 90 days) or on the basis of a residence permit (*autorização de residência*).

Leaving aside the specific regime relating to the extension of short-stay visas, the main visa categories that enable foreign nationals to remain in Portugal for the purpose of residence for a limited period are as follows.

¹⁴⁹⁸ Proof of basic knowledge of Portuguese may be evidenced by one of the following documents: an educational qualification certificate issued by a Portuguese public educational institution, or by a private or cooperative educational institution legally recognised in Portugal; a certificate of successful completion of a basic Portuguese language course issued by the IEFP (Institute for Employment and Vocational Training), or by a public educational institution, or by a legally recognised private or cooperative educational institution; or a certificate attesting basic knowledge of Portuguese, obtained through the completion of a language test at a Portuguese as a Foreign Language assessment centre recognised by the Ministry of Education, in accordance with Article 64(1)(e) of Regulatory Decree no. 84/2007, of November 5th. Furthermore, Article 64(2) of the same Regulatory Decree provides that basic knowledge of Portuguese may also be demonstrated by an educational qualification certificate issued by a public educational institution, or by a legally recognised private or cooperative educational institution, in a Portuguese-speaking country, where the applicant has attended such an institution. Further information in: *Legispédia de Estrangeiros e Fronteiras*, available at <https://sites.google.com/site/leximigratoria/artigo-80-o-concessao-e-renovacao-de-autorizacao-de-residencia-permanente>

1. Temporary stay visa (*visto de estada temporária*)

As previously noted, the temporary stay visa enables its holder to enter and remain in Portuguese territory for a period of up to one year, for one of several legally recognised purposes, including in particular:

- medical treatment in public healthcare establishments or those officially recognised for such purposes;
- the transfer of nationals of States party to the World Trade Organization, in the context of the provision of services or professional training in Portuguese territory;
- the exercise in Portugal of an independent professional activity (including self-employed professionals and service providers);
- the pursuit in Portugal of scientific research at research centres, teaching activities in higher education institutions, or other highly qualified activities, where the duration is less than one year;
- the pursuit of amateur sporting activities, certified by the relevant federation, provided that the club or sporting association assumes responsibility for accommodation and healthcare;
- remaining in Portuguese territory for periods exceeding three months for the purpose of attending a study programme, participating in a student exchange, undertaking an unpaid professional internship, engaging in volunteering, or fulfilling international commitments in the context of the WTO or arising from international conventions and agreements to which Portugal is a party, notably within the scope of the freedom to provide services;
- accompanying a family member undergoing medical treatment;
- accompanying a family member holding a temporary stay visa, except where that visa was issued for the purpose of seasonal work;
- the exercise of subordinate or independent work performed remotely for an individual or legal entity domiciled or headquartered outside Portugal (commonly referred to as the digital nomad regime);
- seasonal work for a period exceeding 90 days but not exceeding nine months; and
- attending a course at an educational establishment or participating in vocational training.

2. Job-seeker visa (*visto para procura de trabalho*)

Until 22 October 2025, any foreign national, regardless of their professional category, could apply for a job-seeker visa through a Portuguese consular office. However, with effect from 23 October 2025,¹⁴⁹⁹ legislative amendments entered into force restricting access to this visa category to so-called highly qualified workers, defined as foreign nationals holding specialised

¹⁴⁹⁹ Law no. 61/2025, of October 22nd, available at <https://diariodarepublica.pt/dr/detalhe/lei/61-2025-941547426>

technical skills, to be further specified by ministerial order (*portaria*) of the Government members responsible for foreign affairs, migration, education and labour.¹⁵⁰⁰

3. Residence visa (visto de residência)

A residence visa is designed to enable its holder to enter Portuguese territory for the purpose of applying for a residence permit. It typically allows two entries and is valid for a period of 120 days. During that period, the visa holder is required to submit an application for a residence permit before AIMA, I.P. (the Agency for Integration, Migration and Asylum).¹⁵⁰¹ Types of residence visas:¹⁵⁰²

PURPOSE	TYPE OF VISA
Retired	Residency visa for retirement purposes, religious purposes or for people living from passive income.
People living from passive income	
Religious training within a religious congregations	

PURPOSE	TYPE OF VISA
Subordinate work	Residency visa for subordinate work purposes
Remote Work / Digital Nomad	Residency visa for the exercise of a professional activity done remotely - "digital nomads"
Independent work	Residency visa for independent work purposes or entrepreneurs
Entrepreneurs	
Highly qualified activity	Residency visa for higher education teaching purposes, highly qualified activity or cultural purposes, as well as, highly qualified subordinate activity.
Higher education teaching / Professorial activity	
Highly qualified subordinate activity	
Sports activities	Residency visa for subordinate work purposes.

¹⁵⁰⁰ As of 14 January 2026, the ministerial order (Portaria) intended to define the highly qualified professions enabling highly qualified applicants to apply for the qualified job-seeker visa in Portugal had not yet been published.

¹⁵⁰¹ AIMA, I.P. refers to the Agency for Integration, Migration and Asylum (*Agência para a Integração, Migrações e Asilo*). Further information is available on its official website: <https://aima.gov.pt/pt>

¹⁵⁰² Summary available at: <https://vistos.mne.gov.pt/en/national-visas/general-information/type-of-visa#fixed-residency>

PURPOSE	TYPE OF VISA
Research	Residency visa for research, study, high-school student exchange, internship and volunteer work purposes.
Secondary education	
Bachelor's Master's PhD Post-Doc	
Mobility program / Exchange program	
Religious person undertaking studies in a recognized institution.	

PURPOSE	TYPE OF VISA
Professional training	Residency visa for research, study, high-school student exchange, internship and volunteer work purposes.
Unpaid internship	
Volunteer work	

PURPOSE	TYPE OF VISA
Family regrouping (prior AIMA consent required)	Residency visa for family reunification purposes
For accompanying family member	Residency visa for accompanying family member applying for a residence visa

Residence visas are also referred to within the Portuguese consular network as Category D visas (*vistos de categoria D*). Below a summary table:¹⁵⁰³

TYPES OF RESIDENCE VISA	OBJECTIVES
D1	Subordinate Work Activity
D2	Independent Work Activity or Entrepreneurship
D3	Professional Activity, Highly Qualify Activity and Cultural Activity
D4	Students exchange, Internship and Volunteer work
D5	Research and Higher Education Students
D6	Family Reunification
D7	Fixed residency for retirement purposes, religious purposes or people living out from individual revenues
D8	Digital Nomads
D9	Investment

¹⁵⁰³ Table prepared by the Author Emellin de Oliveira.

As previously explained, Portuguese law recognises two principal categories of residence permit: temporary residence permits; and permanent residence permits.

In practice and depending on the legal basis of the individual's stay, legislation establishes more specific residence permit sub-types, each with its own eligibility criteria and procedural requirements.

As of January 2026, the relevant sub-categories of residence permits under the IA include, inter alia, the following:

- Article 77 - General conditions for the grant of a temporary residence permit.
- Article 88 - Residence permit for subordinate employment.¹⁵⁰⁴
- Article 89 - Residence permit for independent professional activity or immigrant entrepreneurs.
- Article 90 - Residence permit for teaching activities, highly qualified activity, or cultural activity.
- Article 90-A - Residence permit for investment activity.
- Article 91 - Residence permit for higher education students.¹⁵⁰⁵
- Article 91-A - Mobility of higher education students.¹⁵⁰⁶
- Article 91-B - Residence permit for researchers.¹⁵⁰⁷
- Article 91-C - Mobility of researchers.¹⁵⁰⁸
- Article 92 - Residence permit for students (general).¹⁵⁰⁹
- Article 93 - Residence permit for interns.¹⁵¹⁰
- Article 94 - Residence permit for volunteers.¹⁵¹¹
- Article 98 - Right to family reunification.¹⁵¹²

¹⁵⁰⁴ Transposition of the Directive (EU) 2024/1233 on a single application procedure for a single permit for non-EU nationals to reside and work in a Member State and on a common set of rights for non-EU workers legally residing in a Member State, available at: <https://eur-lex.europa.eu/EN/legal-content/summary/non-eu-workers-a-single-permit-for-residence-and-work-in-the-eu-2026.html>

¹⁵⁰⁵ Transposition of the DIRECTIVE (EU) 2016/801 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0801>

¹⁵⁰⁶ Idem Note no. 10.

¹⁵⁰⁷ Idem Note no. 10.

¹⁵⁰⁸ Idem Note no. 10.

¹⁵⁰⁹ Idem Note no. 10.

¹⁵¹⁰ Idem Note no. 10.

¹⁵¹¹ Idem Note no. 10.

¹⁵¹² Transposition of the COUNCIL DIRECTIVE 2003/86/EC of 22 September 2003 on the right to family reunification, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:en:PDF>

- Article 109 - Residence permit for victims of human trafficking or of facilitation of Illegal immigration.¹⁵¹³
- Article 116 - Right of residence of long-term residents in another EU Member State.
- Article 121 - EU Blue Card residence permit.¹⁵¹⁴
- Article 122 - Residence permit with waiver of the residence visa requirement.
- Article 123 - Exceptional regime.
- Article 123-A - Special regime for relocation of undertakings.
- Article 124-A - Residence permit for intra-corporate transferees (ICT).¹⁵¹⁵
- Article 125 - Long-term resident status.¹⁵¹⁶

It is further relevant to note that Portugal applies a specific visa regime¹⁵¹⁷ to nationals of a State in which the Agreement on Mobility between the Member States of the Community of Portuguese-Speaking Countries (CPLP), signed in Luanda on 17 July 2021, is in force.¹⁵¹⁸

Under this regime, CPLP nationals are exempt from presenting proof of means of subsistence, provided that they submit one of the recognised alternative forms of evidence, namely:

- a term of responsibility signed by the host entity, for interns or workers, or by the organisation responsible for student exchange or volunteering programmes; or
- a term of responsibility, with signature duly recognised, signed by a Portuguese citizen or a qualified foreign national holding a lawful residence document in Portugal, guaranteeing the visa applicant's food and accommodation, and covering potential removal costs in the event of irregular stay, accompanied by:
 - the sponsor's income tax return (for the previous year); and
 - the sponsor's bank statement (covering the previous three months).

Applicants admitted to a higher education institution are not required to demonstrate means of subsistence.

¹⁵¹³ Transposition of the Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, available at: <https://eur-lex.europa.eu/EN/legal-content/summary/residence-permit-for-victims-of-human-trafficking.html>

¹⁵¹⁴ Transposition of the Directive (EU) 2021/1883 – conditions of entry to and residence in the European Union of non-EU nationals for the purpose of highly qualified employment, available at: <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32021L1883>

¹⁵¹⁵ Transposition of the DIRECTIVE 2014/66/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intracorporate transfer, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0066>

¹⁵¹⁶ Transposition of the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02003L0109-20110520>

¹⁵¹⁷ Available at: <https://vistos.mne.gov.pt/en/national-visas/necessary-documentation/cplp-en>

¹⁵¹⁸ Mobility Agreement signed in Luanda on 17 July 2021: <https://files.dre.pt/1s/2021/12/23700/0000400014.pdf>

In addition to the above, Portuguese law has introduced a specific residence permit applicable to CPLP nationals, commonly referred to as the AR CPLP. When this mechanism was first introduced in 2022, the categories eligible to apply for AR CPLP included:

- holders of short-stay visas;
- holders of temporary stay visas; and
- CPLP nationals who had entered Portugal lawfully, even where they did not hold a residence visa.

Following the legislative amendments that entered into force in October 2025, eligibility for AR CPLP was restricted. As from that date, only nationals of Portuguese-speaking States who hold a residence visa became eligible to apply for the AR CPLP.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Portuguese Asylum Law establishes the substantive conditions and procedural rules governing the grant of asylum and subsidiary protection, as well as the legal status of asylum applicants, refugees, and beneficiaries of subsidiary protection.¹⁵¹⁹

Pursuant to Article 3(1) and (2) of the Asylum Law, the right to asylum is guaranteed to foreign nationals and stateless persons who are persecuted, or seriously threatened with persecution, as a consequence of activities carried out in the State of their nationality or habitual residence in support of democracy, national and social liberation, peace between peoples, freedom, and fundamental human rights.¹⁵²⁰

The right to asylum is also granted to foreign nationals and stateless persons who, owing to a well-founded fear of persecution on grounds of race, religion, nationality, political opinion, or membership of a particular social group, are unable, or due to such fear unwilling, to return to the State of their nationality or habitual residence.

Under Article 7 of the Asylum Law, a residence permit based on subsidiary protection may be granted to foreign nationals and stateless persons who do not fall within the scope of the asylum provisions, but who are prevented or unable to return to their country of nationality or habitual residence, either due to a systematic violation of human rights in that country, or because they face a risk of suffering serious harm.^{1521 1522} “Serious harm” includes, in particular:

¹⁵¹⁹ Law no. 27/2008, of June 30th, available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2008-74902145>

¹⁵²⁰ Also on Article 33(8) of the Constitution of the Portuguese Republic, available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-aprovacao-constituicao/1976-34520775-43894075>

¹⁵²¹ Transposition of the Directive 2011/95/EU – common standards for the qualification and international protection of refugees and stateless persons (recast), available at: <https://eur-lex.europa.eu/EN/legal-content/summary/refugees-and-stateless-persons-common-standards-for-qualification-until-2026.html>

¹⁵²² The REGULATION (EU) 2024/1347 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 May 2024 (Qualification Regulation) replaces the Qualification Directive. This Regulation shall apply from 1 July 2026. Available at: <https://www.refworld.org/legal/reglegislation/council/2024/en/148003>

- the death penalty or execution;
- torture or inhuman or degrading treatment or punishment of the applicant in the country of origin; or
- a serious and individual threat to the applicant's life or physical integrity arising from indiscriminate violence in situations of international or internal armed conflict, or from widespread and indiscriminate violations of human rights

The international protection procedure^{1523 1524} in Portugal generally comprises two main stages:

1. the Admissibility Stage (*fase de admissibilidade*); and
2. the Merits/Instruction Stage (*fase de instrução*), which takes place within Portuguese territory.

The admissibility stage may take place either at a border post or within national territory, depending on where the application for international protection is lodged.

• Application lodged at a border post:

- i. Following the submission of the application, the applicant remains in the international zone of the port or airport pending notification of the decision issued by the Board of Directors of AIMA, I.P.¹⁵²⁵
- ii. The Board of Directors of AIMA, I.P., must issue a reasoned decision within a maximum period of seven days.
- iii. The decision adopted by the Board of Directors is subject to judicial challenge before the administrative courts within four days, with suspensive effect.

• Application lodged within national territory

- iv. A foreign national or stateless person who enters Portuguese territory with the intention of seeking international protection must submit the application without delay to AIMA, I.P., or to any other police authority, either in writing or orally (in which case a formal record must be drawn up).
- i. AIMA, I.P., must register the application for international protection within three working days of its submission.
- ii. Within three days of registration, the applicant is provided with a document confirming the submission of the application, which simultaneously attests that the applicant is authorised to remain lawfully in Portuguese territory while the application remains pending.

¹⁵²³ Transposition of the DIRECTIVE 2013/32/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032>

¹⁵²⁴ The Asylum Procedure Regulation replaces the Asylum Procedure Directive. The Regulation shall apply from 12 June 2026. Available at <https://www.refworld.org/legal/reglegislation/council/2024/en/148004>

¹⁵²⁵ See Note no. 7.

- v. Upon receipt of the application, AIMA, I.P., must immediately notify the applicant to provide statements within a period of two to five days, so as to enable the applicant to set out the circumstances underpinning the claim.
- vi. The Board of Directors of AIMA, I.P., is responsible for issuing a reasoned decision on manifestly unfounded and inadmissible applications within 30 days from the date of submission of the application.
- vii. In the absence of a decision within the statutory time limit referred to above, the application is deemed admissible. In respect of applications that are not unfounded, the Board of Directors issues a formal admissibility decision.

Where an application for international protection is admitted, the procedure proceeds to the merits stage.

- i. AIMA, I.P., issues the applicant with a provisional residence permit, valid for six months from the date of the admissibility decision, renewable until a final decision is adopted.
- ii. Article 28 of the Asylum Law provides that the instruction stage should be concluded within six months, and may, in cases of particular complexity, be extended up to nine months. The applicant must be informed of any extension and, upon request, of both the reasons for the delay and the expected timeframe for a decision. Notwithstanding the statutory framework, in practice this stage has frequently lasted approximately two years on average.
- iii. Upon completion of the instruction stage, AIMA, I.P. prepares a reasoned proposal recommending either the grant or refusal of international protection. The content of the proposal is notified to the applicant, who may submit observations within 10 days.
- iv. The duly reasoned proposal is then submitted by AIMA, I.P. to the Government member responsible for migration policy within 10 days.
- v. The Government member responsible for the migration portfolio must decide within eight days from the date of submission of the proposal. AIMA, I.P. must notify the applicant of the decision in a language the applicant understands or can reasonably be presumed to understand.
- vi. The final decision is subject to judicial challenge before the administrative courts within 15 days, with suspensive effect.

It is important to note that a single application for international protection in Portugal typically entails the examination: whether the applicant qualifies for refugee status; and where refugee status is not granted, whether the applicant qualifies for subsidiary protection.

Under Article 67(1), beneficiaries of refugee status are granted a residence permit valid for an initial period of five years, renewable for equal periods.

Under Article 67(2), beneficiaries of subsidiary protection are granted a residence permit based on subsidiary protection valid for an initial period of three years, renewable for equal periods, subject to a prior assessment of developments in the country of origin.

In the context of avenues for international protection in Portugal, reference should be made to the recent legislative proposal commonly referred to as a “humanitarian visa”, which was rejected by the Portuguese Parliament on October 23rd, 2024.¹⁵²⁶ The proposal aimed to enable individuals at risk of persecution or conflict to seek asylum through Portuguese embassies, thereby reducing reliance on unsafe or irregular journeys.

As of January 2026, this mechanism did not yet constitute a consolidated or fully operational visa route and should be understood as a proposed pathway facilitating access to asylum procedures, rather than a standalone immigration status.

In parallel, Portugal has relied on other humanitarian avenues, including:

- Humanitarian Admission (AMH) for vulnerable groups, administered by AIMA, I.P.,¹⁵²⁷ and
- the Special Visa under Article 68 of the IA (for exceptional cases), which functions as an extraordinary entry mechanism in certain circumstances.

Portuguese law further provides for a specific regime concerning temporary protection of displaced persons.¹⁵²⁸

Under Article 2, temporary protection is defined as an exceptional procedure which ensures immediate temporary protection in circumstances of an occurrence or imminent risk of a mass influx of displaced persons from third countries who are unable to return to their country of origin. This mechanism is particularly relevant where the asylum system is unable to respond to such influx without adversely affecting its proper functioning, in the interests of the persons concerned and of other applicants for protection. Activation of temporary protection:

- Once the existence of a mass influx is declared by a decision of the Council of the European Union, within the relevant specific procedure organised in accordance with EU law, Portugal shall, through the competent ministries, adopt the measures provided for under the Temporary Protection Law to implement that decision.
- The Ministry of Internal Administration presides over the interministerial commission, coordinating the implementation of the measures referred to above.
- Portugal may grant temporary protection by means of a Council of Ministers Resolution, taking into account, in each case, the risks faced by displaced persons, the urgency and necessity of temporary protection, and the consequences for public order and national security.

Pursuant to Article 8, temporary protection lasts for one year and may be automatically extended for periods of six months, up to a maximum overall duration of one additional year,

¹⁵²⁶ Further info: <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalleIniciativa.aspx?BID=273964>

¹⁵²⁷ Further info: <https://aima.gov.pt/pt/a-aima/fundos-comunitarios/projetos-cofinanciados/reinstalacao-e-admissao-por-motivos-humanitarios-2023-2025-concluido>; Regulation (EU) 2024/1350 establishing a Union resettlement and humanitarian admission framework, available at: <https://eur-lex.europa.eu/EN/legal-content/summary/eu-resettlement-and-humanitarian-admission-framework-regulation.html>

¹⁵²⁸ Law no. 67/2003, of 23 August, available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2003-213937080>

without prejudice to any decision of the Council of the European Union terminating temporary protection.¹⁵²⁹

An extension beyond those limits may occur where the reasons justifying protection persist, as recognised by a decision of the Council of the European Union for the period indicated therein.¹⁵³⁰ Temporary protection ends:

- once the maximum duration has been reached; or
- at any time, by decision of the Council of the European Union, where the situation in the country of origin permits a safe and durable return of beneficiaries.

During the period of temporary protection, beneficiaries retain the ability to submit an asylum application. Any asylum request that has not been concluded prior to the end of temporary protection must be determined after the expiry of that temporary protection period.

Finally, the IA provides for an extraordinary regime (Article 123) applicable in exceptional circumstances not covered by the Asylum Law. Upon proposal of the Board of Directors of AIMA, I.P., or on the initiative of the Government member responsible for migration policy, a temporary residence permit may, on an exceptional basis, be granted to foreign nationals for humanitarian reasons, including, in particular, where required by the best interests of the child.

As a final note, it should be recorded that the Government has prepared a draft legislative proposal intended to amend the Portuguese Asylum Law.¹⁵³¹ This proposal seeks, in particular, to remove the suspensive effect of appeals in asylum proceedings. It further intends to eliminate tacit admissibility at the admissibility stage where AIMA, I.P. fails to issue a decision within the statutory time limit. The proposal was subject to public consultation¹⁵³² until 31 December 2025, and, as of January 2026, had not yet been formally submitted to the Portuguese Parliament.

¹⁵²⁹ Law. No 20-A/20025, of 26 de fevereiro, Altera a Lei n.º 67/2003, de 23 de agosto, no sentido de alargar o período de duração máxima da proteção temporária de pessoas deslocadas de países terceiros, impossibilitadas de regressar em curto prazo ao seu país de origem, available at: <https://diariodarepublica.pt/dr/detalhe/lei/20-a-2025-909115437>

¹⁵³⁰ Example of implementation measure: Council of Ministers Resolution no 47/2025, of March 17th, extending the validity of temporary protection titles granted to displaced persons from Ukraine, available at: <https://diariodarepublica.pt/dr/detalhe/resolucao-conselho-ministros/47-2025-911089437>

¹⁵³¹ Draft bill amending Law no 34/94 of 14 September, Law no 23/2007 of 4 July, and Law no 27/2008 of 30 June (consultation process).

¹⁵³² Further info: https://www.consultalex.gov.pt/Portal_Consultas_Publicas_UI/ConsultaPublica_Detail.aspx?Consulta_Id=379

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

At the outset, it is essential to note that Portuguese immigration law underwent significant reform in October 2025 as a result of Law no. 61/2025, of October 22nd, which introduced material changes to the rules governing family reunification under the IA.^{1533 1534}

Until 22 October 2025, any foreign national holding a Portuguese residence permit was, in principle, entitled to apply for family reunification in respect of family members already present in Portuguese territory or residing abroad. This entitlement applied irrespective of whether the relevant family ties were formed before or after the sponsor's entry into Portugal.

From 23 October 2025, the entitlement to family reunification is, as a general rule, limited to residents who have held a valid residence permit for at least two years.

This two-year waiting period does not apply to the following family members of the applicant:

- a) dependent minor children or incapacitated dependants;
- b) a spouse or equivalent partner who is the parent or adoptive parent of a dependent minor child or incapacitated dependant of the resident;
- c) family members of a resident whose residence permit was granted under Article 90 (teaching, highly qualified or cultural activity), Article 90-A (investment activity), or Article 121-A (EU Blue Card beneficiaries).

In addition, the two-year period may be waived or reduced in duly reasoned exceptional cases by decision of the Government member responsible for migration, taking into account the nature and strength of the family ties and the applicant's effective integration in Portugal, in light of the constitutional principles of human dignity and proportionality.

For the purposes of family reunification, Article 99 of the IA recognises as "family members" of the resident, in particular:

- i. the spouse;
- ii. minor or incapacitated children dependent on the couple or on one spouse;
- iii. adopted minor children of the applicant (where not married), or of the applicant or spouse, pursuant to a decision of the competent authority of the country of origin, provided that (i) the law of that country confers rights and duties equivalent to those of natural filiation, and (ii) the decision is recognised by Portugal;
- iv. adult dependent children of the couple or of one spouse, who are unmarried and enrolled in study at an educational establishment in Portugal;

¹⁵³³ Constitutional Court (Portugal), judgment delivered at the request of the President of the Republic concerning proposed amendments to the Immigration Act: Judgement no 785/2025, Case no 881/2025 (Plenary), Rapporteur: Judge Joana Fernandes Costa, available at: <https://www.tribunalconstitucional.pt/tc/acordaos/20250785.html>

¹⁵³⁴ Portuguese Parliament legislative file concerning the amendment process culminating in Law no 61/2025, of October 22nd, available at: <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=315162>

- v. adult dependent children, unmarried and enrolled in education, where the sponsor holds a residence permit granted under Article 90-A (investment);
- vi. first-degree direct ascendants of the resident or of the spouse, provided they are dependent;
- vii. minor siblings, provided they are under the resident's legal guardianship pursuant to a decision of the competent authority in the country of origin, recognised by Portugal.

For the family reunification of an unaccompanied minor refugee, the following are treated as family members: first-degree direct ascendants; and the legal guardian, or any other family member, where direct ascendants do not exist or cannot be located.

For holders of a residence permit for study, unpaid internship, or volunteering, only the family members referred to in points (i) to (iii) above are eligible.

Additional requirements concerning children and spouses

- Reunification with a minor or incapacitated child of only one spouse requires the consent of the other parent, or a decision of the competent authority awarding custody to the sponsoring parent.
- The right to reunification with a spouse or equivalent partner is conditional upon the marriage or de facto union being valid and recognised under Portuguese law, and both parties being at least 18 years old at the date of the application.

It falls to the sponsor (the holder of the right to family reunification) to submit an application to AIMA, I.P., for the entry and residence of family members located outside Portuguese territory. The sponsor may also apply for residence authorisation for eligible family members who are already present in Portugal, provided they entered and remain in the country at the time the family reunification application is lodged.

Although a dedicated portal exists for family reunification applications,¹⁵³⁵ its practical scope is limited. In particular, it only permits applications for family members who can demonstrate that they are already in Portugal at the time of submission, and where the household includes at least one child under 18, failing which refusal may occur. Moreover, the portal does not accommodate family reunification applications relating to holders of the CPLP residence permit (AR CPLP).

In practice, difficulties in securing AIMA appointments for the submission and progression of family reunification applications have contributed to a substantial increase in judicial proceedings seeking to compel administrative action.¹⁵³⁶ In appropriate circumstances, it is also

¹⁵³⁵ AIMA online services portal (login page), available at: <https://servicos.aima.gov.pt/login?language=en>

¹⁵³⁶ The Lisbon Administrative Court (*Tribunal Administrativo do Círculo de Lisboa* – TACL) currently has in excess of 133,000 cases pending against AIMA, I.P., with an average daily intake of approximately 500 new cases. The backlog includes, in particular, litigation relating to residence permits and applications seeking to compel AIMA to act, notably in connection with the scheduling of interviews required for regularisation procedures. It has further been reported that, between 14 July and 31 August, the TACL received 179 interim relief applications (*providências cautelares*) aimed at preventing the enforcement of removal/expulsion orders [free translation]. Available at: Público, “Mais de 133 mil processos contra a AIMA pendentes no Tribunal Administrativo de

possible to deploy urgent judicial mechanisms¹⁵³⁷ to require the administration to schedule an appointment so that the sponsor may effectively exercise the right to family reunification.

Once the appointment is secured, the application for family reunification must be accompanied by documents showing the relevant family relationship or the existence of a de facto union; documents demonstrating fulfilment of the applicable conditions for exercising the right to family reunification; and authenticated copies of the family members' (or de facto partner's) travel documents.

To exercise the right to family reunification, the sponsor must demonstrate:

- Accommodation, owned or rented, regarded as suitable for a comparable family in the same region, meeting general standards of safety and habitability;¹⁵³⁸ and
- Sufficient means of subsistence to support the entire household without recourse to social assistance.¹⁵³⁹

In assessing the application, AIMA, I.P., may conduct interviews with the sponsor and/or family members and undertake such enquiries as is considered necessary. Where the application concerns a de facto union, AIMA must consider factors such as the existence of a common child, previous cohabitation, registration of the union, or any other reliable evidence.

Competence to decide family reunification applications lies with the Board of Directors of AIMA, I.P., with the possibility of delegated authority. The statutory decision period is nine

Lisboa”, <https://www.publico.pt/2025/10/11/economia/noticia/133-mil-processos-aima-pendentes-tribunal-administrativo-lisboa-2150462?reloaded&rnd=0.5632573013533079>

¹⁵³⁷ The urgent application for the protection of rights, freedoms and guarantees (*intimação para proteção de direitos, liberdades e garantias*) is the appropriate procedural mechanism where the prompt issuance of a decision on the merits – requiring the Administration to adopt a positive or negative course of conduct – is indispensable to secure, in due time, the effective exercise of a protected right, freedom or guarantee, and where interim relief is not feasible or sufficient in the circumstances, pursuant to Article 109(1) of the Code of Procedure in Administrative Courts (*Código de Processo nos Tribunais Administrativos - CPTA*). The ability to rely upon a minimum period of lawful residence in national territory is a necessary condition for a foreign national to plan and structure their life project with a reasonable degree of security and stability. This is further reinforced by the existence of procedural facilitation measures under Articles 76(3) and 82(7) of Law no. 23/2007 [free translation]. Judgement of the Administrative Supreme Court (STA) in 6 June 2024, case n.º 0741/23.4BELSB, available at <https://www.dgsi.pt/jsta.nsf/35fbbbf22e1bb1e680256f8e003ea931/a23f8319e054984180258b390058f01c?OpenDocument>

¹⁵³⁸ As of January 2026, the ministerial order of the Government members responsible for migration and housing intended to define regional accommodation criteria had not yet been published.

¹⁵³⁹ Pursuant to Article 2 of Ministerial Order (Portaria) no. 1563/2007, of 11 December, “means of subsistence” (*meios de subsistência*) are defined as stable and regular resources sufficient to meet the essential needs of the foreign national and, where applicable, their family, in particular in respect of food, accommodation, and healthcare and hygiene, in accordance with the provisions of that Order.

The assessment criteria for means of subsistence are determined by reference to the national minimum monthly wage (*retribuição mínima mensal garantida*), taking into account the nature and regularity of the income, net of social security contributions, and applying the following per capita weighting within each household: First adult: 100%; Second and subsequent adults: 50%; Children and young persons under 18, and dependent adult children: 30%. Official publication available at: <https://diariodarepublica.pt/dr/detalhe/portaria/1563-2007-628798>; Separately, under Portaria no. 760/2009, of 16 July, an exceptional rule applies where the applicant demonstrates that they are in a situation of involuntary unemployment and declares that they are unable to maintain availability of, or to legally obtain, the required means of subsistence. In such cases, the following criteria apply: First adult: 50% of the national minimum wage; Each additional household member: 30% of the national minimum wage. Official publication available at: <https://diariodarepublica.pt/dr/detalhe/portaria/760-2009-492254>

months from receipt of the application. Save in cases involving spouses with minor children or dependent minors, this period may, in exceptional circumstances linked to the complexity of the assessment, be extended for a further nine months, and the applicant must be informed of such extension.

Where a family member either holds a visa issued for the purposes of family reunification, or is already present in Portuguese territory, and the family reunification application has been approved, that family member is granted a residence permit of the same duration as that held by the sponsor (the holder of the right to family reunification).

By way of exception, a residence permit is granted for a period of 15 months to a spouse (or equivalent partner) who has cohabited with the sponsor for at least 18 months during the period immediately preceding the sponsor's entry into Portuguese territory.

Where the sponsor holds a permanent residence permit, the relevant family member is issued with a residence permit valid for two years, renewable for successive periods of three years.

As a general rule, following two years from the issuance of the first family reunification residence permit, and provided that the family relationship subsists – or, irrespective of that period, where the sponsor has minor children residing in Portugal – family members acquire the right to an autonomous residence permit, of a duration equivalent to that of the sponsor.

In exceptional situations – such as legal separation, divorce, widowhood, death of an ascendant or descendant, prosecution for domestic violence by the Public Prosecutor, or attainment of majority – an autonomous residence permit may be granted before the expiry of the two-year period, including where the relevant facts arise while the reunification application is pending. Such autonomous permits are typically valid for two years, renewable for successive three-year periods.

Further, the first residence permit granted to a spouse under family reunification is autonomous where the marriage or de facto union has existed for more than five years, in which case the spouse is issued a permit with a duration equivalent to that of the sponsor.

A family reunification application may be refused, in particular:

- where the conditions for exercising the right are not satisfied;
- where the family member is subject to an entry/stay ban or is flagged in the Schengen Information System (SIS) for return or refusal of entry and stay;
- where the family member's presence constitutes a threat to public order, public security, or public health.

Where refusal is based on public order/security, the administration must consider the gravity or type of offence and the risks arising from the person's stay, as well as the broader evolution of public order/security conditions. Where refusal is based on public health, consideration must be given to relevant diseases defined by WHO instruments or other contagious infectious/parasitic diseases subject to protective measures, and the capacity of health services.

Prior to refusal, the administration must take into account the nature and strength of family ties, the sponsor's length of residence in Portugal, and the existence of family, cultural and social

ties with the country of origin. Notably, refusal of an application lodged by a refugee cannot be based solely on the absence of documentary proof of the family relationship.

A refusal decision must be notified of reasons and must indicate the right to judicial challenge and the relevant time limit. Refusal decisions are subject to judicial review before the administrative courts with non-suspensive (devolutive) effect as a general rule. However, where family members are already in Portuguese territory and refusal is based exclusively on failure to meet the substantive conditions (accommodation/means), judicial challenge has suspensive effect.

Following the grant of residence permits for family reunification, in accordance with the provisions of Article 101, family members are required to comply with integration measures, including attendance of Portuguese language training and training on Portuguese constitutional principles and values, and compulsory schooling for minors, in accordance with the applicable regulatory decree. Save where non-compliance is not attributable to the family members, renewal of the residence permit depends upon proof of compliance with these measures, including conditions relating to the absence of reliance on social assistance, and demonstrable knowledge of the Portuguese language and constitutional principles/values.

In humanitarian cases, family members may be exceptionally exempted from integration measures by decision of the Government member responsible for migration, applying the principle of proportionality.

Finally, Article 6 of Law no. 61/2025, of October 22nd, establishes a transitional rule: for a period of 180 days following entry into force of the law, the sponsor may apply for residence authorisation for eligible family members who are already in Portuguese territory, provided they entered lawfully and meet the requirements of Article 98 of the IA.

5. What are the conditions for naturalization in the reviewed state?

Under Article 5 of the Constitution of the Portuguese Republic,¹⁵⁴⁰ Portuguese citizens are those who are recognised as such by law or by an international convention binding upon Portugal.

The statutory framework governing Portuguese nationality is set out primarily in:

- The Portuguese Nationality Act;¹⁵⁴¹ and
- The Regulation on Portuguese Nationality.¹⁵⁴²

Portuguese law provides, in broad terms, for nationality to be obtained either by attribution or by acquisition:

¹⁵⁴⁰ See: <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-aprovacao-constituicao/1976-34520775-43894075>

¹⁵⁴¹ Law no. 37/81, of October 3rd, available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/1981-34536975>

¹⁵⁴² Decree-Law no. 237-A/2006, of December 14th, available at: <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/2006-34442175-46640975>

1. Attribution (original nationality/“Portuguese by origin”): Attribution may arise automatically by operation of law or by declaration, and—without prejudice to the validity of legal relationships previously formed under another nationality—produces effects from birth.
2. Acquisition (derived nationality/“Portuguese by acquisition”): Acquisition may be grounded on a declaration of will, adoption, or naturalisation, and generally produces effects only from the date of registration of the relevant act.

Acquisition “by will” (typically by declaration) may arise, in particular, in the following situations:

- minor or incapacitated children of a parent who acquires Portuguese nationality may also acquire it by declaration.
- a foreign national married to a Portuguese citizen for more than three years may acquire Portuguese nationality by declaration made during the marriage. A foreign national in a de facto union for more than three years with a Portuguese citizen may acquire nationality following judicial recognition of that union.
- persons who lost Portuguese nationality by declaration made during incapacity may reacquire it, once capable, by declaration identifying the relevant loss registration and proving legal capacity.

In these declaration-based routes, the Public Prosecutor (acting on behalf of the Portuguese Republic) may lodge opposition within one year from the registration of acquisition. Grounds of opposition include, in particular:

- lack of an effective connection to the national community (subject to statutory exceptions in marriage/de facto union cases, notably where there are Portuguese common children or where the relationship has subsisted for a longer period);
- a final conviction for an offence punishable under Portuguese law with a custodial sentence of three years or more;
- the exercise of non-predominantly technical public functions, or non-compulsory military service, for a foreign State; and
- risk or threat to national security or defence, including involvement in terrorism-related activity or serious organised/violent criminality.

In what concerns the acquisition by adoption, a child adopted by a Portuguese citizen acquires Portuguese nationality by operation of law, subject to the relevant conditions and registration formalities.

Regarding the acquisition by naturalisation, Portuguese law provides for multiple pathways, including (as reflected in the statutory scheme and administrative practice):

1. naturalisation of foreign nationals resident in Portugal;
2. naturalisation of minors born in Portugal;
3. naturalisation of children and young persons placed in State institutions (or equivalent entities) under protective measures;

4. naturalisation of individuals who previously held Portuguese nationality;
5. naturalisation of foreign nationals born in Portugal (under specific residence and parental-residence conditions);
6. special cases where naturalisation may be granted on specific public-interest grounds;
7. naturalisation of descendants of Portuguese Sephardic Jews (subject to the then-applicable legal framework);
8. naturalisation of foreign nationals who are ascendants of Portuguese citizens by origin; and
9. naturalisation of individuals who did not retain Portuguese nationality in the post-1974 context, and their Portugal-born children, subject to statutory conditions.

In the standard naturalisation route for residents, nationality may be granted by the Government provided the applicant satisfies the cumulative requirements, including:

- being of legal age (or emancipated under Portuguese law);
- lawful residence in Portugal for at least five years (under the prevailing statutory baseline prior to the proposed reforms discussed below);
- sufficient knowledge of the Portuguese language;^{1543 1544}
- no final conviction for an offence punishable under Portuguese law by imprisonment of three years or more; and
- not constituting a danger or threat to national security or defence, including through involvement in terrorism-related activity or serious violent/organised criminality.

For residence-counting purposes, the framework generally treats “lawful residence” as requiring a regularised status under the applicable immigration/asylum regimes, and (as reflected in the regulatory approach) may allow aggregation of lawful residence periods within defined temporal limits, including recognition – under certain conditions – of time elapsed since the application for a temporary residence permit, provided that the permit is ultimately granted.

In respect of the naturalisation of minors born in Portuguese territory, the Government may grant Portuguese nationality to minors born in Portugal to foreign parents, provided that – where the minor has reached the age of criminal responsibility – they have not been convicted by a final judgment of an offence punishable under Portuguese law by a custodial sentence of three years or more, and provided further that they do not constitute a danger or threat to national security or defence. In addition, at the time of application, the minor must satisfy one of the following conditions:

¹⁵⁴³ Portuguese Nationality Regulation, Article 25(2) (means of proving Portuguese language knowledge), including, *inter alia*, specified education certificates, approved examinations, and A2-level certifications within the Common European Framework of Reference for Languages, subject to the applicable implementing instruments.

¹⁵⁴⁴ Nationality Act, Article 6(10): the Portuguese language knowledge requirement is presumed to be satisfied for applicants who are nationals of countries where Portuguese is an official language.

- one of the parents has resided in Portugal, irrespective of status/title, for at least the five years immediately preceding the application;
- one of the parents holds lawful residence in Portuguese territory; or
- the minor has attended at least one year of pre-school education or primary, secondary, or vocational education in Portugal.

Where children or young persons under the age of 18 are placed in a public, cooperative, social, or private institution operating under a cooperation agreement with the State, following the imposition of a definitive child protection measure within promotion and protection proceedings, the Public Prosecutor's Office is responsible for initiating the naturalisation process. In such circumstances, the process may proceed without the need to satisfy the conditions relating to the parents, or the requirement that the applicant must have been born in Portuguese territory.

Portuguese nationality may be also granted by naturalisation to individuals who previously held Portuguese nationality and, having lost it, never acquired any other nationality, provided that they also meet the following requirements:

- they are of full age or emancipated under Portuguese law;
- they have not been convicted by a final judgment of an offence punishable under Portuguese law by a custodial sentence of three years or more; and
- they do not constitute a danger or threat to national security or defence, namely due to involvement in activities related to terrorism, in accordance with the applicable legislation.

The Government may grant Portuguese nationality to individuals born in Portuguese territory who have resided in Portugal during the five years immediately preceding the application, where they are the child of a foreign national who, at the time of the applicant's birth, resided in Portugal irrespective of the nature of their residence status/title. Applicants must satisfy the following requirements:

- they are of full age or emancipated under Portuguese law;
- they have sufficient knowledge of the Portuguese language;
- they have not been convicted by a final judgment of an offence punishable under Portuguese law by a custodial sentence of three years or more; and
- they do not constitute a danger or threat to national security or defence, namely due to involvement in activities related to terrorism, as defined in the relevant legislation.

In certain special cases, Portuguese nationality may be granted by naturalisation to individuals who, although not stateless, previously held Portuguese nationality; to persons deemed to be descendants of Portuguese citizens by origin; to members of communities of Portuguese descent; and to foreign nationals who have rendered, or are called upon to render, relevant services to the Portuguese State or to the national community. In such cases, applicants must meet the following requirements:

- they are of full age or emancipated under Portuguese law;
- they have not been convicted by a final judgment of an offence punishable under Portuguese law by a custodial sentence of three years or more; and
- they do not constitute a danger or threat to national security or defence, namely due to involvement in activities related to terrorism, under the applicable legislation.

In the naturalisation route applicable to descendants of Portuguese Sephardic Jews, applicants must cumulatively satisfy the following requirements:

- demonstrate a tradition of belonging to a Sephardic community of Portuguese origin, based on objective requirements evidencing a connection to Portugal, including surnames, family language, and direct or collateral descent;¹⁵⁴⁵ and
- have lawfully resided in Portuguese territory for at least three years, whether consecutive or non-consecutive.

Foreign nationals who are ascendants of Portuguese citizens by origin may be granted Portuguese nationality by naturalisation, provided that:

- they have resided in Portugal, irrespective of status/title, for at least the five years immediately preceding the application; and
- the relevant lineage was established at the time of birth of the Portuguese citizen.

Applicants must additionally satisfy the following requirements:

- they are of full age or emancipated under Portuguese law;
- they have sufficient knowledge of the Portuguese language;
- they have not been convicted by a final judgment of an offence punishable under Portuguese law by a custodial sentence of three years or more; and
- they do not constitute a danger or threat to national security or defence, namely due to involvement in activities related to terrorism.

Portuguese nationality may also be granted by naturalisation to individuals who did not retain Portuguese nationality on the basis that, as of 25 April 1974,^{1546 1547} they had resided in Portugal for less than five years, provided that:

- following the loss of Portuguese nationality, they did not serve the relevant State; and
- they have remained and continue to remain in Portugal, irrespective of status/title.

¹⁵⁴⁵ Portuguese Nationality Regulation, Article 24-A(3)(c): Sephardic ancestry requirement may be evidenced by a certificate issued by a recognised Jewish community established in Portugal, attesting tradition of belonging to a Sephardic community of Portuguese origin on the basis of objective indicia (including surname, family language, genealogy, and family memory).

¹⁵⁴⁶ ‘Portugal’s Carnation Revolution: the day the dictatorship fell’ (historical background), *The Guardian* (24 April 2024), available at: <https://www.theguardian.com/theguardian/2024/apr/24/portugal-carnation-revolution-archive-1974>

¹⁵⁴⁷ Decree-Law no 308-A/75, of June 24th (Portugal) (rules on retention of Portuguese nationality for persons domiciled in former overseas territories becoming independent), available at: <https://diariodarepublica.pt/dr/detalhe/decreto-lei/308-a-1975-530841>

This route may also extend to their children born in Portuguese territory, to whom Portuguese nationality by origin was not attributed.

As regards procedural steps, once the applicant's request is submitted, the file is transmitted to the Central Registry Office (*Conservatória dos Registos Centrais*). In summary:

- The Registry Office performs an initial screening (30 days) and may issue an initial refusal where the application lacks essential documentation, notifying the applicant to respond within a specified timeframe (30 days).
- Where the application proceeds, the Registry Office requests information from competent entities (including criminal-record and security checks), subject to statutory deadlines (30 days) and possible extensions where justified (up to 60 days).
- Upon completion of enquiries, a reasoned assessment is prepared and the process is submitted for decision by the Government member responsible for justice (45 days).
- Where the opinion concludes that the application should be refused, the applicant must be notified of its contents and afforded 30 days in which to submit observations. That notification must also specify the manner in which the applicant may consult the file. Once that period has elapsed, and after any response from the applicant has been considered, the case is referred for decision to the member of Government responsible for the justice portfolio.
- Naturalisation is granted by decision of the Minister of Justice. A decision granting naturalisation is recorded *ex officio* at the Central Registry Office (*Conservatória dos Registos Centrais*). Where the naturalisation application is refused, the decision is notified to the applicant.

In practice, notwithstanding statutory time limits, it has been widely reported that naturalisation files have experienced significant administrative delay, and it is common for processing to extend well beyond the formal timetable (between 30 and 40 months).

Portuguese law recognises a principle of stabilisation (*consolidation*) whereby good faith possession of Portuguese nationality, whether original or acquired, for a minimum period (commonly referenced as 10 years, and a shorter period for certain minors registered in the Portuguese civil registry) may consolidate nationality even if the underlying act or fact is later challenged, subject to the applicable legal conditions and the relevant start date for time calculation (registration and/or first identification document, depending on the legal basis of nationality).

It is also important to note that a legislative package proposing amendments to the Nationality Act¹⁵⁴⁸ was approved by Parliament in late 2025 and subsequently underwent preventive constitutional review, as requested by the President of the Portuguese Republic. The Court identified unconstitutional provisions in that package (including, *inter alia*, measures connected to deprivation/loss of nationality in certain criminal contexts and other aspects of the reform

¹⁵⁴⁸ Portuguese Parliament, Draft Bill no 1/XVII/1.^a amending the Nationality Act (official parliamentary record), available at: <https://debates.parlamento.pt/catalogo/r3/dar/s2a/17/01/013/2025-06-25/19?pgs=19-46&org=PLC>

architecture.¹⁵⁴⁹ ¹⁵⁵⁰ Following those rulings, the President of the Republic returned the parliamentary decrees to the Assembly without promulgation on 19 December 2025,¹⁵⁵¹ as required by the constitutional framework governing preventive review.

As regards naturalisation residence periods, the reform package included an increase from five years to differentiated thresholds – seven years for EU/CPLP nationals and ten years for other nationals – though the legislative outcome remained contingent upon parliamentary reconsideration and/or conformity with the Constitutional Court’s decision.¹⁵⁵²

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state’s domestic law, please indicate them and submit the information accordingly.

¹⁵⁴⁹ Constitutional Court (Portugal), Judgement no. 1133/2025 (Plenary), Case no 1383/2025, Rapporteur: Judge Dora Lucas Neto, available at: <https://www.tribunalconstitucional.pt/tc/acordaos/20251133.html>

¹⁵⁵⁰ Constitutional Court (Portugal), Judgement no. 1134/2025 (Plenary), Case no 1384/2025, Rapporteur: Judge João Carlos Loureiro, available at: <https://www.tribunalconstitucional.pt/tc/acordaos/20251134.html>

¹⁵⁵¹ Further info: <https://debates.parlamento.pt/catalogo/r3/dar/s2a/17/01/121S1/2026-01-07/2?pgs=2&org=PLC>

¹⁵⁵² Further info: <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=315160>

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The most important provision regarding non-discrimination covering non-nationals lies on the Portuguese Constitution, which is deeply grounded on the principle of Human Dignity and of universality of Human Rights. Article 1 sets forth that the Portuguese Republic is based on the Principle of Human Dignity, which imposes that *every human being has the same dignity*. Portugal has, then, agreed to respect, guarantee, and promote the same dignity for national citizens and foreigners alike. The Constitutional Court has already confirmed this philosophy, in the ruling n. 296/2015, where it confirmed that the social minimum income, which aims to guarantee that all persons residing in Portugal must be granted with minimum living conditions, was intended to guarantee a “right to a minimum dignified existence”, which was a direct imposition of respect for human dignity, from which foreigners could not be excluded.

Article 12, on its turn, foresees the principle of universality, according to which everybody enjoys the same rights and is subject to the same duties enshrined in the Portuguese Constitution. But the most important principle regarding the enjoyment of fundamental rights by foreigner citizens is the principle of assimilation. Such principle is enshrined in Article 15, which reads as follows: «*Foreigners and stateless persons who are staying or who reside in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens*». This principle is a general clause, so it applies where no exclusions or restrictions are expressly foreseen. This means that, unless prescribed otherwise, aliens shall enjoy the same rights as national citizens, including social and economic rights. This interpretation was confirmed in the above-mentioned Ruling n. 296/2015.

Finally, the Constitution guarantees the principle of equality, which forbids any discrimination based on the territory of origin (Article 13). This principle must be applicable to all fundamental rights enshrined in the Constitution.

Apart from the Constitution, Portugal has approved a specific Law aimed at guaranteeing the principle of non-discrimination¹⁵⁵³. This Act aims to prohibit and combat discrimination based on racial and ethnic origin, colour, nationality, ancestry, and territory of origin. As such, prohibition of discrimination on the grounds of nationality is specifically targeted. This law sets forth mechanisms and measures to prevent and fight discrimination as regards to social protection, including social security and health care, social benefits, education, access to and provision of goods and services made available to the public, including housing and culture.

Even though the Constitution and the law set forth strong protection against discrimination of non-nationals, special laws may impose specific distinctions, as long as they have a rational basis and an objective motive. Also, as it will be shown below, some rights or activities may be reserved for national citizens only. These distinctions are allowed by Article 15 (2) of the Constitution itself, which sets forth that the principle of assimilation “does not apply to political

¹⁵⁵³ Law no. 93/2017, of 23 August, as last amended by Law no. 3/2024, of 15 January.

rights, the exercise of public functions that are not predominantly technical in nature, and the rights and duties reserved by the Constitution and the law exclusively to Portuguese citizens”.

The enforcement of these anti-discrimination guarantees is reinforced by the Commission for Equality and Against Racial Discrimination (CICDR), established by Law 4/2024, of 15 January, which investigates complaints of nationality-based discrimination and may impose administrative sanctions and fines against providers who violate equal treatment provisions.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

In general, non-nationals are excluded from political participation: pursuant to Article 15, political rights are an exception to the principle of assimilation. However, since the 1989 Constitutional revision, Article 15 authorizes ordinary law to grant foreigners residing in Portugal, on a reciprocal basis, the active and passive electoral capacity for the election of members of local government bodies (paragraph 4). The 1992 revision further allowed the law to grant, on a reciprocal basis, to citizens of EU Member States residing in Portugal, the right to elect and be elected Members of the European Parliament (paragraph 5).

The Law on Elections for local government bodies¹⁵⁵⁴ has implemented this Constitutional provision. In 2025, the following countries had recognized active and passive electoral capacity in Portugal for elections to local government bodies¹⁵⁵⁵: (1) Right to vote: Member States of the European Union, Brazil and Cape Verde, Argentina, Chile, Colombia, Iceland, Norway, New Zealand, Peru, United Kingdom, Uruguay and Venezuela; (2) Right to be elected: Member States of the European Union, Brazil and Cape Verde, Colombia and United Kingdom.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

As regards other civil and political rights, non-nationals enjoy the same rights as Portuguese citizens, according to the principle of assimilation.

Article 15 of the Constitution excludes from the principle of assimilation the exercise of public functions that are not predominantly technical in nature. This exception has been interpreted restrictively to encompass only those functions that entail the exercise of public authority—whether internally, through the assumption of powers of direction or leadership within the public administration, or externally, through the attribution of competence to define legal situations via acts of authority. As such, it has been understood by the Administrative Courts that the following professions are excluded from non-nationals: armed forces, judiciary, diplomacy, national security agents or police forces; whereas public functions such as medical

¹⁵⁵⁴ Organic Law No. 1/2001, of 14 August, as last amended by Organic Law no. /2021, of 04 June.

¹⁵⁵⁵ Declaration no. 105/2025/2, of 15 May of the Ministry of Foreign Affairs.

doctors, nurses, teachers or university professors, among others, can be exercised by non-nationals.

A special regime is also foreseen to citizens of Portuguese-speaking Countries with permanent residence in Portugal. These citizens are granted, on a reciprocal basis, certain rights that are reserved to national citizens only. In practice, only Brazil and Cape Verde currently enjoy agreements granting special rights. Brazil is the only country with a comprehensive bilateral agreement: the Treaty of Friendship, Cooperation and Consultation, signed on April 22, 2000, which entered into force in 2001. It provides, *inter alia*, the same rights as those conferred on Portuguese citizens in areas where the law provides for distinctive treatment, such as equal tuition fees in higher education and equivalence of grades and academic degrees. It also provides for a Special Statute of Equality of Political Rights for Brazilian citizens, which allows citizens with permanent residence to obtain a Citizen's card. Brazilian citizens with a Citizen's Card can access careers as judges and public prosecutors¹⁵⁵⁶.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

There are no limitations or special substantive rules regarding non-nationals' right to buy and own property in Portugal. A proposal to increase the property transfer tax (IMT) applicable to non-resident buyers has been approved by the Government and remains pending parliamentary approval.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

The Portuguese Constitution recognizes the right to work of every person (Articles 58 and 15). Access to the labour market is regulated by immigration and asylum laws, which set forth which types of statuses allow their holders to work in Portugal. Only persons holding the valid documents can engage in labour in Portugal. This encompasses the following categories of immigrants, as well as holders of all types of international protection, such as Refugees, holders of subsidiary protection and holders of temporary protection.

Under Portuguese immigration law, certain long-stay national visas (D-type) grant immediate work authorization upon entry, provided the visa is valid and the employment falls within the visa category. Visa holders must apply for a residence permit within 3 months of entry to formalize their legal status and continue employment. These work-authorizing visas enabling employment in the Portuguese labour market include the subordinate work visa (Article 88 IA), highly qualified activity visa (Article 90 IA, including the Tech Visa), researcher visa (Article

¹⁵⁵⁶ Article 5(a) of Law no. 2/2008, of 14 July, as last amended by Law no. 7-A/2025, of 30 January.

89, IA), intra-corporate transfer visa (Article 91 IA), and job seeker visa (Articles 122(1)(o)-(p) IA).

All holders of permanent residence benefit from the right to work. Moreover, almost all holders of temporary residence permits may also accede to such right. The residence permit for subordinate or dependent work (Article 88 IA) and the residence permit for highly qualified workers (Article 90 IA) are the most adequate documents allowing immediate access to work. Other permits may also allow engagement in labour relations, such as residence permit for family reunification (Article 107 IA), for study in higher education (Articles 87-88 IA), researchers (Article 89 IA), and other highly qualified professionals (when work is related to research or the visa category). In these latter cases, holders may request conversion or substitution of their residence permit to formalize work rights if not already implicit in their status. The permit issued for humanitarian reasons (Article 123 IA) also allows access to the labour market.

Article 122 of the IA provides for several cases conferring residence permits that permit access to the Portuguese labour market, such as students who have completed their courses (Article 122(1)(o) IA), researchers who have finished their projects (Article 122(1)(p) IA), persons previously holding temporary residence permits as victims of human trafficking or facilitating Illegal immigration (Article 122(1)(n) IA), and victims of abusive labour conditions (Article 122(1)(n), IA).

While a decision regarding a residence permit application is pending, for reasons not attributable to the applicant, he or she may carry out professional activity in accordance with law (Article 77, IA).

As regards the Asylum Law, access to the national labour market is allowed to the asylum seeker from the moment they receive a provisional resident permit (Article 22, AL). Holders of Refugee Status (Article 52, AL) and Subsidiary Protection (Article 66, AL) also benefit from the right to work, with rights equivalent to nationals.

The Portuguese Labour Code sets forth, in Article 4, the “principle of equal treatment of a foreign worker or stateless person”. The formalization of a working contract with foreign workers must have a special form, contrarily to the general rule of freedom of form (Article 110, Labour Code). Article 5(1) of the Labour Code sets forth that this contract must be in a written format and must contain particular mentions, namely: (i) the identification, signatures, and domicile or registered office of the parties; (ii) reference to the work visa or the worker's residence permit in Portuguese territory; (iii) the employer's activity; (iv) the contracted activity and remuneration of the worker; (v) the place and normal working period; (vi) the value, periodicity, and method of payment of remuneration; and (vii) the dates of the contract's conclusion and of the activity's beginning.

The employer is further obliged to notify the service with inspective competence on Labour Conditions (ACT—Autoridade para as Condições do Trabalho) of the Ministry responsible for the labour area of the formalization of a work contract with a foreign worker, before the beginning of its execution (Article 5(5) of the Labour Contract).

6. Are there any quotas or limitations for businesses to hire non-nationals?

No, Portugal currently has no fixed annual quotas or numerical limitations for businesses hiring non-nationals. The annual quota system for foreign workers was foreseen in the Law until 2022 but was abolished by Law No. 18/2022. Currently, employers can hire freely if the worker holds a valid work visa or residence permit.

This amendment was introduced in 2022 in Portugal due to labour shortages in sectors like agriculture, tourism, construction and technology. However, in 2025, the Portuguese Government announced a prospective policy shift aimed at reintroducing selective mechanisms for residence permit allocation. This announcement was made in a reform agenda, among other 41 points related to immigration. The Government affirmed the need to establish quotas and prioritization criteria, contingent upon periodic “Labour Needs Assessments” and an evaluation of institutional absorptive capacity within public administration. The aim of this change was to respond to labour market mismatches—prioritizing highly skilled professionals in shortage sectors. It also aimed to address operational constraints, particularly the substantial administrative backlog at AIMA, IP., (estimated at over 400,000 pending cases as of early 2025).

Nevertheless, as of January 2026, these proposed mechanisms were not yet implemented.

7. Are there any professions or sectors that non-nationals are not allowed to work in?

Yes. According to Article 15(2) of the Portuguese Constitution, non-nationals cannot hold public offices involving public functions of a non-technical or non-predominantly technical nature. *A contrario*, this means that the Constitution allows non-nationals to serve in technical public positions, such as medical doctors, nurses, teachers and professors, researchers, engineers, and similar professions. The only excluded positions or sectors are those involving administrative or discretionary public functions, where the exercise of sovereign authority, policy-making power, or constitutional responsibility is predominant. Consequently, professions such as judges, public prosecutors, police officers, members of the armed forces, among others, cannot be exercised by non-nationals.

Nevertheless, the Constitution permits that nationals of Portuguese-speaking countries may hold public offices in Portugal, when so provided by international conventions and under the principle of reciprocity.

Based on this constitutional framework, the Portuguese Law on Public Servants¹⁵⁵⁷ establishes that Portuguese nationality may only be required for the performance of public functions in situations referred to in Article 15(2) of the Constitution—that is, when the exercise of sovereign authority, policy-making judgment, or constitutional responsibility is predominant.

¹⁵⁵⁷ Law No. 35/2014, of 20 July, as last amended by Decree-Law No. 13/2024, of 10 January.

8. To what extent, compared to nationals, do labour protections apply to non-nationals?

Non-nationals authorised to work in Portugal can engage in formal employment and benefit from the principle of equality and non-discrimination with respect to salaries, working hours, and other working conditions. The Portuguese Constitution establishes the fundamental principle of equal treatment of workers (Art. 59(1)), explicitly prohibiting discrimination on grounds of nationality and other suspect criteria. This is valid for all non-nationals having the right to work in Portugal, including Refugees, holders of subsidiary protection and asylum seekers.

Article 59 of the Constitution sets forth a range of labour guarantees. All workers are entitled to the following guarantees: (i) remuneration for work (Art. 59(1)(a)); (ii) organisation of work under socially dignified conditions, in order to provide personal development and to enable the conciliation of work and family life (Art. 59(1)(b)); (iii) right to work in hygienic, safe, and health conditions (Art. 59(1)(c)); rest and leisure, a maximum limit of working hours, weekly rest and paid periodic leave (Art. 59(1)(d)); (iv) material assistance in case of non-voluntary unemployment (Art. 59(1)(e)); (v) assistance and fair reparation when victims of an accident at work or occupational disease (Art. 59(1)(f)).

The Portuguese Labour Code provides, in Article 4 and within the scope of private subordinated labour relations, the principle of equal treatment of foreign or stateless workers. Article 24 of the Labour Code further operationalises this principle, establishing that workers and jobseekers are entitled to equal opportunities and treatment with regard to access to employment, vocational training, promotion, and working conditions. The statute expressly prohibits discrimination based on a broad range of criteria, including ancestry, age, sex, sexual orientation, gender identity, marital status, family situation, economic situation, education, origin or social condition, genetic heritage, reduced working capacity, disability, chronic illness, nationality, ethnic origin or race, territory of origin, language, religion, political or ideological convictions, and trade union membership. This list is non-exhaustive.

The State is further mandated to promote equal access to such rights. Article 25(1) of the Labour Code correspondingly prohibits employers from engaging in direct or indirect discrimination based on any of the aforementioned criteria.

Pursuant to Article 4 and the equal treatment principle, third-country national workers enjoy all rights and guarantees afforded to workers under the Labour Code, encompassing: (i) personality rights (Art. 14–22) and other essential guarantees (Art. 129); (ii) prohibition of discrimination (Art. 23–28), protection against harassment (Art. 29) and against discrimination on grounds of sex (Art. 30–32); and right to vocational training (Art. 130–134). Migrant workers also benefit from (i) protection of parenthood (Art. 33–65); (ii) prohibition of child labour (Art. 66–83); (iii) protection in case of reduced working capacity (Art. 84); (iv) disabilities or chronic illness (Art. 85–88); (v) student worker status (Art. 89–96-A). On the other hand, foreign workers are subjected to the same labour duties as national workers (cf. Art. 126 and 128 of the Labour Code). Furthermore, all international labour rights instruments to which Portugal is a party—

including the International Labour Organization conventions and the relevant European agreements—must be applied equally to foreign workers.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

The Portuguese Constitution establishes that everybody has the right to health protection (Article 64). According to the principle of universality enshrined in Article 12 and the protection extended to foreigners and stateless persons under Article 15 of the Constitution, this fundamental right also benefits non-nationals legally present in Portugal.

Any foreigner who is in the country and needs any kind of health care has the right to be assisted at a health centre or a hospital. Health services cannot refuse to provide medical care on grounds of nationality, lack of economic resources, or legal status, particularly in emergency situations¹⁵⁵⁸.

Even though, minimum health cannot be refused to anyone, healthcare access arrangements in Portugal vary according to migrants' legal status. There are three distinct categories: First, legally residing foreign nationals enjoy all same rights as Portuguese citizens with respect to healthcare (which includes all holders of documents issued under IA and also AL). Upon obtaining a Social Security identification number and healthcare user number, they receive comprehensive coverage under the National Health Service, with the same conditions and entitlements as Portuguese nationals. Second, foreign nationals without residence permit but who are living in Portugal can access National Health Service provided they meet specific conditions: holding a certificate of residence from their local parish council, proving residence for more than 90 days, obtaining a social security number, and paying social security contributions. Those who do not pay contributions may be charged for services incurred. This framework reflects the balance between ensuring access to essential healthcare and maintaining sustainability of the system. Third, undocumented migrants, with no documents or contributions, have access to emergency healthcare and preventive services related to public health. Vulnerable groups such as children, pregnant women, and persons with contagious diseases receive unrestricted access to healthcare services regardless of their documentation status. This provision reflects Portugal's commitment to fundamental human rights even for the most precarious populations.

During the COVID-19 pandemic, the Portuguese Government issued an Order¹⁵⁵⁹ establishing an exceptional temporary measure. Under this order, all migrants and asylum seekers with residence applications or regularization requests pending were treated as being in a regular legal situation in Portugal. This measure granted temporary legal status recognition, whereby approximately 300,000 migrants were considered as lawfully present pending the processing of their applications, with full access to the National Health System. This exceptional temporary

¹⁵⁵⁸ These principles are enshrined in Administrative Order 25360/2001, issued by the Ministry of Health, which applies to all migrants regardless of their legal status in the country.

¹⁵⁵⁹ Decree-Law Order 3863-B/2020 (27 March 2020).

measure was successively extended through multiple decree-laws and administrative orders, as applications remained in administrative backlog. Extensions were granted until 15 October 2025, when the exceptional temporary status regime expired.

It must also be highlighted that Asylum seekers and persons with pending international protection applications benefit from specific healthcare protections (Article 52 of the Asylum Law). They are entitled to access healthcare through the National Health Service free of charge for emergency care and primary health services. This protection extends throughout the duration of their asylum procedure.

Despite the robust legal framework, foreign nationals seeking healthcare access may encounter practical barriers. Obtaining a social security ID number requires formal documentation and registration with social security authorities, which can be challenging for newly arrived migrants or those in precarious situations. The 90-day residency requirement for non-authorized migrants requires obtaining formal documentation from local authorities, which may not always be readily accessible. Language barriers and lack of information about rights and procedures may further limit de facto access to healthcare.

In December 2024, the Portuguese Parliament approved two separate proposals to restrict access to the National Health Service for foreign nationals without legal residence permit. The proposals, sponsored by the Chega party and the center-right PSD-CDS coalition government, seek to limit free healthcare access to emergency cases only, requiring non-resident foreigners to pay for non-urgent services or demonstrate private health insurance coverage. The proposals target specifically the second category of healthcare access, that is, foreign nationals residing in Portugal for more than 90 days without formal residence authorization, currently entitled to free emergency and vital care. However, as of January 2026, these proposals remain in the legislative process and have not been enacted into law.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

As already seen, the Article 15 (1) of the Portuguese Constitution (CRP) guarantees the general principle of assimilation of foreigners to national citizens regarding all constitutional rights. This shall encompass, in principle, every constitutional right, both the so-called rights, freedoms and guarantees, and also the economic, social and cultural rights – such as the right to education, etc. The constitutional framework is reinforced by Article 74(2)(j), which specifically mandates that the State shall provide adequate support to the children of immigrants in order to enable them to effectively exercise their right to education. This provision applies across all educational levels, from pre-school through higher education.

Primary and Secondary Education

Education is compulsory in Portugal for all children aged 6 to 18 years, and this obligation applies without distinction of nationality or legal residence status. All non-national children

legally residing in Portugal, whether third-country nationals with valid residence permit, or asylum-seeking and refugee children, have full access to public primary and secondary education under identical conditions as Portuguese nationals. Public education at these levels is provided free of charge, with textbooks and materials generally provided by the school.

Enrolment in primary and secondary education occurs through a national enrolment portal, or directly at school offices. When non-nationals enrol, the equivalence of their foreign academic qualifications must be assessed through a formal recognition procedure; however, children are granted immediate conditional access to appropriate classes while the equivalence procedure is pending. Language support is available through PLNM (Portuguese as a Non-Native Language) programs, enabling children to progressively integrate into the Portuguese curriculum while developing proficiency in Portuguese.

An important protective provision exists for minors in irregular immigration status. There is a national registry of foreign minors in irregular situation in Portuguese territory¹⁵⁶⁰. Parents or legal guardians of undocumented children can register their children either through an online process or in-person at AIMA offices. Upon approval, they receive a registration credential, valid for two years and renewable, which serves as a sufficient document for access to pre-school, school education, and healthcare services under the same terms as minors in regular immigration status. This system contains a protective clause, that provides that information gathered through the registry cannot be used by public services against these children or their family members for immigration enforcement purposes. This provision removes a major barrier to school access for undocumented families, who would otherwise could fear deportation by registering with authorities. The registry thus enables undocumented minors to attend compulsory education without jeopardizing their family's legal status.

Furthermore, even without registry credential, the obligation of compulsory education (ages 6-18) applies to all minors regardless of immigration status. Schools cannot refuse admission based on immigration status, as education is recognized as a fundamental right that overrides technical administrative requirements.

Higher Education

Access to higher education for non-nationals differs based on their legal status and country of origin. Legally residing non-nationals and those with established residence of two or more years in Portugal may access higher education courses subject to standard tuition fees comparable to Portuguese and EU nationals. Application procedures for such students follow standard protocols, and they are eligible for social support measures (scholarships, student residences, meal plans) available to domestic students.

Refugees and beneficiaries of international protection status, as well as victims of human trafficking and smuggling, are granted preferential treatment¹⁵⁶¹. These categories of students access higher education under the same admission conditions as Portuguese students, pay tuition fees at the same rate as Portuguese students (substantially lower than international

¹⁵⁶⁰ Decree-Law 67/2004, of 25 March 2004, regulated by Portaria 995/2004, of 9 August 2004.

¹⁵⁶¹ Decree-Law 62/2018, which regulates international student access and provisions for humanitarian emergencies.

students), benefit from the same social action and student support as Portuguese students, including scholarships, subsidized meals, and university accommodation, and may pursue all courses of study (degrees, integrated master's degrees, professional courses, master's programs, and doctoral studies).

Other third-country nationals classified as “international students” (those without legal residence in Portugal or lacking special humanitarian status) access higher education through a distinct application procedure. They may enrol in higher education institutions but pay variable tuition fees¹⁵⁶². These fees are established by individual higher education institutions and must not fall below legally specified minimums; they are generally substantially higher than fees charged to Portuguese, EU, or refugee students. International students receive indirect social action (services, rather than direct financial support) and compete for openings specifically reserved for international students, which each institution determines annually.

Vocational Training and Adult Education

Finally, Article 83 of the Immigration Law explicitly guarantees that legally residing non-nationals have the right to access professional guidance, vocational training, continuous training, retraining, and further education. Such programs are available through the Portuguese Institute of Employment and Vocational Training, and other accredited providers.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

The right to social security is enshrined in Article 63 of the Portuguese Constitution, which states that *everyone* is entitled to social security in case of illness, age, disability, widowhood and orphanhood, as well as unemployment and in all other situations where there is a lack or decrease of economic means or work ability. Law 4/2007 of 16 January¹⁵⁶³ establishes the general basis for the Portuguese system of social security. It reaffirms the principle of universality (Articles 6 and 7), establishing that “everyone has the right to social security” and that social protection shall not discriminate beneficiaries based on nationality, “without prejudice to conditions of residency and reciprocity”.

Immigrants holding valid residence permits enjoy exactly the same social security rights and bear the same obligations as Portuguese nationals. No separate or differential regime for immigrant social security has been created in Portuguese law. Legal resident non-nationals contribute at identical rates, qualify for benefits according to identical criteria, and receive identical benefit amounts as Portuguese nationals. Upon meeting contribution requirements, they access retirement pensions, disability support, unemployment insurance, sickness benefits, maternity and paternity protections, and family supports without discrimination or differential treatment.

¹⁵⁶² Decree-Law 36/2014, of 10 March, as last amended by Decree-Law 62/2018, of 6 August.

¹⁵⁶³ As last amended by Law no. 83-A/2013, of 30 December.

The Portuguese system of social security encompasses three complementary components. First, the contributory social security scheme, which is based on the payment of contributions and aimed at replacing income and providing social protection to workers. This system protects workers in case of illness, maternity and paternity (including protection during adoption), family charges, disability, unemployment, occupational disease, retirement, and death. Second, the non-contributory social protection system, which encompasses two subsystems. The solidarity subsystem provides social transfers aimed at preventing and reducing poverty and social exclusion, including the Social Insertion Revenue, a minimum income scheme. The family protection subsystem provides support for family charges and childcare support, with a universal orientation aimed at guaranteeing a minimum income compatible with human dignity. Third, a complementary system of optional private or occupational schemes operates alongside the mandatory public system.

Every worker who works in Portugal, irrespective of nationality, is legally obligated to be registered with the Social Security system, and to contribute according to the applicable regime. Registration with social security does not require a valid residence permit. In practice, the Social Security administration requires only an identification document for registration purposes. This means that undocumented migrants may register and pay contributions to the social security system. However, this creates a significant legal gap: undocumented migrants may pay contributions but cannot effectively access the benefits derived from the contributory system unless they subsequently obtain legal residence status.

Asylum seekers are also excluded from access to non-contributory benefits. Asylum applicants during the processing of their claims receive limited provisional support, according to the EU Directive on Reception Conditions of Asylum Seekers¹⁵⁶⁴, but are not entitled to non-contributory benefits pending final determination. Upon recognition as refugees or beneficiaries of subsidiary protection, they immediately acquire full access to non-contributory as well as contributory benefits under identical conditions as Portuguese nationals.

The primary non-contributory benefit is the Social Insertion Revenue, a minimum income support scheme for individuals in situations of serious economic need and at risk of social exclusion. Eligibility requires legal residence in Portugal for a minimum of 6 years (with specific exceptions for citizens of countries with which Portugal has concluded free movement agreements).

It must be also stressed that certain benefits from the contributory system are exportable and may be received by migrants residing in their countries of origin. Other contributory benefits, such as unemployment and sickness benefits and family allowances, are generally conditional upon residence in Portuguese territory. However, Portugal has signed bilateral and multilateral social security coordination agreements with numerous countries, including all European Union and European Economic Area member states¹⁵⁶⁵, as well as bilateral agreements with countries including Brazil, Angola, Guinea-Bissau, Cape Verde, Sao Tome and Principe, and other nations from the Community of Portuguese Speaking Countries.

¹⁵⁶⁴ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013.

¹⁵⁶⁵ EU Regulation 883/2004 on social security coordination.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Access to welfare and social assistance programmes for non-nationals in Portugal follows a substantially different model than access to social security benefits. Whereas social security protections are available to all workers who contribute, regardless of legal status, welfare programmes employ a more restrictive approach, based on residency status, with particular limitations for undocumented migrants and asylum seekers. Nonetheless, for non-nationals holding valid residence permits, access to welfare programmes is substantially equivalent to that enjoyed by Portuguese nationals, with eligibility determined by criteria of need and vulnerability rather than nationality per se.

Housing Assistance Programmes

Portugal has implemented multiple housing support programmes in recent years, aimed at increasing housing supply and affordability¹⁵⁶⁶. These programmes are accessible to legal residents without regard to nationality.

Residents, including legal resident non-nationals, may apply for social housing administered by the Institute for Housing and Urban Rehabilitation through the Housing Portal. Applications are assessed based on housing need and economic vulnerability rather than nationality. They may also apply for a programme providing urgent accommodation support to individuals and families temporarily or permanently deprived of housing or facing imminent risk of homelessness.

Food Aid Programmes

The government does not operate a direct food voucher or food stamp system comparable to programmes in other countries. Rather, the State subsidizes food bank operations developed by charitable organizations. Unlike government welfare programmes, food banks are not subject to residency documentation requirements and assess eligibility based on demonstrated food need rather than legal status.

Financial Assistance Programmes

As mentioned above, the Portuguese Social Security system develops a specific program of monetary assistance to individuals and families in situations of serious economic need and social exclusion risk: the Social Insertion Revenue. However, for non-nationals, eligibility requires legal residence for a minimum of six years (subject to exceptions established through bilateral social security coordination agreements).

Family Allowance

Family allowance is available to non-nationals residing in Portugal. For foreign minors born outside Portuguese territory, that they benefit from resident status identical to that of Portuguese

¹⁵⁶⁶ Some of these programs include housing rehabilitation and development support for disadvantaged populations, including migrant communities, monthly rental subsidies to families experiencing economic difficulty, among other measures.

nationals for purposes of family allowance, provided their parents or guardians have such status. This provision effectively extends family support to migrant families. Non-EU non-nationals must present valid residence permits or official declarations from competent authorities documenting six or more years of residence.

Child Supplement and Child Guarantee Initiative

Portugal is implementing an expanded Child Guarantee Initiative, which provides automatic cash benefits supplementing existing family allowances and ensuring beneficiaries receive a minimum annual amount. These provisions apply to children of legal residents, including non-national children, on an equal basis with Portuguese nationals' children.

Disability and Incapacity Support: Social Inclusion Benefit

The Social Inclusion Benefit provides monthly cash payments to individuals with certified disability resulting in a degree of incapacity equal to or greater than 60 percent (or 80 percent in cases of invalidity pensioners). Eligibility explicitly extends to “national and foreign citizens, refugees and stateless persons”. For non-nationals, the requirements are legal residence in Portugal.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

April 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Russian Federation

Author: Anna Bara

Disclaimer: Upon the dissolution of the Soviet Union in December 1991, the Russian Federation emerged as its legal and diplomatic successor state. It inherited the majority of the Soviet Union's rights, obligations, and international standing. It assumed the USSR's seat as a permanent member of the United Nations Security Council, including the associated veto power, with the acceptance by the UN General Assembly reflecting international consensus on Russia's status as the continuator state. Russia declared its continuity in relation to most bilateral and multilateral international treaties and agreements signed by the USSR, including international conventions under the ILO and UN system and economic cooperation frameworks.

Please indicate the treaties to which the country under review is a party.

*UN system treaties:*¹⁵⁶⁷

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	Yes	Yes
1967 Protocol to the Convention relating to the Status of Refugees	Yes	Yes (1993)

¹⁵⁶⁷ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=144&Lang=en;https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3-a&chapter=4&clang=en;

1954 Convention relating to the Status of Stateless Persons	No	No
1961 Convention on the Reduction of Statelessness	No	No
International Covenant on Civil and Political Rights (ICCPR)	Yes (1968)	Yes (1973)
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	No	No
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Yes (1968)	Yes (1973)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	No	No
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	No	No
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Yes (1985)	Yes (1987)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	No	No
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	Yes (1966)	Yes (1969)
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes (1980)	Yes (1981)
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes (2001)	Yes (2004)
Convention on the Rights of the Child (CRC)	Yes (1990)	Yes (1990)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	Yes (2012)	Yes (2013)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	Yes (2001)	Yes (2008)

Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	No	No
Convention on the Rights of Persons with Disabilities (CRPD)	Yes (2008)	Yes (2012)
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	No	No
ILO Forced Labour Convention (No. 29)	Yes (1956)	Yes (1956)
2014 Protocol to the ILO Forced Labour Convention (No. 29)	Yes (2019)	Yes
ILO Migration for Employment Convention (Revised) (No. 97)	No	No
ILO Equal Remuneration Convention (No. 100)	Yes (1956)	Yes (1956)
ILO Discrimination (Employment and Occupation) Convention (No. 111)	Yes (1961)	Yes (1961)
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	No	No

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	n/a	n/a
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	n/a	n/a
Convention governing the Specific Aspects of Refugee Problems in Africa	n/a	n/a
African Charter on the Rights and Welfare of the Child	n/a	n/a
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	n/a	n/a

Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	n/a	n/a
European Convention on Human Rights (ECHR)	Yes	Ceased as of 2022 ¹⁵⁶⁸
Protocols to the European Convention on Human Rights (list which ones):	Yes	Ceased as of 2022
European Social Charter (ESC)	Yes, 2000	No
European Convention on the Legal Status of Migrant Workers	No	No
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	No	No
American Convention on Human Rights (ACHR)	n/a	n/a
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	n/a	n/a
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	n/a	n/a
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	n/a	n/a
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	n/a	n/a
Inter-American Convention against All Forms of Discrimination and Intolerance	n/a	n/a
Inter-American Convention Protecting the Human Rights of Older Persons	n/a	n/a

¹⁵⁶⁸ As of March 2022, Russia ceased to be a party to the ECHR following its withdrawal from the Council of Europe; Russia's signature and ratification statuses for the ECHR and related protocols are suspended.

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Russia is a party to several regional treaties and agreements on migration that aim to create a single labor market, enhance the mobility and protection of workers across member states, and remove barriers to employment, social security, and residency. The following agreements facilitate labour migration management in Russia:

1. The Commonwealth of Independent States (CIS) Agreements:

○ **The CIS Agreement on Cooperation in the Field of Migration and Social Protection of Migrant Workers (1994)**¹⁵⁶⁹ facilitates the regulation and protection of the rights of labor migrants within CIS countries.¹⁵⁷⁰

○ **The CIS Convention on Human Rights and Fundamental Freedoms (1995)**¹⁵⁷¹ has provisions related to the protection of the rights of migrant workers and their families within the CIS member states.

○ **Agreement on Cooperation of the CIS Member States on the Return of Minors to their States of Permanent Residence (2002)**¹⁵⁷² aims to protect the rights and interests of minors who have been left without proper care by facilitating their return to their countries of permanent residence.

2. The Eurasian Economic Union (EAEU) (Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia) concluded several agreements that promote labor migration among its members.

○ **Agreement on Cooperation in Combating Illegal Migration from Third Countries (2010)**¹⁵⁷³ between Russia, Belarus, and Kazakhstan focuses on preventing irregular migration by enhancing cooperation among member states in border control, information exchange, and joint operations against illegal migration networks.

○ **AEU Treaty (2014)**¹⁵⁷⁴ sets forth the principles of the common labor market, establishing that citizens of member states can work in any member country without special permits. It mandates equal employment rights, social security benefits, and access to education for migrant workers and their families.

○ **EAEU Agreement on Pension Security (2019)**¹⁵⁷⁵ allows migrant workers to accumulate pension rights across all EAEU member states. Periods of work in any member

¹⁵⁶⁹ <https://cis-legislation.com/document.fwx?rgn=4153>

¹⁵⁷⁰ Suspended in the relations of Ukraine with the Russian Federation and the Republic of Belarus since July 21, 2023 according to the Law of Ukraine of June 29, 2023 No. 3192-IX, <https://cis-legislation.com/document.fwx?rgn=152301>

¹⁵⁷¹ <https://www.unhcr.org/media/cis-convention-human-rights-and-fundamental-freedoms>

¹⁵⁷² <https://cis-legislation.com/document.fwx?rgn=4710&utm>

¹⁵⁷³ https://www.icmpd.org/file/download/61839/file/Return_EN.pdf

¹⁵⁷⁴ https://www.wto.org/english/thewto_e/acc_e/kaz_e/wtacckaz85_leg_1.pdf

¹⁵⁷⁵ <https://cis-legislation.com/document.fwx?rgn=126152>

country count towards pension eligibility. This facilitates the transfer of pension rights between countries.

Russia concluded several bilateral agreements with Uzbekistan, Tajikistan, and Kyrgyzstan concerning labor migration (work permits, labor rights, and the return of migrant workers), geared toward managing labor migration, protecting migrant rights, and ensuring the economic integration of workers across member states.

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

For entering Russia, a visa is the document required unless an international treaty to which the Russian Federation is a party provides for otherwise (Article 6, Federal Law No. 114-FZ of August 15, 1996, on the Procedure for Exit from the Russian Federation and Entry into the Russian Federation).¹⁵⁷⁶ Visa policies are determined through bilateral agreements between Russia and individual countries.

Entry and indefinite visa-free stay in Russia are in place for nationals of Belarus. Furthermore, a unified visa policy with Belarus is in place as of January 11, 2025, according to the agreement on mutual recognition of visas between Russia and Belarus, allowing foreign nationals and stateless persons holding a valid visa to enter, exit, stay, and transit through the territories of both countries.¹⁵⁷⁷

Visa-free travel is in place between Russia and Armenia, Azerbaijan, Belarus, Georgia (as of May 2023),¹⁵⁷⁸ Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Ukraine, and Uzbekistan (terms and conditions vary).¹⁵⁷⁹ Citizens of several other countries enjoy visa-free travel to Russia (<https://uae.mid.ru/en/consular-services/consulate-ru/visafreeregime/>).

The Treaty on the Eurasian Economic Union¹⁵⁸⁰ establishes a single labour market allowing free movement of workers. EAEU nationals may enter Russia without a visa (registration

¹⁵⁷⁶ <https://www.refworld.org/legal/legislation/natlegbod/1996/en/18259>

¹⁵⁷⁷ https://mfa.gov.by/en/press/news_mfa/e90f53f504e4694f.html

¹⁵⁷⁸ A presidential decree No. 335 “On Entry to the Russian Federation and Exit from the Russian Federation for the Citizens of Georgia” abolished the previous 90-day limit on visa-free stays and removed restrictions on employment and education, allowing Georgian nationals to work and study in Russia without obtaining a visa https://mid.ru/en/foreign_policy/news/1868513/

¹⁵⁷⁹ https://base.spininform.ru/show_doc.fwx?rgn=25681

¹⁵⁸⁰ Founding parties signitures to the Treaty on the Eurasian Economic Union in Astana on 29 May 2014, Republic of Belarus, Republic of Kazakhstan, and Russian Federation, with subsequent accessions of Armenia by a separate treaty signed on 9 October 2014, effective 2 January 2015 and Kyrgyzstan by a treaty signed on 23 December 2014, effective 12 August 2015. Original Treaty available at: https://www.wto.org/english/thewto_e/acc_e/kaz_e/wtacckaz85_leg_1.pdf

obligation with the migration authorities applies) and are not required to obtain a work permit to work in Russia.

Residing in Russia for extended periods requires obtaining the appropriate residence permits or visas, even for nationals of countries with visa-free arrangements.

Federal Law “On the Legal Status of Foreign Citizens in the Russian Federation”¹⁵⁸¹ of June 30, 2003, amended on 31.07.2025, regulates temporary stay of foreigners and stateless persons.

The period of temporary stay of a foreign citizen is determined by the validity period of the visa issued, except for cases provided for by Law (Art. 5.1).

The period of temporary stay of a foreign citizen who has arrived in the Russian Federation in a manner that does not require a visa may not exceed ninety days in total during one calendar year (exceptions exist in the Federal Laws and international treaties) (Art.5.1).

The period of temporary stay of a foreign citizen who has arrived in a manner that does not require a visa and is a HQS (or a family member) is determined by the validity period of the work permit issued to the HQS.

The period of temporary stay of a stateless person who has received a temporary identity card of a stateless person is determined by the validity period of the card.

The period of temporary stay of a person applying for recognition as a refugee is determined by the validity period of the certificate of consideration of the application for recognition as a refugee in the territory of the Russian Federation.

The period of temporary stay of a refugee is determined by the validity period of a refugee's certificate.

The period of temporary stay of person who has received temporary asylum is determined by the validity period of the certificate of temporary asylum in the territory of the Russian Federation (Art. 5.1).

A *migration card* is a paper form that foreign citizens (except EAEU nationals) or stateless persons must fill out upon entry into Russia. It serves as a record of a foreign national's or stateless person's entry and contains details regarding their full name, date of birth, citizenship, passport number, purpose of entry (e.g., tourism, work, study), and duration of stay. It confirms the right of a foreign citizen or a stateless person who arrived in the Russian Federation in a manner that does not require a visa to temporarily stay in the Russian Federation, as well as serves to control their temporary stay in Russia (Federal Law No. 115-FZ of July 25, 2002, “On the Legal Status of Foreign Citizens, Art. 2).¹⁵⁸² The card consists of two parts: Part A (retained by border officials) and Part B (stamped and returned to the foreign national), which must be kept during the entire stay and returned upon departure from Russia. Loss of the migration card may lead to fines; in case of loss, it must be replaced at the local migration office. If a person overstays their permitted time as noted in the card, it may lead to administrative penalties or a ban on re-entry.

¹⁵⁸¹ <https://normativ.kontur.ru/document?moduleId=1&documentId=501913>

¹⁵⁸² https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

After the entry, if the person intends to stay for any of the purposes outlined in Article 6 of Law No. 115-FZ “On the Legal Status of Foreign Citizens,” they must apply for a temporary residence permit (*разрешение на временное проживание*), for up to three years (unless established otherwise).

There is a quota system for issuing temporary residence permits to foreign citizens, which varies by region. The quota is annually approved by the Government of the Russian Federation based on proposals submitted by the executive authorities of the constituent entities of the Russian Federation, with an account of the demographic situation in the corresponding constituent entity and its capacity to accommodate foreign citizens (Article 6, Federal Law No. 115-FZ of July 25, 2002, on the Legal Status of Foreign Citizens).

The rules for determining, adjusting, and redistributing quotas among the constituent entities of for issuing temporary residence permits in the Russian Federation to foreign citizens and stateless persons, establishing and using its reserve. The procedure for distributing the specified quota by the relevant commissions formed in the constituent entities of the Russian Federation is approved by the Government of the Russian Federation (as amended by Federal Law No. 329-FZ of 15 October 2020)

Article 6.3 also contains provisions for issuing a permit for temporary residence to a foreign citizen without an account for the quota.

The expiration dates of the visa and the residence permit are independent of each other (Article 5, Federal Law No. 115-FZ of July 25, 2002, on the Legal Status of Foreign Citizens).

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, etc. There are also bridging visas in addition to PR and TR.

To legally reside in Russia for more than 90 days, a non-national must fall under one of the following migratory statuses:

- Temporary Residence Permit (TRP) (*разрешение на временное проживание, РВП*) (Federal Law No. 115-FZ ‘On the Legal Status of Foreign Citizens in the Russian Federation’), confirms a foreign citizen’s or a stateless person’s right to temporarily reside in Russia until they obtain a residence permit (Art. 2). It is issued in the form of a mark in a document certifying the identity of a foreign citizen or in the form of a document of the established form issued in the Russian Federation to a stateless person who does not have a document certifying their identity.

A temporary residence permit is issued within a quota system (unless exempted) for a period up to three years (Art. 6.1). Each region of the Russian Federation submits a proposal to the

Government with a quota for a certain number of TRPs to be issued for a given year, which is then approved by the Government (Art. 6.2). There is also a federal quota; in 2025, it was set for 5,500 permits (Order No. 2839-r of 14 October 2024).¹⁵⁸³

Exceptions to the rule on the application of quotas exist. For example, foreigners who have married Russian citizens for at least three years¹⁵⁸⁴ are entitled to obtain a temporary residence permit outside of the quota.

There are no legal provisions for the TRP extension beyond three years.

The Ministry of Internal Affairs is the responsible state body that issues temporary residence permits to foreign citizens and stateless persons.

Outside of the quota system, the TRP may be issued to individuals for reasons of birth in the RSFSR or the Russian Federation, USSR citizens, being incapacitated while having able-bodied children-citizens of Russia, marriage to a Russian citizen, investment, enlistment for military service, or participation in the state resettlement program. TRP holders may change their place of residence as long as they re-register within the other region.

- **Permanent Residence Permit (PRP)** (*вид на жительство, ВНЖ*) (Article 8, Federal Law No. 115-FZ), granted to individuals who have resided in Russia on a TRP (for at least 1 year) or under specific conditions (e.g., HQS, marriage to a Russian citizen) for 5 years and renewable indefinitely.

- **Highly Qualified Specialist (HQS) Status** (Article 13, Federal Law No. 115-FZ), issued to foreign professionals who meet salary thresholds (effective March 1, 2024)¹⁵⁸⁵ and employment criteria. It is valid for the duration of their employment contract, up to 3 years, and allows non-nationals to live and work across the country.¹⁵⁸⁶

- **Temporary Residence Permit for Education - RVPO** (*разрешение на временное проживание в целях получения образования, РВП/О*) (Federal Law N 357-FZ of 14 July 2022 On Amendments to the Federal Law ‘On the Legal Status of Foreign Citizens in the Russian Federation’),¹⁵⁸⁷ issued to those admitted to full-time degree programs at the accredited institutions (duration matching academic program, renewable).

- **Refugee status** (for up to 3 years) or **temporary asylum** (for up to 1 year) in Russia (Law No. 4528-1 “On Refugees”¹⁵⁸⁸) without the need for a TRP and with the possibility to apply for residence later.

- **State Program on Assistance to Voluntary Resettlement of Compatriots Living Abroad** (Presidential Decree ‘On measures to facilitate the voluntary resettlement to the Russian Federation of compatriots living abroad’ No. 637 of June 22, 2006, amended on September 18,

¹⁵⁸³ <https://www.garant.ru/products/ipo/prime/doc/410456632/>

¹⁵⁸⁴ The three-year rule is in place since 25 January 2025.

¹⁵⁸⁵ <https://konsugroup.com/en/news/increased-minimum-salary-hqs-q1-2024/>

¹⁵⁸⁶ Starting January 2024, HQS and their family members can apply for an indefinite residence permit after residing in Russia for two years under a residence permit linked to their HQS status.

¹⁵⁸⁷ <http://publication.pravo.gov.ru/Document/View/0001202207140110?index=3>

¹⁵⁸⁸ <https://www.refworld.org/legal/legislation/natlegbod/1993/ru/147699>

2024, No. 809)¹⁵⁸⁹ offers ethnic Russians, Russian speakers from former USSR countries, and certain categories of foreigners a simplified path to TRP, PRP, and, eventually, citizenship.

Citizens of Ukraine and Belarus receive preferential or expedited processes for residence (and naturalization).¹⁵⁹⁰ The citizens of Ukraine are not required to obtain a temporary residence permit before applying for a residence permit. Ukrainian citizenship represents a sufficient ground for obtaining a residence permit in Russia under a simplified procedure.¹⁵⁹¹

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

The existing legal framework for granting international protection in Russia is based on national legislation and international treaties to which Russia is a party, as follows:

- Federal Law “On Refugees” (No. 4528-1 of February 19, 1993),¹⁵⁹² which governs refugee status in Russia. It outlines: the definition of a refugee, aligned with the 1951 Convention relating to the Status of Refugees; procedures for applying for refugee status; rights and responsibilities of recognized refugees; and grounds for refusal, revocation, or cessation of refugee status.
- Federal Law “On the Legal Status of Foreign Citizens in the Russian Federation” (No. 115-FZ of July 25, 2002),¹⁵⁹³ which covers broader migration and residence regulations, including temporary asylum provisions (Article 12); temporary and permanent residence permits; and specific rules for stateless persons and humanitarian status holders.
- International Treaties and Instruments, including: 1951 Refugee Convention; 1967 Protocol relating to the status of refugees; and CIS instruments on Humanitarian Cooperation (2005)¹⁵⁹⁴ and Return of Minors.¹⁵⁹⁵
- Presidential Decrees and Government Orders¹⁵⁹⁶ to regulate procedures for entry, exit, naturalization, and residence for certain categories of foreign citizens and stateless persons, and establish reception procedures and regional allocations.
- Ministry of Internal Affairs (MVD) Regulations,¹⁵⁹⁷ as the MVD is responsible for administering asylum procedures and implementing refugee application interviews and

¹⁵⁸⁹ <https://cis-legislation.com/document.fwx?rgn=13028>; <http://www.kremlin.ru/acts/bank/51110>

¹⁵⁹⁰ <https://russianroute.com/vnzh-rf-dlya-grazhdan-respubliki-belarus/>
<https://pravoistatus.ru/page/261/grazhdanam-ukrainy/>

¹⁵⁹¹ <https://russianroute.com/vnzh-rf-dlya-grazhdan-ukrainy/>

¹⁵⁹² <https://www.refworld.org/legal/legislation/natlegbod/1993/ru/147699>

¹⁵⁹³

<https://www.refworld.org/legal/legislation/natlegbod/2002/en/21410?prevDestination=search&prevPath=/search?keywords=On+the+Legal+Status+of+Foreign+Citizens+in+the+Russian+Federation&sort=score&order=desc&result=result-21410-en>

¹⁵⁹⁴ <https://cis-legislation.com/document.fwx?rgn=9433>

¹⁵⁹⁵ <https://cis-legislation.com/document.fwx?rgn=4710>

¹⁵⁹⁶ <http://en.kremlin.ru/acts/news/68853> ; <https://cis-legislation.com/document.fwx?rgn=162935>

¹⁵⁹⁷ <https://www.garant.ru/products/ipo/prime/doc/72243642/#0>

decisions; temporary accommodation and registration procedures; and issuance of relevant residence and asylum documents.

Russia has four main avenues for granting international protection: (i) refugee status; (ii) temporary asylum; (iii) humanitarian protection; (iv) stateless person status.

(i) Refugee status: As a party to the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol, Russia is legally obligated to uphold the principles of *non-refoulement* and to provide a fair and effective process for determining refugee status, among other obligations.

Refugee status in Russia is governed by Federal Law No. 4528-1 "On Refugees" (1993), amended and supplemented in June 2023.¹⁵⁹⁸ The Law defines a refugee as a person who, owing to a well-founded fear of persecution based on race, nationality, religion, political opinion, or membership in a particular social group, has fled their country of origin. Refugees are granted temporary residence for up to three years, after which they can apply for permanent residence.

(ii) Temporary asylum: ¹⁵⁹⁹ Temporary asylum may be granted to persons who do not meet the criteria for refugee status but require protection for humanitarian reasons, such as fleeing armed conflict or persecution. Temporary asylum is typically granted for up to one year and can be extended up to three years. Asylum seekers may be allowed to apply for refugee status during their stay under this status. They may also be granted protection for humanitarian reasons, under the provisions of the law. To date, Russia has recognized situations of grave and generalized human rights violations concerning certain countries, particularly in the context of asylum seekers fleeing conflicts or violence in Syria, Ukraine, Iraq, Afghanistan, and Central Asian countries (Uzbekistan and Tajikistan). There are no objective and consistent criteria for this classification; the recognition of such situations is largely discretionary and case-by-case, handled by the Ministry of Internal Affairs (MVD).

(iii) Humanitarian Protection: Humanitarian visas are granted under Federal Law No. 115-FZ "On the Legal Status of Foreign Citizens"¹⁶⁰⁰ for persons facing grave risks such as armed conflict or environmental disasters. These visas provide short-term residence and can be extended based on individual circumstances. Humanitarian protection is granted on a case-by-case basis and is aimed at individuals who cannot return to their country of origin due to such humanitarian crises. A visa or residence permit that allows individuals to stay in Russia for a specific period may later be converted into other forms of residence, depending on the individual's circumstances and whether they meet the requirements for long-term residence.

(iv) Stateless Persons Status: Under Federal Law No. 115-FZ "On the Legal Status of Foreign Citizens,"¹⁶⁰¹ stateless persons in Russia are granted temporary residence permits, which may lead to permanent residency. Stateless individuals have the right to apply for citizenship after fulfilling residence requirements (Art. 5.2).

¹⁵⁹⁸ <https://www.refworld.org/legal/legislation/natlegbod/1993/ru/147699>

¹⁵⁹⁹ <https://base.garant.ru/72343642/53f89421bbdaf741eb2d1ecc4ddb4c33/>

¹⁶⁰⁰ <https://www.refworld.org/legal/legislation/natlegbod/2002/en/21410>

¹⁶⁰¹ <http://publication.pravo.gov.ru/Document/View/0001202102240004?rangeSize=1&index=4>

The Ministry of Internal Affairs (MVD) is the primary authority handling *refugee status determination* in Russia. Applications for refugee status are decided by the Main Directorate for Migration, specifically the Refugee and Stateless Persons Division within the MVD. This body is responsible for reviewing and making decisions on the granting of refugee status and temporary asylum, including the evaluation of whether applicants meet the criteria established in Federal Law No. 4528-1 "On Refugees."ⁱ

Refugee status applications submitted to the local migration authorities must include the reasons for seeking asylum, personal details, and supporting evidence. The Ministry of Internal Affairs (MVD) processes the application through its Refugee and Stateless Persons Division and conducts an interview, after which the MVD evaluates the applicant's eligibility for refugee status and makes a decision. If the application is denied, the decision may be appealed within one month either administratively to the Main Directorate for Migration Affairs (ГВБМ МВД) or judicially in accordance with the Code of Administrative Court Procedure of the Russian Federation. During the appeal process, the applicant's temporary certificate confirming consideration of the application remains valid (Federal Law No. 4528-1 of 19 February 1993 "On Refugees," Art. 10(8),¹⁶⁰² and Federal Law No. 21 of 8 March 2015 "Code of Administrative Court Procedure of the Russian Federation," Art. 218–227).¹⁶⁰³

The Federal Law "On Refugees" (No. 4528-1, 1993) outlines the *procedures for granting refugee status*. The Law ensures that asylum seekers can fully participate in the application process, including interviews and hearings, without language barriers.¹⁶⁰⁴ Additionally, the Law provides for other support services for refugees, such as emergency medical assistance and access to temporary accommodation centers if the applicant is in a particularly vulnerable situation.

In Russia, decisions recognizing an individual as a refugee do not have a declaratory nature. Recognition of refugee status in Russia is constitutive, and the individual is granted refugee status if the application has been reviewed and a formal decision is made by the appropriate authority. If the decision is favorable, the individual is granted the rights and protections associated with refugee status from that moment onward.

Humanitarian protection can be extended to individuals who are not eligible for refugee status but who require protection due to reasons such as armed conflict, persecution, or other humanitarian crises. This is regulated under Article 15 of the Federal Law "On Refugees" (No. 4528-1), which allows for the granting of temporary asylum in Russia. Additionally, Article 31 of the Federal Law "On the Legal Status of Foreign Citizens" (No. 115-FZ) contains provisions for granting temporary or permanent residence permits to persons who are in need of humanitarian protection.

To date, no specific legal instrument has been enacted to regulate the concession of humanitarian visas and residence permits in Russia. General legal frameworks and provisions

¹⁶⁰² <https://www.zakonrf.info/doc-13457873/st10/>

¹⁶⁰³

https://www.consultant.ru/document/cons_doc_LAW_176147/98b69fee6357343965f5b57193fcaaa54b0f21e4/

¹⁶⁰⁴ <https://help.unhcr.org/russia/en/rights-and-obligations/>

address aspects related to humanitarian protection, although these do not explicitly define humanitarian visas as a separate category.

Federal Law No. 115-FZ “On the Legal Status of Foreign Citizens in the Russian Federation” regulates the overall framework for the legal status of foreign citizens, and provides for the issuance of various visas and residence permits (such as for work, study, and other purposes) without specifically mentioning humanitarian visas. Article 8 addresses the issuance of temporary stay permits and other forms of temporary residence for foreign nationals who flee from armed conflict or persecution (Article 8 of the Federal Law No. 115-FZ). It does not specifically detail the process of granting refugee status, as this is governed more directly by the Refugee Law (No. 4528-I).

Federal Law No. 4528-1 “On Refugees” (1993) covers the recognition of refugees and temporary asylum and provides the basis for humanitarian protection. It allows for temporary asylum and protection of foreign nationals who do not meet refugee status criteria but need protection on humanitarian grounds. Individuals granted temporary asylum can be issued temporary residence permits, subject to case-by-case evaluation by authorities, and there is no special humanitarian visa category.

The Russian legal framework for the *protection of stateless persons* is grounded in the following legal instruments:

1. Federal Law No. 62-FZ of 31 May 2002 "On Citizenship of the Russian Federation," which provides the foundational legal framework for the regulation of citizenship in Russia, including the protection of stateless persons, and offers provisions for stateless individuals to apply for Russian citizenship or residence permits under certain conditions.
2. Federal Law No. 115-FZ of 25 July 2002 "On the Legal Status of Foreign Citizens in the Russian Federation," which outlines the legal status of foreign citizens and stateless persons residing in Russia. Article 5.2 refers to the treatment of stateless persons, including their rights to reside, work, and access social services in Russia in accordance with international norms and agreements.
3. Federal Law No. 4528-1 of 19 February 1993 "On Refugees," which (though primarily focused on refugees) extends provisions regarding the treatment of stateless persons in Russia, stipulating that stateless persons who are not eligible for refugee status may still be granted temporary asylum under this law and other related protective statuses.

Persons seeking to be recognized as stateless file an application before the Ministry of Internal Affairs. The application must include a formal request for recognition of stateless status and supporting documents proving the applicant’s statelessness or inability to establish nationality. The applicant should provide a set of documents, including: personal identity documents (if available); affidavit or written explanation of the person’s statelessness, particularly if the individual cannot provide a valid passport or national ID; proof of stay in Russia (e.g., visa or residence permit) and any history of residency status; and other supporting documents that may assist in proving their stateless status. If the applicant cannot provide these documents due to circumstances (e.g., conflict zones, displacement), they may need to demonstrate their statelessness through testimony or supporting evidence.

Once the application is submitted, the Ministry of Internal Affairs evaluates the application, assesses the applicant's circumstances, and verifies their statelessness. In cases where the applicant cannot prove their statelessness, the authorities may take additional steps to assess the situation.

If the application is successful, the individual will be officially recognized as stateless in Russia, which provides them with a right to reside in the country, work, and access social services. If the application is rejected, the applicant has the right to appeal the decision in administrative court or request a review by the Ministry of Internal Affairs.

Once a person is recognized as stateless in Russia, they are eligible to apply for naturalization as a Russian citizen once they meet the necessary residence and legal criteria (Federal Law No. 62-FZ "On Citizenship of the Russian Federation"). The process involves applying to the Ministry of Internal Affairs. The granting of Russian citizenship is conditioned to compliance with the required residence duration, demonstrating legal standing, and proficiency in the Russian language. The MVD processes the application and makes a decision. Stateless persons who have legally resided in Russia for a shorter period may be granted some exemptions on the naturalization residence requirement. Specifically, if they have lived in Russia for at least one year with the status of a stateless person, they may be granted Russian citizenship through a simplified procedure (Article 14 of the Russian Citizenship Law No 62-FZ¹⁶⁰⁵).

If the stateless person in question does not wish to naturalize, they may remain in Russia with a permanent residence permit, which does not require them to acquire Russian citizenship. In this case, they shall be granted a residence permit for an indefinite period (Article 13, Federal Law No. 115-FZ).

Political asylum, as a form of protection independent from refugee status granted to individuals who are persecuted in their home country for political reasons and are seeking protection in Russia, is primarily regulated through the Federal Law No. 4528-1 of 19 February 1993 "On Refugees" and the Federal Law No. 115-FZ "On the Legal Status of Foreign Citizens in the Russian Federation" (as amended). The Russian Constitution (Article 63.1)¹⁶⁰⁶ specifies that the Russian Federation grants political asylum to foreign nationals and stateless persons according to the universally recognized norms of international law.¹⁶⁰⁷ According to Article 89(a)¹⁶⁰⁸ of the Constitution, the President of the Russian Federation decides on issues of citizenship of the Russian Federation and of granting political asylum.¹⁶⁰⁹ Presidential Decree No. 746 of 21 July 1997 "On the Procedure for Granting Political Asylum in the Russian Federation" (Clause 3) stipulates that the granting of political asylum is through a presidential decree.¹⁶¹⁰

Under this framework, the Decree provides that the President's decision is final. Applications for political asylum are processed with the involvement of competent state bodies, such as the

¹⁶⁰⁵ <https://www.refworld.org/sites/default/files/attachments/5a9d48314.pdf>

¹⁶⁰⁶ <http://www.fms39.ru/index.pl?file=asylum.html&spath=gosuslugi>

¹⁶⁰⁷ <https://constitution.garant.ru/english/>

¹⁶⁰⁸ <https://base.garant.ru/10103000/1f48af6d902343d6260a9c412b50d7d2/>

¹⁶⁰⁹ <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>

¹⁶¹⁰ <https://yeltsin.ru/archive/act/39303/>

Ministry of Internal Affairs, the Ministry of Foreign Affairs, and others, with the President representing the final authority. The decision to grant – or deny – political asylum through a presidential decree is not subject to judicial or administrative review. Once the President issues a decree granting or denying asylum, no established legal mechanism for challenging or appealing that decision in the courts or through administrative channels is envisaged. Within this framework, asylum is considered a sovereign act of discretion by the head of state, rather than an administrative procedure. This rule contrasts with refugee status procedures regulated under the 1993 Law “On Refugees,” where appeal is possible through administrative and judicial channels. Notably, the procedures pertaining to the granting – or denial – of political asylum align with the broader legal framework in Russia, where the legal structure places significant discretionary power in the hands of the executive in a range of migration matters.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

In Russia, migration for the purpose of family reunification is primarily regulated under Federal Laws No. 115-FZ of 25 July 2002 “On the Legal Status of Foreign Citizens in the Russian Federation”¹⁶¹¹ and No. 109-FZ of 15 July 1996 “On Migration Registration of Foreign Citizens and Stateless Persons.”¹⁶¹² Both Laws only regulate the registration of family members of foreign citizens enjoying diplomatic privileges and immunities, and not the general foreign or stateless population (Article 22, Law No. 115-FZ; Chapter 2, Article 11; Chapter 4, Article 20, Law No. 109-FZ).

The term “family reunification” is not explicitly used in Law No. 115-FZ “On the Legal Status of Foreign Citizens in the Russian Federation.” The concept is present in the form of provisions allowing family members of persons enjoying diplomatic privileges and immunities to join foreign nationals residing legally in Russia. This approach is different from the customary family reunification procedures, where there are specifically defined rules under that name. The Russian legislation (Federal Law No. 115-FZ) does not provide a codified or exhaustive list of family members eligible for “family reunification.”

There is no independent program for granting a residence permit for family reunification, and the process is embedded in the standard immigration process and managed through standard entry visas (e.g., private or dependent visas) and residence permits. The provisions allowing family members to enter or stay are generally tied to: types of visas (e.g., private visa based on invitation); residence permits (temporary or permanent); and relationships with Russian citizens or legal residents, assessed on a case-by-case basis. In practice, decisions regarding family-based migration or residence are made on a case-by-case basis, taking into account the specific family relationship and the circumstances of the individuals involved.

¹⁶¹¹

<https://www.refworld.org/legal/legislation/natlegbod/2002/en/21410?prevDestination=search&prevPath=/search?keywords=On+the+Legal+Status+of+Foreign+Citizens+in+the+Russian+Federation&sort=score&order=desc&result=result-21410-en>

¹⁶¹² <https://ils-usa.com/data/ils-usa.com/docs/Law3.pdf>

Article 6 of Law No. 115-FZ allows foreign nationals to receive temporary residence permits if they have close relatives who are Russian citizens permanently residing in Russia.

5. What are the conditions for naturalization in the reviewed state?

Naturalization in Russia is regulated by Federal Law No. 138-FZ "On Citizenship of the Russian Federation,"¹⁶¹³ which sets out the conditions and procedures for acquiring Russian citizenship through naturalization. Article 12 lists the grounds for acquiring citizenship of the Russian Federation, as follows:

- 1) by birth (Article 13 of the Federal Law N 138-FZ),¹⁶¹⁴
- 2) as a result of admission to citizenship of the Russian Federation (naturalization);
- 3) as a result of being recognized as a citizen of the Russian Federation;
- 4) as a result of choosing citizenship of the Russian Federation when the State border of the Russian Federation was altered;
- 5) under an international treaty of the Russian Federation.

Articles 14 and 15 of the Federal Law No. 138-FZ "On Citizenship" regulate the admission to citizenship for a foreign citizen or a stateless person who has reached the age of eighteen, has legal capacity, and undertakes to a) comply with the Constitution of the Russian Federation; b) take the Oath of Allegiance; and c) meet the additional statutory requirements.¹⁶¹⁵

Certain categories of foreign nationals and stateless persons may acquire Russian citizenship through a simplified procedure, without the need to meet the standard requirements under points 1-4 of Part 1, Article 15 of the Federal Law on Citizenship of the Russian Federation (Article 16 Federal Law No. 138-FZ "On Citizenship of the Russian Federation"). This simplified path is available to individuals who are legally capable, at least 18 years of age, permanently residing in the Russian Federation, and fall into one of the following categories:

- born or permanently resided on the territory of the RSFSR and was a citizen of the USSR;
- has lineal ancestors who were born or permanently resided on the territory of the RSFSR or a territory that was part of the Russian Empire or the USSR, within the State Border of the Russian Federation;
- has at least one parent (adoptive parent) who is a citizen of Russia and resides there;

¹⁶¹³ https://www.ecoi.net/en/file/local/2122849/2023_russia_law_on_citizenship_amend2024_en.pdf

¹⁶¹⁴

https://www.consultant.ru/document/cons_doc_LAW_445998/8d0a8bfc2562a8bf2eaff542453f1c3da111160/

¹⁶¹⁵ Part 1 of Article 15 of Federal Law No. 138-FZ: 1) permanently resides in the Russian Federation from the date of the decision to issue a residence permit in the Russian Federation and up to the date of submission of an application for admission to citizenship of the Russian Federation for five years; 2) has a command of the Russian language; 3) knows the history of Russia and the fundamentals of legislation of the Russian Federation; 4) is not subject to any circumstances that give rise to the denial of application to admission to citizenship of the Russian Federation.

https://www.consultant.ru/document/cons_doc_LAW_445998/e18ce69fce5689aa6c3adaf317fab6fb0a85ab49/

- has a son or daughter who is a citizen of the Russian Federation and resides in the Russian Federation;
- is married to a citizen of the Russian Federation who resides in the Russian Federation and has a common child with them, including an adopted child;
- has successfully mastered, in the Russian Federation, an intramural higher educational program with state accreditation and received an educational degree and qualification with distinction;
- has mastered an intermediate professional educational program, bachelor degree's program, specialist's degree program, master's degree program, residency program, assistant internship program with state accreditation, or a post-graduate (adjunct) scientific and academic training program in educational or scientific institutions of and on the territory of the Russian Federation, and is employed in the Russian Federation for no less than one year in total until applying for citizenship of the Russian Federation;
- is a stateless person who used to be a citizen of the USSR.

Participants of the State Program to Assist Compatriots Residing Abroad in the Voluntary Resettlement to the Russian Federation and their family members are exempt from fulfilling the requirement of point 1, Part 1 of Article 15 of Federal Law No. 138-FZ "On Citizenship of the Russian Federation" to permanently reside in Russia from the date of the decision to issue a residence permit in the country and up to the date of submission of an application for admission to citizenship of the Russian Federation for five years.

In addition to the regular and simplified admission to Russian citizenship, the Law provides for an exceptional admission (Article 17) for a foreign citizen or a stateless person who reached the age of eighteen and has legal capacity without reference to the requirements of points 1-3, Part 1 of Article 15 of Federal Law No. 138-FZ, if such foreign citizen or stateless person: 1) is of special merit to the Russian Federation; 2) is of interest to the Russian Federation due to their profession or qualification, or other reasons.

For humanitarian or other purposes, the President of the Russian Federation has the right to define other categories of foreign citizens and stateless persons that may be admitted to citizenship of the Russian Federation without reference to all or certain requirements of Part 1 of Article 15 of Federal Law No. 138-FZ, and to establish other requirements and conditions of admission to the citizenship of the Russian Federation (Article 16).

Before applying for naturalization, an applicant must have resided in Russia for at least 5 years on a temporary or permanent residence permit. This period is shortened for (i) spouses of Russian citizens (the residence requirement is reduced to 3 years if the applicant is married to a Russian citizen); (ii) refugees, who have been granted asylum in Russia (they can apply for naturalization after 1 year of continuous residence); and (iii) persons with Russian-speaking heritage (referred to as "compatriots") (they may be eligible for a more expedited process, with reduced residence requirements, often allowing for a naturalization period of 3 years).

A citizenship application must be submitted in person at the territorial department for migration issues of the Ministry of Internal Affairs at the place of residence. In Moscow, applications can be submitted through the Multifunctional Migration Center, which centralizes migration services to streamline the process for applicants residing in the capital. For individuals residing outside Russia, applications for citizenship may be submitted to the nearest Russian diplomatic mission or consulate in the country of residence. Processing these applications may involve verifying documents, collecting necessary fees, and conducting interviews if required.

Proficiency in Russian is a requirement (Art. 13), proven by passing a test and obtaining a certificate issued by a recognized institution, unless the applicant belongs to a category that is exempt (elderly persons, persons with disabilities, or native speakers applying under special procedures).

A criminal background check is a mandatory component of the Russian naturalization process, and certain criminal records can disqualify an applicant from obtaining Russian citizenship. In addition, applicants must ensure to have no violations of Russian migration or residency laws.

The process of naturalization entails

- 1) an application with the mandatory documentation, including proof of legal residence, evidence of sufficient Russian language proficiency and familiarity with the history and fundamentals of Russian legislation, and a clean criminal record;
- 2) a thorough review of the application by the authorities, including verification of the applicant's compliance with all statutory requirements; and, if the application is approved,
- 3) an oath of allegiance to the Russian Federation, committing to uphold its Constitution and laws.

Upon acquiring Russian citizenship, individuals are subject to the same legal responsibilities as all other citizens, including conscription laws. Federal Law No. 53-FZ "On Military Duty and Military Service" outlines the framework for conscription without differentiating between native-born and naturalized citizens regarding military service requirements.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

d. refugees;

e. asylum seekers;

f. other beneficiaries of international protection, if applicable.

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

Overview

The rights of foreign citizens and stateless persons during their stay in Russia are governed by a set of provisions contained in the Constitution, federal laws, presidential decrees, and international treaties.

Articles 17-64 of the Constitution outline rights and freedoms applicable to all persons on the territory of Russia, not only to Russian citizens. Art. 62.4 stipulates that foreign nationals and stateless persons enjoy the rights (and bear the obligations) of citizens of the Russian Federation, except for cases envisaged by the federal law or the international agreements.¹⁶¹⁶ The rights include protection of life, dignity, personal security, and access to justice. Art. 63 stipulates that the Russian state grants political asylum to foreign nationals and stateless persons according to the universally recognized norms of international law.

Federal Law No. 115-FZ of 25 July 2002 “On the Legal Status of Foreign Citizens in the Russian Federation”¹⁶¹⁷ regulates the stay of foreigners and stateless persons, including residency, rights, obligations, and restrictions. Art. 1 defines the legal position of foreign citizens and regulates relations between foreign citizens and the state bodies, as well as their respective officials, arising in connection with the stay of foreign citizens in Russia, including rules for employment, business activities, obtaining education, and access to medical care.

Federal Law No. 4528-1 of 19 February 1993 “On Refugees” defines the rules for recognising refugee rights (and status) in Russia.

¹⁶¹⁶ <http://www.constitution.ru/en/10003000-03.htm>

¹⁶¹⁷ https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The Russian legal framework on non-discrimination contains provisions that specifically apply to non-nationals. Art. 19 (1–2) of the Russian Constitution stipulates that the state guarantees equality of rights and freedoms regardless of race, nationality, origin, official status, place of residence, and other circumstances. Art. 62.4 specifies that all categories of foreign nationals and stateless persons enjoy the rights of citizens of the Russian Federation (protection of life, dignity, personal security, and access to justice), except for cases envisaged by the federal law or the international agreements.¹⁶¹⁸

Article 3 of the Russian Labour Code explicitly prohibits discrimination in labour relations on the grounds of race, nationality, origin, and official status, as well as other circumstances not related to professional qualities, and this provision equally applies to foreign workers as it does to Russian citizens.¹⁶¹⁹

1993 Federal Law “On Refugees” No. 4528-1 (last amended on 13.06.2023) stipulates in the preamble economic, social, and legal guarantees of protection of rights and lawful interests of refugees in accordance with the Constitution, generally recognized principles and norms of international law, and international treaties, without explicitly referring to non-discrimination on grounds of race, nationality, or other. Article 6 outlines certain rights granted to persons recognized as refugees, including equal rights to work, access to information and medical care, and other benefits.¹⁶²⁰

Federal Law No. 115-FZ “On the Legal Status of Foreign Citizens” provides that foreigners in Russia enjoy equal rights (and bear equal responsibilities) a par with Russian citizens, except for the cases stipulated by federal law (Art. 4).¹⁶²¹

Anti-discrimination provisions in sectoral laws guarantee access to education independently of nationality, race, origin, or language (Education Act No. 273-FZ, Art. 2),¹⁶²² while Art. 19 of the 2011 Healthcare Law No. 323-FZ¹⁶²³ stipulates the right to medical care of foreign citizens living and staying in the Russian Federation as established by the legislation of the Russian Federation and relevant international treaties. The same Law confirms that stateless persons permanently residing in the Russian Federation enjoy the right to medical care on an equal basis with citizens of the Russian Federation, unless otherwise provided by international treaties of the Russian Federation.

The procedures for providing medical care to foreign citizens is determined by the Government of the Russian Federation. To this end, 2010 Federal Law No. 326-FZ ‘On Compulsory Medical

¹⁶¹⁸ <http://www.constitution.ru/en/10003000-03.htm>

¹⁶¹⁹ https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_363.pdf

¹⁶²⁰ https://www.consultant.ru/document/cons_doc_LAW_4340/

¹⁶²¹ https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

¹⁶²² https://www.9111.ru/laws/273fz/glava_1/statia_5/

¹⁶²³ <https://minzdrav.gov.ru/documents/7025-federalnyy-zakon-323-fz-ot-21-noyabrya-2011-g>

Insurance'¹⁶²⁴ (amended on 28.12.2024), Art. 10.1 and 10.1.1., specify that medically insured persons include foreign citizens permanently or temporarily residing in Russia (*постоянно или временно проживающие в Российской Федерации иностранные граждане*), foreign citizens who are temporarily staying in the territory of the Russian Federation (*временно пребывающие на территории РФ*) and engaged in labour activity, stateless persons (with the exception of non-working family members of highly qualified specialists, as well as foreign citizens engaged in labour activities in the Russian Federation in accordance with Article 13.5 of Federal Law No. 115-FZ of 25 July 2002 'On the Legal Status of Foreign Citizens in the Russian Federation'), and persons entitled to medical care in accordance with the Federal Law 'On Refugees'¹⁶²⁵ (Art. 6.7).

Resolution of the Government of the Russian Federation No. 631 of 08.05.2025 'Rules for the provision of medical care to foreign citizens,'¹⁶²⁶ replacing the 2013 Decree with the same name (until 01.09.2025),¹⁶²⁷ set out the procedure for providing medical care to foreign citizens permanently or temporarily residing in the Russian Federation, as well as those temporarily staying in the Russian Federation by specifying what types of care are provided and under what conditions (emergency/ambulance care, planned care, specialised care, etc.). Among the rules are emergency medical care, including specialised care, to foreign citizens in the event of illness, accidents, injuries, poisoning, exacerbations of chronic illnesses that pose a threat to the patient's life, and other conditions requiring urgent medical intervention, free of charge.

Foreign citizens who are insured in accordance with the Federal Law "On Compulsory Medical Insurance in the Russian Federation"¹⁶²⁸ are entitled to free medical care under compulsory medical insurance (unless otherwise stipulated by the Rules). Foreign citizens specified in Part 1.1 of Article 10 of the Federal Law "On Compulsory Medical Insurance in the Russian Federation" are entitled to free medical care within the framework of compulsory medical insurance (subject to conditions set out in Article 16, Part 1.1).¹⁶²⁹ State and municipal healthcare institutions are to provide emergency medical care to foreign citizens free of charge. Emergency medical care (except for ambulance services, including specialised ambulance services) and planned medical care are provided to foreign citizens in accordance with contracts for the provision of paid medical services or voluntary medical insurance contracts and (or) compulsory medical insurance contracts concluded in favour of foreign citizens. Additionally, if an international treaty establishes a different procedure for providing medical care to foreign citizens, the rules of the international treaty apply.¹⁶³⁰

¹⁶²⁴

https://www.consultant.ru/document/cons_doc_LAW_107289/7e136daa780a2b64dd6976678206b3196fa2b54d/

¹⁶²⁵ https://www.consultant.ru/document/cons_doc_LAW_4340/914b0ca4ed6220a4a6fd70fff57fa9ee29abfb99/

¹⁶²⁶ https://base.garant.ru/411990190/#block_1000

¹⁶²⁷ <http://publication.pravo.gov.ru/document/0001201303110002>

¹⁶²⁸

https://www.consultant.ru/document/cons_doc_LAW_107289/7e136daa780a2b64dd6976678206b3196fa2b54d/

¹⁶²⁹

https://www.consultant.ru/document/cons_doc_LAW_107289/7e136daa780a2b64dd6976678206b3196fa2b54d/

¹⁶³⁰ https://base.garant.ru/411990190/#block_1000

When it comes to international treaties incorporated into domestic law, Russia has ratified the ICERD,¹⁶³¹ CEDAW,¹⁶³² and CRC,¹⁶³³ which apply to everyone within its jurisdiction, including foreigners. Under Article 15(4) of the Constitution, ratified international treaties have priority over conflicting domestic law.¹⁶³⁴

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

According to the Russian Constitution and legislation, any active (voting) or passive (running for office and candidacy) rights at the federal and regional levels are reserved for Russian citizens. Specifically, Art. 32 of the Constitution outlines the rights to participate in the government, to be elected, to vote, and to participate in referendums, conditional upon being “*гражданин Российской Федерации*” (“citizen of the Russian Federation”). Similarly, Federal Law On the Legal Status of Foreign Citizens (No. 115-FZ) provides that foreign citizens in the Russian Federation have no right to elect and to be elected to the federal state power bodies and to the state power bodies of the subjects of the Russian Federation, or to take part in a referendum of the Russian Federation or in referendums of the regions (Art. 12.1).¹⁶³⁵

Federal Law “On the Election of the President of the Russian Federation” (2002, amended in 2003)¹⁶³⁶ stipulates that only citizens can vote in the presidential elections (Art. 1 and 2), and persons who want to nominate themselves or be nominated must meet citizenship requirements (Art. 34).

Legal exemptions exist for the *local self-government bodies*. Federal Laws “On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum” (No. 67-FZ, as amended in 2003, Art. 4.8)¹⁶³⁷ and “On the Legal Status of Foreign Citizens (No. 115-FZ, Art. 12.2)¹⁶³⁸ provide that under international treaties and corresponding federal and regional laws, foreign citizens permanently residing on the territory of the relevant municipal unit have a right to elect and be elected to bodies of *local self-government on the same conditions as citizens of the Russian Federation* and to take part in a local referendum. The most recent legal instance of a bilateral agreement giving non-nationals a degree of political participation at the municipal level is the signature of a protocol between Belarus and Russia amending the bilateral agreement on equal rights of citizens of 25 December 1998 (Federal Law No. 226-FZ of July 23, 2025 “On the ratification of the Protocol amending the Agreement between the Russian Federation and the Republic of Belarus on equal rights of

¹⁶³¹ https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-2&chapter=4&clang=en#EndDec

¹⁶³² https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en

¹⁶³³ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en

¹⁶³⁴ <https://constitution.garant.ru/english/>

¹⁶³⁵ https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

¹⁶³⁶ <https://legislationline.org/taxonomy/term/12319>

¹⁶³⁷ <https://legislationline.org/taxonomy/term/12320>

¹⁶³⁸ https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

citizens of December 25, 1998”).¹⁶³⁹ The Protocol provides for the possibility, on a reciprocal basis, for Belarusian and Russian citizens *permanently residing in the territory of the other state* to participate in local elections (to vote in local elections and be elected to certain local self-government bodies).

According to the 2001 Federal Law “On Political Parties” No. 95-FZ,¹⁶⁴⁰ *membership in a political party* is open to citizens of the Russian Federation (conditions apply), while foreign nationals and stateless persons are explicitly excluded from party membership (Art. 23).

At the same time, restrictions have been introduced for citizens of the Russian Federation who receive the status of a “foreign agent,” which can apply to both individuals and organizations. Federal Law “On Control over the Activities of Persons under Foreign Influence” No. 255-FZ of July 14, 2022 (amendments and additions effective as of September 1, 2025) restricts foreign agents in participating in elections and certain election-related roles. This Law amends the 1999 Federal Law N.55 “On Basic Guarantees of Electoral Rights and the Right of Citizens of the Russian Federation to Participate in a Referendum”¹⁶⁴¹ and bans Russian citizens designated as foreign agents from participating in elections, being candidates, candidates’ agents and representatives, or being observers at elections of all levels, including those to federal and regional state bodies, to public authorities of a federal territory, and to local self-government bodies.¹⁶⁴² Under this Federal Law, a registered candidate may not be in the foreign agents register, and a candidate must terminate their status as a foreign agent before submitting their documents for registration as a candidate. A proof consisting of a notification from the Russian Justice Ministry about this status being removed from the list of foreign agents and a respective court ruling is required. For certain existing office-holders (e.g. in the Federation Council or State Duma), if they are designated foreign agents, their mandates can be terminated early.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Russia guarantees foreigners basic civil rights such as access to courts, freedom of expression, and some assembly rights. Foreign citizens’ political participation and access to certain professions are restricted compared to nationals, and their residence and employment are subject to migration controls.

Generally, under Russian law, both citizens of the Russian Federation and foreigners or stateless persons legally present in the country enjoy the right to freedom of movement and the choice of place of residence within Russia. For citizens, this right may only be restricted by law

¹⁶³⁹ <http://publication.pravo.gov.ru/document/0001202507230016>

¹⁶⁴⁰ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2012\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2012)001-e)

¹⁶⁴¹ https://www.democracy.ru/english/library/laws/bg_law_eng/

¹⁶⁴² <https://tass.com/politics/1788621>

(Constitution, Art. 27).¹⁶⁴³ For foreigners and stateless persons, this right may be subject to additional requirements such as migration registration or restrictions in specific areas (Federal Law No. 5242-1 of June 25, 1993 (as amended on December 13, 2024) “On the Right of Citizens of the Russian Federation to Freedom of Movement, Choice of Place of Stay and Residence within the Russian Federation”).¹⁶⁴⁴

Requirements are in place regarding the rules of registration and residency for foreigners and stateless persons. Foreign citizens and stateless persons are subject to *registration at the place of residence* (2018 amendments to the Federal Law No. 109-FZ of 18 July 2006 “On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation”).¹⁶⁴⁵ This rule applies regardless of whether foreigners and stateless persons entered Russia with a visa or without a visa, regardless of the purpose and duration of stay, and regardless of their legal status, and applies equally to persons with temporary residence permits and permanent residence permits, and those staying in the country temporarily without residence permits.

Federal Law of 27 June 2018 No. 163-FZ On Amendments to the Federal Law “On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation”¹⁶⁴⁶ tightens the requirement for all foreign citizens to be registered at the address of the actual residence and that registration corresponds to the actual residential conditions, not just an administrative address, as was under the previous Federal Law No. 109-FZ dated 18.07.2006 “On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation,”¹⁶⁴⁷ which permitted employers registering foreign employees at the address of the employer’s office or company. The 2018 Law removed this possibility unless the foreigner actually lives at that address. Employers can no longer automatically use their office address for registration unless it really functions as living premises. The Law stipulates the obligation of foreign citizens and stateless persons to reside at the place of residence (*место жительства*) or at the place of stay (*место пребывания*), information about which has been submitted for the purpose of migration registration.¹⁶⁴⁸

Foreigners are required to carry documents confirming their legal residence status, including a valid identity document (passport) with a visa (if applicable) and proof of migration registration (migration card). This requirement applies to foreigners residing in the country for over 7 working days. Migration registration must generally be completed within 7 working days after arrival at the place of stay in Russia, except for citizens of EAEU countries (Belarus, Armenia, Kazakhstan, and Kyrgyzstan), for whom the procedure is simplified. These documents must be presented to law enforcement (police) officers upon request, and failure to comply with these

¹⁶⁴³ <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>

¹⁶⁴⁴ https://www.consultant.ru/document/cons_doc_LAW_2255/e805677425d2514b6662b04d4a059d4442c3424e/

¹⁶⁴⁵ <https://aebrus.ru/upload/iblock/9dd/federal-law-163.pdf>

¹⁶⁴⁶ <https://aebrus.ru/upload/iblock/9dd/federal-law-163.pdf>

¹⁶⁴⁷ <https://base.garant.ru/12148419/>

¹⁶⁴⁸ <https://www.pgplaw.com/analytics-and-brochures/alerts/important-changes-in-the-migration-registration-of-foreign-citizens-in-the-russian-federation/>

requirements may result in administrative liability. Sanctions are laid down in the Code of Administrative Offenses (KoAP), Art. 18.8 (violation of migration rules by foreigners).¹⁶⁴⁹

Certain territorial units are equally closed to Russian and foreign citizens for entry, residency, and stay without special permits (e.g. certain border areas, restricted cities of military/strategic significance, closed cities), as specified in the Decree of the Government of the Russian Federation No. 655 of June 26, 1998 (as amended on March 19, 2014) “On Approval of the Regulations on Ensuring a Special Regime in a Closed Administrative-Territorial Formation on the Territory of Which Facilities of the Ministry of Defence of the Russian Federation Are Located.”¹⁶⁵⁰

When it comes to association and assembly, foreign citizens may participate in public associations but cannot establish political parties or join them (Federal Law No. 95-FZ on Political Parties as of 11 July 2001).¹⁶⁵¹

Foreign citizens’ relation to suffrage is governed by the Federal Law No. 115-FZ of 25 July 2002 “On the Legal Status of Foreign Citizens in the Russian Federation.”¹⁶⁵² Art. 12 specifies that foreign citizens in the Russian Federation have no right to elect and to be elected to the federal state power bodies and to the state power bodies of the regions, or to take part in a referendum of the Russian Federation or in regional referendums (Art. 12.1). Permanent residents, in the cases and in conformity with the procedure stipulated by the federal laws, have the right to elect and to be elected to the local self-government bodies, and to take part in a local referendum (Art. 12.2).

Employment of foreigners is prohibited in the Armed Forces, defence, state security, military formations and troops (exceptions apply: foreign citizens may enlist for military service on a contractual basis and may work in the Armed Forces, other troops and military units as members of the civilian personnel¹⁶⁵³); structural units working with state secrets; nuclear and radiation-hazardous industries; vessels with nuclear installations; nuclear power plants, including those under construction (although in agreement with the Federal Security Service of Russia, foreign nationals may be employed at a nuclear power plant under construction and foreign nationals may work on it before nuclear fuel is supplied to the territory of the nuclear power plant) (Decree of the Government of the Russian Federation No. 755 of October 11, 2002 (as amended on February 4, 2011) “On the Approval of the List of Facilities and Organizations Where Foreign Citizens Are Not Entitled to Be Employed”);¹⁶⁵⁴ in the municipal service, as judges¹⁶⁵⁵

¹⁶⁴⁹ <https://eng.confidencegroup.ru/info/articles/migratsionnye-uslugi/perechen-administrativnykh-pravonarusheniy-v-sfere-migratsionnogo-i-trudovogo-zakonodatelstva/>

¹⁶⁵⁰ https://www.consultant.ru/document/cons_doc_LAW_19183/a0249cfbac36e70025095116aff3d09d7505c4f1/

¹⁶⁵¹ <https://legislationline.org/taxonomy/term/12553>

¹⁶⁵² https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

¹⁶⁵³ Art. 15, Federal Law No. 115-FZ of 25 July 2002 “On the Legal Status of Foreign Citizens in the Russian Federation” https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

¹⁶⁵⁴ https://www.consultant.ru/document/cons_doc_LAW_39084/b4e4b17cd1a423636f458f8ac8d75fedf927be0c/

¹⁶⁵⁵ Judges who are citizens of the Russian Federation can not have nationality (citizenship) of the foreign state or a residence permit or other document confirming the right to permanent residence of a citizen of the Russian Federation in the territory of a foreign state. Law No. 3132-1 “About the status of judges in the Russian Federation of June 26, 1992 (as amended on 10-07-2023), Art. 4.3. <https://cis-legislation.com/document.fwx?rgn=1721#:~:text=Article%204.&text=candidates%20for%20judgeship-1.,of%20powers%20of%20the%20judge.>

and prosecutors. Foreigners have no right to occupy posts in the crews of ships sailing under the Russian Flag; being members of the crew of a military air vessels or other types of non-commercial vessels or in aviation and civil aircrafts; or any organisations whose activity is involved in providing for the security of the Russian Federation (Federal Law No. 115-FZ, Art. 14.1).¹⁶⁵⁶

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

The Russian legal framework allowing foreigners to buy, own, and sell real estate (apartments, houses, commercial property) is primarily based on the Civil Code (Federal Law No. 51-FZ, 30.11.1994),¹⁶⁵⁷ which governs the sale and purchase of real estate in Russia. Ownership rights are formally equal to those of Russian citizens. 1999 Federal Law No. 171-FZ “On Foreign Investments in the Russian Federation” confirms that foreign individuals and entities can acquire property in Russia, except for restricted categories.

Restrictions apply to land ownership. Foreigners cannot own agricultural land (Federal Law No. 101-FZ of 24 July 2002 “On the Turnover of Agricultural Land”); land in border areas (Decree of the President of the Russian Federation No. 26 of 9 January 2011 defines such zones); and land plots within seaports and some strategic territories (for national security reasons). In such cases, foreigners may only lease the land or own buildings on the land but not the land itself. Foreigners can inherit property, but if it includes restricted land, they must sell it within a year. Selling property by foreigners is possible without restrictions.

Federal Law No. 101-FZ of July 24, 2002 (amended 26.12.2024) “On the Circulation of Agricultural Land”¹⁶⁵⁸ (Art. 3) stipulates that foreign citizens, foreign legal entities, stateless persons, as well as legal entities in whose charter (share) capital the share of foreign citizens, foreign legal entities, or stateless persons exceeds 50%, may own land plots from agricultural land only on the right of lease (except in cases provided for by Federal Law No. 119-FZ “On the Specifics of Providing Citizens with Land Plots Owned by the State or Municipalities and Located in the Arctic Zone of the Russian Federation and Other Territories of the North, Siberia, and the Far East of the Russian Federation, and on Amendments to Certain Legislative Acts of the Russian Federation” of May 1, 2016).¹⁶⁵⁹

Federal Law No. 218-FZ “On State Registration of Real Estate” (13 July 2015)¹⁶⁶⁰ provides the procedures for registering real estate, which applies equally to foreign nationals.

¹⁶⁵⁶ https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

¹⁶⁵⁷ https://www.consultant.ru/document/cons_doc_LAW_5142/

¹⁶⁵⁸

https://www.consultant.ru/document/cons_doc_LAW_37816/53d6886e6a0e3e25c09210246e80092ee379a32b/

¹⁶⁵⁹ <https://cis-legislation.com/document.fwx?rgn=85037>

¹⁶⁶⁰ <https://cis-legislation.com/document.fwx?rgn=77202>

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

The conditions under which foreign citizens may engage in formal employment or perform labour and business activity are mainly governed by the Federal Law No. 115-FZ of 25 July 2002 “On the Legal Status of Foreign Citizens in the Russian Federation.”¹⁶⁶¹ With certain exceptions,¹⁶⁶² foreign nationals may engage in formal employment only if they are legally present in the country and possess the appropriate authorization in the form of a permit for work (Art. 13.4). Employment must comply with regional, quota, and employer notification rules, as applicable, depending on the legal status of a foreign worker. Permanent residents (holders of a residence permit, БЖЖ) enjoy the same rights as Russian citizens in terms of pensions, maternity, sickness, and other social insurance benefits.

The Law fastens a regional approach to foreign labour distribution in Russia. Regional restrictions apply to temporarily staying and temporary residing foreigners.

Temporarily staying foreigners have no right to engage in labour activity outside the region of the Russian Federation, on the territory of which a work permit had been issued (Art. 13, clause 4) (except for two sets of Russian regions: Moscow city as the city of federal significance (and a region of the Russian Federation) and the surrounding Moscow Oblast, and St. Petersburg as the city of federal significance (and a region of the Russian Federation) and the neighbouring Leningrad Oblast¹⁶⁶³).

Temporary residing foreigners may only engage in labour activity on the territory of the region where they are permitted to temporarily reside (Art. 13, clause 5). The Government reserves the legal right to introduce amendments, and exceptions may be made based on the specific needs of a given region (Art. 13, clause 6).

Regional restrictions do not apply to permanent residents and Highly Qualified Specialists, who may work anywhere in Russia (general restrictions on the employment of foreigners in certain sectors or restricted territories apply).

Foreign citizens who have arrived in Russia on a visa-free basis apply for a patent (патент) (exemptions apply), which confirms the right to work in a given region.¹⁶⁶⁴ The patent is valid only in the region for which it is issued, for a period of up to 12 months, with a possibility to be reissued 10-20 business days before the expiration date. To this end, the employer should

¹⁶⁶¹ https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

¹⁶⁶² This requirement does not apply to foreign citizens who are permanent residents; participants in the compatriots resettlement Programme; employees of diplomatic representations, consulates, and international organisations, and private domestic helpers thereof; certain categories of foreign services providers, journalists accredited in the Russian Federation, certain categories of students; lecturers (Art. 4).

¹⁶⁶³ Constitution, Art. 65.1 <https://base.garant.ru/10103000/d4d1c020f5ac1ff694cd399cf1a90fc2/>

¹⁶⁶⁴ https://www.gosuslugi.ru/help/faq/foreign_patent/175110

provide the applicant with a request for a reissue of the patent and a copy of the employment or civil law contract.

Employment of foreign citizens who entered Russia based on a visa requires a receipt of a work permit issued by the federal executive body in internal affairs (Ministry of Internal Affairs - MVD) (Art. 13).

Art. 13.1. governs the employment of foreign citizens who enter Russia without a visa. Such foreigners must obtain a labour (work) permit (*разрешение на работу*) issued by the Ministry of Internal Affairs (*МВД России*) or its regional office, an application for which may be submitted personally, through an employment agency, or via a legal representative. The list of documents is minimalistic: a valid identity document recognized by Russia; a migration card with a border-control entry mark; and a proof of payment of the state fee for the work permit (Art. 13.1.3). In the unlikely event that the required documents are missing, the federal executive body in charge of migration (or its territorial agency) has the right to refuse to accept the application (Art. 13.5). The nuance here is that while a work permit is required for these categories of foreigners, no employer is needed to obtain one. The migration authority must issue the work permit or a reasoned refusal within 10 working days (Art. 13.7). Information on issued work permits must be transmitted by the migration authority to the corresponding regional employment body. Decisions to refuse a work permit can be appealed to the migration authority or a court within three working days.

Medical clearance is mandatory for long-term permits of over 90 days, in which case the foreign citizen who has arrived at the Russian Federation in a manner not requiring a visa must, within 30 days as of the date of receiving the work permit to submit certificates confirming that they are not drug-dependent, do not suffer from dangerous infectious diseases (Government endorsed list applies), and are not HIV-positive (Art. 13.8).

Under the 2015 Treaty on the Eurasian Economic Union,¹⁶⁶⁵ citizens of Armenia, Belarus, Kazakhstan, and Kyrgyzstan enjoy the right to work in Russia and are not required to obtain a permit for conducting work activities (Art. 97.1). They can take up employment in Russia on the same basis as Russian citizens, subject to the requirement of concluding a written employment contract and notifying the migration authorities through a simplified registration procedure (notification of arrival at the place of stay and registration within 30 days upon arrival, Art. 97.6). Employment restrictions related to national security (including the economic sectors of strategic importance) and public order apply (Art. 97.2).

Employers and customers of services may hire foreigners who entered visa-free and hold valid work permits without needing a separate employer permit. In this case, employer notification to authorities is compulsory, to both the regional migration office (MVD) and the regional employment authority, about the fact of employment of foreign workers and about the

¹⁶⁶⁵ Founding parties signatures to the Treaty on the Eurasian Economic Union in Astana on 29 May 2014, the Republic of Belarus, the Republic of Kazakhstan, and the Russian Federation, with subsequent accessions of the Republic of Armenia by a separate treaty signed on 9 October 2014, effective 2 January 2015, and Kyrgyzstan by a treaty signed on 23 December 2014, effective 12 August 2015. Original Treaty available at: https://www.wto.org/english/thewto_e/acc_e/kaz_e/wtackkaz85_leg_1.pdf

commencement and termination of employment contracts (Federal Law No. 115-FZ “On the Legal Status of Foreign Citizens in the Russian Federation,” Art. 13.8).¹⁶⁶⁶

According to a bilateral Agreement with Tajikistan regulating temporary labor activity on the territory of the Russian Federation, the recruitment of workers for temporary employment and the use of their labor is conditional upon a work permit, issued to a worker for the term of the contract concluded, but for no more than three years.¹⁶⁶⁷ The Ministry of the Interior organizes the issuance of work permits for the Tajik labour migrants.¹⁶⁶⁸ Tajik citizens may work without a permit if they hold temporary residence permits or permanent residence permits, or if they qualify under exemptions (e.g. students, highly qualified specialists).

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies’ employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Russia has a quota system for hiring foreign nationals, and employers in Russia hiring foreign nationals from visa-required countries must comply with the annual quota for foreign labour, as established by the Government of the Russian Federation (Federal Law No. 115-FZ “On the Legal Status of Foreign Citizens in the Russian Federation,” Art. 6.2 and Art. 18.1).¹⁶⁶⁹

The Government determines the maximum number of work permits by region and sector based on the proposals from the executive state power bodies of Russian regions and approves the quota on an annual basis.

Certain categories of foreign nationals are exempt from the quota, including holders of residence permits, HQSs invited under simplified procedures, diplomatic/consular staff, their families, and their support staff, employees of international organizations, citizens of the EAEU MSs, and students studying full-time in Russian universities, but only in certain cases (e.g., working at the university or during vacations).

Implications for employers are such that a business cannot hire any foreign national but must ensure the worker falls within the quota or an exemption. Failing to comply can result in fines or restrictions on further hiring of foreigners.

Resolution of the Government of the Russian Federation No. 1707, dated 3 December 2024, “On determining the need for attracting foreign workers arriving in the Russian Federation on

¹⁶⁶⁶ https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

¹⁶⁶⁷ Agreement between the Government of the Russian Federation and the Government of the Republic of Tajikistan on labor activities and the protection of the rights of citizens of the Russian Federation in the Republic of Tajikistan and citizens of the Republic of Tajikistan in the Russian Federation, dated October 16, 2004, amended by the Protocol of October 29, 2013. <https://www.rabota-legalno.ru/laws/o-mezhpravitelstvennykh-soglasheniyakh/soglashenie-mezhdu-pravitelstvom-rossiyskoy-federatsii-i-pravitelstvom-respubliki-tadzhikistan-o-tru/>

¹⁶⁶⁸ Agreement between the Government of Russia and the Government of the Republic of Tajikistan on the organized recruitment of citizens of the Republic of Tajikistan for temporary employment in the Russian Federation, April 17, 2019, Art. 4. <https://base.garant.ru/72229294/1b93c134b90c6071b4dc3f495464b753/>

¹⁶⁶⁹ https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

visa basis, including by priority professional-qualification groups, and approving quotas for 2025,” set the need for 2025 to attract 234,958 foreign nationals on the basis of a visa, with the subsequent issuance of invitations and work permits accordingly in the same number.¹⁶⁷⁰ This quota is distributed according to priority professional-qualification groups, as defined in the annex to the Resolution.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

In Russia, several professions and sectors have specific restrictions or bans on employing foreign nationals. Limitations vary depending on the region and are subject to change based on security considerations, labour migration management objectives, and federal and local laws and regulations. Decree of the Government of the Russian Federation No. 755 “On the Approval of the List of Facilities and Organizations Where Foreign Citizens Are Not Entitled to Be Employed” of October 11, 2002 (as amended on 04.02.2011) restricts the employment of foreign nationals in the defence and state security industry, armed forces, and military formations (exceptions apply); structural units for the protection of state secrets; radiation-hazardous and nuclear-hazardous industries.¹⁶⁷¹ Certain civil service positions are closed to foreign nationals, and so are those of judges and prosecutors.

Regional Variations in Employment Restrictions for Foreign Nationals

By the end of 2024, restrictions on the employment of *foreign citizens from countries with a visa-free regime who work under a patent without a residence permit*¹⁶⁷² had been introduced in 49 of Russia’s 89 regions. Regional authorities are responsible for the introduction of restrictions through decrees. The main area of labour activity is taxi (16 regions). Limitations exist for retailing of alcohol and tobacco, agriculture, public catering, passenger transport, construction, education, healthcare, logging, HR roles, and some other.¹⁶⁷³ The list per region and type of activity is available at <https://www.confidencegroup.ru/info/news/v-ryade-regionov-vveden-zapret-na-rabotu-inostrannykh-grazhdan-po-patentam/>.

Some prominent examples are the Tver Region, where the Decree of the Governor No. 32-pg dated December 13, 2024,¹⁶⁷⁴ expanded the list of economic activities for which economic entities are prohibited from hiring foreign workers from 36 to 82, and St. Petersburg, where the Decree of the Governor No. 65-pg “On Amending Decree of the Governor of St. Petersburg No. 60-pg dated July 28, 2025” restricted the economic activity of “light taxis and rented passenger cars with drivers” performed by foreign citizens holding patents until the end of 2025.¹⁶⁷⁵ In St. Petersburg, operating companies were given three months to terminate their employment relationships with this group of migrants. In August 2025, the list was expanded to include courier services, courier delivery by various modes of transport, and home food

¹⁶⁷⁰ <https://rg.ru/documents/2024/12/09/o-privlechenii-inostrannykh-rabotnikov-dok.html>

¹⁶⁷¹ https://www.consultant.ru/document/cons_doc_LAW_39084/b4e4b17cd1a423636f458f8ac8d75fedf927be0c/

¹⁶⁷² These restrictions mainly apply to labor migrants from Uzbekistan and Tajikistan.

¹⁶⁷³ <https://migron.ru/stati/izmeneniya-migratsionnaya-politika-rf-2024-2025/>

¹⁶⁷⁴ <http://publication.pravo.gov.ru/document/6900202412130011>

¹⁶⁷⁵ <https://www.garant.ru/news/1842346/>

delivery. The Decree concerned only *patent holders* – foreign citizens working legally in Russia without a visa. The city’s authorities requested an assessment of this measure’s socio-economic impact on the city, with a pending decision to reapply it in 2026. The Labor and Employment Committee was tasked to submit proposals on this matter by November 1, 2025.¹⁶⁷⁶

Employment restrictions do not apply to migrants with temporary residence permits (TRP), permanent residence permits (PRP), citizens of the Eurasian Economic Union (Armenia, Belarus, Kazakhstan, and Kyrgyzstan), and migrants with work visas.

In parallel, from September 1, 2025, Federal Law No. 121-FZ of May 23, 2025 “On Amendments to Certain Legislative Acts of the Russian Federation and on Conducting an Experiment on the Introduction of Additional Mechanisms for Registering Foreign Citizens,” eased regional restrictions and enabled labor migrants with patents to work with one patent in two neighboring regions: Moscow and the Moscow Region, and St. Petersburg and the Leningrad Region.¹⁶⁷⁷

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

In Russia, labour protections under the 2001 Labour Code of the Russian Federation (*Трудовой кодекс РФ, ТК РФ*), last amended on 29.09.2025,¹⁶⁷⁸ apply to all workers, including foreign citizens and stateless persons employed under a labour contract, unless a federal law or an international treaty provides otherwise (Art. 11). This includes minimum wage, overtime, maternity leave, leave entitlements, and safety standards. Main labour protections that apply equally to Russian nationals and foreign nationals and stateless persons, as established within the Labour Code, are:

- Minimum wage (Art. 133) and regional supplements (*районные коэффициенты*);
- Working time standard 40-hour work week (Art. 91) and overtime rules (*сверхурочная работа*) (Art. 99, 152);
- Annual paid leave of at least 28 calendar days (Art. 115);
- Maternity leave of 140 days (Art. 255), parental protections, including prohibition on dismissal during pregnancy (Art. 261), and parental leave until the child is 3 years old (Art. 256);
- Equal rights to safe working conditions, protective equipment, medical checks, etc.

Under the Federal Law No. 165-FZ “On the Basics of Compulsory Social Insurance”¹⁶⁷⁹ of July 16, 1999, last amended on 29.10.2024, socially insured are foreign citizens and stateless persons working under employment contracts (Art. 6.2). The types of social insurance risks are (Art. 7):

¹⁶⁷⁶ <https://www.pnp.ru/economics/v-peterburge-prinyat-zapret-na-rabotu-migrantov-v-taksi.html>

¹⁶⁷⁷ <http://publication.pravo.gov.ru/document/0001202505230034>

¹⁶⁷⁸ <https://normativ.kontur.ru/document?moduleId=1&documentId=501882>

¹⁶⁷⁹ <https://normativ.kontur.ru/document?moduleId=1&documentId=481277#h160>

- the need to receive medical care;
- loss of earnings (payments, remuneration in favour of the insured person) or other income in connection with the occurrence of an insured event;
- additional expenses of the insured person or his family members in connection with the occurrence of an insured event. Insured events are: retirement age, disability, loss of breadwinner, illness, injury, industrial accident or occupational disease, pregnancy and childbirth, birth of a child (children), care for a child under the age of one and a half years, and other cases established by federal laws on specific types of compulsory social insurance.

Insurance coverage under the compulsory social insurance includes: payment of medical expenses; old-age pension; disability pension; survivor's pension; temporary disability allowance; insurance payments in connection with an industrial accident and occupational disease, payment of additional expenses for medical rehabilitation, sanatorium treatment, social and vocational rehabilitation; maternity allowance; monthly child care allowance; one-time allowance for the birth of a child; and social allowance for burial (Art. 8).

Socially insured foreign citizens and stateless persons working under employment contracts are obliged to pay insurance premiums if such an obligation is established by the legislation on taxes and fees, and/or federal laws on specific types of compulsory social insurance (Art. 10).

Federal Law No. 115-FZ “On the Legal Status of Foreign Citizens in the Russian Federation”¹⁶⁸⁰ of June 21, 2002, establishes the right of foreigners to work in Russia under work permits/patents and confirms their labor rights in line with Russian legislation. The main differences compared to nationals appear in social security entitlements (pensions, unemployment, health insurance) and access to certain public/state professions:

- Foreign workers without permanent residence (working under a temporary residence permit, RVP) are not entitled to unemployment benefit (*нособие no безработице*).
- Pension rights are limited for temporary workers, as full pension rights are available only to permanent residents, citizens of the EAEU MSs, or under a bilateral treaty.
- Mandatory medical insurance is available via permanent or temporary residency of working foreigners or to special categories. In the absence of residency status (e.g. tourist visa, short-term stay), they are not eligible for coverage under the mandatory medical insurance scheme and must either pay out for medical services or obtain voluntary health insurance (*ДМС*).

Compulsory social insurance (work accidents, sick leave, maternity benefits, pensions) applies if the foreigner works under an employment contract and their employer pays contributions to the Social Fund.

Highly qualified specialists (HQS) are excluded from some insurance contributions (pension), unless they are permanent residents.

¹⁶⁸⁰ https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_390.pdf

9. To what extent, compared to nationals, can non-nationals access public health services?

Access to medical care depends on the residential and employment status, the availability of a compulsory medical insurance policy, and international agreements.

Federal Law No. 326-FZ “On Compulsory Medical Insurance in the Russian Federation”¹⁶⁸¹ of November 29, 2010 (last amended on 28.12.2024) provides for equal medical insurance for Russian citizens and foreign nationals (both permanently and temporarily residing in the country, temporarily present in the country and performing labour activities (except non-working family members of HQSs), stateless persons, and persons entitled to medical care in accordance with the Federal Law “On Refugees” working under a working contract, self-employed, and farmers (Art. 10). Free medical care is available to these categories under a compulsory medical insurance scheme (Art. 20).

In case an international treaty establishes rules other than those provided for in the Federal Laws, the rules of the international treaty apply (Art. 2).

Temporary staying foreigners with work permits and patents are not covered by the compulsory health insurance and must obtain voluntary health insurance.

For the refugees, separate benefits and procedures are established by the 1993 Federal Law ‘On Refugees,’¹⁶⁸² according to which refugees receive medical assistance in accordance with the Russian legislation (Art. 6) by virtue of their status. The Law obliges refugees to undergo a mandatory medical examination (federal procedures apply). A refusal to undergo a mandatory medical examination in accordance with the established procedure results in the non-issuance of a refugee certificate and the deprivation of refugee status. A person recognized as a refugee who has reached the age of eighteen and has undergone a mandatory medical examination receives medical care on an equal basis with citizens of the Russian Federation, unless otherwise provided for by international treaties (Art. 7).

The Treaty on the Eurasian Economic Union (Protocol on The Provision of Medical Care to the Member States’ Employees and to their Family Members – Annex 30) regulates the provision of medical care to foreign employees and their family members. Russia guarantees the provision of medical assistance to the employees from the EAEU MSs and their family members and grants the right to access free medical assistance (in urgent and emergency forms) in accordance with the same order and the same conditions applied for its own citizens. Emergency medical assistance is provided to foreign employees and their family members by health-care institutions free of charge, regardless of whether they have insurance or not. In case of the prolongation of the patient’s treatment in the health-care institution, after the threat to their life has been eliminated, the payment of the actual cost of the services provided is made by the patient or with the use of other resources, according to the existing tariffs. In case medical evacuation of the patient to the state of permanent residence is necessary, the process is

¹⁶⁸¹ https://www.consultant.ru/document/cons_doc_LAW_107289/

¹⁶⁸² https://www.consultant.ru/document/cons_doc_LAW_388900/#dst100010

coordinated with the Embassy and/or the Authorized body of the state of permanent residence, including the reimbursement of expenses connected with the medical evacuation by the state of permanent residence.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Foreigners' access to public education in Russia differs across primary, secondary, and tertiary levels. Federal Law No. 273-FZ "On Education in the Russian Federation"¹⁶⁸³ provides that foreign citizens and stateless persons have the right to receive education in accordance with international treaties of the Russian Federation and this Federal Law (Art. 78.1). Specifically, foreign citizens have the same rights as citizens of the Russian Federation to receive preschool, primary general, basic general, and secondary general education, as well as vocational training in vocational training programs for blue-collar professions and white-collar positions within the scope of the secondary general education program, free of charge (Art. 78.2).

As of April 1, 2025, the Law introduced the obligation to present a document confirming the legality of foreigners' and stateless persons' stay in the Russian Federation as a prerequisite for admission to basic general education programs (Federal Law No. 544-FZ "On Amendments to Articles 67 and 78 of the Federal Law 'On Education in the Russian Federation'" of December 28, 2024).¹⁶⁸⁴ Admission to general educational programs of primary, basic, and secondary education has become conditional upon successful passing (free of charge) of a respective test of knowledge of the Russian language (Art. 78.2.1).

Foreign citizens and stateless persons are entitled to receive secondary vocational education, higher education, and additional vocational education free of tuition via federal, regional, or local budget allocations, and conditions apply (international treaties' provisions, federal laws, or quotas established by the Government of Russia) (Art. 78.3). If no treaty or quota applies to access state-funded (budget) places, there is an option to study on a paid basis under paid educational services contracts.

State academic scholarships are available to students, postgraduate students, interns, and assistant trainees throughout the entire period of training, regardless of academic performance.

Accommodation in dormitories is available to foreign citizens and stateless persons enrolled in professional educational programs funded from the federal budget within the quota on the terms established for Russian citizens studying at the expense of federal budget allocations (Art. 78.5).

¹⁶⁸³ <https://www.9111.ru/laws/273fz/>

¹⁶⁸⁴ <https://ealegislation.com/document.fwx?rgn=164042>

Foreign citizens who are compatriots living abroad have the right to receive secondary vocational education, higher education, and additional professional education on an equal basis with Russian citizens.¹⁶⁸⁵

Under the EAEU Treaty,¹⁶⁸⁶ educational qualifications of foreign nationals from the Eurasian Economic Union MSs issued by their educational institutions are recognized in Russia for the purpose of employment without requiring additional national recognition procedures (Art. 97.3). Recognition procedures remain mandatory for nationals of EAEU Member States who intend to engage in regulated professions (educational, medical, or pharmaceutical sectors) in Russia. In such cases, the procedure is carried out in accordance with Russian legislation.

Russia recognizes academic degrees and titles issued by the EAEU MSs. Employers may request certified translations of educational documents into the Russian language and may verify the authenticity of such documents directly with the issuing institutions.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Foreign citizens and stateless persons' access to social security depends on their residence and employment status.

Social insurance (sickness, maternity, accident)

Foreign citizens and stateless persons working under employment contracts in Russia, holding a residence permit or temporary residence permit, and contributing to social funds, are *covered by compulsory social insurance as Russian nationals* (Law No. 165-FZ "On the Fundamentals of Mandatory Social Insurance" of July 16, 1999, amended on 29.10. 2024, Art. 6).¹⁶⁸⁷

Compulsory social insurance is part of the state system of social protection of the population against possible changes in their material and (or) social status, including due to circumstances beyond their control. It comprises legal, economic and organizational measures that aim at compensating or minimizing the consequences of changes in the material and (or) social status of working persons due to reaching retirement age, disability, loss of breadwinner, illness, injury, accident, occupational accident or occupational disease, pregnancy and childbirth, birth, taking care of a child under the age of one and a half years, and other events (Art. 1).

The Treaty on the Eurasian Economic Union grants the employed citizens of its MSs (and their family members) social protection (except for pensions) on the same terms and conditions as for the Russian citizens (Art. 98.3). Employment experience of member States employees is counted in the total employment experience for the purposes of social protection (except for

¹⁶⁸⁵ Provided that they comply with the requirements set forth in Article 17 of Federal Law No. 99-FZ of May 24, 1999 "On the State Policy of the Russian Federation Regarding Compatriots Abroad." https://www.consultant.ru/document/cons_doc_LAW_23178/a42a204dc5723a3ba6f42a6db9507d807de76faa/#dst100223

¹⁶⁸⁶ https://www.wto.org/english/thewto_e/acc_e/kaz_e/wtacckaz85_leg_1.pdf

¹⁶⁸⁷ <https://normativ.kontur.ru/document?moduleId=1&documentId=481277>

pensions) in accordance with the Russian legislation. Retirement of MSs employees and their family members is regulated by the legislation of the State of residence and separate international agreements between Russia and the MSs. A Member State employee has the right to join trade unions on par with Russian citizens (Art. 98.5).

As of 2021, a “direct payments” mechanism was introduced, under which social benefits (sickness, maternity, and child-care allowances) are transferred directly to insured persons’ bank accounts. As of January 1, 2023, the Pension Fund and the Social Insurance Fund were merged into one Pension and Social Insurance Fund of the Russian Federation (Social Fund of Russia, SFR, *социальный фонд России*),¹⁶⁸⁸ to which employers must make the same insurance contributions as for Russian citizens, except for HQS temporarily staying in Russia.¹⁶⁸⁹ To this end, employers transmit data on employment, earnings, and insurance contributions electronically to the Fund, which calculates and pays the benefits without intermediaries.

Compulsory health insurance guarantees the insured person free medical care as per territorial compulsory health insurance program and, in certain cases, as per basic compulsory health insurance program, in the event of an illness, injury, other health condition of the insured person, or preventive measures (Art. 3). Federal Law No. 326-FZ “On the Obligatory Medical Insurance” of November 29, 2010 (last amended on 25.12.2023)¹⁶⁹⁰ regulates the implementation of compulsory medical insurance for permanently or temporarily residing foreigners, foreigners temporary staying and working in Russia, and stateless persons (Art. 10), amongst others, and responsibilities related to the payment of contributions for compulsory medical insurance. Compulsory medical insurance coverage entails the obligation to provide the insured foreigners and stateless persons (exceptions apply) with the necessary medical care upon the occurrence of an insured event and to pay for it to a medical organization, with the obligation of the foreign workers to pay compulsory medical insurance premiums.

The right to the compulsory health insurance policy and its benefits is directly linked to the legal status of foreigners and stateless persons in Russia. The cancellation of a residence permit for foreign citizens and stateless persons; cancellation of a temporary residence permit or of a temporary residence permit for the purpose of obtaining education; loss or deprivation of refugee status, and loss of work by an insured foreigner or stateless person results in a suspension or invalidation of the compulsory health insurance policy and its benefits (Art. 49.1).

Law No. 125-FZ “On Compulsory Social Insurance against Industrial Accidents and Occupational Diseases” of July 24, 1998, last amended on 21.11.2022, covers all persons working under employment agreements, including foreign nationals and stateless persons, regardless of residence status, in respect of accidents at work and occupational diseases (Art.

¹⁶⁸⁸ Federal Law No. 236-FZ “About Fund of Pension and Social Insurance of the Russian Federation” of July 14, 2022 (last amended on 13.07.2024) <https://cis-legislation.com/document.fwx?rgn=141730>

¹⁶⁸⁹ Unified tariffs of insurance contributions for compulsory pension insurance, compulsory social insurance, and compulsory medical insurance are in place, with calculations and percentages available at <https://www.awaragroup.com/blog/payroll-regulations-in-russia/>

¹⁶⁹⁰ <https://normativ.kontur.ru/document?moduleId=1&documentId=463785&cwi=324>

5.2).¹⁶⁹¹ The employer is obliged to pay contributions and provide insurance protection in case of an accident or an industrial risk.

Refugees and persons granted temporary asylum are entitled to social protection and assistance on an equal basis with Russian citizens (Federal Law No. 4528-1 of 19 February 1993 “On Refugees,” Art. 8.10).¹⁶⁹²

Pension (retirement benefits)

Foreign citizens and stateless persons permanently residing in Russia have equal rights with citizens regarding insurance pension coverage¹⁶⁹³ (conditions apply) (Federal Law No. 400-FZ “On Insurance Pensions” of December 28, 2013, as amended on 28.02.2025, Art. 4.3).¹⁶⁹⁴

Temporary residents can only receive pensions if an international social security agreement provides for reciprocity and portability of social security rights, allowing contributions and work periods in different countries to be counted for pension eligibility.

The Agreement on Pension Provision for Workers of the Member States of the Eurasian Economic Union came into force on January 1, 2021, establishing a framework for pension provision for citizens of EAEU MSs,¹⁶⁹⁵ allowing for the summation of employment periods within the EAEU to determine pension eligibility. Each EAEU member state pays a pension for the length of a worker’s activity on its territory, with the possibility of considering work experience from other EAEU countries. Foreign citizens working legally can request transfer of entitlements to their home country if a bilateral agreement exists.¹⁶⁹⁶

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Russian citizens have broad access to social welfare programs, administered by federal and regional authorities. Benefits include financial aid in the form of unemployment benefits, child allowances, and family support; food assistance provided through various state and local programs; and subsidized housing through state housing programs and municipal allocations.

Non-nationals and stateless persons have access to social welfare programs depending on their legal and/or residency status.

Refugees and persons granted temporary asylum in Russia are entitled to social protection and assistance, according to Federal Law No. 4528-1 “On Refugees” of 19 February 1993, last

¹⁶⁹¹ <https://normativ.kontur.ru/document?moduleId=1&documentId=439674&cwi=385>

¹⁶⁹² https://www.consultant.ru/document/cons_doc_LAW_4340/b343039e1bb25a5ec0014e018ea52cb1179ebe3e/

¹⁶⁹³ Types of insurance pensions according to Art. 6: 1) insurance pension on old age; 2) insurance pension on disability; 3) insurance pension on the occasion of loss of the supporter. <https://cis-legislation.com/document.fwx?rgn=65866>

¹⁶⁹⁴ <https://cis-legislation.com/document.fwx?rgn=65866>

¹⁶⁹⁵ <https://docs.eaeunion.org/documents/236/4913/>

¹⁶⁹⁶ <https://egov.kz/cms/en/articles/pension/eacs-1>

amended on 13.06.2023. This includes financial aid through allowances for children and families; food assistance through various programs; and subsidized housing through state housing programs.

Specifically, temporary accommodation centers are available for persons applying for refugee recognition or recognized refugees and their family members (Art. 1.4). A housing fund (a set of residential premises) is provided to persons recognized as refugees and their family members. Refugees and their family members are entitled to receive transportation to the place of stay; a lump-sum monetary allowance for each family member; a referral to the temporary accommodation center; food and access to public utilities in the place of temporary detention or temporary accommodation; medical assistance; social protection; assistance in being sent to vocational training or in finding employment (Art. 6, Art. 8).

According to Federal Law No. 188-FZ “Housing Code of the Russian Federation” of December 29, 2004 (as amended on 31.07.2025), unless an international agreement of the Russian Federation provides otherwise, residential premises under social rental agreements are not provided to foreign citizens or stateless persons (Art. 49).

Legally employed foreigners with a temporary residence permit or a residence permit are considered tax residents. The status gives foreigners the right to tax deductions, similar to those of Russian citizens, which include property deductions (for housing purchases), social deductions (for medical treatment and education), standard deductions (for example, for children), investment deductions, and professional deductions. To apply for deductions, foreigners need to file a tax return for the last three years and attach supporting documents. The documentation is submitted to the tax office in person or by mail.¹⁶⁹⁷

Are there any final observations you would like to make? Please write below.

While the Russian legal framework formally prohibits discrimination, Russia lacks a comprehensive anti-discrimination law like the EU’s Equality Directives or the U.S. Civil Rights Act. Protection is fragmented across the Constitution and sectoral laws. Enforcement remains an area of further development.

¹⁶⁹⁷ <https://migron.ru/stati/lgoty-posobiya-inostrantsam/>

ILA Committee on International Migration and International Law
Second interim report – Rights to stay and while staying
Country review

April 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Slovenia

Authors: Vasilka Sancin and Sergeja Hrvatič

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons		X
1961 Convention on the Reduction of Statelessness		X
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		X
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	X (24 September 2009)	
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		X
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		X

ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		X
ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		X

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		X
Protocols to the European Convention on Human Rights (list which ones):		X (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14bis, 15, 16)
European Social Charter (ESC)		X

European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		X
American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Slovenia's Migration-Related Agreements and Regional Cooperation

Slovenia has several agreements and memoranda of understanding (MoUs) on migration with both countries of origin and destination, such as:

- *The Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Bulgaria on the Readmission of Persons (2000);¹⁶⁹⁸*

¹⁶⁹⁸ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2141>.

- *The Agreement between the Government of the Republic of Slovenia and the Federal Government of the Federal Republic of Yugoslavia on the Return and Readmission of Persons Who Do Not Comply with Conditions for Entry or Stay (2001)*;¹⁶⁹⁹
- *Protocol between the Government of the Republic of Slovenia and the Government of Montenegro on the implementation of the Agreement between the European Community and the Republic of Montenegro on the readmission of persons residing without authorisation (2009)*;¹⁷⁰⁰
- *The Agreement between the Government of the Republic of Slovenia and the Government of Romania on the Readmission of Persons Who Irregularly Entered and/or Are Irregularly Staying (2001)*;¹⁷⁰¹
- *The Agreement between the Government of the Republic of Slovenia and the Swiss Federal Council on the Readmission of Persons with Unauthorized Stays (2005)*;¹⁷⁰²
- *The Act ratifying the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the Readmission of Persons with Irregular Entry or Residence (2006)*;¹⁷⁰³
- *In the context of irregular migration, it is important to mention also Slovenia's Act ratifying the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on cooperation in combating terrorism, illicit traffic in and abuse of drugs as well as against organised crime (1994)*;¹⁷⁰⁴
- *The Protocol between the Ministry of Interior of the Republic of Slovenia, the Police, and the Ministry of Interior of the Republic of Croatia, the Police Directorate, on the Implementation of Mixed Patrolling along the State Border between the Republic of Slovenia and the Republic of Croatia (2004)*;¹⁷⁰⁵
- *Memorandum of Understanding on the operation of joint patrols on the external Croatian border (2025)*;¹⁷⁰⁶
- *The Protocol between the Government of Slovenia and the Council of Ministers of Bosnia and Herzegovina (2017)*;¹⁷⁰⁷

¹⁶⁹⁹ See <https://www.gov.si/zbirke/projekti-in-programi/nasledstvo-sfri/>.

¹⁷⁰⁰ See https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2009-02-0005/uradba-o-ratifikaciji-protokola-med-vlado-republike-slovenije-in-vlado-crne-gore-o-izvajanju-sporazuma-med-evropsko-skupnostjo-in-republiko-crno-goro-o-ponovnem-sprejemu-oseb-ki-prebivajo-brez-dovoljenja?utm_source.

¹⁷⁰¹ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3094>.

¹⁷⁰² See <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2005-02-0010/zakon-o-ratifikaciji-sporazuma-med-vlado-republike-slovenije-in-svicarskim-zveznim-svetom-o-ponovnem-sprejemu-oseb-ki-prebivajo-nedovoljeno-in-protokola-o-izvajanju-sporazuma-med-vlado-republike-slovenije-in-svicarskim-zveznim-svetom-o-ponovnem-sprejemu-oseb-ki-prebivajo-nedovoljeno-bchpso>.

¹⁷⁰³ See <https://www.uradni-list.si/pdf/2006/Mp/m2006033.pdf>.

¹⁷⁰⁴ See <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/1994-02-0022?sop=1994-02-0022>.

¹⁷⁰⁵ See <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2004-02-0100>.

¹⁷⁰⁶ See <https://www.policija.si/medijsko-sredisce/sporocila-za-javnost/sporocila-za-javnost-gpue/123871-na-zunanji-hrvaski-meji-bodo-vzpostavljene-tristranske-policijske-patrolje>.

¹⁷⁰⁷ See <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2017-02-0013?sop=2017-02-0013>.

- *The Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Macedonia on the Readmission of Persons Whose Entry and/or Residence in the Country is in Contravention of Internal Law (1998)*.¹⁷⁰⁸
- *The Agreement Between the Government of the Republic of Slovenia and the Government of the Republic of Kosovo on the Admission of Persons Whose Residence Is Illegal (2011)*.¹⁷⁰⁹
- *The Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Poland on the Return and Readmission of Persons without a Residence Permit (1997)*.¹⁷¹⁰
- *The Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Lithuania on the Readmission of Persons Whose Entry or Residence in the Country is in Contrary to the Current Regulations of the Country (1997)*.¹⁷¹¹

EU and Regional Cooperation

Slovenia is a member of the European Union (EU) and actively participates in various **Regional Consultative Processes (RCPs)** and **Interregional Consultative Forums (IRFs)** on migration.

- Since 2014, Slovenia has been a part of the **EU-Horn of Africa Migration Route Initiative (Khartoum Process)**.¹⁷¹²
- Slovenia joined the **Euro-African Dialogue on Migration and Development (Rabat Process)** in 2006.¹⁷¹³
- Since 2018, Slovenia has participated in the **Prague Process**, a policy dialogue involving EU Member States, Schengen Area countries, the Eastern Partnership, the Western Balkans, Central Asia, Russia, and Turkey.¹⁷¹⁴
- A member of the **Budapest Process** since 1993, Slovenia engages in dialogue on migration with more than 50 governments and 10 international organizations.¹⁷¹⁵
- Slovenia is also, since 2000, part of the **Salzburg Forum**, a Central European security partnership led by Austria, including also Bulgaria, Croatia, the Czechia, Hungary, Poland, Romania and Slovakia, with the Western Balkans and Moldova as Friends of the Forum.¹⁷¹⁶
- Slovenia since 2004 participates in the **Eastern Partnership Panel on Migration, Mobility and Integrated Border Management**—a successor of the Söderköping Process.¹⁷¹⁷

Participation in RCPs and IRFs has resulted in regional mobility frameworks:

¹⁷⁰⁸ See https://www.uradni-list.si/_pdf/1998/Mp/m1998070.pdf.

¹⁷⁰⁹ See https://www.uradni-list.si/_pdf/2011/Mp/m2011093.pdf.

¹⁷¹⁰ See https://www.uradni-list.si/_pdf/1997/Mp/m1997016.pdf.

¹⁷¹¹ See https://www.uradni-list.si/_pdf/1997/Mp/m1997016.pdf.

¹⁷¹² See <https://www.iom.int/eu-horn-africa-migration-route-initiative-khartoum-process>.

¹⁷¹³ See <https://www.iom.int/euro-african-dialogue-migration-and-development-rabat-process>.

¹⁷¹⁴ See <https://www.iom.int/prague-process>.

¹⁷¹⁵ See <https://www.iom.int/budapest-process>.

¹⁷¹⁶ See http://www.salzburgforum.org/Who_are_we/Levels_and_Fields_of_Cooperation.html.

¹⁷¹⁷ See <https://www.iom.int/eastern-partnership-panel-migration-mobility-and-integrated-border-management>.

- In the **Khartoum Process**, the 2015 Valletta Summit produced a **political declaration** emphasizing lifesaving, legal migration, addressing root causes, and fighting smuggling and trafficking.¹⁷¹⁸
- The **2022 Cadiz Declaration** under the Rabat Process outlines goals for managing migration, facilitating visa issuance, protecting refugees, and fostering reintegration. It also promotes youth and women mobility.¹⁷¹⁹
- The **Eastern Partnership Panel** adopted **joint statements** (2011–2017) highlighting cooperation on migrant rights, economic development, and environmental concerns.¹⁷²⁰
- The **2022 Prague Process Action Plan (2023–2027)** addresses crisis-driven migration, especially due to the armed conflict in Ukraine, and includes goals related to return, integration, labor migration, asylum, and protection.¹⁷²¹
- The **Budapest Process's five-year plan and Istanbul Commitments** outline priorities such as combatting irregular migration, enhancing legal migration, integration, development impact, and anti-trafficking efforts.¹⁷²²

Bilateral Migration Engagements

Slovenia conducts bilateral negotiations and consultations with origin and transit countries such as Albania, Bosnia and Herzegovina, Croatia, North Macedonia, Turkey, and others. These engagements focus on exchanging best practices, addressing migration causes, and supporting humanitarian and development cooperation.¹⁷²³

Slovenia leads the **Brdo Process**, a platform for interior ministers from the Western Balkans, established in 2001 to promote regional cooperation on migration, organized crime, and internal security. Annual ministerial conferences set priorities, and international partners are invited to collaborate on concrete projects.¹⁷²⁴

In 2015, the EU and Turkey adopted a **Declaration on the Action Plan on Migration**, aiming to support Syrian refugees in Turkey and reduce irregular flows to the EU. Slovenia contributed 5.4 million EUR to the EU's 3 billion EUR Facility for Refugees in Turkey, supporting humanitarian, health, education, and infrastructure programs.¹⁷²⁵

EU-Level Readmission Agreements

Through the EU, Slovenia is party to readmission agreements with numerous non-EU countries, including: **Hong Kong** (2004), **Macao** (2004), **Sri Lanka** (2005), **Albania** (2006), **Russia** (2007), **Ukraine** (2008), **North Macedonia** (2008), **Bosnia and Herzegovina** (2008),

¹⁷¹⁸ See https://www.consilium.europa.eu/media/21841/political_decl_en.pdf.

¹⁷¹⁹ See <https://www.rabat-process.org/en/component/repo/document/463-cadix-political-declaration-and-action-plan?task=document.preview&Itemid=958&ml=1>.

¹⁷²⁰ See <https://www.iom.int/eastern-partnership-panel-migration-mobility-and-integrated-border-management>.

¹⁷²¹ See <https://www.iom.int/prague-process>.

¹⁷²² See <https://www.iom.int/budapest-process>.

¹⁷²³ See <https://www.consilium.europa.eu/en/policies/eu-migration-policy/migration-timeline/>.

¹⁷²⁴ See <https://www.gov.si/en/news/2023-04-04-ministers-of-the-brdo-process-countries-endorse-closer-operational-cooperation-in-the-fight-against-migrant-smugglers-in-the-region/>.

¹⁷²⁵ See <https://www.gov.si/novice/2019-07-18-strategija-na-podrocju-migracij/>.

Montenegro (2008), Serbia (2008), Moldova (2008), Pakistan (2010), Georgia (2011), Armenia (2014), Azerbaijan (2014), Turkey (2014), Cape Verde (2014), and Belarus (2020).¹⁷²⁶

Additionally, the EU concluded a **Memorandum of Understanding with Tunisia** and non-binding arrangements with **Afghanistan, Guinea, Bangladesh, Ethiopia, The Gambia, and Ivory Coast**,¹⁷²⁷ aiming to improve cooperation between EU and non-EU authorities on migration governance.¹⁷²⁸

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

The entry of foreigners into the Republic of Slovenia is governed by the Foreigners Act¹⁷²⁹ (*hereinafter*: FA).

Article 7 FA determines **requirements to enter, leave and reside in Slovenia** for foreigners and provides that:

(1) To enter, leave and reside in the Republic of Slovenia, a foreigner shall be in possession of a valid travel document, unless otherwise provided by law or international treaty.

(2) Foreigners who are additionally entered in a travel document may enter and leave the Republic of Slovenia only together with the person whose travel document they are entered in.

(3) Foreigners holding a group travel document may enter and leave the Republic of Slovenia only together, and the persons entered in the group travel document must be in possession of a document with a photograph on the basis of which their identity can be established. The leader of the group must be in possession of a personal travel document.

(4) Exceptionally, an individual member of the group may also be allowed to leave the Republic of Slovenia if this is necessary for his/her own personal reasons or if so ordered by the competent authority.

¹⁷²⁶

See

https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536469/IPOL_STU%282015%29536469_EN.pdf.

¹⁷²⁷ See https://home-affairs.ec.europa.eu/policies/migration-and-asylum/irregular-migration-and-return/humane-and-effective-return-and-readmission-policy_en.

¹⁷²⁸ *Ibid.*

¹⁷²⁹ See <https://pisrs.si/pregledPredpisa?id=ZAKO5761>.

(5) The Government of the Republic of Slovenia may determine that citizens of certain countries may also enter and leave the Republic of Slovenia with an identity card or other appropriate document prescribed in the foreigner's country, which may be used to prove his or her identity.

(6) Foreigners whom the Republic of Slovenia is obliged to admit on the basis of an international treaty or in accordance with international acts adopted shall be admitted without a valid travel document.

(7) Without a valid travel document, entry may also be granted, on the basis of an international treaty, in the case of the transit of deported foreigners who are not nationals of the State with which such a treaty has been concluded.

A **visa requirement** is explained in Article 8 FA, which provides:

(1) In order to enter the Republic of Slovenia, a foreigner shall, in addition to the valid travel document referred to in the preceding Article, be in possession of a visa or a residence permit issued by the competent authority of the Republic of Slovenia or by the competent authority of a State party to the Convention implementing the Schengen Agreement of 14 June 1985, unless otherwise provided by law or international treaty.

(2) The list of countries whose nationals require a visa to enter the Republic of Slovenia is governed by the *acquis* of the European Union, which establishes a list of third countries whose nationals must be in possession of a visa when crossing the external borders of the Republic of Slovenia and countries whose nationals are exempt from this requirement.

Article 17(2) FA determines three **types of visas**:

- airport transit visa (visa A)
- short-term visa (visa C)
- long-term visa (visa D)

Citizens of EU/EEA countries can enter and reside in Slovenia with a valid identity card or passport *without the need for a visa* or residence permit. Citizens of the EU do not need a visa or residence permit to enter Slovenia. Entry is permitted on the basis of a valid identity card or a valid passport, irrespective of the reason for entering or the reason for residing in the country – employment, study, self-employment, relocation, etc.¹⁷³⁰

¹⁷³⁰ See <https://www.gov.si/en/topics/entry-and-residence/>.

As a signatory to the Convention relating to the Status of Refugees and a Member State of the EU, Slovenia is obliged to offer **international protection (asylum)** to persons who are not protected in their countries of nationality or permanent residence (country of origin). International protection in Slovenia means refugee status and **subsidiary protection status**.¹⁷³¹

Information on whether foreign citizens need a visa to travel to Slovenia can be found on the website Representation in the World of the Ministry of Foreign and European Affairs.¹⁷³² **Visa applicants must apply in person at a diplomatic mission or consulate or through an external service provider.** Short-term visa applicants must submit all ten fingerprints electronically when submitting their application. However, the required documentation and procedure varies by country. Submitting an **online visa application** is possible in third countries where the visa is issued through a visa center.¹⁷³³

Slovenia has a system in place to **monitor visa overstays** only at the border. However, it is conducted on an *ad hoc* basis. There are two authorities in Slovenia responsible for monitoring visas, namely the Ministry of Interior through the Police¹⁷³⁴ and the Ministry of Foreign and European Affairs¹⁷³⁵.

Slovenian courts have dealt with several cases concerning entry, stay and departure from the country. As an example of relevant jurisprudence, we can mention a case before the Supreme Court,¹⁷³⁶ which issued a decision in case X Ips 413/2012, dated 26 February 2014. In this case, the court observed that the foreigner in question entered Slovenia “illegally”¹⁷³⁷ and his application for international protection was rejected. Before this decision became final, he married a Slovenian citizen and applied for a temporary residence permit. It turned out that the foreigner's passport was forged, as a result of which the foreigner was convicted of the criminal offense of forgery and his application for a temporary residence permit was rejected. Since the police found him on the territory of Slovenia without the appropriate permits, he was issued a decision on a misdemeanor, which was annulled by the court. In this case, it was disputed whether Slovenia could expel a foreigner even though his stay was not a misdemeanor. The court stated that, according to the FA, a foreigner must have a valid travel document and, in addition, a visa or residence permit. If a foreigner is staying in Slovenia illegally, they must leave the country within the set time limit. The Supreme Court has interpreted the FA to mean that foreigners may stay in Slovenia only if the prescribed conditions are met, otherwise they must either leave the country voluntarily or be expelled from the country. Making the issuance of a return decision conditional on a final conviction for an illegal residence offense could effectively prevent the police from removing a foreigner from Slovenia. The misdemeanor procedure, in which it is assessed whether a person has committed an illegal residence offense, may end in favor of the foreigner even in cases where one of the situations of illegal residence

¹⁷³¹ See <https://www.gov.si/en/topics/international-protection/>.

¹⁷³² See <https://www.gov.si/en/representations>.

¹⁷³³ See <https://www.gov.si/teme/vstop-in-prebivanje/>.

¹⁷³⁴ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5761>.

¹⁷³⁵ See <https://podatki.gov.si/dataset/evidenca-o-vizumih/resource/b9afcfdb-c703-49b7-9348-4737255267d8>.

¹⁷³⁶ Jurisprudence of the Supreme Court can be found by the case number through the search engine available at [https://www.sodnapraksa.si/?q=zavrnitev%20vstopa%20v%20dr%C5%BEavo&database\[SOVS\]=SOVS&submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2012032113064554](https://www.sodnapraksa.si/?q=zavrnitev%20vstopa%20v%20dr%C5%BEavo&database[SOVS]=SOVS&submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2012032113064554).

¹⁷³⁷ The exact translation of the wording used by the court.

under the FA is otherwise met, but the foreigner cannot be convicted of an illegal residence offense (*e.g.* in the case of statute of limitations, insanity, etc.). Even in such cases, the police must have the possibility, when issuing a return decision, to determine independently (irrespective of the decision of the misdemeanor authority on the misdemeanor of illegal residence) whether one of the cases exhaustively listed in the FA, in which a foreigner is considered to be illegally present in Slovenia, is present. In view of the above, the Supreme Court concluded that the correct position is that the foreigner was in a situation of illegal residence at the time of the issuance of the return decision because he did not have a residence permit, since his application for the issuance of a temporary residence permit for a family member of a Slovenian citizen was finally rejected.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

According to the *Foreigners Act*, third-country nationals intending to reside in Slovenia for more than three months are required to obtain either a **long-term visa** or a **residence permit**—temporary or permanent.

Article 20(1) FA provides that a **long-term visa** can be issued to a foreigner:

- who is a family member of an EU citizen or a foreigner who is a family member of a Slovenian citizen and intends to reside in Slovenia for the purpose of family reunification with an EU citizen or a Slovenian citizen, if the foreigner needs a visa to enter Slovenia;
- who is a holder of a diplomatic or service passport and who intends to reside in Slovenia for the purpose of carrying out their duties in a diplomatic mission or consulate of another country or an international organisation established in Slovenia, and their family members as defined in Article 47 of FA, unless otherwise provided for in an international agreement;
- for the purpose of attending or participating in a course or other similar forms of education or further training for which the foreigner does not require a residence permit for the purpose of study, provided that the course or other similar forms of education or further training lasts at least 20 hours per month and that they present a certificate of admission to the course or other similar forms of education and a certificate of payment, if the course or other similar forms of education are fee-paying;

- due to the existence of an economic interest for Slovenia, which the foreigner can prove with an opinion of the competent ministry;
- who is a higher education teacher, higher education associate or researcher, because of the existence of an interest of Slovenia in the field of education or science, which the foreigner demonstrates by an opinion of the competent ministry;
- who is an artist or a cultural worker, because of the existence of an interest of Slovenia in the field of culture, which the foreigner demonstrates by an opinion of the competent ministry;
- who is a sports coach, professional sportsperson or private sports worker and who has a coaching contract, employment contract or work contract with a club or sports organisation established in Slovenia;
- is accredited in Slovenia as a reporter for foreign media or as a foreign correspondent;
- who will exercise a priestly profession or religious activity in Slovenia within the framework of a registered religious community; and a foreigner who will organise or conduct charitable and humanitarian activities within the framework of a recognised humanitarian organisation or a registered religious community.

In addition, Article 20(2) FA explains that a long-term visa can be issued to a foreigner also due to:

- a need of urgent treatment;¹⁷³⁸
- a serious illness or death of a family member;
- an unforeseen prolongation of a business visit to prevent greater economic damage or harmful consequences for the environment;
- natural disasters;
- participation in proceedings before state authorities.

A foreigner who asks for the issuance of a visa for a long-term stay must demonstrate that for the time of the validity of the visa, they have appropriate travel health insurance, which shall

¹⁷³⁸ According to the Article 103 of the Compulsory health insurance rules emergency medical care includes resuscitation medical services and medical services necessary to maintain vital functions and prevent serious deterioration of the health condition of suddenly ill, injured and chronically ill people. Emergency medical care is provided until vital functions are stabilized or until treatment begins at an appropriate location. Emergency medical care includes emergency ambulance transport. Emergency treatment includes; immediate treatment after providing emergency medical assistance, if necessary; wound care, prevention of sudden and fatal exacerbations of chronic diseases or health conditions that could cause permanent damage to individual organs or their functions; treatment of sprains and fractures and injuries that require specialist treatment; treatment of poisoning; health services to prevent the spread of infections that could cause a septic condition in the insured person; treatment of diseases for which mandatory treatment is prescribed by law or services that are defined as mandatory by law and for which the payer is not the state, employer or the insured person himself; prescription medicines from the positive list, necessary for the treatment of the conditions from the previous paragraphs; devices necessary for the treatment of the conditions from the previous paragraphs, namely to the extent, standards and norms as determined by the rules; treatment of injuries to the teeth and oral cavity and inflammatory conditions in the oral cavity, if these conditions can life-threatening, or neglecting their care may significantly worsen the outcome of treatment; treatment of severe bleeding and; treatment of severe persistent pain in the oral cavity unresponsive to analgesics.

cover the costs that could incur for health reasons and emergency medical assistance and emergency hospital treatment (Article 23(1) FA). A foreigner who asks for the issuance of a visa for a long-term stay must have the funds provided on a monthly basis at least in the amount of the basic amount of the minimum income in Slovenia (Article 25(1) FA).

According to Article 32(1) FA, Residence permit is granted for:

- temporary residence; or
- permanent residence.

Article 35(1) FA provides that a temporary residence permit shall be issued to a foreigner who intends to reside in Slovenia for the following purposes:

- employment or work;
- family reunification;
- study, education, professional development, practical training, specialization or participation in international study exchanges;
- pursuing volunteer work and participating in volunteering projects within the EU program;
- other justified reasons provided by law, international acts or international principles and customs or in the interest of Slovenia.

Article 35(2) FA states that the temporary residence permit in Slovenia shall also be issued to:

- foreigners who have a long-term resident status in another Member State of the EU;
- foreigners of Slovenian descent to the second knee in a straight row (*i.e.* up to the second generation in the direct line of descent);
- children of foreigners born in Slovenia;
- victims of trafficking in human beings;¹⁷³⁹
- victims of illegal employment;¹⁷⁴⁰
- victims of domestic violence;
- foreigners who were allowed in Slovenia.

¹⁷³⁹ According to Article 50 of the FA, this permit is granted to a person for 0 days to decide whether to participate as a witness in criminal proceedings for the crime of human trafficking (para. 1); A victim of human trafficking may be issued a temporary residence permit if she is willing to participate as a witness in criminal proceedings, which is confirmed by the competent public prosecutor, and in the event of the existence of personal circumstances that justify her residence in the Republic of Slovenia. (para. 4); A victim of human trafficking, a victim of illegal employment and a victim of domestic violence who has no means of subsistence are exempt from paying the administrative fee, payment of printed materials and costs of interpretation and translation in the procedure for issuing a temporary residence permit (para. 6).

¹⁷⁴⁰ According to Article 4 of the Act on the Employment and Work of Foreigners this is a foreigner who is not a citizen of an EU Member State and who, in accordance with the law regulating the residence of foreigners, has been issued a temporary residence permit as a victim of illegal employment.

A permanent residence permit may be, according to Article 52 FA, issued to a foreigner who has been continuously resident in Slovenia for five years on the basis of a temporary residence permit or a certificate of submitted for renewal or issuance of a further permit for a temporary residence or certificate of submitted for a temporary residence permit, and fulfils the term of knowledge from the Slovene language at the basic level, as evidenced by the certificate of successful examination from the knowledge of Slovene at the basic level (A2 of the common European language framework), and if there are *no reasons for the refusal* of the authorization as per Article 55 of FA.

A foreign national is also entitled to reside in Slovenia while in the process of obtaining international protection.¹⁷⁴¹

EU Citizens and Their Family Members

EU citizens may reside in Slovenia without registering residence for the first three months following entry. For a stay exceeding three months, they must apply for a residence registration certificate at the competent administrative unit before the three-month period expires. Alternatively, EU citizens may apply for the certificate immediately upon entry.¹⁷⁴²

The provisions of the Foreigners Act also apply to nationals of the European Economic Area (EEA) and their family members.¹⁷⁴³

Non-EU Family Members of EU or Slovenian Citizens

Non-EU family members of EU or Slovenian citizens may reside in Slovenia without a residence permit for up to 90 days after entering the country. For a longer stay, they must apply for a residence permit for family members before the expiry of the 90-day period. The application must include documentation proving that the applicant:

- Has health insurance;
- Possesses sufficient financial resources;
- Has no criminal record in their country of origin.¹⁷⁴⁴

If the EU or Slovenian citizen is employed, self-employed, or provides services in Slovenia, the requirement to submit proof of health insurance or sufficient financial means does not apply. This also applies to family members of Slovenian nationals.¹⁷⁴⁵

According to Article 127(1) FA the following individuals are considered family members of an EU or Slovenian citizen:

- Spouse or partner in a civil partnership or civil union;
- Children under the age of 21;

¹⁷⁴¹ See <https://www.gov.si/en/topics/international-protection/>.

¹⁷⁴² See <https://www.gov.si/en/topics/entry-and-residence/>.

¹⁷⁴³ *Ibid.*

¹⁷⁴⁴ *Ibid.*

¹⁷⁴⁵ *Ibid.*

- Children of the spouse, civil partner, or long-term partner, up to the age of 21;
- Children over the age of 21 and other dependent relatives, if the EU or Slovenian citizen is, under the law of the country of which he or she is a citizen, legally or actually supporting them;
- Children over the age of 21 and dependent relatives of the spouse, civil partner, or long-term partner, if supported as above;
- Older relatives of an EU citizen up to the age of 21.

Additionally, the following individuals are also recognized as family members:

- A household member who previously resided with the EU or Slovenian citizen in another EU Member State;
- A person maintained by the EU or Slovenian citizen in accordance with the laws of their country of origin;
- An individual for whom the EU or Slovenian citizen provides personal care due to medical condition;
- A partner in a long-term relationship with an EU or Slovenian citizen.

An example of how Slovenian courts interpret the rules about residence permits is the decision of the Supreme Court of Slovenia in case I Up 85/2018, dated 12 September 2018. In this case, the court had to decide whether a foreigner should be denied a residence and work permit because of his past behaviour. He had broken traffic rules, failed to register his temporary residence properly, worked illegally, and didn't have compulsory health insurance. He also started a company that didn't meet its tax and labour obligations. The authorities believed that this kind of behaviour made it harder for the state to control the labour market and showed that the person might not respect Slovenian laws in the future. The law allows authorities to deny a residence permit if there are reasons to believe that the person will not respect Slovenian laws. The court decided that the foreigner's past actions were enough to justify such concerns. As a result, the court agreed that his application for an extension of the permit should be denied and rejected his appeal.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

According to the Article 20 of the *Act on International Protection*,¹⁷⁴⁶ international protection in Slovenia may be granted in the form of either refugee status or subsidiary protection status.

• **Refugee status** may be granted to individuals who provide credible and well-founded evidence that they are being persecuted in their country of origin based on race, ethnic origin, religion, nationality, membership of a particular social group, or political opinion. The decision

¹⁷⁴⁶ See <https://pisrs.si/pregledPredpisa?id=ZAKO7103>.

granting refugee status is valid as a permanent residence permit in Slovenia from the date it is served.

• **Subsidiary protection** may be granted to individuals who do not meet the criteria for refugee status but for whom there are substantial grounds to believe they would face serious harm if returned to their country of origin. Such harm includes:

- The death penalty or execution;
- Torture or inhuman or degrading treatment; or
- A serious and individual threat to life or freedom resulting from indiscriminate violence in situations of international or internal armed conflict. The decision granting subsidiary protection serves as a temporary residence permit in Slovenia from the date of service and is valid for the duration of the protection.

A foreign national must express their intention to apply for international protection as soon as possible after entering Slovenia. This can be done before any public authority or self-governing local authority.¹⁷⁴⁷

Following the declaration of intent:

- The police establish the applicant's identity and determine their route of entry into Slovenia.
- The applicant is then transferred to the Asylum Centre, where they formally submit their application for international protection.
- Before submitting the application, the applicant is informed of the procedure and their rights in a language they understand.
- The application process is conducted in the presence of an interpreter.¹⁷⁴⁸

According to the Act on International Protection the applicant may express this intention to any state body or body of a self-governing local community in Slovenia, which shall inform the police thereof (Art. 42/1). The competent authority shall decide in the procedure within the shortest possible time, unless this would affect the appropriateness and completeness of the consideration, whereby in the regular procedure it shall decide no later than six months from the submission of the application, and in the accelerated procedure no later than two months from the submission of the application (Art. 47/1). An action may be brought against the decision of the competent authority to the administrative court within 15 days of service. An action may be brought against a decision issued in the accelerated procedure within three days of service (Art. 70/1). An action may be brought against all decisions issued on the basis of this Act within three days of service (Art. 70/2).¹⁷⁴⁹

Slovenia also implements ad-hoc measures to accommodate migrants affected by sudden or large-scale crises. For example, after the escalation of the war in Ukraine, new temporary

¹⁷⁴⁷ See <https://www.gov.si/en/topics/international-protection/>.

¹⁷⁴⁸ *Ibid.*

¹⁷⁴⁹ See <https://pisrs.si/pregledPredpisa?id=ZAKO7103>.

accommodation facilities were designated, such as student dormitories (Postojna, Portorož), hotels in Logatec, Lendava, former Bishop's Home Vipava etc.

In response to the crisis in Ukraine following the Russian attack on the Ukraine on 24th of February 2022, the Council of the European Union adopted a decision on 4 March 2022 to activate temporary protection for displaced persons across the EU. This mechanism allows for the immediate and temporary protection of individuals displaced from Ukraine on or after 24 February 2022. Following this decision, the Slovenian Government adopted its own decision on 9 March 2022 to introduce temporary protection for displaced persons from Ukraine, which came into effect on 10 March 2022. With the entry into force of this decision, the Temporary Protection of Displaced Persons Act (2005)¹⁷⁵⁰ also came into effect. This Act governs:

- The introduction, duration, and termination of temporary protection;
- The conditions and procedures for granting and ending protection; and
- The rights and obligations of individuals under temporary protection in Slovenia.¹⁷⁵¹

In the judgment I Up 210/2024 dated 2 September 2024, the Supreme Court dealt with the question of what constitutes serious harm that would entitle a person to subsidiary protection status under the International Protection Act. The applicant stated that he could not return to Algeria because he could not secure the means to live a decent life there. In his opinion, the situation he would face if he returned should be considered as serious harm, since the State does not care if its citizens die of hunger. The Supreme Court ruled that the alleged risk that the applicant would be subjected to inhuman or degrading treatment (severe poverty) in his country of origin was a consequence of the general economic and social conditions in that State and the actions of the State authorities. These conditions and possible difficulties in finding employment are therefore faced not only by the applicant, who would be exposed to them as a result of the actions of the perpetrators of serious harm directed against him, but also by the rest of the population as a result of the general failure of the systems of the country of origin alleged in the complaint. The institution of international protection is not intended to protect against this situation, as it only provides protection to a person against serious harm that could be caused to that person in the event of return to the country of origin. This is a well-established interpretation of the Supreme Court, which emphasizes that, even if a person proves that they could not support themselves in the country of origin due to poor economic conditions therein, such harm would not be sufficient for the existence of serious harm. A general deprivation in the country of origin does not suffice, and the harm must be caused by a third party. The Supreme Court concluded that the international protection cannot be based solely on the fact that the applicant finds the economic and social system in their country of origin worse than in the country where they are seeking international protection.¹⁷⁵²

¹⁷⁵⁰ See <https://pisrs.si/pregledPredpisa?id=ZAKO4176>.

¹⁷⁵¹ See <https://www.gov.si/novice/2022-03-11-postopek-za-pridobitev-zacasne-zascite-za-razseljene-osebe-iz-ukrajine/>.

¹⁷⁵² See [https://www.sodnapraksa.si/?q=postopek%20mednarodne%20za%C5%A1%C4%8Dite&database\[SOVS\]=SOVS&submit=i%C5%A1%C4%8Di&order=date&direction=desc&rowsPerPage=20&page=0&id=2015081111477803](https://www.sodnapraksa.si/?q=postopek%20mednarodne%20za%C5%A1%C4%8Dite&database[SOVS]=SOVS&submit=i%C5%A1%C4%8Di&order=date&direction=desc&rowsPerPage=20&page=0&id=2015081111477803).

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Family reunification is permitted for migrants under certain visa and residence categories, as regulated by the Foreigners Act (FA).

According to Article 47(1) FA, the right to family reunification is granted to a foreign national who either resides in Slovenia on the basis of a permanent residence permit, or has legally resided in Slovenia on the basis of a temporary residence permit for at least one year and currently holds a temporary residence permit valid for at least one year.

An exception applies to foreign nationals who reside in Slovenia on the basis of a temporary residence permit for seasonal work or as daily labour migrants, *i.e.* foreigners with permanent residence in a neighboring country that come to Slovenia each day only to conduct their work and then return to that neighboring country—they are not entitled to family reunification rights.

The right to reunite with a minor unmarried child of the foreign national or of their spouse/partner is recognized without restrictions regarding the parents' duration of residence or permit validity, provided that both parents or guardians hold a temporary residence permit in Slovenia.

Furthermore, the right to family reunification is also extended to individuals with recognized refugee status (Article 47.a FA), and foreign nationals granted subsidiary protection (Article 47.b FA). For these individuals, the family reunification process is simplified, as they are not required to provide evidence of financial means or proof of sufficient subsistence, provided the application is submitted within 90 days from the issuance of the asylum decision.¹⁷⁵³

According to Article 47(3) FA, the following family members are eligible for reunification:

- A spouse, partner in a civil partnership or civil union, or a partner in a long-term relationship;
- Unmarried minor children;
- Unmarried minor children of the spouse, civil partner, or long-term partner;
- Parents, if the applicant is a minor and resided with them in a family unit before arriving in Slovenia;
- Adult unmarried children and parents of the spouse, civil partner, or long-term partner, if the spouse or partner is legally required to support them under the laws of their country of citizenship.

¹⁷⁵³ See <https://www.gov.si/en/topics/entry-and-residence/>.

In exceptional cases, other relatives may be considered eligible for family reunification if special circumstances justify such a decision.¹⁷⁵⁴ For example, for the completion of studies in Slovenia;¹⁷⁵⁵ need for a physical care;¹⁷⁵⁶ being the closest member of the family,¹⁷⁵⁷ etc.

In the case of polygamous marriages, a residence permit for the purpose of family reunification may be issued and extended to only one spouse.¹⁷⁵⁸

To apply for family reunification, the foreign national must have legally resided in Slovenia for at least one year.

- A permanent residence permit granted to a family member remains valid even in the event of divorce or the death of the sponsor, provided the marital union lasted at least three years, including at least one year in Slovenia.
- A temporary residence permit, however, may be lost if the above condition is not met.¹⁷⁵⁹

For family members of Slovenian or EU citizens, the process differs slightly. These family members may apply for a permanent residence permit after only two years of continuous legal residence in Slovenia.¹⁷⁶⁰

The extension of a residence permit for adult family members is subject to proof of Slovene language proficiency at a subsistence level, demonstrated through a certificate of successful completion of a language test.¹⁷⁶¹

In the Supreme Court's case I Up 169/2017, dated 13 November 2019, the court dealt with entitlement to family reunification. The court dealt with the question of who was entitled to the right to family reunification. The FA states that the competent authority may exceptionally consider another relative of a refugee as a family member, if special circumstances speak in favor of family reunification in Slovenia. According to the Supreme Court, special circumstances exist when there is a living community between other relatives which, due to specific factual circumstances, is essentially similar to the primary family¹⁷⁶² or has the same function as the primary family, which means primarily genuine family ties between family members, physical care, protection, safeguarding, emotional support and financial dependence. The Supreme Court accepted that a refugee may be allowed to reunite with family members

¹⁷⁵⁴ See <https://www.gov.si/en/topics/entry-and-residence/>.

¹⁷⁵⁵ See https://sodnapraksa.si/?_submit=i%C3%83%C6%92%C3%A2%E2%82%AC%C2%A6%C3%83%E2%80%9A%C3%82%C2%A1%C3%83%C6%92%C3%A2%E2%82%AC%C5%BE%C3%83%E2%80%9A%C3%82%20i&q=in&rowsPerPage=20&page=10888&id=2015081111437251.

¹⁷⁵⁶ See [https://www.sodnapraksa.si/?q=odlo%C4%8Dbe%20&database\[SOVS\]=SOVS&database\[UPRS\]=UPRS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=1823&id=2015081111434906](https://www.sodnapraksa.si/?q=odlo%C4%8Dbe%20&database[SOVS]=SOVS&database[UPRS]=UPRS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=1823&id=2015081111434906).

¹⁷⁵⁷ See [https://www.sodnapraksa.si/?q=id:2015081111437251&database\[UPRS\]=UPRS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2015081111437251](https://www.sodnapraksa.si/?q=id:2015081111437251&database[UPRS]=UPRS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2015081111437251).

¹⁷⁵⁸ *Ibid.*

¹⁷⁵⁹ *Ibid.*

¹⁷⁶⁰ *Ibid.*

¹⁷⁶¹ *Ibid.*

¹⁷⁶² In the narrow sense, the primary family consists of parents and minor children; in the broader sense, other dependent relatives may also be included.

who are not exhaustively listed in the FA. The phrase "other relatives" can only refer to relatives who are not exhaustively listed. The legislator's intention was to guarantee the right to family reunification not only to the so-called primary family, but also to living communities that are essentially similar to the primary family. The Court disagreed with the decision that a family member under the FA could be another relative (more distant from the applicant), but not a parent, even if in both cases there were the same special circumstances (*e.g.* the need for physical care, protection, custody), which are listed in the law in some cases and decided in a favor of a foreigner seeking reunification.¹⁷⁶³

5. What are the conditions for naturalization in the reviewed state?

Acquisition of Slovenian Citizenship

Foreign residents may acquire Slovenian citizenship after residing in the country for **ten years**.

According to the Article 12 of Constitution of the Republic of Slovenia, citizenship is regulated by law.¹⁷⁶⁴ The Citizenship of the Republic of Slovenia Act in Article 3 specifies that citizenship may be acquired by descent, by birth on Slovenian territory, by naturalization (*i.e.*, admission to citizenship based on application), or by international agreement.¹⁷⁶⁵ Naturalization in Slovenia may occur through regular naturalization, extraordinary naturalization, or extraordinary naturalization for Slovenian emigrants and their descendants.¹⁷⁶⁶

Regular Naturalization

Under Article 10 of the Citizenship Act, the **general conditions** for regular naturalization are as follows:

- The applicant is at least 18 years old;
- Has renounced previous citizenship;
- Has resided in Slovenia for 10 years, including five years of continuous legal residence immediately prior to submitting the application;
- Has a lawful foreigner status;
- Possesses guaranteed means of subsistence in at least the amount of the basic minimum income;
- Has mastered the Slovenian language for everyday communication;¹⁷⁶⁷

¹⁷⁶³

See

[https://www.sodnapraksa.si/?q=zdruc%20dru%C5%BEitev%20dru%C5%BEine&database\[SOVS\]=SOVS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2015081111434906](https://www.sodnapraksa.si/?q=zdruc%20dru%C5%BEitev%20dru%C5%BEine&database[SOVS]=SOVS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2015081111434906).

¹⁷⁶⁴ See <https://pisrs.si/pregledPredpisa?id=USTA1>.

¹⁷⁶⁵ See <https://pisrs.si/pregledPredpisa?id=ZAKO13>.

¹⁷⁶⁶ See <https://www.gov.si/en/topics/citizenship/>.

¹⁷⁶⁷ The mandatory Slovenian language proficiency test shall be taken by a person applying for citizenship before an expert committee appointed by the Government of the Republic of Slovenia, which shall also determine the criteria for the written and oral Slovenian language proficiency test. The language proficiency requirement shall be deemed to have been met: if the person has completed primary school in Slovenia; if the person has successfully

- Has not been convicted of an unconditional prison sentence exceeding three months, or a conditional sentence with a probation period longer than one year;
- Has not been banned from residing in Slovenia;
- Poses no threat to public order, security, or national defense;
- Has settled all tax obligations;
- Is willing to take an oath to respect the free democratic constitutional order.

Extraordinary Naturalization

Some individuals may be eligible for extraordinary naturalization, which provides facilitated conditions. These, according to Article 12 of the Citizenship of the Republic of Slovenia Act, include:

- Slovenian emigrants and their descendants up to the fourth generation: Required to live in Slovenia for only one year, with no requirement to renounce previous citizenship;
- Individuals who previously held Slovenian citizenship but lost it through termination or renunciation: Required to live in Slovenia for six months, requirement to renounce previous citizenship may be waived;
- Persons married to Slovenian citizens: Required to reside in Slovenia for one year, be married for at least three years; renunciation of previous citizenship and residence conditions may be waived;
- Persons born and residing in Slovenia continuously: Exempt from renunciation of citizenship if they provide proof of means of subsistence and knowledge of the Slovenian language;
- Persons granted international protection: Must have resided in Slovenia for five years;
- Stateless persons: Required to live in Slovenia for five years, with no requirement to renounce citizenship (as they have none);
- Persons who have completed at least a higher education program in Slovenia: Required to reside in Slovenia for seven years, including one continuous year immediately prior to application.

completed a publicly recognized secondary education program in Slovenia; if the person has obtained a level VI or VII education in Slovenia or has completed higher education or university studies after 25 June 1991; if the person is over 60 years of age and has actually lived in Slovenia for 15 years; if the person has completed primary or secondary school with the Slovenian language of instruction in areas inhabited by members of the indigenous Slovenian national community in neighboring countries. The language proficiency requirement is also met by a person who is illiterate but can communicate orally in Slovenian, as proven by a certificate of successful completion of the oral communication exam in Slovenian at the basic level. The language proficiency requirement does not need to be met by a person who, due to health problems that prevent everyday communication, is unable to take the exam in the required form. Proof of compliance with this requirement, in the event of an alleged factual inability to take the exam, shall be provided by an expert. The costs incurred in providing this proof shall be borne by the person.

Extraordinary naturalization may

be granted for justified scientific, economic, cultural, national, or similar reasons.¹⁷⁶⁸

Extraordinary Naturalization for Slovenian Emigrants

In the case of Slovenian emigrants, continuous residence based on lawful foreigner status is not required. However, applicants must demonstrate an active personal connection to Slovenia, including:

- At least five years of active involvement in Slovenian associations abroad or other Slovenian expatriate or minority organizations;
- Proof that Slovenian citizenship was previously lost for legitimate reasons (*i.e.* release or renunciation of citizenship), along with a renewed request for admission;
- Recommendations from relevant organizations confirming the applicant's active connection and five years of involvement;
- If available, official documents issued abroad showing Slovenian nationality.¹⁷⁶⁹

Acquisition of Citizenship by Minors

Special provisions apply to minors:

- If both parents acquire Slovenian citizenship through naturalization, their minor child may acquire it at their request;
- If one parent acquires citizenship, the minor child may also acquire it upon request, provided they have lived with that parent continuously for at least one year before the application and have regulated foreigner status;
- A child born in Slovenia and under one year of age may acquire citizenship at the request of a parent who has acquired Slovenian citizenship through naturalization;
- If one parent acquires Slovenian citizenship via extraordinary naturalization for national reasons, their minor child may also acquire citizenship upon request;
- A child without parents, or whose parents have been deprived of parental rights or legal capacity, and who has lived in Slovenia since birth, may acquire citizenship upon request by a guardian, provided the ministry responsible for family and social affairs consents.¹⁷⁷⁰

Slovenia does not require minors to be released from their previous citizenship. Minors are also not obligated to renounce foreign citizenship or choose between Slovenian and foreign nationality.¹⁷⁷¹

¹⁷⁶⁸ See <https://www.gov.si/en/topics/citizenship/>.

¹⁷⁶⁹ See <https://infotujci.si/en/third-country-nationals/slovenian-citizenship/>.

¹⁷⁷⁰ See <https://infotujci.si/en/third-country-nationals/slovenian-citizenship/>.

¹⁷⁷¹ See <https://www.gov.si/en/topics/citizenship/>.

Special Provision for EU Citizens

If the applicant is a citizen of an EU Member State, they are not required to provide proof of renunciation of their previous citizenship, provided that reciprocity exists between Slovenia and the applicant's country.¹⁷⁷²

In the case U 606/93 dated 10 March 1994, the Supreme Court examined the question of when a person is considered to have resided in Slovenia for the purpose of obtaining citizenship. The complainant appealed against the rejection of his application for Slovenian citizenship on the grounds that he had been working abroad since 1990 and did not meet the requirement of five years' continuous residence in Slovenia before submitting an application for regular naturalization. According to the Supreme Court, a person can actually live in Slovenia even if they are not physically present in Slovenia all the time. Therefore, a correct conclusion as to where a particular person actually resides can only be made if all the specific circumstances of each case are taken into account. The information in this case showed that the applicant has had his permanent residence in Slovenia since 1978, that he has a wife and two children. The applicant came home to Slovenia every week for the weekend, *i.e.* to his family. The court considered that it was not possible to reliably conclude that the applicant did not actually live in Slovenia solely on the basis of the fact that he was employed abroad. If the applicant has an apartment and a family in Slovenia, if he comes to his family every week and on all his days off, if he takes care of the family and the upbringing of the children, this would indicate that the applicant carries out the majority of his life activities in Slovenia, and he actually lives in Slovenia.¹⁷⁷³

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*

¹⁷⁷² See <https://www.gov.si/en/topics/citizenship/>.

¹⁷⁷³

See [https://www.sodnapraksa.si/?q=naturalizacija&database\[SOVS\]=SOVS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=13826](https://www.sodnapraksa.si/?q=naturalizacija&database[SOVS]=SOVS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=13826)

f. other beneficiaries of international protection, if applicable.

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Yes, in addition to the Slovenian constitution prohibiting discrimination (Article 14) and “any incitement to national, racial, religious or other inequality and the incitement of national, racial, religious or other hatred and intolerance is unconstitutional” (Article 63),¹⁷⁷⁴ the Protection against Discrimination Act contains a broad spectrum of protected personal circumstances. Its Article 1 provides for the protection of every individual against discrimination regardless of gender, nationality, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity and gender expression, social status, financial situation, education or any other personal circumstance in various areas of social life, in the exercise of human rights and fundamental freedoms, in the exercise of rights and obligations and in other legal relationships in the political, economic, social, cultural, civil or other areas.¹⁷⁷⁵ In Article 2(1), it states that this Act binds state authorities, local communities, holders of public authority and legal and natural persons, who must ensure protection against discrimination and equal treatment of all persons in all areas of decision-making, legal transactions and other activities or conduct in relation to third parties, in particular in relation to:

- the conditions for access to employment, self-employment and occupation, including selection criteria and employment conditions, regardless of the type of activity and at all levels of the professional hierarchy, including promotion,
- access to all forms and all levels of career guidance and counselling, vocational and professional education and training, further vocational training and retraining, including work experience,
- employment terms and conditions of work, including termination of employment contracts and wages,
- membership and integration into an organisation of workers or employers or into any organisation whose members practice a particular profession, including the benefits provided by such organisations,
- social protection, including social security and health care,
- social benefits,
- education,

¹⁷⁷⁴ See <https://pisrs.si/pregledPredpisa?id=USTA1>

¹⁷⁷⁵ See <https://pisrs.si/pregledPredpisa?id=ZAKO7273>

- access to and provision of goods and services available to the public, including housing.

Moreover, regardless of the provisions of other laws, the provisions of this Act shall apply if they are more favorable to the discriminated person (Article 2(3)).

Nevertheless, protection can be limited with more specific act. For example, the Employment Relations Act is considered to be *lex specialis* in comparison to Protection against Discrimination Act, as noted by the judgement of the Slovenian Supreme Court.¹⁷⁷⁶ The same applies to other sectoral laws that, among other things, contain a prohibition of discrimination in individual areas.

a. Temporary and permanent resident migrants:

Temporary and permanent resident migrants are, within the Slovenian legal framework, protected under the Protection against Discrimination Act.

b. Regular migrants benefiting from more favourable treatment (e.g., EU citizens):

In Slovenia migrants that benefit from more favourable treatment are citizens of the European Union (EU), who benefit from both national and EU-level anti-discrimination guarantees. The Treaty on the Functioning of the EU (TFEU) in Article 18 states that discrimination based on nationality is prohibited,¹⁷⁷⁷ especially with regard to the employment (Article 45 of the TFEU).

c. Undocumented migrants:

Undocumented migrants are formally covered by the Protection against Discrimination Act, but in practice enjoy weak legal protection since their status is not regulated.

d. Refugees:

Refugees are, according to the International Protection Act, entitled to equal education (Article 101), and social rights (Article 99) as Slovenian nationals.

e. Asylum seekers:

Access of asylum seekers to rights is conditional (e.g., access to labour market only after 3 months), as regulated by the International Protection Act.

¹⁷⁷⁶

See [https://sodnapraksa.si/?q=id:2015081111449554&database\[SOVS\]=SOVS&database\[IESP\]=IESP&database\[VDSS\]=VDSS&database\[UPRS\]=UPRS&submit=i%C5%A1%C4%8Di&page=0&id=2015081111449554](https://sodnapraksa.si/?q=id:2015081111449554&database[SOVS]=SOVS&database[IESP]=IESP&database[VDSS]=VDSS&database[UPRS]=UPRS&submit=i%C5%A1%C4%8Di&page=0&id=2015081111449554)

¹⁷⁷⁷ See <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>.

f. Other beneficiaries of international protection:

In Slovenia “other beneficiaries of international protection” are beneficiaries of subsidiary protection,¹⁷⁷⁸ who enjoy largely the same anti-discrimination protections as the refugees under the International Protection Act, and persons entitled to a temporary protection for displaced persons,¹⁷⁷⁹ whose non-discrimination protection relies on the Constitution and Protection Against Discrimination Act. Some rights, however, also according to the Act on Temporary Protection of Displaced Persons are the same as for the nationals, for example the education (Article 49).

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

According to Article 43 of Slovenian Constitution, political rights are reserved for citizens, unless otherwise provided by law. Thus, political participation in Slovenia is limited for non-nationals and depends on citizenship status and, in a few cases, reciprocity agreements or EU membership.

a. Temporary and permanent resident migrants

Temporary and permanent resident migrants have no voting rights in national elections or referenda. However, Local Elections Act (Article 5(3)) states that foreigners with permanent residence in Slovenia can vote in local elections.

b. Regular migrants benefiting from more favourable treatment (e.g., EU citizens)

EU citizens cannot vote in national elections or referenda, but they can vote in local elections (mayor and municipal council) and stand as candidates if they have permanent or temporary residence in Slovenia (Article 5 of Local Elections Act – implementing Directive 94/80/EC).

According to the Act on the Election of Members of the European Parliament from the Republic of Slovenia a citizen of another Member State of the EU who has reached the age of eighteen on the day of voting and has a permanent residence permit and registered permanent residence in Slovenia or a certificate of registration of residence and registered temporary residence in

¹⁷⁷⁸ Subsidiary protection may be granted to a person who does not meet the conditions for refugee status, but who demonstrates reasonable and credible reasons that he or she would face serious harm (death penalty or execution, torture, inhuman or degrading treatment) if returned to his or her home country. We also grant subsidiary protection due to a serious and individual threat to the life or freedom of the applicant due to arbitrary violence in situations of international or internal armed conflict in the country of origin. The decision to grant subsidiary protection shall also be valid as a temporary residence permit in Slovenia from the date of service for the duration of this protection. See <https://www.gov.si teme/mednarodna-zascita/>.

¹⁷⁷⁹ This status is granted based on the Act on Temporary Protection of Displaced Persons and the decisions of the Council of the EU referred to in Article 5 of Directive 2001/55/EC.

Slovenia also has the right to vote and be elected as a Member of the European Parliament, provided that he or she is registered in the electoral register (Article 10(2)).

c. Undocumented migrants

Undocumented migrants have no voting rights.

d. Refugees

Refugees have no voting rights.

e. Asylum seekers

Asylum seekers have no voting rights.

f. Other beneficiaries of international protection (subsidiary protection)

Persons with subsidiary protection and persons with temporary protection status have **no** voting rights.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

There are some distinctions in enjoyment of civil and political rights between nationals and non-nationals in Slovenia, depending on the right and group of non-nationals.

a. Temporary and permanent resident migrants

There is no distinction in enjoyment of civil and political rights (aside from the right to vote) between temporary and permanent resident migrants compared to nationals.

b. Regular migrants benefiting from more favourable treatment (e.g., EU citizens)

There is no distinction in enjoyment of civil and political rights (aside from the right to vote) between EU citizens and nationals.

c. Undocumented migrants

Undocumented migrants' freedom of movement is legally restricted due to their irregular status and the possibility of detention and deportation, under the Foreigners Act (Articles 60, 60.a).

d. Refugees

There is no distinction in enjoyment of civil and political rights (aside from the right to vote) between refugees and nationals.

e. Asylum seekers

Asylum seekers face restrictions during the asylum procedure and have their movement limited to specific reception centers or assigned municipalities (International Protection Act, Article 84).

The Slovenian Constitutional Court has noted in decision U-I-95/08, Up-1462/06 that the regulation that requires prior approval of accommodation at a private address and a prior hearing or personal interview is a constitutionally permissible interference with the right to free choice of residence of asylum seekers, since it can achieve the constitutionally permissible goal of protecting public order. However, the regulation that stipulates a further restriction, i.e. that the competent authority may approve accommodation at a private address only if the capacities of the asylum home or its branches are occupied, is inconsistent with the right to free choice of residence, since such a further restriction is not necessary for the protection of public order. Whether the competent authority will use this authority in accordance with the purpose arising from the legal regulation, to ensure efficient decision-making in asylum procedures and respect for public order, and will also adequately justify its decision, is a matter for decision in individual procedures.¹⁷⁸⁰

f. Other beneficiaries of international protection

There is no distinction between the persons with subsidiary protection status and persons with temporary protection status in enjoyment of civil and political rights (aside from the rights to vote). However, during the procedure of granting them a status they face the same limitations as asylum seekers, for example, regarding the freedom of movement (International Protection Act, Article 84; Act on Temporary Protection of Displaced Persons, Article 29).

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

The Slovenian Constitution (Article 68), provides that non-nationals "may acquire ownership rights to real estate under conditions provided by law or a treaty ratified by the National

¹⁷⁸⁰

See

<https://www.us-rs.si/sl/zadeve-in-odlocitve/odlocitve/u-i-9508-up-146206?SearchTerm=svoboda+gibanja+prosilcev+za+azil>.

Assembly.” Non-nationals who may acquire ownership rights to real estate without additional conditions are:

- citizens and legal entities of the Member States of the European Union (EU),
- citizens and legal entities of the Member States of the Organisation for Economic Co-operation and Development (OECD),
- citizens and legal entities of the Member States of the European Economic Area (EFTA),
- persons with the status of a Slovenian without Slovenian citizenship (thus, people who do not hold Slovenian citizenship, but can demonstrate Slovenian ethnic origin, cultural ties, or that they identify as Slovenians; often descendants of Slovenians living abroad, in neighboring countries, or in the diaspora),
- legal heirs and foreign testamentary heirs who would also be heirs after legal succession when acquiring ownership rights to real estate by inheritance,
- foreigners from the former republics of the SFRY who met all the conditions for registration before 31 December 1990 (however, the registration was not carried out or the procedure for registration in the land register was not initiated), in the currently initiated procedures for registration of ownership rights to real estate.

Citizens and legal entities of EU candidate countries (Republic of North Macedonia, Republic of Serbia, Montenegro, Republic of Albania, Ukraine, Republic of Moldova, Bosnia and Herzegovina, Georgia) may acquire ownership rights to real estate, subject to a positive decision on the establishment of reciprocity (*i.e.*, same possibility exists for Slovenians in the non-nationals’ countries).

Act on the Conditions for the Acquisition of Property Rights to Real Estate by Natural and Legal Entities from Candidate Countries for Membership in the European Union states in Article 3 that foreigners may acquire ownership rights to real estate under this Act on the basis of a legal transaction, inheritance or a decision of a state authority. Regarding this, Higher Court in Ljubljana stated in a judgement I Cp 1330/2016 of 3 November 2016 that the plaintiff, who was a citizen of the Republic of Croatia, could acquire ownership rights to real estate, but only on the basis of a legal transaction, inheritance or a decision of a state body, but not on the basis of law (*i.e.* not on the basis of possession). In this case the plaintiff claimed that he had acquired property by possession. The court of first instance, as stated by the Higher court, correctly established that Slovenia, with the adoption of the Constitutional Act for the Implementation of the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia on 25 June 1991, restricted the acquisition of property rights by persons who do not have Slovenian citizenship. The same applies to the Constitution of the Republic of Slovenia (Article 68 with amendments and supplements). Only the Act on the Conditions for the Acquisition of Property Rights by Natural and Legal Entities of Candidate Countries for Membership in the European Union to Real Estate (Official Gazette of the Republic of Slovenia, No. 61/2006) enabled Croatian citizens to acquire property rights to real estate, but only on the basis of a legal transaction, inheritance or a decision of a state authority, but not on the basis of law (*i.e.* not on the basis of appropriation). From 1991 until its accession to the EU on 1 July

2013, citizens of Croatia could not acquire ownership rights to real estate in Slovenia on the basis of possession. This means that during this period the plaintiff could not be sure that the real estate (to the extent that he possessed it outside his co-ownership share) was his property, nor could he think that all the prerequisites for acquiring ownership rights had been met. Therefore, during this entire period his possession could not have been *bona fide possession*. This is a prerequisite for acquiring ownership rights on the basis of possession. He could only have been in good faith from 1990 to 25 June 1991 and after 1 July 2013, which is a period that is not sufficient for acquiring ownership rights to the real estate.¹⁷⁸¹

Citizens and legal entities from all other countries that do not fall into any of the above groups (including the People's Republic of China and the Russian Federation) cannot acquire ownership rights to real estate or can only acquire it on the basis of inheritance subject to the existence of reciprocity.¹⁷⁸²

a. Temporary and permanent resident migrants

Temporary and permanent residents in Slovenia generally have the right to purchase and own property without significant restrictions. However, certain limitations exist based on nationality, especially for non-EU nationals, as presented above.

b. Regular migrants benefiting from more favourable treatment (e.g., EU citizens)

EU citizens enjoy equal rights to purchase and own property in Slovenia, based on the principle of free movement of capital enshrined in Article 63 TFEU and transposed into Slovenian law. No special restrictions apply to EU citizens, and they benefit from full ownership rights equivalent to Slovenian nationals.

c. Undocumented migrants

Undocumented migrants face practical barriers to property ownership due to their irregular status and lack of residence permits, which is often a prerequisite for registering property in Slovenia. Legally, property ownership is possible, but registration and purchase contracts typically require valid identification and residence status.

d. Refugees

Recognized refugees enjoy the right to buy and own property under the same conditions as other non-nationals with legal residence status. They do not face additional restrictions, provided they comply with general rules applicable to their nationality.

¹⁷⁸¹

¹⁷⁸² See [https://sodnapraksa.si/?q=id:2015081111401211&database\[SOVS\]=SOVS&database\[IESP\]=IESP&database\[VDSS\]=VDSS&database\[UPRS\]=UPRS&submit=i%C5%A1%C4%8Di&page=0&id=2015081111401211](https://sodnapraksa.si/?q=id:2015081111401211&database[SOVS]=SOVS&database[IESP]=IESP&database[VDSS]=VDSS&database[UPRS]=UPRS&submit=i%C5%A1%C4%8Di&page=0&id=2015081111401211).

¹⁷⁸² See <https://www.gov.si/zbirke/storitve/pridobivanje-lastninske-pravice-tujcev-na-nepremicninah/>

e. Asylum seekers

Asylum seekers do not have explicit legal restrictions on property ownership but face practical limitations due to their temporary and often precarious status, limited financial means, and restricted freedom of movement.

f. Other beneficiaries of international protection

Subsidiary protection holders have the same rights as refugees and other legal residents regarding property ownership.

People with temporary protection do not have the explicit restrictions on property ownership, therefore, the general rules for foreigners apply to them.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

In Slovenia, the conditions for non-nationals to engage in formal employment depend on their migratory status.

Under the Employment, Self-employment and Work of Foreigners Act (2016), third-country nationals have the right to free access to the Slovenian labor market if:

- they are residing in Slovenia on the basis of a temporary residence permit for family reunification with a Slovenian citizen;
- they are residing in Slovenia on the basis of a permanent residence permit;
- they are residing in Slovenia on the basis of a temporary residence permit issued to a foreigner of Slovenian origin;
- they are residing in Slovenia on the basis of a temporary residence permit issued to a victim of trafficking in human beings;
- they are residing in Slovenia on the basis of a temporary residence permit issued to a victim of illegal employment;
- they are granted the right to international protection in Slovenia and their family members are residing in the country on the basis of a residence permit for family reunification;
- they are granted the temporary protection status (demonstrated by an appropriate identity card);
- their identity has been established beyond doubt and have been granted the status of an applicant for international protection in Slovenia, namely nine months after filing an application for international protection, provided that no decision of the competent

authority has been served thereon in that period and the delay cannot be attributed to them (Article 6).¹⁷⁸³

The Higher Labour and Social Court heard a case Psp 279/2022 of 7 December 2022 in which a non-national wanted to be registered within the register of unemployed persons, and explained requirements for foreigners to be entered in the register of unemployed persons in Slovenia.¹⁷⁸⁴

a. Temporary and Permanent Resident Migrants

Temporary and permanent residents typically need a valid work permit or a residence permit that includes the right to work. Work permits are generally issued based on labour market needs.

Foreign nationals from third countries require a single residence and work permit in order to reside and work in Slovenia. Single permits are issued by administrative units and approved by the Employment agency of Slovenia. The single residence and work permit grants third-country nationals the right to enter and reside in Slovenia, as well as the right to be employed, self-employed or work in the country.¹⁷⁸⁵ Once a person obtains a work permit, they can switch jobs on it.¹⁷⁸⁶

Foreign nationals can become self-employed after one year's continuous legal residence in Slovenia. The requirement regarding residence does not apply if they are registered in the business register as a person who will pursue a professional activity in a self-employed capacity (Employment, Self-employment and Work of Foreigners Act, Article 15).¹⁷⁸⁷ Foreign nationals who are registered by law in the Slovenian court register as representatives of a legal entity may be engaged to represent the legal entity, conclude legal transactions, supervise, give instructions and perform other similar tasks in the capacity of a representative. They are allowed to do such work for up to 90 days in a calendar year.¹⁷⁸⁸

Family members or students may be entitled to a temporary residence permit other than for employment or work. Foreign nationals residing in Slovenia as family members of a foreign national or for the purpose of studying can only be employed on the basis of an information sheet issued by the Employment agency. The latter means that the Employment agency first assesses the labor market. In case there are no suitable candidates in the register of the unemployed in Slovenia, the Employment agency sends a written notification and an information sheet to the employer, the administrative unit and the inspectorate. The information sheet lists all the elements and conditions of employment.¹⁷⁸⁹

¹⁷⁸³ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6655>, 26 June 2015

¹⁷⁸⁴ See [https://sodnapraksa.si/search.php?q=dostop%20do%20trga%20dela%20tujec&database\[SOVS\]=SOVS&database\[IESP\]=IESP&database\[VDSS\]=VDSS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2015081111463628](https://sodnapraksa.si/search.php?q=dostop%20do%20trga%20dela%20tujec&database[SOVS]=SOVS&database[IESP]=IESP&database[VDSS]=VDSS&_submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2015081111463628)

¹⁷⁸⁵ See <https://www.gov.si/en/topics/employment-and-work-of-foreign-nationals/>

¹⁷⁸⁶ See <https://www.ess.gov.si/delodajalci/zaposlovanje-tujcev-iz-tretjih-drzav/zaposlitev-delo-in-nastanitev-tujcev/>

¹⁷⁸⁷ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6655>

¹⁷⁸⁸ See <https://www.ess.gov.si/en/jobseekers/access-to-slovenian-labor-market>

¹⁷⁸⁹ See <https://www.ess.gov.si/en/jobseekers/access-to-slovenian-labor-market>

b. Regular Migrants with More Favourable Treatment (e.g., EU Citizens)

EU citizens benefit from freedom of movement and the right to work without needing a work permit under EU law (Directive 2004/38/EC). They only need to register their residence if staying longer than three months.¹⁷⁹⁰

According to Slovenia's Employment, Self-employment and Work of Foreigners Act (2016) citizens of EU Member States and European Economic Area (Norway, Liechtenstein, Iceland) and Switzerland are equal in job seeking and getting employment with Slovenian workers. In addition, family members of workers coming from the EU, EEA or the Swiss Confederation (who are third-country nationals) have the right of free access to the labor market (Articles 6, 68).¹⁷⁹¹

The EU Blue Card is a temporary residence permit for the purpose of highly qualified employment. It was introduced and has its basis in the Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.¹⁷⁹² The EU ICT permit has its basis in the Directive 2014/66/EU and was implemented in Slovenian legislation on 1st January 2018. ICT entitles its holder to reside and work in the territory of a Member State. The foreigner is not employed by the host entity (Slovenian company). They are positioned there by their home entity. The permit is issued for 1 year and may be extended.¹⁷⁹³

Work permits are issued for citizens of Bosnia and Herzegovina and Serbia, and for seasonal work in agriculture for a period of up to 90 days.¹⁷⁹⁴

c. Undocumented Migrants

Undocumented migrants do not have legal access to formal employment. Working without authorization is illegal and can result in penalties for both the employee and employer.¹⁷⁹⁵ Despite this, undocumented migrants often work in the informal economy, which exposes them to exploitation and lack of legal protections.¹⁷⁹⁶

d. Refugees

Refugees have the right to work under conditions equal to nationals once their status is granted (International Protection Act, Article 90).

¹⁷⁹⁰ See <https://www.gov.si/podrocja/zaposlovanje-delo-in-upokojitev/delovne-migracije/>

¹⁷⁹¹ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6655>, 26 June 2015

¹⁷⁹² See <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gvxp/vi67ybyggepr>

¹⁷⁹³ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0066>

¹⁷⁹⁴ See <https://www.gov.si/en/topics/employment-and-work-of-foreign-nationals/>

¹⁷⁹⁵ See <https://pisrs.si/pregledPredpisa?id=ZAKO6765>

¹⁷⁹⁶ See <https://www.sloga-platform.org/wp-content/uploads/2018/11/Escape-room-2018.pdf>

e. Asylum Seekers

Asylum seekers acquire the right to free access to the labour market three months after they have lodged their application, if the decision in their procedure has not yet been taken by the Migration directorate and the delay cannot be attributed to the asylum seeker (International Protection Act, Article 87/1).

Once asylum seekers have the right to free access to the labour market, they can access self-employment, employment and work without meeting other requirements.

f. Other beneficiaries of international protection

Beneficiaries of subsidiary protection have the right to work under conditions equal to nationals once their status is granted (International Protection Act, Article 90).

Persons with temporary protection status have free access to the labor market in accordance with the regulations governing employment, self-employment and work of foreigners (Act on Temporary Protection for Displaced Persons, Article 48).

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g., labour market testing in Australia).

In Slovenia, migrants may be subject to a labor quota, regulating the number of work permits per sector, and a labor market test upon submission of the request for a work permit (Employment, Self-employment and Work of Foreigners Act, 2016, Article 41).

The Employment, Self-employment and Work of Foreigners Act (2016) states that “[d]epending on the situation and anticipated trends in the labor market, the government can annually set a quota of consents to the issuance of a single permit and a quota of permits for seasonal work, with which to limit the number of foreigners on the labor market”. Moreover, “[i]n addition to the quota, the government can also set restrictions and bans on the employment, self-employment and work of foreigners by region, field of activity, companies and professions, as well as limit or prohibit the arrival of new foreigners for the purpose of employment or work in whole or from certain regional areas, when this is justified with public order, public security, public health, general economic interest or situation and anticipated trends in the labor market” (Article 41).¹⁷⁹⁷

The Employment, Self-employment and Work of Foreigners Act (2016) stipulates that, in some cases before employing a foreigner, the employer must obtain a certificate from the Employment Agency. That is the case when a foreigner possesses a Single permit or Blue Card, where the Employment agency checks whether there are suitable candidates in the register of unemployed persons and if not, sends a written notification and an information sheet to the employer, the administrative unit and the inspectorate (Articles 9, 12). Meanwhile, for self-

¹⁷⁹⁷ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6655>

employment of foreigners, the consent of the Employment agency is not necessary (Article 15).¹⁷⁹⁸

a. Temporary and Permanent Resident Migrants

Foreigners with a temporary residence permit that is not issued for employment, self-employment or work, but, for example, for family reunification, study or other reasons, can be employed on the basis of the information sheet, issued by the Slovenian Employment Agency within five working days (Employment, Self-employment and Work of Foreigners Act, Article 33).¹⁷⁹⁹

According to the Employment, Self-Employment and Work of Foreigners Act, third-country nationals have the right to free access to the Slovenian labour market when:

- they reside in Slovenia on the basis of a temporary residence permit for family reunification with a Slovenian citizen;
- they reside in Slovenia on the basis of a permanent residence permit;
- they reside in Slovenia on the basis of a temporary residence permit for a foreigner of Slovenian origin;
- they reside in Slovenia on the basis of a temporary residence permit as a victim of human trafficking;
- they reside in Slovenia on the basis of a temporary residence permit as a victim of illegal employment.¹⁸⁰⁰

b. Regular Migrants with More Favourable Treatment (EU Citizens)

EU citizens are exempt from work permits and labour market testing under the EU freedom of movement principle, thus the restrictions established in the Employment, Self-employment and Work of Foreigners Act do not apply to them (Article 5).¹⁸⁰¹

c. Undocumented Migrants

Employment of undocumented migrants is illegal and subject to penalties for employers. There are no quotas because such employment is prohibited altogether.

¹⁷⁹⁸ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6655>

¹⁷⁹⁹ See <https://www.ess.gov.si/iskalci-zaposlitve/zaposlitev-tujih-drzavljanov/delo-v-sloveniji/tujci-z-dovoljenjem-za-prebivanje/>

¹⁸⁰⁰ See <https://www.ess.gov.si/iskalci-zaposlitve/zaposlitev-tujih-drzavljanov/delo-v-sloveniji/prost-dostop-tujcev-na-trg-dela/>

¹⁸⁰¹ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6655>

d. Refugees

Refugees have the right to work without restrictions once their status is granted.¹⁸⁰²

e. Asylum Seekers

Asylum seekers may access the labour market after a waiting period (International Protection Act, Article 87/1). An asylum seeker whose identity has been established beyond doubt has free access to the labour market after three months from the date of submission of the application for international protection, provided that the decision of the competent authority has not been served on them during this period and this delay cannot be attributed to the foreigner. The foreigner shall prove that they meet the above conditions with a certificate from the ministry responsible for internal affairs (Employment, Self-employment and Work of Foreigners Act, Article 6).

f. Other beneficiaries of international protection

Beneficiaries of subsidiary protection have the right to work without restrictions once their status is granted.¹⁸⁰³ The same is for persons with temporary protection status (Act on Temporary Protection for Displaced Persons, Article 48).

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

In Slovenia, restrictions on non-nationals for working in specific professions or sectors exist primarily for reasons of public interest, security, or where specific citizenship requirements apply (e.g. positions that require a high level of trust and access to sensitive information, to functions essential for the exercise of state authority, and to roles where loyalty and the absence of conflicts of interest are expected; posts that demand in-depth knowledge of the national legal system and a special degree of public trust etc.). Restrictions vary depending on the legal status of the non-national and the sector concerned.

Further, the Public Employees Act (2002) specifically regulates employments in the public sector (Article 1) and states that “[t]he recruitment of civil servants is carried out in such a way that equal access to jobs is ensured for all interested candidates under the same conditions and in such a way that the candidate who is best professionally qualified to perform the tasks at the workplace is selected” (Article 7). However, the condition of language knowledge may be specified (Article 17). Workers are selected and employed on the basis of a public competition (Part VIII).¹⁸⁰⁴ Requirement for C level of knowledge of Slovenian language is demanded in particular laws, for example in Article 11 of Medical service law (1999) for doctors. Upon

¹⁸⁰² See <https://www.ess.gov.si/iskalci-zaposlitve/zaposlitev-tujih-drzavljanov/delo-v-sloveniji/prost-dostop-tujcev-na-trg-dela/>

¹⁸⁰³ See <https://www.ess.gov.si/iskalci-zaposlitve/zaposlitev-tujih-drzavljanov/delo-v-sloveniji/prost-dostop-tujcev-na-trg-dela/>

¹⁸⁰⁴ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3177>

notification of the documentation on medical education (and obtaining a job offer), a doctor needs to enroll to the Medical Chamber of Slovenia as the membership is required to commence with the practice, and the Medical Chamber requires proof of passing the Slovenian language test at C1 level.¹⁸⁰⁵

The provisions of the Employment, Self-employment and Work of Foreigners Act (2016) is not used for employers from the public sector who provide health care, for public institutions that provide institutional care for adults, special social welfare institutions for adults, welfare work centres and social welfare training institutions, public institutions that provide social welfare services, family assistance at home, and public social welfare institutions that provide social welfare services (Article 20).¹⁸⁰⁶

The procedures at the Employment Agency of the Republic of Slovenia are demanding due to determining the education, language skills and qualifications of foreigners. The 2023 amendment to the Employment, Self-employment and Work of Foreigners Act does not apply to foreigners who will be employed in the state or public sector, which means that the Employment Agency will not give consent to jobs in the public sector. Thus, the foreign nationals working in the healthcare/social welfare sectors are exempt from demanding procedures at the Employment Agency and consequently, can be employed without its consent. This amendment allows for fast-track procedures for recruiting migrant workers in public sectors with high demand for workforce (e.g. elderly care), i.e. without obtaining the consent from the Employment agency.¹⁸⁰⁷ Thus, the administrative requirements have been simplified with the above amendment (while further amendments are discussed).

Employers in the private sector are bound by the provisions of the Employment Relationships Act (2013) that ensures prohibition of discrimination, including on nationality (Article 6). However, “[t]aking into account the legal prohibitions, the employer has the right to freely decide with which candidate who meets the conditions for performing the work, he will conclude an employment contract” (Article 21).¹⁸⁰⁸ Namely, the private sector employer can require other qualifications, which foreigners have to prove, such as language knowledge, under the condition that such requirements do not amount to prohibited discrimination.¹⁸⁰⁹

Foreigners can open an “afternoon self-employment” only if they have permanent residence permit or a personal work permit in Slovenia. According to the Attorneys Act (1993) a foreign national may practice law in Slovenia if they meet the requirements based on their country's laws, and if there is reciprocity, pass a test on knowledge of Slovenia's legal system according to the respective law, and demonstrate proficiency in Slovenian (Article 25).¹⁸¹⁰

The Medical Services Act (1999) states that doctors must use the Slovenian language at work (Article 11). Additionally, the candidate must pass professional exams in Slovenia (Article 14),

¹⁸⁰⁵ See <https://pisrs.si/pregledPredpisa?id=ZAKO1395>

¹⁸⁰⁶ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6655>, 16 June 2016

¹⁸⁰⁷ See <https://www.gov.si/novice/2023-03-28-s-spremembo-zakona-do-hitrejsega-zaposlovanja-tujcev/>

¹⁸⁰⁸ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5944>, 5 March 2013

¹⁸⁰⁹ See <https://zagovornik.si/wp-content/uploads/2023/03/Zagotavljanje-enakih-moznosti-in-preprecevanje-diskriminacije-pri-zaposlovanju-in-delu.pdf>

¹⁸¹⁰ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO265>

be entered in the register of doctors (Article 29) and obtain a license to work as a doctor (Article 33).¹⁸¹¹

a. Temporary and Permanent Resident Migrants

Third-country nationals generally face no broad sectoral bans but may be restricted in certain sensitive public service roles as stated above.

b. Regular Migrants Benefiting from More Favourable Treatment (EU Citizens)

EU citizens have the right to work in most sectors under the principle of free movement and equal treatment. However, positions classified as “public service” or those connected to the exercise of public authority (e.g., police, judiciary, military) are typically reserved for Slovenian nationals.

c. Undocumented Migrants

Employment of undocumented migrants is illegal in any sector.

d. Refugees

Once recognized as refugees, beneficiaries have the right to work, subject to the same conditions as third-country nationals, including restrictions on certain public service roles as stated above.

e. Asylum Seekers

Asylum seekers may work after a waiting period, but access to regulated professions requiring licenses or nationality may remain limited as stated above.

f. Other beneficiaries of international protection

Once granted subsidiary protection or temporary protection, beneficiaries have the right to work, subject to the same conditions as third-country nationals, including restrictions on certain public service roles as stated above.

¹⁸¹¹ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1395>

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

In Slovenia, labour protections generally apply equally to nationals and non-nationals, regardless of their status, although some differences may arise depending on legal residency and work authorization.¹⁸¹² For example, cash compensation depends on the length of employment (Labor Market Regulation Act, Article 60). Foreigners Act in Article 51 stipulates that a foreigner acquires the right to family reunification only after one year of legal residence, which may have consequences for access to certain social rights for family members. Directive 2011/98/EU provides that Member States may restrict access to social rights, in particular social assistance, until a condition of legal residence or employment for a fixed period is met (Article 12).

a. Temporary and Permanent Resident Migrants

Non-nationals legally employed with valid work permits or residence status enjoy the same labour rights as Slovenian nationals. The Slovenian Employment Relationships Act applies equally to all employees (Article 6). This includes protections such as minimum wage, working hours, overtime pay, paid annual leave, maternity/paternity leave, sick leave, social security benefits, and protection from unfair dismissal.¹⁸¹³

b. Regular Migrants Benefiting from More Favourable Treatment (EU Citizens)

EU citizens working in Slovenia have the same labour protections as nationals based on the principle of equal treatment under EU law. They have full access to social security benefits and labour rights, with no legal distinctions.¹⁸¹⁴

c. Undocumented Migrants

While undocumented workers are technically outside the legal framework, Slovenian law and international standards prohibit employers from exploiting undocumented workers. Minimum standards such as protection from forced labour and unsafe working conditions apply but may be difficult to enforce.¹⁸¹⁵

d. Refugees

Recognized refugees enjoy equal labour rights once authorized to work.¹⁸¹⁶

¹⁸¹² See <https://www.ess.gov.si/iskalci-zaposlitve/zaposlitev-tujih-drzavljanov/delo-v-sloveniji/pravice-delavcev/>

¹⁸¹³ See <https://pisrs.si/pregledPredpisa?id=ZAKO5944>

¹⁸¹⁴ See <https://pisrs.si/pregledPredpisa?id=ZAKO5944>

¹⁸¹⁵ See <https://pisrs.si/pregledPredpisa?id=ZAKO6765>

¹⁸¹⁶ See <https://pisrs.si/pregledPredpisa?id=ZAKO5944>

e. Asylum Seekers

Asylum seekers may have limited or delayed access to the labour market but enjoy the same labour protections while working legally.¹⁸¹⁷

f. Other beneficiaries of international protection

Recognized beneficiaries of subsidiary protection and temporary protection enjoy equal labour rights once authorized to work.¹⁸¹⁸

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

All migrants in Slovenia have the same status as citizens in accessing government-funded emergency healthcare services. Other government-funded health services are available to migrants depending on their migration status.

According to the Constitution of the Republic of Slovenia (1991), “[e]veryone has the right to health care under the conditions established by law” (Article 51).¹⁸¹⁹

The main law that regulates conditions on healthcare access is the Health Care and Health Insurance Act (1992).¹⁸²⁰ The responsible authority for the provision of health services at the national level is the Health Insurance Institute of Slovenia which provides health coverage to all Slovenian citizens and non-citizens with permanent residence in Slovenia.¹⁸²¹

People with compulsory health insurance are: workers in all work spheres and forms of employment; their family members; permanent residents, unemployed persons receiving cash compensation from the employment office (unemployment benefits); foreigners studying in Slovenia; persons with recognised refugee status or granted subsidiary protection; citizens of Slovenia with permanent residence in Slovenia; who are not insured under another title/ground and who meet the conditions for obtaining cash social assistance; citizens of Slovenia; and foreigners who have a permanent residence permit and who, according to the law governing the exercise of rights from public funds have the right to pay a contribution for compulsory insurance (Article 15).¹⁸²² As per the Act, “obligatory health insurance includes primary, health care, medical, specialist-ambulatory, hospital, health care and tertiary health care services.” (Article 23).

¹⁸¹⁷ See <https://pisrs.si/pregledPredpisa?id=ZAKO5944>

¹⁸¹⁸ See <https://pisrs.si/pregledPredpisa?id=ZAKO5944>

¹⁸¹⁹ See <http://pisrs.si/Pis.web/pregledPredpisa?id=USTA1>

¹⁸²⁰ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO213>

¹⁸²¹ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO213>

¹⁸²² See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO213>

All children and adolescents aged up to 18 years and students below the age of 26 who are enrolled in a regular school program (on primary, secondary or tertiary level) have a right to health care services on the same basis as citizens of Slovenia (International Protection Act, Article 86).¹⁸²³ All children of non-citizens are health-insured and thus are granted access to all government-funded health services for the first 3 months automatically; afterwards, parents need to personally come to the Health Insurance Institute to insure their children.

a. Temporary and Permanent Resident Migrants

Individuals holding a temporary residence permit are entitled to compulsory health insurance schemes if they are employed in Slovenia or are insured as a family member of a person employed by a Slovenian employer, and thus have equal access to all healthcare services as nationals.¹⁸²⁴

Groups that are not covered by the public health care system have access to emergency healthcare services only, while costs of other non-urgent medical care must be covered by the patient.¹⁸²⁵ As such, migrants who are not covered by health insurance in Slovenia only have the right to emergency or necessary health services, for which payment is provided in accordance with the European legal order, international agreements or from the State budget. An out-patient clinic is available for people without health insurance.¹⁸²⁶ The European legal order applies to the claim of health services during a temporary or permanent stay in EU member States, the countries of the European Economic Area, Switzerland and the United Kingdom, and to the claim of health services in Australia, Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia agreements on social insurance that Slovenia concluded with these countries.¹⁸²⁷

b. Regular Migrants Benefiting from More Favourable Treatment (e.g., EU Citizens)

EU citizens residing in Slovenia have access to public health services under the same conditions as nationals, based on EU law principles of free movement and social security coordination (Regulation (EC) No 883/2004). They are entitled to compulsory health insurance if they reside or work in Slovenia.¹⁸²⁸

c. Undocumented Migrants

Access to health care for undocumented migrants is limited. They are entitled only to emergency medical care under the Health Care and Health Insurance Act (Article 7). Several pro bono clinics provide basic healthcare services to persons with no healthcare coverage for

¹⁸²³ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7103>

¹⁸²⁴ See <https://includeu.eu/health-care-in-slovenia/>

¹⁸²⁵ See https://www.filantropija.org/wp-content/uploads/2020/10/Zbornik_Migranti-in-zdravje_SLO-12-WEB.pdf

¹⁸²⁶ See <https://infotujci.si/en/integration-into-slovenian-society/health-care/health-insurance/>

¹⁸²⁷ See https://zavarovanec.zzs.si/wps/portal/portali/azos/zav_tujina/sporazumi/

¹⁸²⁸ See <https://pisrs.si/pregledPredpisa?id=ZAKO213>

undocumented migrants.¹⁸²⁹ The pro bono clinics are usually financed with contributions from municipalities, charities, and non-governmental organization.¹⁸³⁰ In the 2022-2026 coalition agreement, the Slovenian government stated that it would regulate the status of pro bono clinics, which should become part of the public health network.¹⁸³¹

d. Refugees

Persons with recognized refugee status have the right to compulsory health insurance, as per Article 98 of the International Protection Act (2016).¹⁸³²

e. Asylum Seekers

Slovenia's International Protection Act provides that in the specific case of (adult) asylum seekers and migrants in irregular situations, they are entitled to emergency medical and dental aid, emergency treatment and emergency rescue transportation (Article 86).¹⁸³³ Further, several pro bono clinics provide basic healthcare services to persons with no healthcare coverage and both migrants in an irregular situation and asylum seekers avail of the services of these clinics.¹⁸³⁴ The pro bono clinics are usually financed with contributions from municipalities, charities, and non-governmental organization.¹⁸³⁵ In the 2022-2026 coalition agreement, the Slovenian government stated that it would regulate the status of pro bono clinics, which should become part of the public health network.¹⁸³⁶ Vulnerable asylum seekers can request an expanded scope of medical services, including psychological support, subject to a decision of a special commission appointed by the Government Office for the Care and Integration of Migrants (Article 83). Asylum seeking women also have the right to contraception, reproductive health care, and termination of pregnancy. Asylum-seeking children are entitled to the same scope of rights as citizens.¹⁸³⁷

f. Other Beneficiaries of International Protection

Persons with recognized subsidiary protection have the right to compulsory health insurance, as per Article 98 of the International Protection Act (2016).¹⁸³⁸

¹⁸²⁹ See https://www.filantropija.org/wp-content/uploads/2020/10/Zbornik_Migranti-in-zdravje_SLO-12-WEB.pdf

¹⁸³⁰ See <https://www.ljubljana.si/sl/aktualno/ambulanta-pro-bono/>

¹⁸³¹ See https://www.gov.si/assets/vlada/Vlada_predstavitev_dokumenti/Koalicijski-dogovor-2022-2026-Programski-del-18.5.2022.pdf

¹⁸³² See <https://www.gov.si/teme/sprejem-oskrba-in-nastanitev-prosilcev-za-mednarodno-zascito/>

¹⁸³³ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7103>

¹⁸³⁴ See https://www.filantropija.org/wp-content/uploads/2020/10/Zbornik_Migranti-in-zdravje_SLO-12-WEB.pdf

¹⁸³⁵ See <https://www.ljubljana.si/sl/aktualno/ambulanta-pro-bono/>

¹⁸³⁶ See https://www.gov.si/assets/vlada/Vlada_predstavitev_dokumenti/Koalicijski-dogovor-2022-2026-Programski-del-18.5.2022.pdf

¹⁸³⁷ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7103>

¹⁸³⁸ See <https://www.gov.si/teme/sprejem-oskrba-in-nastanitev-prosilcev-za-mednarodno-zascito/>

According to the Act on Temporary Protection of Displaced Persons, persons with temporary protection status have the right to emergency treatment, which includes: emergency medical, dental, and urgent care; treatment of chronic and infectious diseases; prescribed medicines and devices; compulsory vaccinations; women's health services; and mandatory health checks for school entry (Article 45(1)). In justified cases, a health commission, appointed by the minister responsible for health, approves a greater scope of health care for an individual person with temporary protection or for a group (Article 45(2)). Persons with temporary protection who are minors are entitled to healthcare to the same extent as children who are compulsorily insured as family members (Article 45(3)).

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Migrants in Slovenia have the same status as citizens in accessing government-funded education and vocational training depending on their migration status.

The Constitution of Republic of Slovenia states that “[e]ducation is free”, “[p]rimary school education is compulsory and financed from public funds” and “[t]he State creates opportunities for citizens to acquire an appropriate education” (Article 57).¹⁸³⁹

While free primary education in Slovenia lasts for a period of nine years and is compulsory for children who have turned 6,¹⁸⁴⁰ secondary education remains non-compulsory, and is divided into general education (grammar schools), vocational schools, and professional training. It lasts three or four years and ends with a secondary school leaving certificate or a final examination (baccalaureate).¹⁸⁴¹ Slovenia allows access to university education for all international students provided that they hold the necessary permit, but fees may differ from those of nationals.

Rules on pre-enrolment announcement and enrolment in higher education foresees that the number of places for citizens of third countries is determined by means of tenders for institutes.¹⁸⁴² Foreigners (nationals of third country) can apply for Slovenian universities in case that they fulfil the same conditions as Slovenian citizens, with the difference that it does not matter which four-year high school program they completed abroad, while a specific four-year high school program is required for some studies for Slovenian students. Slovenian universities, however, have special enrolment places for foreigners from third countries, which means that they do not directly compete with Slovenian students for enrolment.¹⁸⁴³

¹⁸³⁹ See <http://pisrs.si/Pis.web/pregledPredpisa?id=USTA1>

¹⁸⁴⁰ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO445>

¹⁸⁴¹ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO448>

¹⁸⁴² See https://moja.um.si/bodoci-studentje/Documents/Merila-in-pogoji-za-sprejem-tujcev_%202022-23.pdf

¹⁸⁴³ See <https://www.uni-lj.si/studij/prijavno-sprejemni-postopki/neclani-eu/>

a. Temporary and Permanent Resident Migrants

According to the Basic School Act (1996), children who are foreign citizens or stateless persons residing in Slovenia have the right to compulsory primary school education under the same conditions as citizens of Slovenia (Article 10).¹⁸⁴⁴

According to Article 9 of Gimnazija Act (1996)¹⁸⁴⁵ and Article 7 of the Vocational Education Act (2006),¹⁸⁴⁶ foreign nationals are entitled to secondary education based on the principle of reciprocity or if at least one of their parents are residents of Slovenia for tax purposes at the time of enrolment.¹⁸⁴⁷

Slovenia's Higher Education Act (1993) states citizens of third countries have the same opportunities as Slovenian citizens, provided that the principle of reciprocity is applied, or provided that they have completed secondary school education in Slovenia and passed the mature exam, or provided that they have permanent residence in Slovenia and are alone or at least one of their parents or guardians until the start of the selection process are residents of Slovenia for tax purposes. With the statute of a public higher education institution, more favourable conditions for enrolment can be determined for Slovenians without Slovenian citizenship. (Article 7)¹⁸⁴⁸

Slovenia allows access to university education for all international students provided that they hold the necessary permit, but fees may differ from that of nationals.

b. Regular Migrants with Favourable Treatment (e.g., EU Citizens)

According to the Basic School Act (1996), children who are foreign citizens residing in Slovenia have the right to compulsory primary school education under the same conditions as citizens of Slovenia (Article 10).¹⁸⁴⁹

According to Article 9 of Gimnazija Act (1996)¹⁸⁵⁰ and Article 7 of the Vocational Education Act (2006)¹⁸⁵¹ citizens of other EU member states, Slovenians without Slovenian citizenship are entitled to education under the same conditions as Slovenian citizens.¹⁸⁵²

Slovenia's Higher Education Act (1993) states that Slovenians without Slovenian citizenship (that is, descendants of Slovenian citizens up to the 3rd generation) and EU citizens have the same access to education at higher education institutions as citizens.¹⁸⁵³

Slovenia allows access to university education for all international students provided that they hold the necessary permit, but fees may differ from that of nationals.

¹⁸⁴⁴ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO448>

¹⁸⁴⁵ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO450>

¹⁸⁴⁶ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4325>

¹⁸⁴⁷ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4093>

¹⁸⁴⁸ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO172>

¹⁸⁴⁹ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO448>

¹⁸⁵⁰ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO450>

¹⁸⁵¹ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4325>

¹⁸⁵² See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4093>

¹⁸⁵³ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO172>

c. Undocumented Migrants

While there is no explicit legal provision guaranteeing access to education for undocumented migrants, in practice, primary education is provided as a fundamental right for all children at age 6.¹⁸⁵⁴

d. Refugees

Persons with recognized international protection are equal to citizens of Slovenia in exercising their rights in the areas of pre-school education, primary, secondary, post-secondary, higher education, and adult education (Article 101).¹⁸⁵⁵

Slovenia's Higher Education Act (1993) states that persons with international protection have the same access to education at higher education institutions as citizens.¹⁸⁵⁶

Children under international protection are invited to attend the 20-hour preparatory course on enrolment in school - learning of Slovenian and inclusion in the new environment.¹⁸⁵⁷

e. Asylum Seekers

Applicants for international protection are guaranteed the right to primary school education no later than three months from the date of submission of the application. As per the International Protection Act (2016), applicants for international protection are also granted access to education at vocational and secondary schools and universities under the conditions that apply to citizens of Slovenia (Article 88).¹⁸⁵⁸

f. Other international protection beneficiaries

Persons with recognized subsidiary protection are equal to citizens of Slovenia in exercising their rights in the areas of pre-school education, primary, secondary, post-secondary, higher education, and adult education (Article 101).¹⁸⁵⁹

Slovenia's Higher Education Act (1993) states that persons with international protection have the same access to education at higher education institutions as citizens.¹⁸⁶⁰

Person with temporary protection status is entitled to inclusion in preschool education, primary, secondary, post-secondary, higher education, music school and adult education to the same

¹⁸⁵⁴ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO448>

¹⁸⁵⁵ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7103>

¹⁸⁵⁶ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO172>

¹⁸⁵⁷ See <https://includeu.eu/education-in-slovenia/>

¹⁸⁵⁸ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7103>

¹⁸⁵⁹ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7103>

¹⁸⁶⁰ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO172>

extent as citizens of Slovenia (Act on Temporary Protection of Displaced Persons, Article 49(1)).

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Generally, non-nationals legally residing in Slovenia have access to the social security system on conditions similar to nationals, subject to fulfillment of specific criteria related to residence, employment, or contribution history.

According to the Constitution of Republic of Slovenia “[c]itizens have the right to social security, including the right to a pension, under the conditions established by law” and “[t]he state shall regulate compulsory health, pension, disability and other social insurance, and shall ensure its proper functioning” (Article 50).¹⁸⁶¹

The social security system in Slovenia includes social insurance and family benefits and the social assistance system. The social insurance systems consist of mandatory pension and disability insurance, mandatory health insurance, unemployment insurance and parental care insurance. Insurance is mandatory for all employees and self-employed persons. The whole system is financed by social security contributions paid by employed persons and employers.¹⁸⁶²

The Slovenian welfare system in its main part consists of a contribution-funded, professional social insurance scheme, composed of compulsory insurance branches, which mirror traditional social risks (contingencies) such as unemployment, old-age, sickness, etc., and a subsidiary tax-funded, residence-based social assistance scheme, which is aimed at preventing poverty and social exclusion. In general, all gainfully employed persons in Slovenia (e.g. workers, self-employed persons) enjoy coverage within the social insurance scheme, irrespective of their nationality or residence status. Citizenship and/or (long-term) residence is however required when accessing means-tested social assistance benefits. Migrants’ access to social rights is thereby dependent upon the nature of the benefit (means-tested or not) and their economic (in)activity or (long-term) residence.¹⁸⁶³

The Employment, Self-employment, and Work of Foreigners Act (2016) stipulates compulsory inclusion for foreigners (Article 8).¹⁸⁶⁴

¹⁸⁶¹ See <https://pisrs.si/pregledPredpisa?id=USTA1>.

¹⁸⁶²

See https://ec.europa.eu/employment_social/empl_portal/SSRinEU/Your%20social%20security%20rights%20in%20Slovenia_sl.pdf.

¹⁸⁶³ See https://link.springer.com/chapter/10.1007/978-3-030-51241-5_26

¹⁸⁶⁴ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6655>

Health insurance, regulated by the Health Care and Health Insurance Act (1992), is implemented by the Health Insurance Institute of Slovenia (Article 12).¹⁸⁶⁵ Social health insurance is compulsory for all employed and self-employed persons in Slovenia, employee-like persons and recipients of social security benefits. Regarding compulsory health insurance, all gainfully employed persons are treated equally, regardless of their nationality or residence status. Emergency medical treatment is universal and guaranteed regardless of one's insurance or other status.¹⁸⁶⁶

The Pension and Disability Insurance Act (2012) regulates pension and invalidity disability insurance and comprises old-age pension, early pension, partial pension, invalidity disability pension, widow's and widower's pension, family pension, and assistance and attendance allowance (Part 3).¹⁸⁶⁷ It is compulsory for all employed, self-employed and employee-like persons. As with other branches of what was considered professional insurance, equal treatment applies to all gainfully employed persons. Special conditions however apply to foreigners regarding access to particular benefits, e.g. parental allowance, whose recipients also enjoy coverage within the pension and invalidity disability insurance. At the same time, foreigners do not enjoy equal access to voluntary pension insurance – the general clause for the voluntary pension insurance stipulates the condition of permanent residence.¹⁸⁶⁸ Voluntary additional pension insurance is the basic form of saving for old age in Slovenia, which the state encourages with tax breaks. It represents the collection of funds in the personal accounts of insured persons included in this form of insurance, with the aim of guaranteeing them the right to an additional pension or other rights.¹⁸⁶⁹

The Parental Protection and Family Benefits Act (2014) regulates the compulsory, contribution-funded social insurance scheme, consisting of maternity, paternity, and parental leave and benefits, and the right to part-time work due to child-care and contribution payment, means-tested lump sum benefits, provided within a tax-funded scheme.¹⁸⁷⁰ Social insurance rights can be exercised regardless of one's citizenship or residence status. However, voluntary insurance is not possible for people who are not citizens or residents.¹⁸⁷¹

The Constitutional Court of the Republic of Slovenia stated in decision no. Up-672/16-24 of 13 March 2019 that “[p]rotection of the right to social security according to the first paragraph of Article 50 of the Constitution is reserved for citizens of Slovenia. The above does not mean that the Constitution does not guarantee protection of the right to social security to foreigners simply because of their citizenship. Such a narrow interpretation of the provisions of the Constitution could, at least in certain circumstances, lead to the denial of human dignity, which is the value starting point of human rights and fundamental freedoms. The Constitutional Court has already accepted the position that the protection of the right to a pension, which the Constitution expressly guarantees as a right to social security in the first paragraph of Article 50, is also

¹⁸⁶⁵ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO213>

¹⁸⁶⁶ See https://link.springer.com/chapter/10.1007/978-3-030-51241-5_26

¹⁸⁶⁷ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6280>

¹⁸⁶⁸ See https://link.springer.com/chapter/10.1007/978-3-030-51241-5_26

¹⁸⁶⁹ See <https://www.gov.si/teme/prostovoljno-dodatno-pokojninsko-zavarovanje/>

¹⁸⁷⁰ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6688>

¹⁸⁷¹ See https://link.springer.com/chapter/10.1007/978-3-030-51241-5_26

guaranteed by the right to private property from Article 33 of the Constitution, and this also applies to persons, who are not citizens of Slovenia (see decision No. Up-770/06 of 27 May 2009, Official Gazette of the Republic of Slovenia, No. 54/09; 4th point of explanation). In adopting the above-mentioned position, on which several decisions were subsequently based (no. Up-1419/08 of 22 October 2009 (Official Gazette of the Republic of Slovenia, No. 90/09, and OdlUS XVIII, 87), no. Up-424/09 of 9 December 2009, no. Up-957/09 of 8 January 2010 and no. Up-174/10 of 15 November 2011), the Constitutional Court stated several points of departure relevant in assessing whether a certain right from social security is protected by the constitutional guarantee of property.” (point 8)¹⁸⁷²

a. Temporary and Permanent Resident Migrants

The tax-funded and means-tested social assistance scheme aimed at preventing poverty and social exclusion is regulated by several Acts (The Social Assistance Benefits Act, Official Gazette no. 61/10, Exercise of Rights from Public Funds Act, Official Gazette no. 62/10, and the Social Assistance Act, Official Gazette no. 3/07). The Social Assistance Benefits Act stipulates the following benefits: (i) monetary social assistance (minimum income benefit), (ii) extraordinary monetary social assistance and (iii) supplementary allowance (social assistance supplement). The beneficiaries can be foreigners with a permanent residence permit.¹⁸⁷³

The Labor Market Regulation Act (2009), which regulates unemployment insurance, provides special conditions for non-EU foreigners, who first have to obtain a working permit in order to exercise gainful employment leading to the *ex lege* conclusion of any compulsory social insurance, a feature as a rule typical for every professional or employment-based type of insurance.¹⁸⁷⁴

Slovenia has agreements with other countries on the portability of social security entitlements and earned benefits, including old-age pensions. Beyond the EU, Slovenia has agreements with Argentina (2003)¹⁸⁷⁵, Australia (2011)¹⁸⁷⁶, Bosnia and Herzegovina (2011)¹⁸⁷⁷, Canada (2000)¹⁸⁷⁸, North Macedonia (2000)¹⁸⁷⁹, Montenegro (2011)¹⁸⁸⁰ and Serbia (2010)¹⁸⁸¹. Those agreements determine the rules on the summation of insurance periods. The general rule is that in the event that the co-insured supplements the insurance period according to the legal regulations of both parties, when acquiring, maintaining or re-recognizing the right to claim, the insurance periods are added together, if they do not refer to the same period. To what extent and how the insurance periods are taken into account are determined by the legal regulations of

¹⁸⁷²

See

[https://www.us-](https://www.us-rs.si/odlocitev/?q=&caseId=&df=&dt=&af=&at=&pri=1&vd=&vo=1&vv=&vs=&ui=&va=&vp%5B0%5D=PP16&page=1&sort=&order=&id=113261)

<rs.si/odlocitev/?q=&caseId=&df=&dt=&af=&at=&pri=1&vd=&vo=1&vv=&vs=&ui=&va=&vp%5B0%5D=PP16&page=1&sort=&order=&id=113261>

¹⁸⁷³ See https://link.springer.com/chapter/10.1007/978-3-030-51241-5_26

¹⁸⁷⁴ See https://link.springer.com/chapter/10.1007/978-3-030-51241-5_26, pp. 391-403

¹⁸⁷⁵ See <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2008-02-0047?sop=2008-02-0047>

¹⁸⁷⁶ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3634>

¹⁸⁷⁷ See <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2008-02-0046?sop=2008-02-0046>

¹⁸⁷⁸ See <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3029>

¹⁸⁷⁹ See <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlmpid=200050>

¹⁸⁸⁰ See <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2011-02-0052?sop=2011-02-0052>

¹⁸⁸¹ See <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlmpid=201032>

the Contracting Party in which the insured completed these insurance periods.¹⁸⁸² All agreements are still in force.

b. Regular Migrants with Favourable Treatment (e.g., EU Citizens)

The tax-funded and means-tested social assistance scheme aimed at preventing poverty and social exclusion, is regulated by several Acts (The Social Assistance Benefits Act, Official Gazette no. 61/10, Exercise of Rights from Public Funds Act, Official Gazette no. 62/10, and the Social Assistance Act, Official Gazette no. 3/07). The Social Assistance Benefits Act stipulates the following benefits: (i) monetary social assistance (minimum income benefit), (ii) extraordinary monetary social assistance and (iii) supplementary allowance (social assistance supplement). The beneficiaries can be EU workers.¹⁸⁸³

The Labor Market Regulation Act (2009), which regulates unemployment insurance, stipulates equal treatment, same rights and obligations apply to Slovenian, EU, EEA, and Swiss citizens (Article 6).¹⁸⁸⁴ As such, all employed persons in Slovenia (e.g. workers, self-employed persons) enjoy coverage within the social insurance scheme, irrespective of their nationality or residence status.¹⁸⁸⁵

EU citizens legally employed in Slovenia enjoy equal treatment under EU regulations on social security coordination (Regulation (EC) No 883/2004), which ensures aggregation of insurance periods across member states.

Slovenia, as an EU member state, is bound by Regulation no. 883/2004 of the European Parliament and of the Council of 29 April 2004, on the coordination of social security systems of 29. 4. 2004¹⁸⁸⁶, and Regulation no. 987/2009 of 16. 9. 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.¹⁸⁸⁷ Both Regulations coordinate social security systems and enable their integration, which realizes the freedom of movement of persons within the EU of the European Economic Area (EEA), which ensures that an individual does not lose rights arising from the social security system when moving between EU and EEA member states.

c. Undocumented migrants

Access to social security is non-existent for undocumented migrants.

¹⁸⁸² See https://zavarovanec.zzs.si/wps/portal/portali/azos/zav_tujina/sporazumi/

¹⁸⁸³ See https://link.springer.com/chapter/10.1007/978-3-030-51241-5_26

¹⁸⁸⁴ See <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5840>

¹⁸⁸⁵ See https://link.springer.com/chapter/10.1007/978-3-030-51241-5_26, pp. 391-403

¹⁸⁸⁶ See <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0883:20100501:sl:PDF>

¹⁸⁸⁷ See <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:284:0001:0042:SL:PDF>

d. Refugees

The International Protection Act (2016) stipulates that a person who is granted international protection has the right to social security (Article 90).¹⁸⁸⁸

The tax-funded and means-tested social assistance scheme aimed at preventing poverty and social exclusion is regulated by several Acts (The Social Assistance Benefits Act, Official Gazette no. 61/10, Exercise of Rights from Public Funds Act, Official Gazette no. 62/10, and the Social Assistance Act, Official Gazette no. 3/07). The Social Assistance Benefits Act stipulates the following benefits: (i) monetary social assistance (minimum income benefit), (ii) extraordinary monetary social assistance and (iii) supplementary allowance (social assistance supplement). The beneficiaries can be persons granted international protection and their family members, exercising the right to family reunification.¹⁸⁸⁹

e. Asylum Seekers

Asylum seekers are entitled to material reception conditions, such as accommodation, health care, hygienic products, food, pocket money.¹⁸⁹⁰

f. Other Social Benefits (Social Assistance)

The International Protection Act (2016) stipulates that a person who is granted international protection, *i.e.* subsidiary protection status, has the right to social security (Article 90).¹⁸⁹¹

The tax-funded and means-tested social assistance scheme aimed at preventing poverty and social exclusion is regulated by several Acts (The Social Assistance Benefits Act, Official Gazette no. 61/10, Exercise of Rights from Public Funds Act, Official Gazette no. 62/10, and the Social Assistance Act, Official Gazette no. 3/07). The Social Assistance Benefits Act stipulates the following benefits: (i) monetary social assistance (minimum income benefit), (ii) extraordinary monetary social assistance and (iii) supplementary allowance (social assistance supplement). The beneficiaries can be persons granted international protection and their family members, exercising the right to family reunification.¹⁸⁹²

The Act on Temporary Protection of Displaced Persons provides, that a person with temporary protection status, who resides in Slovenia and is not accommodated in an accommodation centre or other accommodation facility, where they are provided with food, and who is without sufficient income, benefits or property or whose subsistence is not provided by those liable, is entitled to monthly financial assistance (Article 36(1)). If a person is accommodated in an accommodation centre or other accommodation facility, where food is provided, and who declares that he or she has no income, benefits or property or that his or her subsistence is not provided by the persons liable for the protection, shall be provided by pocket money (Article

¹⁸⁸⁸ See <https://pisrs.si/pregledPredpisa?id=ZAKO7103>

¹⁸⁸⁹ See https://link.springer.com/chapter/10.1007/978-3-030-51241-5_26

¹⁸⁹⁰ See <https://pisrs.si/pregledPredpisa?id=ZAKO7103>

¹⁸⁹¹ See <https://pisrs.si/pregledPredpisa?id=ZAKO7103>

¹⁸⁹² See https://link.springer.com/chapter/10.1007/978-3-030-51241-5_26

50(1)). A family member of a deceased person with temporary protection status in Slovenia who has arranged for a funeral in Slovenia is granted, as a special form of financial assistance to cover funeral costs in the amount of twice the basic amount of the minimum income, but not more than the funeral costs (Article 47(1)).

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

In Slovenia, non-nationals' access to welfare programs such as financial aid, food aid, subsidized housing, and other social assistance depends largely on their legal status, length of residence, and integration level.

The Social Security Act states in Article 5 that beneficiaries under this Act are citizens of Slovenia who have permanent residence in Slovenia and foreigners who have a permanent residence permit in Slovenia. Citizens of Slovenia who do not have permanent residence in Slovenia and foreigners who do not have a permanent residence permit in Slovenia exercise their rights to individual services in the cases and under the conditions specified in this Act.

The Social Security Benefits Act, which regulates the right to financial social assistance and the right to a protection allowance, states in Article 3 that the beneficiaries under this Act are citizens of Slovenia who have permanent residence in Slovenia, foreigners who have a permanent residence permit and permanent residence in Slovenia, as well as persons granted international protection and their family members who have obtained a residence permit in Slovenia on the basis of the right to family reunification and have registered permanent or temporary residence in Slovenia. In addition, persons who can exercise these social security benefits on the basis of international acts that are binding on Slovenia.

Foreigners Act provides that a foreigner who is permitted to stay in Slovenia has the right to basic care (Article 75(3)).

The Higher Labour and Social Court ruled in case Psp 323/2022 of 11 January 2023 that the right to financial assistance under the second paragraph of Article 51 of the Foreigners Act cannot be equated with the right to financial social assistance, nor with the right to extraordinary financial social assistance. Regardless of the difference in the name of individual rights, it is crucial that the listed rights are intended for those persons who have found themselves in severe social hardship, i.e., when they cannot ensure their own social security. The name of the right itself is not decisive in this regard, i.e., whether it is the right to cash assistance or the right to cash social assistance. The key point here is that in the case of financial assistance, as defined in the second paragraph of the Foreigners Act, it is a bare right, with its content having to be filled in with the provisions of the Social Security Benefits Act.¹⁸⁹³

¹⁸⁹³

See [https://sodnapraksa.si/search.php?q=socialna%20pomo%C4%8D%20tujci&database\[SOVS\]=SOVS&database\[IESP\]=IESP&database\[VDSS\]=VDSS&submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2015081111464723](https://sodnapraksa.si/search.php?q=socialna%20pomo%C4%8D%20tujci&database[SOVS]=SOVS&database[IESP]=IESP&database[VDSS]=VDSS&submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=0&id=2015081111464723)

a. Temporary and Permanent Resident Migrants

Those with permanent or long-term residence permits generally have access to social welfare programs on an equal footing with nationals, subject to usual means-testing and residency requirements (Social Security Act, Article 5).

b. Regular Migrants with Favourable Treatment (e.g., EU Citizens)

EU citizens legally residing in Slovenia benefit from Directive 2004/38/EC provisions on social assistance, though in some cases there may be waiting periods or conditions related to employment or integration.

c. Undocumented Migrants

They are mostly excluded from welfare benefits except for emergency aid or services related to human dignity (basic health and shelter under international obligations).

d. Refugees

They enjoy access to welfare programs on a largely equal basis with nationals (International Protection Act, Article 90; Social Security Act, Article 5).

International Protection Act defines material reception conditions for beneficiaries of international protection, including access to basic welfare such as accommodation, food, and basic subsistence (Articles 78-82).

e. Asylum Seekers

Have access to material reception conditions (International Protection Act, Articles 78-82) but limited access to other welfare programs until granted protection status. International Protection Act defines material reception conditions for asylum seekers, including access to basic welfare such as accommodation, food, and basic subsistence (Articles 78-82). Also Social Security Benefits Act provides financial assistance to them.

f. Other Beneficiaries of International Protection

People with subsidiary protection status enjoy access to welfare programs on a largely equal basis with nationals (International protection Act, Article 90; Social Security Act, Article 5).

International Protection Act defines material reception conditions for beneficiaries of international protection, including access to basic welfare such as accommodation, food, and basic subsistence (Articles 78-82).

Person with temporary protection status have a special regime of access to welfare services as regulated in the Act on Temporary Protection of Displaced Persons. The one who resides in Slovenia and is not accommodated in an accommodation centre or other accommodation facility, where they are provided with food, and who is without sufficient income, benefits or property or whose subsistence is not provided by those liable, is entitled to monthly financial assistance (Article 36(1)). The office shall grant a pocket money to a person with temporary protection who is accommodated in an accommodation centre or other accommodation facility, where food is provided, and who declares that he or she has no income, benefits or property or that his or her subsistence is not provided by the persons liable for the protection, and shall issue a certificate to this effect (Article 50(1)). A family member of a deceased person with temporary protection who has arranged for a funeral in Slovenia is granted, as a special form of financial assistance, financial assistance to cover funeral costs in the amount of twice the basic amount of the minimum income, but not more than the funeral costs, if the family member has temporary protection status in Slovenia (Article 47(1)).

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law
Second interim report – Rights to stay and while staying
Country review

May 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: South Africa

Author: Cristiano d’Orsi

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons		
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		X
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		
ILO Equal Remuneration Convention (No. 100)		X

ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		x
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		X
Convention governing the Specific Aspects of Refugee Problems in Africa		x
African Charter on the Rights and Welfare of the Child		x
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		
American Convention on Human Rights (ACHR)		

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Southern Africa Development Community (SADC), *Protocol on the Facilitation of Movement of Persons* (2005). South Africa has signed and ratified the SADC Protocol on Facilitation of Movement of Persons. However, the protocol is not yet fully in force because it requires ratification by a minimum number (two-thirds) of SADC member states (Article 36: ‘Entry into Force’). The Member States of SADC are 16.¹⁸⁹⁴

Agreement Establishing the African Continental Free Trade Area (AfCFTA). Date of Adoption: March 21, 2018. Date entry into force: May 30, 2019. South Africa ratified it on 31 January 2019. The AfCFTA aims to facilitate the free movement of people within Africa, complementing its focus on trade in goods and services. This is intended to boost intra-African trade and economic integration by allowing the movement of businesses, entrepreneurs, and investors, as well as seasonal workers and students. Article 3 of the AfCFTA (General Objectives) ‘The general objectives of the AfCFTA are to: (a) create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent and in accordance with the Pan African Vision of “An integrated, prosperous and peaceful Africa” enshrined in Agenda 2063; [...]’.¹⁸⁹⁵

¹⁸⁹⁴

https://www.sadc.int/sites/default/files/2021-11/Protocol_on_Facilitation_of_Movement_of_Persons2005.pdf accessed 10 may 2025.

¹⁸⁹⁵ https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf accessed 10 May 2025.

The African Union (AU) also has a separate *Protocol on Free Movement of Persons* that aims to guarantee the right of citizens to move, reside, and establish themselves in other member states. This last 2018 Protocol, however, is not yet into force and South Africa has neither ratified nor signed this protocol yet.¹⁸⁹⁶

Treaty Establishing the African Economic Community, adopted in Abuja, Nigeria on June 3, 1991, entered into force May 12, 1994. South Africa ratifies it on 31 May 2001. CHAPTER VI (FREE MOVEMENT OF PERSONS, RIGHTS OF RESIDENCE AND ESTABLISHMENT) ARTICLE 43: GENERAL PROVISIONS 1) Member States agree to adopt, individually, at bilateral or regional levels, the necessary measures, in order to achieve progressively the free movement of persons, and to ensure the enjoyment of the right of residence and the right of establishment by their nationals within the Community. 2) For this purpose, Member States agree to conclude a Protocol on the Free Movement of Persons, Right of Residence and Right of Establishment'.¹⁸⁹⁷

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

The Immigration Act 2002¹⁸⁹⁸ and its regulations¹⁸⁹⁹ govern South Africa's visa and migration permit system. It distinguishes between temporary residence permits and permanent residence permits, with various types of visas available for different purposes. The system also includes a point-based system for work visas, assessing applicants based on factors like qualifications, work experience, and salary.

Temporary Residence Permits:

Visitor's Visas: For short-term visits (less than 90 days) or longer stays (over 90 days, but not exceeding 3 years).

Study Visas: For international students.

Work Visas: Including General Work Visas and Critical Skills Work Visas.

Other Temporary Visas: For business, medical treatment, relatives, retired persons, exchange programmes.

¹⁸⁹⁶

https://au.int/sites/default/files/treaties/36403-treaty-protocol_on_free_movement_of_persons_in_africa_e.pdf accessed 10 May 2025.

¹⁸⁹⁷ <https://au.int/en/treaties/treaty-establishing-african-economic-community> accessed 10 May 2025.

¹⁸⁹⁸ https://www.gov.za/sites/default/files/gcis_document/201409/a13-020.pdf accessed 10 May 2025.

¹⁸⁹⁹ https://www.dha.gov.za/images/final_Immigration_Regulations_2014_1.pdf accessed 10 May 2025.

Permanent Residence Permits:

Granted to individuals who meet specific criteria and are deemed able to contribute to the South African economy.

Considered under Section 26 (Direct Residency Permits) and Section 27 (Residency-on-Other-Grounds Permits) of the Immigration Act.

Points-Based System for Work Visas:

Introduced for General Work Visas and Critical Skills Visas.

Applicants accumulate points based on factors like qualifications, work experience, salary, and other criteria.

Applicants typically need to score 100 points or more to qualify.

Other Key Aspects:

Visa Types: The Department of Home Affairs (DHA) offers various visa types for different purposes, including visitor's visas, study visas, work visas, and more.

Immigration Permits: Issued by Regional Offices of the Department of Home Affairs, with extensions available for those unable to arrive within the initial validity period.

Required Documents: Visa applications usually require a valid passport, passport photos, proof of financial means, and other documentation related to the purpose of visit.

e-Visa System: South Africa has an e-Visa system for certain nationalities, streamlining the visa application process. South Africa launched its electronic visa system (e-Visa) in November 2019. This system is designed to facilitate the entry of international travellers, notably by enabling nationals of certain countries to obtain a visa online, without having to visit a South African embassy.

The e-Visa programme has been rolled out progressively, is currently available for the following 34 countries, and aims to simplify entry formalities for tourism and business: Albania, Algeria, Belarus, Bulgaria, Cameroon, China, Comoros, Congo, Côte d'Ivoire, Croatia, Cuba, Democratic Republic of Congo, Egypt, Ethiopia, Ghana, Guinea, India, Indonesia, Iran, Kenya, Liberia, Lithuania, Mali, Mexico, Morocco, Niger, Nigeria, Pakistan, Philippines, Romania, Saudi Arabia, Senegal, Slovakia and Uganda.

Citizens of several countries are exempt from visa requirements for short-term tourist or business stays in South Africa.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Several migratory statuses allow non-nationals to reside in South Africa for more than three months, including temporary residence permits for work, study, business, or family, as well as permanent residence permits. Refugees and asylum seekers also have specific statuses that allow them to reside in the country for extended periods.

Temporary Residence Permits:

Work Permits: Issued to foreign nationals who have a job offer in South Africa and meet certain requirements.

Study Permits: Granted to individuals who intend to study at a South African educational institution.

Business Permits: Available to those who want to invest in or manage a business in South Africa.

Family/Partner Visas: For spouses, life partners, and dependent children of South African citizens or permanent residents, or family members of foreign nationals already in the country on work or study permits.

Relative's Visa: Allows family members of South African citizens or permanent residents to reside in the country.

Retirement Visa: For foreign nationals who have sufficient funds to support themselves in retirement.

Permanent Residence Permits:

Direct Residence Permits: Available to individuals who have been residing in South Africa on work permits for a minimum of five years, or who are spouses or dependents of South African citizens or permanent residents.

Refugee Status: Granted to individuals who have a well-founded fear of persecution in their home country and are granted protection under the Refugees Act.

Other Statuses:

Asylum Seeker: Individuals who have applied for refugee status but are awaiting a decision on their application.

Special Visas: For certain categories, such as intra-company transfers, exchange visas, and religious visas, which may allow for longer stays

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

South Africa's legal framework for international protection primarily relies on the Refugees Act, 130 of 1998¹⁹⁰⁰ and international conventions like the 1951 UN Refugee Convention,¹⁹⁰¹ the 1967 Protocol relating to the Status of Refugees,¹⁹⁰² and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.¹⁹⁰³ This framework governs the process for asylum seekers and refugees, including their rights and obligations.

The Refugees Act, 130 of 1998: This Act is the primary piece of legislation in South Africa that regulates the granting of refugee status and asylum, outlining the process for applications, the rights and obligations of refugees, and the grounds for recognition. The Act, along with subsequent amendments, defines refugee status, outlines the application process, and provides for the rights and protections of refugees, including the right to seek employment and access to basic services.

Key aspects of the Refugees Act include:

Definition of a Refugee: The Act defines a refugee as a person who, owing to a well-founded fear of persecution, is unable or unwilling to return to their country of origin.

Application for Asylum: Asylum seekers must apply for refugee status within five days of entering South Africa, reporting to a Refugee Reception Office.

Rights of Refugees: Refugees are entitled to an identity document, the right to seek employment, and access to basic health services and education.

Appeal Process: The Act establishes the Refugee Appeals Authority to hear and determine appeals against decisions regarding refugee status.

Removal of Refugees: The Act also provides for the removal of refugees and asylum seekers under certain circumstances, such as when they have committed serious crimes or pose a threat to public order.

Protection of Dependants: The Act includes provisions for the protection of the spouses and dependants of refugees and asylum seekers.

¹⁹⁰⁰ https://www.gov.za/sites/default/files/gcis_document/201409/a130-980.pdf accessed 10 May 2025.

¹⁹⁰¹ <https://www.unhcr.org/sites/default/files/legacy-pdf/4ca34be29.pdf> accessed 10 May 2025.

¹⁹⁰² https://treaties.un.org/doc/Treaties/1967/10/19671004%2007-06%20AM/Ch_V_5p.pdf accessed 10 May 2025.

¹⁹⁰³ <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa> accessed 10 May 2025.

Amendment and Interpretation: The Act has been amended and is interpreted in a manner consistent with international conventions and domestic law.

Eligibility Procedure: Asylum Seeker

A person enters the Republic of South Africa through a port of entry (a land border post, airport or harbour), claims to be an asylum seeker and is, therefore, issued with a section 23 Permit which is a non - renewable “asylum transit permit” of the Immigration Act.

The permit is valid for a period of 14 days only and authorizes the person to report to the nearest Refugee Reception Office in order to apply for asylum in terms of section 21 of the Refugee Act.

The asylum seeker is required to furnish, a section 23 permit, any proof of identification from the country of origin, a travel document if in possession of one.

The asylum seeker lodges in person his application at a designated Refugee Reception Office where an admissibility hearing takes place. The following are done, applicant's fingerprints taken in the prescribed manner, Interpreter if secured (if necessary), first interview conducted by a Refugee Reception Officer (RRO) and BI-1590 form duly completed, applicant's data and image captured in the refugee system, an asylum seeker's permit (a section 22 permit) is printed, signed, stamped and issued to the asylum seeker

The section 22 permit, which is valid for a period of six months, legalizes the asylum seeker stay in the Republic of South Africa temporarily pending a final decision on his application. The permit can be extended by an RRO for a further six months while the process of status determination is in progress. The holder of section 22 permit has the right to work and study in South Africa and is protected against deportation to his country of origin.

Refugee Status Determination (RSD)

Before the permit expires, the asylum seeker reports to the Refugee Reception Office for, a Refugee Status Determination Officer (RSDO) conducts a second interview. The RSDO proceed with a fair adjudication of the application, makes a decision on claims for asylum application and provides reasons for the decisions. The RSDO must on conclusion of the status determination hearing grant asylum; or reject the application as manifestly unfounded, abusive or fraudulent; or refer any question of law to the Standing Committee for Refugee Affairs (SCRA).

When granted asylum (written recognition of refugee status), a refugee is generally issued with a section 24 permit, which allows such person to remain for a specified period of 2 years in South Africa, and it is renewable upon expiration of its validity after the review process by an RSDO. In this case, the refugee must write a letter requesting the extension of his or her refugee status. She/he is also allowed to work and study in South Africa whilst the permit is valid.

Refugee Enabling Documents

A refugee must apply for a refugee ID at any Refugee Reception Office within 15 days in the prescribed manner. After being issued with an ID, a refugee can apply for a UNCTD (United Nations Convention Travel Document) at any Refugee Reception Office in the prescribed manner. An ID is free.

Appeal and Review Process

In case of rejection, an asylum seeker or refugee who believes that he has a well-founded fear of persecution but whose claim has been rejected, may decide to appeal against the rejection decision of the RSDO to the Refugee Appeal Board (RAB) in the prescribed manner within 30 days after the decision has been handed over to them.

The Appeal Board conducts an appeal hearing during which the appellant who is entitled to a fair hearing have the rights to be heard and to present his case fully. The RAB is responsible for considering and deciding appeals on decisions made by RSDOs.

The RAB may after hearing an appeal confirm or set aside or substitute the decision of the RSDO. In respect of manifestly unfounded applications, the Standing Committee for Refugee Affairs (SCRA) reviews or confirms or sets aside decisions taken by the RSDO and refer cases back to RSDO for determination within 14 days as well as monitors in general the decisions of the RSDO.

Humanitarian Visas:

While the Refugees Act primarily focuses on refugee status, South Africa may also grant humanitarian visas to individuals facing dire circumstances, though the specific criteria and process may differ. Yet, in South Africa, humanitarian visas are primarily processed through the asylum seeker and refugee permit system, rather than a specific “humanitarian visa” category. Individuals fleeing persecution or seeking refuge should apply for an asylum seeker’s permit at a Refugee Reception Office (RRO). If asylum is granted, a refugee permit (Section 24 permit) is issued.

Rights and Obligations:

Refugees in South Africa enjoy a range of rights, including the right to work, access to education, and healthcare, according to the UNHCR. They also have obligations, such as respecting South African laws and customs.

The rights as a recognized refugee in South Africa are:

The right to a formal written recognition of refugee status: Formal Refugee Recognition – section 24 permit;

The right to enjoy full legal protection, which includes the rights set out in Chapter 2 of the Constitution and the right to remain in the Republic of South Africa;

The possibility to apply for permanent residence after five years of continuous residence in the Republic from the date on which she/he has been recognized as a refugee, if the Standing Committee certifies that the person will remain a refugee indefinitely;

The entitlement to an identity document and to a South African refugee travel document;

The entitlement to seek employment;

The entitlement to the same basic health services and basic primary education, which the inhabitants of the Republic receive from time to time.

The responsibilities as a recognized refugee in South Africa are:

The responsibility to abide by South Africa's laws;

Apply for an identity card immediately (this 'refugee ID' is valid for the same time period as the refugee recognition document);

Must submit, in writing, an intention to extend refugee documentation, 90 days before it expires at the designated Refugee Reception Office;

Cannot leave South Africa without a travel document, and may apply for a refugee travel document, if travel is going to be undertaken, and subject to further application requirements;

Must notify the officials at the Refugee Reception Office of any change in address;

The refugee document also states that it can be withdrawn 'if the holder has been convicted and sentenced for a criminal offence'. In addition to these conditions, the refugee also have the duty to provide accurate information to the Government, UNHCR and partners.

However, the White Paper on Citizenship, Immigration and Refugee Protection, released by the South African Government in April 2024,¹⁹⁰⁴ states that South Africa should review and potentially withdraw from both the 1951 UN Refugee Convention and the 1969 OAU Convention. This review is aimed at re-acceding with reservations, similar to other countries, particularly regarding the protection of socio-economic rights for refugees.

The government's justification for this move appears to be a desire to tighten immigration control and address what it perceives as challenges related to irregular migration and the influx of refugees and asylum seekers. There are also claims that the first democratic government made a mistake by failing to have reservations in place regarding socio-economic rights.

The proposed withdrawal or modification of commitments could have significant implications for the protection of refugees and asylum seekers in South Africa. Concerns have been raised that such a move could lead to chain deportations and other harms, particularly if safe and effective protection measures are not in place in other countries.

¹⁹⁰⁴ https://www.gov.za/sites/default/files/gcis_document/202404/50530gon4745.pdf accessed 10 May 2025.

The White Paper has generated a strong public response, with various stakeholders, including individuals, public interest groups, and international organizations, expressing their views on the proposed changes. In this regard, UNHCR has expressed concern about the proposed withdrawal and re-acceding with reservations, particularly regarding employment and education, arguing that it would be an unnecessary step and a departure from South Africa's leadership in supporting a norm-based international system, according to a UNHCR statement on the White Paper. UNHCR believes withdrawing from the Convention and re-acceding with reservations would mark a departure from South Africa's role as a leader in the international refugee protection framework. UNHCR's Assistant High Commissioner for Protection has noted that withdrawing from the Convention and re-acceding with reservations would not provide the immediate, practical solutions South Africa is seeking to address the influx of foreign nationals. UNHCR also highlighted the challenges faced by refugees in South Africa, including xenophobia, difficulties accessing documentation, and limited access to social and economic support. UNHCR has specifically pointed out the concern about reservations regarding access to employment and education, as these are crucial for integration and self-sufficiency. UNHCR has also expressed concern about recent funding cuts, which are affecting organizations supporting refugees, particularly those with disabilities and women.¹⁹⁰⁵

South Africa provides specific provisions for foreign victims of trafficking to remain in the country. The Prevention and Combating of Trafficking in Persons Act (PACOTIP Act) allows for visitor's visas to be granted for recovery and reflection periods, which can be extended. This allows victims to access support programs and make informed decisions about cooperating with law enforcement.

The PACOTIP Act (Act No. 47 of 2013)¹⁹⁰⁶ outlines the legal framework for combating trafficking in persons in South Africa. The Act allows for the granting of visitor's visas to foreign victims of trafficking who may be able to assist in police investigations. These visas are granted for a recovery and reflection period, initially up to three months, which can be extended for a further three months. This period allows victims to access various programs and support services to help them make informed decisions about cooperation with law enforcement and prosecuting authorities. Despite the provisions, there have been ongoing concerns about the implementation of immigration provisions and the ability of foreign victims to access them.¹⁹⁰⁷

More in detail, the PACOTIP Act aims to implement South Africa's commitments under international laws and agreements regarding trafficking in persons, especially women and children. The Act criminalizes various forms of trafficking, including recruitment, transportation, transfer, harbouring, or receipt of persons by means of threat, force, deception, or coercion. The PACOTIP Act provides for the protection and assistance of victims of human trafficking, including access to healthcare, support services, and legal representation. The Act prescribes severe penalties for trafficking offenses, including significant fines and imprisonment. The Act also establishes mechanisms for its coordinated implementation,

¹⁹⁰⁵

<https://www.refworld.org/en/download/147563#:~:text=In%20UNHCR's%20view%2C%20withdrawing%20from,a%20norm%2Dbased%20international%20system>. Accessed 10 May 2025.

¹⁹⁰⁶ https://www.gov.za/sites/default/files/gcis_document/201409/36715gon544.pdf accessed 10 May 2025.

¹⁹⁰⁷ <https://2021-2025.state.gov/reports/2022-trafficking-in-persons-report/south-africa/> accessed 10 May 2025.

application, and administration, involving various government departments and agencies. Finally, the Act recognizes South Africa's obligations under the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.¹⁹⁰⁸ South Africa ratified this protocol on 20 February 2004.

South Africa offers a specific permission to stay, a letter of recognition, for victims of human trafficking. However, this permission is not conditioned on the victim's cooperation with authorities or the payment of any fees. The letter of recognition is a key document for identifying and protecting victims, and it is part of the legal framework for assisting them.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Family reunification in South Africa involves bringing a recognized refugee or asylum seeker's dependent family members into the country to join them. This process is known as "family joining" or "family unification". The application process and requirements are outlined in the Refugees Act. Dependent family members, such as spouses, unmarried children, and destitute, aged, or frail relatives, of a recognized refugee or asylum seeker can apply to join them in South Africa.

Legal Basis:

Section 3(c) of the Refugees Act of South Africa, which states that dependent family members can be granted refugee status (or asylum seeker status), governs the process.

The family unit is typically documented under one file, ensuring that the family is recognized together. The individual seeking refugee status or asylum will apply for their family members to be included in their file. The South African Department of Home Affairs will review the application and determine if family reunification is granted.

In order to do this, the Department of Home Affairs requires various documents, including proof of kinship, an undertaking from the South African citizen or permanent resident to support the family member, and medical reports.

The right to family unity is recognized and accepted under international legal instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR).

Assistance:

Organizations like the International Committee of the Red Cross (ICRC) and the South African Red Cross Society offer assistance in tracing and re-establishing contact with family members.

¹⁹⁰⁸ https://www.unodc.org/documents/treaties/Special/2000_Protocol_to_Prevent_2C_Suppress_7-and_Punish_Trafficking_in_Persons.pdf accessed 10 May 2025.

Child Protection:

The Children's Act 38 of 2005¹⁹⁰⁹ directs that children in alternative care be placed as close as possible to their family to foster reunification.

Section 187 of the Act focuses on the principle that a child in need of care and protection should be removed from their parents with the view of achieving reunification if possible and if it is in the child's best interest. The Act places the best interests of the child at the forefront of all decisions, including those related to reunification.

Additionally, the Act defines the responsibilities and rights of parents, including the responsibility to care for their child, maintain contact, and provide financial support. The Act also acknowledges the need for support services to assist parents in fulfilling their responsibilities and to facilitate reunification. These services can include counselling, parenting support, and other interventions.

If reunification is not possible, the Act provides for alternative care arrangements, such as foster care or child- and youth-care centres, ensuring the child's safety and well-being. The Act also addresses parental responsibilities and rights agreements, which can help define the roles and responsibilities of parents in a child's life, even in situations where reunification is not possible.

In essence, the Children's Act 38 of 2005 prioritizes family reunification, but recognizes that it must always be in the best interests of the child. The Act provides a framework for ensuring the child's safety and well-being, while also supporting parents in their efforts to rebuild their relationship with their child and provide a stable family environment.

The Government of the Republic of South Africa must authorize the family reunification. For relatives to join as a relative of a South African citizen or permanent resident, the citizen or resident must be able to provide support and maintenance.

In South Africa reunification, is permitted for both formally married spouses and partners in a permanent homosexual or heterosexual relationship, provided evidence of the relationship is presented to the Department of Home Affairs. Reunification is allowed for minor children of the sponsor or their spouse, provided they are dependent on the sponsor or spouse and unmarried.

In some cases, dependent parents or siblings may also be eligible for reunification, but this is often dependent on the specific circumstances and the requirements of the Refugees Act and other domestic laws. To facilitate family reunification, individuals must provide evidence of their relationship to the Department of Home Affairs, such as marriage certificates, birth certificates, or other documents proving the relationship.

There may be exceptional situations where reunification is granted even when not all conditions have been met, but these require the sponsor to demonstrate special circumstances.

¹⁹⁰⁹ <https://www.justice.gov.za/legislation/acts/2005-038%20childrensact.pdf> accessed 10 May 2025.

Overall, there is no general international agreement explicitly regulating family reunification for all migrants, and the specific requirements and eligibility criteria can vary between countries.

South African law recognizes the concept of cohabitation, but it does not offer the same legal protections as marriage. Partners who cohabit may enter into a cohabitation agreement to define their rights and obligations, but this is not a legal requirement. Cohabiting partners may have limited legal rights compared to married couples, especially in terms of inheritance and property division. While a draft Domestic Partnership Bill was published in 2008 to address these gaps, it has not been passed, leaving cohabitants without statutory protection.

The Revised White Paper on Families in South Africa (31 March 2021), although not legally binding, provides for general guidelines about what is intended for “family” in South Africa.¹⁹¹⁰

5. What are the conditions for naturalization in the reviewed state?

To be considered for naturalization in South Africa, applicants must typically have held a valid permanent residence permit for at least five years and demonstrate knowledge of at least one of South Africa’s official languages. The founding provisions of South Africa’s Constitution recognise 12 official languages: Afrikaans, English, isiNdebele, isiXhosa, isiZulu, Sepedi (also known as Sesotho sa Leboa), Sesotho, Setswana, siSwati, Tshivenda, Xitsonga and, since 2023, South African Sign Language or SASL.

Additionally, applicants must have good character, intend to remain in South Africa, and have met certain physical presence requirements, including not being absent from the country for more than 90 days per year within the previous five years.

In certain circumstances, such as being married to a South African citizen, the residency requirement may be reduced.

Applications typically require the completed DHA-529 form, proof of permanent residence, language proficiency test results, a background check, police clearance from previous countries of citizenship, and proof of payment of the application fee.

Successful applicants are required to attend a compulsory induction seminar and a naturalization ceremony.

The legal basis for naturalization in South Africa is primarily the South African Citizenship Act 88 of 1995.¹⁹¹¹ This act outlines the requirements and procedures for individuals to become South African citizens through naturalization. Additionally, the Act may be amended or supplemented by other relevant legislation, like the South African Constitution regarding citizenship.

Applicants must also be citizens of countries that allow dual citizenship or renounce their foreign citizenship if dual citizenship is not allowed.

¹⁹¹⁰ https://www.gov.za/sites/default/files/gcis_document/202106/44724gon540.pdf accessed 10 May 2025.

¹⁹¹¹ <https://www.gov.za/documents/south-african-citizenship-act> accessed 10 May 2025. See, in particular, Section 4 of the Act (“Citizenship by Naturalization”).

In May 2025, the Constitutional Court has confirmed the unconstitutionality of a law which automatically stripped South Africans of citizenship if they took citizenship of another country.¹⁹¹²

The court, in a unanimous decision, has struck down the relevant section of the South African Citizenship Act, declaring it invalid from its promulgation in October 1995.

The court also declared that affected people are now deemed not to have lost their citizenship.

The respondents, the Minister and Director-General of Home Affairs, were ordered to pay the costs of the application.

The Democratic Alliance Party (DA) initially brought the matter to court. The party lost its initial challenge in the Pretoria High Court, which ruled that the section was not irrational and did not infringe on constitutional rights, but won in the Supreme Court of Appeal (SCA).

The matter came before the Constitutional Court for confirmation of the SCA unconstitutionality ruling. The Minister and the DG agreed to abide by the decision of the court.

Justice Steven Majiedt, writing for the Constitutional Court, said the application was supported by Phillip Platjes, a chartered accountant born in Cape Town who lost his South African citizenship because of the provisions of the Act.

He left South Africa to teach English in South Korea in November 2002. He never intended his departure to be permanent. However, while overseas he met a British citizen who he later married.

The couple lived in the United Kingdom. He was naturalised, through marriage, as a citizen of the UK in 2007. He believed he would then have “dual citizenship”, but seven years later, when he went to renew his expired South African passport at the South African embassy in London, he found out he had lost his South African citizenship.

Justice Majiedt said Platjes received his passport back, cut at the corners with the words “cancelled” stamped across the pages, as well as a letter stating that he had committed a voluntary act, which resulted in the automatic loss of his citizenship.

However, he remained a permanent resident.

“He says this was one of the saddest days in his life as he was desirous of retaining his South African citizenship”, Justice Majiedt said.

He said the DA said it had brought the court application in defence of many South Africans living abroad “who had acquired a second citizenship in good faith”. The party said this automatic loss of citizenship occurred without their knowledge.

The DA had contended that this was a violation of the right to citizenship without justifiable reasons.

The respondents initially opposed the application in the Pretoria High Court and in the SCA.

¹⁹¹² Democratic Alliance v Minister of Home Affairs and Another CCT184/23. Case CCT 184/23 [2025] ZACC 08. Hearing Date: 05 November 2024. Judgement Date: 06 May 2025 <https://collections.concourt.org.za/handle/20.500.12144/38508> accessed 10 May 2025.

They argued that the section affected those who had “voluntarily” given up their citizenship and that those people could make an application to the Minister for permission to hold dual citizenship.

After the High Court dismissed the application, the SCA ruled that the section of the Act was arbitrary and irrational.

It held that there was no reason why individuals who applied for citizenship of another country must, by operation of law, lose their South African citizenship.

The SCA also held that this treated South Africans who already had dual citizenship differently from those who intend to acquire citizenship of another country and, the SCA found, the section of the Act unjustifiably limited political rights, the right to enter and remain in South Africa, and the rights to freedom of trade, occupation and profession.

Justice Majiedt said the right to citizenship was “cherished” and should not be lightly removed.

“Loss of citizenship has severe consequences. It entails being deemed a foreigner.”

“Where the law automatically terminates citizenship without any forewarning and even knowledge, simply on account of dual citizenship, that is plainly a deprivation of citizenship.”

He said all laws were subject to the Constitution and the respondents had failed to advance any legitimate purpose for the section.

He said the section also did not provide any criteria for how the Minister’s discretion was to be exercised.

“The Minister is simply given unconstrained free rein to determine in (her) untrammelled discretion whether to permit dual citizenship.”

Justice Majiedt said the SCA’s reasoning could not be faulted and the plight of Plaatjies “vividly demonstrated” the irrationality of the section of the Act and that it was a constitutional aberration.

He said the Act had come into effect in October 1995, under the interim constitution, and had remained in place under the current constitution.

It was invalid under both, so the declaration of invalidity must take effect from October 1995.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- g. temporary and permanent resident migrants;*
- h. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- i. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- j. refugees;*
- k. asylum seekers;*
- l. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

-

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

-

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

-

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

-

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

-

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

-

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

-

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

-

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

-

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

In South Africa, non-nationals have the same right to a basic education as nationals. This means undocumented children, asylum seekers, and refugee status individuals cannot be denied access to public schools. The right to a basic education is enshrined in the Constitution and supported by national legislation and court rulings.

The South African Constitution¹⁹¹³ guarantees everyone the right to a basic education. This right applies regardless of nationality, immigration status, or any other characteristic.

The South African Schools Act¹⁹¹⁴ prohibits any form of unfair discrimination in admitting learners, including those who are undocumented or non-South African citizens.

While documentation is often required for enrolment, the focus is on residency permits and not necessarily South African citizenship. South African courts have consistently upheld the right to a basic education for all, even without proper documentation, in cases like *Minister of Home Affairs v Watchenuka*¹⁹¹⁵ and *Mubake v Home Affairs*.¹⁹¹⁶

Despite legal protections, practical challenges in accessing education can still exist for non-nationals, including: Gaps in birth registration, challenges in asylum seeker processes, and the complexity of migration can make it difficult for non-nationals to obtain necessary documentation. Some school administrators may resist enrolling undocumented or non-citizen learners, leading to denials of access.¹⁹¹⁷ Non-nationals may face socioeconomic challenges that hinder their ability to afford school fees, uniforms, and other essential supplies. Efforts are ongoing to address the challenges to educational access for non-nationals, including improving policy implementation, addressing policy gaps, and developing approaches that are more effective to ensure their participation in basic education.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

-

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

-

Are there any final observations you would like to make? Please write below.

¹⁹¹³ <https://www.gov.za/documents/constitution/constitution-republic-south-africa-04-feb-1997> accessed 10 May 2025.

¹⁹¹⁴ https://www.gov.za/sites/default/files/gcis_document/201409/act84of1996.pdf accessed 10 May 2025.

¹⁹¹⁵ *Minister of Home Affairs and Others v Watchenuka and Others* (010/2003) [2003] ZASCA 142; [2004] 1 All SA 21 (SCA); 2004 (2) BCLR 120 (SCA); 2004 (4) SA 326 (SCA) (28 November 2003) <https://www.saflii.org/za/cases/ZASCA/2003/142.html> accessed 10 May 2025.

¹⁹¹⁶ *Mubake and Others v Minister of Home Affairs and Others* (72342/2012) [2015] ZAGPPHC 1037; 2016 (2) SA 220 (GP) (9 July 2015) <https://www.saflii.org/za/cases/ZAGPPHC/2015/1037.html> accessed 10 May 2025.

¹⁹¹⁷ <https://blogs.lse.ac.uk/africaatlse/2024/06/27/foreign-nationals-are-facing-multifaced-xenophobia-in-south-africa/> accessed 10 May 2025.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

December 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Republic of Korea

Authors: Jong Hyeok Lee

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	No	Yes (1992)
1967 Protocol to the Convention relating to the Status of Refugees	No	Yes (1992)
1954 Convention relating to the Status of Stateless Persons	No	Yes (1962)
1961 Convention on the Reduction of Statelessness	No	No
International Covenant on Civil and Political Rights (ICCPR)	No	Yes (1990)
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	No	Yes (1990)
International Covenant on Economic, Social and Cultural Rights (ICESCR)	No	Yes (1990)
Optional Protocol to the International Covenant on Economic,	No	No

Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	No	No
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	No	Yes (1995)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	No	No
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	Yes (1978)	Yes (1978)
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes (1983)	Yes (1984)
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	No	Yes (2006)
Convention on the Rights of the Child (CRC)	Yes (1990)	Yes (1991)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	Yes (2000)	Yes (2004)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	Yes (2000)	Yes (2004)
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	No	No
Convention on the Rights of Persons with Disabilities (CRPD)	Yes (2007)	Yes (2008)
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	No	Yes (2022)
ILO Forced Labour Convention (No. 29)	N/A	Yes (2021)
2014 Protocol to the ILO Forced Labour Convention (No. 29)	N/A	No
ILO Migration for Employment Convention (Revised) (No. 97)	N/A	No
ILO Equal Remuneration Convention (No. 100)	N/A	Yes (1997)
ILO Discrimination (Employment and Occupation) Convention	N/A	Yes (1998)

(No. 111)		
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	N/A	No

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	N/A	N/A
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	N/A	N/A
Convention governing the Specific Aspects of Refugee Problems in Africa	N/A	N/A
African Charter on the Rights and Welfare of the Child	N/A	N/A
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	N/A	N/A
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	N/A	N/A
European Convention on Human Rights (ECHR)	N/A	N/A
Protocols to the European Convention on Human Rights (list which ones):	N/A	N/A
European Social Charter (ESC)	N/A	N/A
European Convention on the Legal Status of Migrant Workers	N/A	N/A
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	N/A	N/A
American Convention on Human Rights (ACHR)	N/A	N/A
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	N/A	N/A

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	N/A	N/A
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	N/A	N/A
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	N/A	N/A
Inter-American Convention against All Forms of Discrimination and Intolerance	N/A	N/A
Inter-American Convention Protecting the Human Rights of Older Persons	N/A	N/A

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Among the free trade agreements (FTAs) concluded by the Republic of Korea (hereinafter “Korea”), the following include dedicated chapters on the movement of natural persons, which may be considered relevant to migration. Listed in the order of their conclusion, they are:

- (i) the Korea-India FTA (Chapter 8)¹⁹¹⁸
- (ii) the Korea-Australia FTA (Chapter 10)¹⁹¹⁹
- (iii) the Korea-China FTA (Chapter 11)¹⁹²⁰

Separately, the following FTAs contain chapters specifically addressing temporary entry for business persons. Here are listed in the order of their conclusion:

- (i) the Korea-Chile FTA (Chapter 13)¹⁹²¹
- (ii) the Korea-Singapore FTA (Chapter 13)¹⁹²²
- (iii) the Korea-Peru FTA (Chapter 11)¹⁹²³
- (iv) the Korea-Canada FTA (Chapter 12)¹⁹²⁴

¹⁹¹⁸ https://fta.motir.go.kr/webmodule/_PSD_FTA/in/1/eng/CEPA_CHAP8_eng.pdf

¹⁹¹⁹ https://fta.motir.go.kr/webmodule/_PSD_FTA/au/1/eng/KAFTA%20Chapter%2010_eng.pdf

¹⁹²⁰ https://fta.motir.go.kr/webmodule/_PSD_FTA/cn/1/eng/CH_11_Movement%20of%20Natural%20Persons_eng.pdf

¹⁹²¹ https://fta.motir.go.kr/webmodule/_PSD_FTA/cl/1/eng/Chapter13_eng.pdf

¹⁹²² https://fta.motir.go.kr/webmodule/_PSD_FTA/sg/1/eng/13.CH13_TEMPORARY%20ENTRY%20OF%20BUSINESS%20PERSONS_eng.pdf

¹⁹²³ https://fta.motir.go.kr/webmodule/_PSD_FTA/pe/1/eng/chapter11_eng.pdf

¹⁹²⁴ https://fta.motir.go.kr/webmodule/_PSD_FTA/ca/2/eng/12_EN_CKFTA_Ch_12_Temp_Entry_eng.pdf

- (v) the Korea-New Zealand FTA (Chapter 9)¹⁹²⁵
- (vi) the Korea-Colombia FTA (Chapter 10)¹⁹²⁶
- (vii) the Korea-Central America FTA (Chapter 12)¹⁹²⁷
- (viii) the Korea-Israel FTA (Chapter 11)¹⁹²⁸

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries, such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

As a general rule, a foreign national must obtain both a visa and a residence permit in order to enter and reside in Korea.¹⁹²⁹ Unless one of the exceptional circumstances enumerated in Article 7(2) of the Immigration Act¹⁹³⁰ applies — most notably, where a visa exemption agreement exists between Korea and the foreign national’s country of nationality¹⁹³¹ — the individual must hold a valid passport and a visa issued by the Minister of Justice to be permitted entry into Korea (Article 7(1) of the Immigration Act). Furthermore, in order to reside in Korea after entry, a foreign national must hold either (i) a general permit of stay pursuant to Article 10(a) and Article 10-2 of the Immigration Act, or (ii) a permanent residence permit pursuant to Article 10(b) and Article 10-3 of the same Act.¹⁹³²

¹⁹²⁵ https://fta.motir.go.kr/webmodule/_PSD_FTA/nz/2/eng/CHAPTER_9_eng.pdf

¹⁹²⁶ https://fta.motir.go.kr/webmodule/_PSD_FTA/co/1/eng/10%20TEBP_Final_en.pdf

¹⁹²⁷ https://fta.motir.go.kr/webmodule/_PSD_FTA/c_america/2/eng/12%20Temporary%20Entry%20for%20Business%20Persons_eng.pdf

¹⁹²⁸ https://fta.motir.go.kr/webmodule/_PSD_FTA/il/1/eng/11.%20Temporary%20Entry%20of%20Business%20Persons_eng.pdf

¹⁹²⁹ In the Korean legal system, a “permit of stay” does not correspond to a separate residence permit applied for prior to entry. Rather, the relevant status of stay is granted upon entry on the basis of the visa issued (or visa exemption), and a separate application is required only where the foreign national seeks to extend the period of stay or to change the status of stay pursuant to Articles 24 and 25 of the Immigration Act.

¹⁹³⁰ https://elaw.klri.re.kr/eng_service/lawView.do?hseq=33079&lang=ENG However, the unofficial English translation available at this link is based on the version as of 15 October 2014. The currently applicable law was amended on 22 July 2025 and has been in force since 23 January 2026. Accordingly, the link does not fully reflect all newly introduced or amended provisions that are presently in force. The currently applicable provisions of the Immigration Act, in Korean, can be found at the following link: <http://law.go.kr/법령/출입국관리법>

¹⁹³¹ Korea grants mutual visa free entry for 30 or 90 days with a number of countries, subject, where applicable, to the Korea Electronic Travel Authorization (K-ETA) system. The list of these countries is available at the following link: <https://www.k-eta.go.kr/portal/guide/viewetaqualification.do>

¹⁹³² Articles 10-2 and 10-3 were newly introduced on 20 March 2018 and therefore do not appear in the unofficial English translation available at the link cited in footnote 13. The Reviewer’s unofficial English translation of Articles 10-2 and 10-3 is set out below:

Article 10-2 (General Permit of Stay) (1) The general permit of stay under Article 10(1) (hereinafter referred to as the “general permit of stay”) shall be classified as follows:

According to Article 10-2(1) of the Immigration Act, the general permit of stay is categorised into a permit for short-term stay and a permit for long-term stay. The former refers to a status of stay that allows an individual to remain in Korea for up to 90 days for purposes such as tourism or visiting (or for a longer period, if permitted under a visa exemption agreement or based on the principle of reciprocity).¹⁹³³ The latter refers to a status of stay that permits residence in Korea for more than 90 days for purposes such as study, training, investment, intra-company transfer, or marriage, within the maximum duration prescribed by the Ordinance of the Ministry of Justice.

Article 10-2(2) of the Immigration Act provides that the specific types of short-term and long-term stay shall be determined by the Presidential Decree of the Immigration Act. Short-term stay permit includes the following categories:¹⁹³⁴

- (i) B-1 (Visa Exemption)
- (ii) B-2 (Tourism and Transit)
- (iii) C-1 (Temporary News Coverage)
- (iv) C-3 (Short-Term Visit)

-
- (i) Short-term permit of stay: A permit of stay that allows a person to remain in Korea for a period not exceeding 90 days for purposes such as tourism or visiting (or, where exceeding 90 days pursuant to a visa exemption agreement or the principle of reciprocity, for such period);
 - (ii) Long-term permit of stay: A permit of stay that allows a person to reside in Korea for more than 90 days for purposes such as study, training, investment, intra-company transfer, or marriage, within the maximum period of stay prescribed by Ordinance of the Ministry of Justice.

(2) The types of short-term and long-term permits of stay under paragraph (1), the persons eligible for each permit of stay, and the scope of activities permitted under each permit shall be determined by Presidential Decree, taking into account the purpose of stay, whether employment activities are permitted, and other relevant considerations.

Article 10-3 (Permanent Residence Permit)

(1) A foreigner who holds the permanent residence permit under Article 10(2) (hereinafter referred to as the “permanent residence permit”) shall not be subject to restrictions on the scope of activities or the period of stay.

(2) A person who intends to acquire a permanent residence permit shall be a person meeting the qualifications for permanent residence prescribed by Presidential Decree and shall satisfy all of the following requirements:

- (i) He or she shall have good conduct, including compliance with the laws and regulations of Korea;
- (ii) He or she shall have the ability to maintain a livelihood through his or her own income or assets, or those of family members living together;
- (iii) He or she shall possess the basic qualifications necessary to continue residing in Korea, including Korean language proficiency and understanding of Korean society and culture.

(3) Notwithstanding paragraph (2)(ii) and (iii), the Minister of Justice may, in accordance with Presidential Decree, mitigate or waive all or part of the requirements under paragraph (2)(ii) and (iii) for persons prescribed by Presidential Decree, such as persons who have rendered special contributions to Korea, persons with outstanding ability in specific fields including science, business management, education, culture and the arts, or sports, and persons who have invested a specified amount or more in Korea.

(4) Matters necessary for the standards and scope of the requirements under paragraph (2) shall be prescribed by Ordinance of the Ministry of Justice.

¹⁹³³ Even in the case of short-term stays, such as 60 days, a foreign national must hold a valid status of stay pursuant to Article 10 of the Immigration Act. However, this does not require a separate application for a general permit of stay. The status of stay is granted at the time of entry through the visa issued or, where applicable, under a visa exemption arrangement. A separate application becomes necessary only where the foreign national seeks to extend the period of stay or change the status of stay pursuant to Articles 24 and 25 of the Immigration Act.

¹⁹³⁴ For details, see Annex Table 1 of the Presidential Decree of the Immigration Act.

(v) C-4 (Short-Term Employment).¹⁹³⁵

For details regarding long-term stay permits and permanent residence permits, see Question 2 below.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, a visa/permit for labour, educational, or health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer-sponsored visas, skilled visas, and refugee visas. Temporary visas (TR) include student and employer-sponsored visas, among others. There are also bridging visas in addition to PR and TR.

A migratory status that allows a non-national to reside in Korea for more than three months may be classified as either a long-term stay permit or a permanent residence permit.

Long-term stay permit

The categories of persons eligible for long-term stay permits and the scope of their permitted activities are prescribed in Annex Table 1-2 of the Presidential Decree of the Immigration Act.¹⁹³⁶ The following are the categories, with additional details provided in footnotes for certain statuses:¹⁹³⁷

- (i) A-1 (Diplomacy)
- (ii) A-2 (Official Duty)
- (iii) A-3 (Treaty-Based)

¹⁹³⁵ This status is divided into three subcategories: (a) individuals who intend to engage in short-term, profit-oriented employment in fields corresponding to those listed under stay permits E-1 (Professor) through E-7 (Specific Activities) in Annex Table 1-2 of the Presidential Decree, including temporary performance, advertising, fashion modelling, lectures, research, and technical guidance; (b) individuals who are dispatched to public institutions or private organisations in Korea under various service contracts for short-term profit-making activities related to the installation, maintenance, or repair of machinery, or the manufacturing and supervision of shipbuilding or industrial facilities; (c) individuals recognised by the Minister of Justice, in consultation with the heads of relevant central administrative agencies, as intending to engage in short-term employment in agriculture (e.g., cultivation and harvesting of crops) or primary processing of marine products.

¹⁹³⁶ https://elaw.klri.re.kr/eng_service/lawView.do?hseq=61257&lang=ENG However, the unofficial English translation available at this link is based on the version as of 16 August 2022. The currently applicable law was amended on 27 May 2025 and has been in force since 1 June 2025. Accordingly, the link does not fully reflect all newly introduced or amended provisions that are presently in force. The currently applicable provisions of the Presidential Decree of the Immigration Act, in Korean, can be found at the following link: <http://law.go.kr/법령/출입국관리법시행령>

¹⁹³⁷ The alphabetical prefixes (A, D, E, F, H, G) indicate broad functional groupings based on the principal purpose of stay under Annex Table 1-2 of the Presidential Decree of the Immigration Act (e.g. A for diplomatic and official activities, D for training and designated activities, E for employment, F for residence-oriented statuses, H for special employment programmes, and G for miscellaneous and humanitarian categories).

- (iv) D-1 (Cultural and Artistic Activities)
- (v) D-2 (Study)
- (vi) D-3 (Industrial Training)
- (vii) D-4 (General Training)
- (viii) D-5 (News Coverage)
- (ix) D-6 (Religious Work)
- (x) D-7 (Intra-Company Transfer)
- (xi) D-8 (Corporate Investment)
- (xii) D-9 (Trade Management)
- (xiii) D-10 (Job-Seeking)
- (xiv) E-1 (Professor)
- (xv) E-2 (Foreign Language Instructor)
- (xvi) E-3 (Research)
- (xvii) E-4 (Technological Guidance)
- (xviii) E-5 (Professional Employment)
- (xix) E-6 (Arts and Entertainment)
- (xx) E-7 (Specific Activities)
- (xxi) E-8 (Seasonal Work)¹⁹³⁸
- (xxii) E-9 (Non-Professional Employment)¹⁹³⁹
- (xxiii) E-10 (Maritime Crew Employment)¹⁹⁴⁰
- (xxiv) F-1 (Visiting and Cohabitation)¹⁹⁴¹

¹⁹³⁸ This status is granted to individuals recognised by the Minister of Justice, in consultation with the heads of relevant central administrative agencies, who engage in seasonal employment in agriculture (including cultivation, harvesting, and primary processing of agricultural products) or in the primary processing of marine products.

¹⁹³⁹ This status applies to individuals who meet the employment eligibility requirements under the Act on the Employment of Foreign Workers, and who intend to engage in non-professional occupations in Korea. It excludes individuals seeking employment in fields that require specific qualifications or experience.

¹⁹⁴⁰ This status is granted to individuals who fall under specified categories and have entered into a crew employment contract to work for six months or more as crew members, as defined in Article 2(6) of the Seafarers Act.

¹⁹⁴¹ This status applies to: (a) individuals recognised by the Minister of Justice as intending to reside in Korea for purposes such as visiting relatives, family cohabitation, dependency, household support, or other comparable reasons; (b) domestic assistants of persons holding A-1 (Diplomacy) or A-2 (Official Duty) status, or of foreign investors (including executives and employees of corporate entities) who have invested USD 500,000 or more and hold D-8 (Corporate Investment), F-2 (Residency), F-5 (Permanent Residency), or F-6 (Marriage Immigration) status; or of foreign investors (including executives and employees of corporate entities) in high-tech or IT sectors such as AI, IT, e-commerce, BT, or NT, who also hold D-8, F-2, F-5, or F-6 status; (c) domestic partners not forming the same household as a person holding A-1 to A-3 status, provided that the necessity of their cohabitation is recognised by the Minister of Justice; (d) individuals recognised by the Minister of Justice as having unavoidable circumstances that require long-term stay in Korea without engaging in employment activities.

- (xxv) F-2 (Residency)¹⁹⁴²
- (xxvi) F-3 (Dependent Family)¹⁹⁴³
- (xxvii) F-4 (Overseas Korean)
- (xxviii) F-6 (Marriage Immigration)¹⁹⁴⁴
- (xxix) H-1 (Working Holiday)
- (xxx) H-2 (Working Visit)¹⁹⁴⁵

¹⁹⁴² This status is granted to the following categories: (a) the minor children of Korean nationals, and the spouses and minor children of individuals holding F-5 (Permanent Residency) status under Annex Table 1-3; (b) persons born from a marital relationship with a Korean national (including de facto marriages), as recognised by the Minister of Justice; (c) individuals recognised as refugees; (d) foreign investors falling within specific categories under the Foreign Investment Promotion Act; (e) individuals who have lost their F-5 (Permanent Residency) status under Annex Table 1-3 and are deemed by the Minister of Justice to require continued residence in Korea for the protection of their living interests (excluding individuals subject to deportation); (f) persons who have continuously resided in Korea for five years or more under a status other than A-1 to A-3, and who have established their principal residence in Korea, as recognised by the Minister of Justice; (h) persons appointed as public officials under the State Public Officials Act or the Local Public Officials Act, as recognised by the Minister of Justice; (i) Persons who meet the criteria relating to age, education, or income as publicly notified by the Minister of Justice; (j) foreigners who have invested in real estate or hold positions as executives or shareholders of a corporation, in accordance with standards publicly notified by the Minister of Justice concerning the region, type, or amount of investment. In such cases, the number of status grants per corporation may be limited based on investment amount or other considerations; (k) individuals recognised by the Minister of Justice as having made a special contribution to Korea or as having promoted the public interest; (l) the spouse and children of individuals falling under subparagraphs (a) to (k), provided that the children meet the criteria prescribed by the Minister of Justice; (m) individuals meeting the publicly notified criteria of the Minister of Justice concerning industries and regions for the purpose of addressing labour shortages and revitalising local communities in depopulated areas as defined in Article 2(12) of the Special Act on Decentralisation and Balanced National Development.

¹⁹⁴³ This status is granted to the spouses and minor children (who are not accompanied by another parent) of individuals holding D-1 (Cultural and Artistic Activities), D-2 (Study), D-4 (General Training) to E-7 (Specific Activities), F-2 (Residency), F-4 (Overseas Korean), or H-2 (Working Visit) status. However, it excludes the spouses and children of individuals holding F-2 status under subparagraph (l).

¹⁹⁴⁴ This status applies to: (a) spouses of Korean nationals; (b) fathers or mothers raising a child born of a marriage (including de facto marriage) with a Korean national, as recognised by the Minister of Justice; (c) Individuals who had been residing in Korea as the spouse of a Korean national but are no longer able to maintain the marital relationship due to the Korean spouse's death, disappearance, or other circumstances not attributable to the foreign spouse, as recognised by the Minister of Justice.

¹⁹⁴⁵ This status applies to persons of foreign nationality who fall under Article 2(2) of the Act on the Immigration and Legal Status of Overseas Koreans, are at least 18 years of age, and are recognised by the Minister of Justice as eligible to reside in Korea for the activities listed in subparagraph (b); individuals already eligible for F-4 (Overseas Korean) status are excluded. Eligible persons must meet one of the following conditions: (1) those whose family register, closed family register, or removed family register includes a Korean national as their parent at the time of birth, and their lineal descendants; (2) persons invited by a Korean national, or by a holder of F-5 (Permanent Residency) status under subparagraph 5 of Annex Table 1-3, who is related within the eighth degree of kinship or the fourth degree of affinity; (3) individuals who fall under the category of national meritorious persons or their families as defined in the Act on the Honorable Treatment and Support of Persons of Distinguished Service to the State or the Act on the Honorable Treatment of Persons of Distinguished Service to the Independence of Korea; (4) individuals who have made special contributions to Korea or have otherwise promoted the national interest; (5) parents or spouses of a person currently enrolled in a Korean institution under D-2 (Study) status for at least one semester; (6) individuals who voluntarily departed Korea in accordance with the standards and procedures prescribed by the Minister of Justice for the purpose of maintaining immigration order; or (7) other individuals deemed by the Minister of Justice to require residence on grounds equivalent to those in items (1) through (6).

Permitted activities under this status include: (1) visiting, temporary cohabitation with relatives, tourism, recuperation, field trips, participation in friendly sports events, non-commercial cultural or artistic activities,

(xxxi) G-1 (Other).

Permanent residence permit

According to Article 10-3(1) of the Immigration Act, a foreign national who holds a permanent residence permit may reside in Korea without restrictions on the scope of permitted activities or the duration of stay. The requirements for obtaining permanent resident status are set forth in Article 10-3(2) of the Immigration Act, Article 12-2 and Annex Table 1-3 of the Presidential Decree of the Immigration Act.

Pursuant to Article 10-3(2) of the Immigration Act, an applicant for permanent residence must:

- (i) have no record of having violated Korean law;
- (ii) possess the financial means to maintain a stable livelihood through personal income, assets, or the income or assets of cohabiting family members; and
- (iii) demonstrate basic competencies necessary for long-term residence in Korean society, including Korean language proficiency and understanding of Korean society and culture.

However, under Article 10-3(3) of the Immigration Act, the requirements under (ii) and/or (iii) may be relaxed or waived for individuals prescribed in Article 12-2(2) of the Presidential Decree — namely, those who have made a special contribution to Korea, those with exceptional abilities in specific fields such as science, business management, education, culture and the arts, or sports, and those who have made a qualifying investment above a specified amount.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

A foreign national may obtain refugee status in Korea through the following legal pathways. An individual already present in Korea may apply for refugee recognition by applying to the head of a local immigration office (Article 5(1) of the Refugee Act).¹⁹⁴⁶ Alternatively, a foreign national may submit a refugee application at the time of immigration inspection at an airport or

attendance at meetings, collection of academic materials, commercial activities such as market research, business communication, and contract negotiations, and other comparable activities; or (2) employment in the following industrial sectors, excluding those classified under Korean Standard Industrial Classifications (KSIC) E and G through U: (a) crop production (011); (b) animal production (012); (c) services related to crop and animal production (014); (d) specific forestry activities (02011, 02012, 02020, and 02040), limited to positions classified under Korean Standard Occupational Classification (KSOC) code 99102 in certified corporate entities pursuant to applicable forestry legislation; (e) coastal and near-sea fishing (03112); (f) aquaculture (0321); (g) metal mining (06); (h) non-metallic mineral mining, excluding fuel (07); (i) mining support services (08); (j) manufacturing (KSIC codes 10 to 34), limited to enterprises employing fewer than 300 workers or with capital of KRW 8 billion or less, or regional mid-sized companies under the Act on the Promotion of Root Industries; (l) construction (41 to 42), excluding projects involving industrial or environmental facilities at power plants, steel mills, or petrochemical sites; and (m) other sectors as specified, with detailed restrictions and exceptions in fields such as logistics, publishing, education, financial services, and real estate, as notified by the Minister of Justice and the Commissioner of Statistics Korea under the Statistics Act.

¹⁹⁴⁶ https://elaw.klri.re.kr/eng_service/lawView.do?hseq=43622&lang=ENG

seaport (Article 6(1) of the Refugee Act). When an application is submitted at a port of entry, the Minister of Justice must decide within seven days whether to refer the application for substantive examination. If no decision is made within that period, the applicant must be permitted to enter Korea (Article 6(3) of the Refugee Act).

Upon receipt of a refugee application, the head of the competent immigration office must, without delay, conduct an interview and a fact-finding investigation, and submit the results along with the application to the Minister of Justice (Article 8 of the Refugee Act). A decision on refugee status must be made within six months from the date of submission (Article 18(4) of the Refugee Act). If the Minister of Justice determines that the application is well-founded, refugee status must be granted and a certificate of refugee recognition issued to the applicant (Article 18(1) of the Refugee Act). Once refugee status is granted and the certificate is issued, the individual becomes eligible for long-term stay under F-2-Subparagraph (c) of Annex Table 1-2 of the Presidential Decree of the Immigration Act.

If refugee status is denied, the applicant may file an objection in accordance with the procedures set out in Article 21 of the Refugee Act.

A person granted permission for humanitarian stay refers to a foreign national who is not recognised as a refugee but who, due to a risk of torture, inhumane treatment or punishment, or other comparable circumstances, is deemed to face a serious threat to life, liberty or security of person, and who has therefore been granted permission to stay in Korea by the Minister of Justice (Article 2(3) of the Refugee Act; Article 2(1) of the Presidential Decree of the Refugee Act). A person granted humanitarian stay must obtain a stay permit, or permission to change their permit or extend their period of stay, in accordance with Articles 23 to 25 of the Immigration Act (Article 2(3) of the Presidential Decree of the Refugee Act).¹⁹⁴⁷

Korea does not provide a stand-alone residence permit specifically designated for victims of trafficking in persons. However, victims may be granted a G-1 (Other) status of stay on humanitarian grounds or in connection with ongoing criminal proceedings.

Publicly available visa category listings indicate that sub-categories within the G-1 status include victims of prostitution, sexual violence, and human trafficking. In addition, foreign government reporting has noted that G-1 status has been used in practice to allow foreign victims of trafficking and related crimes to remain in Korea, including during investigation or prosecution.¹⁹⁴⁸

The granting of such status is not formally conditioned on the victim's cooperation with law enforcement authorities, although cooperation may be relevant where criminal proceedings are involved. No specific statutory fee exemption is provided for victims of trafficking, and general immigration application fees apply.

¹⁹⁴⁷ https://elaw.klri.re.kr/eng_service/lawView.do?hseq=44659&lang=ENG

¹⁹⁴⁸ <https://www.state.gov/reports/2024-trafficking-in-persons-report/south-korea/>

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Migration for purposes of family reunification is regulated through specific categories of long-term stay permits under Annex Table 1-2 of the Presidential Decree of the Immigration Act, in particular F-1 (Visiting and Cohabitation), F-2 (Residency), F-3 (Dependent Family), and F-6 (Marriage Immigration).¹⁹⁴⁹

(i) Spouse: A foreign national married to a Korean national may obtain F-6 (Marriage Immigration) status.¹⁹⁵⁰ This category is designed specifically for marriage-based residence and constitutes the principal pathway for spousal reunification. In limited circumstances, cohabiting family members or spouses of foreign nationals may qualify under F-1 (Visiting and Cohabitation) or F-3 (Dependent Family), depending on the sponsor's status of stay. Eligibility is assessed based on the authenticity of the marital relationship and compliance with applicable statutory and regulatory requirements.

(ii) Child: Minor children of a Korean national or of a foreign national holding an eligible long-term stay permit may obtain F-3 (Dependent Family) status. Where the child is directly connected to a Korean national parent, F-2 (Residency) status may also be available in certain circumstances. The assessment typically considers dependency, cohabitation, and lawful parental status in Korea.

(iii) Parents: Parents of Korean nationals may, in specific circumstances, obtain F-1 (Visiting and Cohabitation) status where cohabitation and dependency can be demonstrated. The Immigration Act does not establish an automatic entitlement to parental reunification; rather, residence is granted on a discretionary basis in accordance with the applicable provisions of the Presidential Decree and subordinate regulations.

(iv) Other Family Relationships: Other family members may qualify for F-1 (Visiting and Cohabitation) status where a close familial relationship and actual cohabitation are established. Korean immigration law does not provide a general or open-ended right to extended family reunification; eligibility depends on whether the relationship falls within the categories recognised under Annex Table 1-2 and the relevant implementing regulations.

Reunification with non-nuclear family members is permitted only in limited circumstances. The Immigration Act and its subordinate regulations do not provide a general right to extended family reunification. In practice, certain non-nuclear family members may qualify for F-1 (Visiting and Cohabitation) status where cohabitation and dependency can be demonstrated. This may include, for example, parents or other close relatives of a Korean national or of a foreign national holding an eligible long-term status of stay. The granting of such status is discretionary and subject to the specific eligibility criteria set out in the relevant Presidential Decree and implementing regulations.

¹⁹⁴⁹ For further details, see the footnotes provided in the response to Question 2 for each of these statuses.

¹⁹⁵⁰ Under current Korean law, F-6 (Marriage Immigration) status presupposes a legally valid marriage. Korean law does not presently recognise same-sex marriage, and *de facto* or non-registered partnerships do not qualify as a basis for F-6 status.

Reunification is not allowed for partners who are not formally married. Marriage-based residence (F-6 status) presupposes a legally valid marriage under Korean law. *De facto* relationships or non-registered partnerships do not constitute an independent basis for residence for the purpose of family reunification.

5. What are the conditions for naturalization in the reviewed state?

A foreign national who has not previously acquired Korean nationality may obtain it through naturalisation upon receiving approval from the Minister of Justice (Article 4(1) of the Nationality Act).¹⁹⁵¹ Naturalisation is classified into three types under the Act:

- (i) general naturalisation (Article 5);
- (ii) simplified naturalisation (Article 6); and
- (iii) special naturalisation (Article 7).

Upon receiving an application for naturalisation, the Minister of Justice examines whether the applicant satisfies the relevant requirements set out in Articles 5 to 7 of the Nationality Act, and grants naturalisation only to those who meet these conditions (Article 4(2)). The requirements for each type of naturalisation are as follows.

A. General naturalisation:

- (i) the applicant must have had a domicile in Korea continuously for at least five years;
- (ii) The applicant must possess a permanent residence permit in Korea;
- (iii) the applicant must be of legal age under Korean civil law, which is 19 years of age;
- (iv) the applicant must have no record of violating Korean laws or regulations;
- (v) the applicant must be able to sustain a stable livelihood either through personal assets or skills, or by relying on family members with whom they share a household;
- (vi) the applicant must possess basic knowledge and qualities required of a Korean national, such as proficiency in the Korean language and an understanding of Korean customs. In practice, this requirement is assessed through the Korea Immigration and Integration Program (KIIP) or through a naturalisation examination and interview administered by the Ministry of Justice. The specific procedures and evaluation methods are determined by the relevant implementing regulations; and
- (vii) the Minister of Justice must determine that granting naturalisation would not undermine national security, public order, or the public interest.

¹⁹⁵¹ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=61297&lang=ENG

B. Simplified naturalisation:

This category comprises two types. First, a foreign national who has continuously resided in Korea for at least three years may be granted naturalisation without satisfying requirements (i) and (ii) listed under Section A, if they fall under any of the following categories:

- a. a person whose father or mother was a Korean national;
- b. a person born in Korea whose father or mother was also born in Korea; or
- c. an adopted child of a Korean national who was of legal age under Korean civil law at the time of the adoption.

Second, a foreign national whose spouse is a Korean national may be granted naturalisation without satisfying requirements (i) and (ii) listed under Section A, if they meet any of the following conditions:

- (a) the person has been residing in Korea continuously for at least two years while remaining married to the Korean spouse;
- (b) at least three years have passed since the marriage, and the person has continuously resided in Korea for at least one year while remaining married to the Korean spouse;
- (c) the person has not met the residence periods specified in (a) or (b), but was residing in Korea while married to the Korean spouse and, due to the spouse's death, disappearance, or other reasons not attributable to the applicant, was unable to maintain a normal marital relationship, and has since fulfilled the remaining period required under (a) or (b), as deemed appropriate by the Minister of Justice; or
- (d) the person has not satisfied the conditions in (a) or (b), but is raising or must raise a minor child born of the marriage with the Korean spouse, and has fulfilled the remaining period required under (a) or (b), as deemed appropriate by the Minister of Justice.

C. Special naturalisation: A foreign national residing in Korea may be granted naturalisation even if they do not satisfy requirements (i), (ii), (iii), or (v) listed under Section A, if they fall under any of the following categories:

- (a) a person whose father or mother is a Korean national, provided that this does not apply to an adopted child who was adopted after reaching the age of majority under the Korean Civil Act;
- (b) a person who has rendered exceptional service to Korea; or
- (c) a person recognised as having outstanding ability in a specific field such as science, economics, culture, or sports, and whose naturalisation is deemed to serve the national interest of Korea.

The criteria and procedures for special naturalisation under (b) and (c) are set out in detail in Article 6 of the Presidential Decree of the Nationality Act.

Part II - Rights while staying

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Although Korea does not have a comprehensive anti-discrimination statute, the legal basis for addressing discrimination is found in a combination of constitutional guarantees and specific legislative provisions, including the National Human Rights Commission Act.¹⁹⁵² It has established the National Human Rights Commission of Korea (NHRCK) under the National Human Rights Commission Act. Under this institutional framework, remedial measures may be pursued, and laws, institutions, policies, and practices may be corrected or improved, where human rights violations or discriminatory acts are committed against individuals, whether Korean nationals or foreign nationals, by the Korean government, local governments, Korean legal persons, organisations, or private individuals. Article 4 of the Act provides that the Act applies to Korean nationals and to foreign nationals present within the territory of Korea.

Pursuant to Article 2(c) of the Act, a “discriminatory act” means, without reasonable justification, any of the following acts committed on one of the prohibited grounds enumerated in the Act, including country of origin or ethnic origin: (i) favouring, excluding, distinguishing, or otherwise disadvantaging a particular person in matters relating to employment; (ii) favouring, excluding, distinguishing, or otherwise disadvantaging a particular person in connection with the supply or use of goods, services, means of transportation, commercial facilities, land, or residential facilities; (iii) favouring, excluding, distinguishing, or otherwise disadvantaging a particular person in connection with education or training, or access thereto, at educational or vocational training institutions; or (iv) sexual harassment.

Victims of human rights violations or discriminatory acts may file a petition with the NHRCK, which is empowered to conduct an investigation in response to such a petition (Article 30(1) of the Act). In addition, even in the absence of a petition, the NHRCK may initiate an investigation *ex officio* where there exist reasonable grounds to believe that a human rights violation or discriminatory act has occurred and the matter is considered serious (Article 30(3) of the Act).

At the level of specific statutes, Article 10 of the Framework Act on the Treatment of Foreigners Residing in Korea¹⁹⁵³ provides that the Korean government and local governments shall endeavour to prevent unreasonable discrimination against foreign residents and their children and to promote their human rights, including through education, public awareness activities, and other necessary measures. In the field of employment, Article 6 of the Labour Standards Act¹⁹⁵⁴ prohibits employers from discriminating against workers with respect to working conditions on the ground of nationality. This principle is reinforced by Article 22 of the Act on

¹⁹⁵² https://elaw.klri.re.kr/kor_service/lawView.do?hseq=69109&lang=ENG

¹⁹⁵³ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=69493&lang=ENG

¹⁹⁵⁴ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=68845&lang=ENG

the Employment of Foreign Workers,¹⁹⁵⁵ which expressly prohibits employers from engaging in unjust discriminatory treatment of foreign workers on the ground of their status as foreign workers.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Article 15(2)(c) of the Public Official Election Act provides that a foreign national who is 18 years of age or older, who has held permanent resident status for at least three years as of the reference date for the preparation of the electoral register, and who is entered in the foreign resident register of the relevant local government, is entitled to vote in elections for members of the local council and the head of the local government in the electoral district concerned. This includes elections at the metropolitan level, for example, the Mayor of Seoul, as well as at the municipal level. It does not extend to presidential or National Assembly elections.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders are required to stay in a specific Australian state (e.g., SA or Victoria) for 2 years, thereby restricting their mobility.

Article 17(2) of the Immigration Act provides that foreign nationals staying in Korea shall not engage in political activities,¹⁹⁵⁶ except as permitted under the Act or other statutes.

In addition, where the Minister of Justice considers it necessary for the protection of public order or important national interests, the Minister may restrict the place of residence or the scope of activities of foreign nationals staying in Korea, or impose other necessary conditions (Article 22 of the Act).

Furthermore, where a foreign national staying in Korea seeks to engage in activities falling within a different status of stay in addition to those permitted under the current status, prior authorisation for activities outside the permitted scope of stay must be obtained from the Minister of Justice (Article 20 of the Act).

¹⁹⁵⁵ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=60984&lang=ENG

¹⁹⁵⁶ The Immigration Act does not define “political activities.” The term is interpreted in light of related legislation and administrative practice and generally encompasses activities such as participation in election campaigns, political party activities, or organised political movements. Ordinary expression of opinion or academic discussion is not automatically treated as prohibited political activity. The scope of the term remains open-textured and is assessed on a case-by-case basis.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Where a foreigner, whether a natural person or a legal entity, enters into a contract to acquire immovables located in Korea, the acquisition must be reported within 60 days from the date of conclusion of the contract to the head of the local government having jurisdiction over the location of the immovables (Article 8(1) of the Act on the Reporting of Transactions in Immovables).¹⁹⁵⁷ Where a foreigner acquires immovables located in Korea by a means other than a contract, such as inheritance or public auction, the acquisition must be reported within six months from the date of acquisition to the head of the local government having jurisdiction over the location of the immovables (Article 8(2) of the Act). In addition, where ownership of immovables located in Korea changes from a Korean, whether a natural person or a legal entity, to a foreigner, and the foreigner intends to continue to hold such immovables, the foreigner must report the change within six months from the date of the change in ownership to the head of the local government having jurisdiction over the location of the immovables (Article 8(3) of the Act).

Where land to be acquired by a foreigner is located in any of the following areas, prior authorisation for land acquisition must be obtained from the head of the local government having jurisdiction over the location of the land before the conclusion of the acquisition contract, and any land acquisition contract concluded without such authorisation shall not take effect (Article 9(1) and (3) of the Act):

- (i) military bases and military facilities protection zones;
- (ii) cultural heritage and related preservation facilities or protection zones;
- (iii) natural monuments and related preservation facilities or protection zones;
- (iv) ecological and landscape conservation areas; and
- (v) special wildlife protection areas.

Article 7 of the Act provides for the principle of reciprocity. Where the home State of a foreigner prohibits or restricts the acquisition or transfer of land by a Korean, the acquisition or transfer of land in Korea by foreigners of that State may likewise be prohibited or restricted.

¹⁹⁵⁷ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=70428&lang=ENG

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

A foreign national seeking to engage in employment in Korea must obtain a status of stay that permits employment (Article 18(1) of the Immigration Act).¹⁹⁵⁸ A foreign national holding such a status of stay may not work at a place of employment other than the designated workplace (Article 18(2) of the Act). Any foreign national whose period of stay in Korea exceeds 90 days is required to complete foreign national registration (Article 31(1) of the Act). The statuses of stay that permit employment include the following (Article 23 of the Act's Presidential Decree):

- A. Short term stay status: C-4 (short term employment, up to 90 days);
- B. Long term stay statuses primarily for employment: E-1 (Professor); E-2 (Foreign Language Instructor); E-3 (Research); E-4 (Technical Instruction); E-5 (Professional Employment); E-6 (Arts and Entertainment); E-7 (Specific Activities);¹⁹⁵⁹ E-8 (Seasonal Employment);¹⁹⁶⁰ E-9 (Non-professional Employment);¹⁹⁶¹ E-10 (Seafarer);

¹⁹⁵⁸ Foreign students holding D-2 (Study) or D-4 (General Training) status of stay may engage in part time employment, subject to statutory limitations. D-2 status of stay is not granted for enrolment in institutions such as open universities, distance learning universities, broadcasting and correspondence universities, cyber universities, or lifelong education institutions. For students holding D-2 status of stay, engagement as a researcher for a company, including an industry university cooperation foundation affiliated with the host university, is not permitted without prior authorisation, as it may constitute an activity outside the permitted scope of the status of stay. Where the activity constitutes research or internship activities conducted within the host university, participation in research or internships unrelated to the student's academic programme requires permission for part time employment. Where the activity constitutes research or internship activities conducted outside the host university, (i) participation related to the student's academic programme requires permission for part time employment, whereas (ii) participation unrelated to the academic programme requires permission for engaging in activities outside the scope of the status of stay.

¹⁹⁵⁹ A person who intends to engage in activities specially designated by the Minister of Justice pursuant to a contract with a public institution or a private organisation within Korea.

¹⁹⁶⁰ A person who intends to engage in employment in crop cultivation, harvesting, and the primary processing of fisheries products.

¹⁹⁶¹ It refers to a person who satisfies the domestic employment requirements prescribed under the Act on the Employment of Foreign Workers (FEA). Employment under the E-9 status of stay is subject to the Employment Permit System, which operates on the basis of memoranda of understanding concluded with labour sending States (17 States as of 2025). The permitted industries are those determined by the Foreign Workforce Policy Committee and include manufacturing, shipbuilding, construction, agriculture and livestock farming, fisheries, and service industries (Article 5(1) of the FEA). The foreign worker, including a person who seeks re-employment after leaving Korea upon the expiry of a previous employment period and after the lapse of six months, must pass a Korean language proficiency test administered in the worker's home State (Article 7(2) of the Foreigner Employment Act). The employer and the foreign worker must conclude an employment contract using the standard employment contract form, for a period agreed upon by the parties within a maximum of three years (Article 9(1) of the FEA). Within 15 days of entry into Korea, the foreign worker must complete employment training provided by the Human Resources Development Service of Korea (Article 11 of the FEA; Article 11 of its Enforcement Rule). Re-employment under the FEA is not permitted unless at least six months have elapsed from the date of departure from Korea (Article 18 3 of the FEA).

C. Long term stay statuses permitting employment as an ancillary activity: F-2 (Residence); F-3 (Accompanying Family); F-4 (Overseas Koreans); F-6 (Marriage Migration);

D. Long term stay statuses for special forms of employment: H-1 (Working Holiday); H-2 (Visit and Employment).¹⁹⁶²

The Minister of Justice may grant permission to engage in employment to a person granted humanitarian stay (Article 39 of the Refugee Act). Where six months have elapsed from the date of an application for refugee status, the Minister of Justice may also permit the applicant to engage in employment (Article 40(2) of the Act; Article 18 of the Act's Presidential Decree).

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of a company's employees to be non-nationals. In contrast, others require companies to prove they tried to hire national workers before hiring a non-national (e.g., labour market testing in Australia).

Employment conditions for foreign nationals vary depending on the status of stay, as outlined below:

A. E-9 (Non-professional Employment) and H-2 (Visit and Employment): Employment under E-9 and H-2 status of stay is permitted only in industries designated by the Foreign Workforce Policy Committee. Employment is allowed within the prescribed quota and only after domestic recruitment efforts have been made, upon issuance of an Employment Permit (for E-9) or a Special Employment Confirmation (for H-2). Under E-9 status of stay, employment is limited to the following sectors: manufacturing, construction, agriculture and livestock farming, fisheries, forestry, mining, and services. Under H-2 status of stay, employment is permitted in manufacturing, construction, agriculture and livestock farming, fisheries, and forestry. Employment in mining and service sectors is also generally permitted, unless the relevant sector is designated as an excluded industry.

B. E-7 (Specific Activities): Employment under E-7 status of stay is permitted only for occupations designated by the Minister of Justice. As a general rule, invitations are restricted where the domestic employer has fewer than five employees or where the enterprise is primarily oriented toward the domestic market. In occupations designated for the protection of domestic employment, foreign nationals may, in principle, be employed only within 20 percent of the number of Korean employees. Wage requirements are assessed on a differentiated, occupation-specific basis according to the level of professional expertise, by reference to the average wage of Korean nationals with comparable duties and experience, in order to prevent the circumvention of wage standards through the use of low-paid foreign labour. The inviting employer is required to submit a statement of reasons for invitation, describing the necessity of

¹⁹⁶² This status is granted to overseas Koreans who do not qualify for the F-4 status of stay and operates under a special employment permit scheme. The permitted industries and scale of employment are determined and publicly announced by the Foreign Workforce Policy Committee. Employers may hire eligible foreign job seekers who have entered Korea under an H-2 status of stay and are registered in the foreign job seeker registry, and must report such employment (Article 12(4) of the FEA).

employing foreign nationals, the plan for their utilisation, and the expected effects, and may also be required to submit an employment recommendation.

C. E-8 (Seasonal Employment): Under E-8 status of stay, the number of foreign nationals who may be employed is limited according to the types of crops or fishery products and the scale of production. As a general rule, up to nine foreign workers per employer are permitted.

D. E-10 (Seafarer): Under E-10 status of stay, a ministerial notification issued by the Minister of Oceans and Fisheries, titled Standards and Scope for the Employment of Foreign Seafarers on International Vessels, prescribes the minimum number of Korean seafarers required by vessel type and by rank, including captains and chief engineers. In addition, a ministerial notification issued by the Minister of Oceans and Fisheries, titled Guidelines on the Management of Foreign Seafarers, provides that employment standards such as caps on the number of foreign seafarers and the scope of permitted service are to be determined by the Minister after consultation with seafarers' labour unions and shipowners' associations.

Foreign nationals and the following persons may not be granted a licence for domestic air transportation business or international air transportation business (Article 9(a) and (f) of the Aviation Business Act):

- foreign governments or foreign public organisations;
- foreign corporations or organisations;
- corporations in which any person falling within the foregoing categories owns one half or more of the shares or equity interests or effectively controls the business;
- corporations whose representative listed in the corporate registry is a foreign national or in which foreign nationals constitute one half or more of the registered directors; and
- corporations that have among their directors any person who is not a Korean national.

Foreign nationals or foreign corporations that have effectively acquired managerial control over a company are required to obtain prior approval from the Administrator of the Defense Acquisition Program Administration where such company seeks to participate in a national strategic weapons programme or an equivalent project, in order to prevent the overseas leakage of defence science and technology (Article 50-2 of the Defense Acquisition Program Act; Article 64-2 of its Presidential Decree).

Foreign investment triggers a requirement for prior approval by the Minister of Trade, Industry and Energy where a company, research institution, or other entity possessing national core technology developed with government-funded research and development support intends to proceed with overseas mergers and acquisitions, joint ventures, or other forms of foreign investment (Article 11-2 of the Act on Prevention of Divulgence and Protection of Industrial Technology; Article 18-2 of its Presidential Decree).

Foreign nationals who intend to give a performance in Korea, or persons who intend to invite foreign nationals to Korea for the purpose of a performance, are required to obtain a recommendation from the Korea Media Rating Board, and the same requirement applies where

any matter subject to such recommendation is to be changed (Article 6(1) of the Performance Act). Foreign nationals' performances for which no recommendation has been obtained from the Korea Media Rating Board may nevertheless be given in Korea where any of the following applies (Article 6(2) of the Act): (i) where the State or a local government invites foreign nationals to Korea to give a performance; (ii) where a foreign organisation or individual intends to give a performance in Korea for the purposes of religious rites, fellowship, or research presentation; (iii) where a domestic organisation or individual invites foreign nationals to Korea to give a performance for the purposes of religious rites, fellowship, or research presentation; or (iv) where a public interest corporation invites foreign nationals to Korea to give a performance for the purpose of contributing to the general public interest.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Foreign nationals may not be appointed as public officials in fields related to national security, security sensitive matters, confidential or classified matters. In other fields, foreign nationals may be employed, within the category of general service officials, as professional career officials or fixed term officials, and may also be appointed as politically appointed officials or special service officials, subject to the relevant statutory requirements (Article 26-3 of the State Public Officials Act; Article 4(1) of the Act's Presidential Decree).

Foreign nationals may not serve as publishers or editors of newspapers or internet newspapers, nor may they act as persons responsible for the arrangement of articles in internet news services (Article 13(1) of the Act on the Promotion of Newspapers). Unless a newspaper is published solely for distribution to members of a specific organisation, foreign governments, foreign corporations, and corporations represented by foreign nationals may not publish newspapers. In addition, a corporation in which foreign nationals or foreign corporations hold thirty percent or more of the shares may not publish a daily newspaper, and a corporation in which foreign nationals or foreign corporations hold fifty percent or more of the shares may not publish newspapers other than daily newspapers (Article 13 paragraph 4 of the Act).

Foreign nationals, foreign governments, and foreign corporations may not operate cable broadcasting businesses or cable music broadcasting businesses (Article 13(2)(a) of the Broadcasting Act). Foreign nationals may not serve as representatives or persons responsible for programming of corporations that have obtained permission or approval, or have completed registration or notification, pursuant to Article 9 of the Act.

Foreign nationals, foreign governments, and foreign corporations may not establish radio stations (Article 20(1) of the Radio Waves Act). Limited exceptions are allowed under Article 20(2) of the Act.

Foreign nationals may not acquire mining rights (Article 10-2 of the Mining Act), nor may they obtain fishing licences (Article 5(1) of the Fisheries Act). Foreign nationals may also not be licensed as maritime pilots (Article 6(a) of the Pilotage Act).

Foreign-invested corporations may not be granted a licence for nuclear power generation business, nor may plans for the manufacture or supply of nuclear fuel be approved (Article 96 of the Electric Utility Act).

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, and maternity leave, among others.

Foreign workers likewise have the legal status of “workers” and, unless a statute expressly provides otherwise, are subject to legislation on labour protections, including the Labor Standards Act, the Minimum Wage Act,¹⁹⁶³¹⁹⁶⁴ the Wage Claim Guarantee Act,¹⁹⁶⁵ the Act on the Guarantee of Employees’ Retirement Benefits,¹⁹⁶⁶ the Trade Union and Labour Relations Adjustment Act,¹⁹⁶⁷ the Act on Equal Employment Opportunity and Support for Work-Family Balance,¹⁹⁶⁸ and the Act on the Promotion of Workers’ Participation and Cooperation.¹⁹⁶⁹

The Supreme Court of Korea (15 September 1995, Docket No. 94Nu12067)¹⁹⁷⁰ has long held that, even in the case of an undocumented foreign worker, an employment contract cannot be regarded as automatically void, and that such a worker is to be recognised as a worker for so long as he or she in fact provides labour. The Court further held, in an *en banc* decision of 25 June 2015, that even a foreign worker without authorisation to work is entitled to establish or join a trade union (Docket No. 2007Du4995).¹⁹⁷¹

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Foreign nationals are also subject to the National Health Insurance Act¹⁹⁷² and, depending on their status, are treated either as employee insured persons (Article 109(2) of the Act), or as self-employed insured persons (Article 109(3) of the Act and Article 61-2 of the Act’s Enforcement Rule).¹⁹⁷³ Accordingly, they are entitled to benefits under the Act, including medical care benefits, reimbursement of medical expenses, health examinations, and benefits for assistive devices for persons with disabilities. This does not apply, however, where the foreign national’s stay in Korea is in violation of law, or where a foreign national residing in Korea is able to obtain medical coverage equivalent to that provided under the Act pursuant to

¹⁹⁶³ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=48699&lang=ENG

¹⁹⁶⁴ Professional personnel employed under an E-7 visa are subject to a separate minimum wage standard.

¹⁹⁶⁵ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=70551&lang=ENG

¹⁹⁶⁶ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=60203&lang=ENG

¹⁹⁶⁷ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=60885&lang=ENG

¹⁹⁶⁸ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=69019&lang=ENG

¹⁹⁶⁹ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=60983&lang=ENG

¹⁹⁷⁰ <https://www.law.go.kr/LSW/precInfoP.do?evtNo=94%EB%88%8412067> (in Korean)

¹⁹⁷¹ <https://www.law.go.kr/LSW/precInfoP.do?precSeq=178577> (in Korean)

¹⁹⁷² https://elaw.klri.re.kr/kor_service/lawView.do?hseq=70016&lang=ENG

¹⁹⁷³ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=71189&lang=ENG

foreign law, foreign insurance, or a contract with the employer, and the employer or the insured person applies for an exclusion from coverage (Article 109(5) of the Act).

Industrial accident compensation insurance likewise applies mandatorily to foreign workers employed in any business or workplace to which the Industrial Accident Compensation Insurance Act¹⁹⁷⁴ applies. As confirmed by the Supreme Court of Korea in its decision of 15 September 1995 (Docket No. 94Nu12067), the applicability of industrial accident compensation insurance is not affected by the worker's status of stay and therefore extends even to undocumented foreign workers.

Article 3 of the Act on Emergency Medical Care¹⁹⁷⁵ provides that a foreign national staying in Korea has the right to receive emergency medical care without discrimination on grounds such as sex, age, ethnicity, religion, social status, or economic circumstances.

In addition, Article 42 of the Refugee Act provides that the Minister of Justice may provide medical assistance to refugee applicants.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Primary and secondary education

In Korea, six years of primary education and three years of middle school education (lower-secondary education) are designated as compulsory education (Article 8(1) of the Framework Act on Education). All citizens have the right to receive compulsory education (Article 8(2) of the Act). Although three years of high school education (upper-secondary education) are not classified as compulsory education, high school education is nevertheless provided free of charge (Article 10-2 of the Elementary and Secondary Education Act).

Article 28-2(1) of the Elementary and Secondary Education Act requires the State and local governments to establish necessary educational measures in order to ensure equal educational opportunities for (i) children or students who are members of multicultural families under the Multicultural Families Support Act, and (ii) children or students who are foreign nationals residing in Korea and who are expected to enrol in, or are enrolled in, elementary schools, middle schools, or high schools. Detailed provisions concerning special considerations for the admission or transfer of foreign children are set out in Article 19 of the Presidential Decree of the Elementary and Secondary Education Act. In addition, whether a foreign child is enrolled in an elementary school, middle school, or high school is included in the scope of foreign-resident registration information (Article 47(4) of the Enforcement Rules of the Immigration Act), and such information is taken into account in assessing the status of stay of both the child and the parents.

¹⁹⁷⁴ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=69273&lang=ENG

¹⁹⁷⁵ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=69818&lang=ENG

Recognised refugees and their children under the age of 19 are entitled to receive primary and secondary education on the same basis as nationals (Article 33(1) of the Refugee Act). Refugee applicants and their family members who are minors may also receive primary and secondary education equivalent to that provided to nationals (Article 43 of the Act).

Tertiary education

With respect to admission to undergraduate programmes, universities may operate separate admission quotas for foreign students through out-of-quota special admissions. For foreign nationals and overseas Koreans, a separate quota of up to 2 percent of the annual admission capacity for each academic year may be established (Article 29(2)2 and Appendix 1 of the Presidential Decree of the Higher Education Act). Separate special admission procedures may also be operated for foreign nationals and overseas Koreans who have completed abroad all educational programmes equivalent to Korean primary and secondary education (Article 29(2)7 of the Act's Presidential Decree).

In the case of graduate-school admission, including transfer admission and readmission, separate quotas may be operated for (i) foreign nationals whose parents are both foreign nationals, and (ii) foreign nationals or overseas Koreans who have completed abroad all educational programmes equivalent to Korean primary, secondary, and tertiary education (Article 30(8)(a)(iii) and (iv) of the Act's Presidential Decree).

The Minister of Education may provide administrative and financial support necessary for the recruitment and support of foreign students in order to strengthen the global competitiveness of universities and promote exchanges and cooperation with foreign universities (Article 34-7(1) of the Act). The heads of universities may use language proficiency as part of the admission materials for foreign nationals and overseas Koreans

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance and retirement pensions, among others.

Article 8 of the Framework Act on Social Security establishes the general principle that, in applying social security schemes to foreign nationals residing in Korea, such application shall be based on the principle of reciprocity, subject to the relevant statutes and regulations.

By contrast, Article 31 of the Refugee Act provides that foreign nationals who have been recognised as refugees and who reside in Korea are entitled, notwithstanding Article 8 of the Framework Act on Social Security, to social security benefits at the same level as Korean nationals.

Article 126(1) of the National Pension Act provides that, on the condition of reciprocity, foreign nationals who are employed at workplaces covered by the Act or who reside in Korea are mandatorily insured either as employee insured persons or as self-employed insured persons; however, this provision does not apply where the law of the foreign national's home country governing a pension scheme corresponding to the Korean national pension does not apply to Korean nationals. Notwithstanding the principle of reciprocity, certain categories of foreign

nationals are automatically excluded from the scope of application of the Act (Article 111 of the Act's Presidential Decree), namely: (i) foreign nationals staying in Korea without having obtained permission for an extension of the period of stay; (ii) foreign nationals who have failed to register as foreigners or who are subject to a deportation order; and (iii) foreign nationals holding D-1, D-2, D-3, D-4, D-6, F-1, F-3, or G-1 status of stay. With respect to foreign workers, the payment of a lump-sum refund of national pension contributions is, in principle, not permitted and is allowed only on an exceptional basis (Article 126(4) of the Act).

Foreign workers who are enrolled in the national pension scheme are also subject to coverage under long-term care insurance for the elderly. However, foreign workers who satisfy certain statutory requirements may apply for exclusion from long-term care insurance coverage (Article 7(4) of the Long-Term Care Insurance Act).

Foreign workers are subject to the Employment Insurance Act. However, unemployment benefits under Chapter IV and parental leave benefits under Chapter V of the Act apply only where the employer submits an application for the enrolment of the foreign worker in employment insurance to the Korea Workers' Compensation and Welfare Service (Article 10-2(1) of the Act; Article 2 of the Act's Enforcement Rules). For other foreign nationals who have entered into employment contracts, cultural or artistic service contracts, or labour-provision contracts, all or part of the Act may be applied, taking into account the scope of permitted activities and the period of stay under the Immigration Act (Article 10-2(2) of the Act).

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

National basic livelihood security

Basic livelihood security is provided under the National Basic Livelihood Security Act to certain categories of foreign nationals registered under the Immigration Act, in accordance with Article 5-2 of the National Basic Livelihood Security Act and Article 4 of its Presidential Decree.

The eligible categories of foreign nationals are limited to the following:

- (i) A foreign national married to a Korean national, who meets one of the following conditions:
 - (a) the foreign national or the Korean spouse is pregnant;
 - (b) the foreign national is raising a minor child of Korean nationality, including stepchildren or adopted children; or
 - (c) the foreign national lives together with and supports a lineal ascendant of the Korean spouse who is a Korean national;
- (ii) A foreign national who has divorced a Korean national or whose Korean spouse has died, and who is either raising a minor child of Korean nationality or is pregnant with the deceased spouse's child.

In addition, where the requirements set out in Article 12-3 of the Act are satisfied, entitlement to medical assistance benefits is granted.

Emergency welfare support

The Emergency Aid and Support Act¹⁹⁷⁶ provides emergency assistance to persons who are in a crisis situation, as defined in Article 2 of the Act, and who are in urgent need of support. Pursuant to Article 9(1) of the Act, such assistance includes:

- (i) livelihood support, including financial assistance or in-kind support for food, clothing, and other basic necessities;
- (ii) medical support, including medical services such as examinations and treatment;
- (iii) housing support, including the provision of temporary accommodation or equivalent financial assistance;
- (iv) support for the use of social welfare facilities, including admission to or use of such facilities and the costs associated therewith; and
- (v) educational support, including tuition fees, entrance fees, school operation support fees, and the cost of school supplies for elementary, middle, and high school students.

Among foreign nationals residing in Korea, those who fall within one of the following categories may qualify as eligible recipients of emergency assistance (Article 5-2 of the Act, Article 1-2 of the Act's Presidential Decree):

- (i) a foreign national married to a Korean national;
- (ii) a foreign national who has divorced a Korean national or whose Korean spouse has died and who is caring for a lineal ascendant or descendant of Korean nationality;
- (iii) a person recognised as a refugee;
- (iv) a person who has suffered damage due to fire, crime, or natural disasters through no fault of their own; or
- (v) any other person whom the Minister of Health and Welfare considers to be in urgent need of support.

Housing supply

Article 4(1) of the Rules on Housing Supply (Ordinance of the Ministry of Land, Infrastructure and Transport)¹⁹⁷⁷ sets out the general principles governing housing supply as follows:

¹⁹⁷⁶ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=70312&lang=ENG

¹⁹⁷⁷ <https://www.law.go.kr/법령/주택공급에관한규칙> (in Korean)

- (i) “national housing” shall be supplied on a one-house-per-household basis to adult members of households without home ownership who reside in the relevant housing construction area as of the date of the public notice for tenant recruitment;
- (ii) “private housing” shall be supplied on a one-house-per-person basis to adults residing in the relevant housing construction area as of the date of such notice.

For the purposes of (i), a “member of a household without home ownership” means a member of a household in which none of the household members owns a house (Article 2(4) of the Rules). However, since foreign nationals cannot be registered as heads or members of households under the Resident Registration Act and are not subject to resident registration obligations, they are not eligible to apply for housing that requires household membership or head-of-household status.

Nevertheless, Article 42 of the Rules provides separately for special housing supply for foreign nationals. Under this provision, a project operator may, for the purpose of promoting policies to encourage foreign investment, supply housing that it constructs to foreign nationals who do not own a house, within 10 percent of the total housing units constructed, on a one-house-per-household basis, in accordance with standards determined and publicly notified by the relevant metropolitan mayor or provincial governor. In the case of national housing, the foreign national must remain without home ownership from the date of the tenant recruitment notice until the date of move-in. Where approval is obtained from the mayor or governor, the special supply ratio may exceed 10 percent.

Refugees

Special considerations are provided for refugees as follows:

- (i) foreign nationals who have been recognised as refugees and who reside in Korea are entitled, notwithstanding Article 5-2 of the National Basic Livelihood Security Act, to basic livelihood security under Articles 7 through 15 of that Act, upon application (Article 32 of the Refugee Act);
- (ii) the Minister of Justice may provide living expense support to refugee applicants (Article 40 of the Refugee Act; Article 17 of its Presidential Decree; Article 15 of its Enforcement Rules), and may also establish and operate residential facilities for refugee applicants (Article 41(1) of the Act; Article 19 of its Presidential Decree); and
- (iii) a recognised refugee who falls within the category of persons eligible for medical assistance under the Medical Care Assistance Act is deemed to be a beneficiary under that Act (Article 3-2 of the Medical Care Assistance Act).

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

May 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Spain

Author: Yago Ferreira Freire

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons		X
1961 Convention on the Reduction of Statelessness		X
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		X
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		X

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		X
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		X
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		X
ILO Migration for Employment Convention (Revised) (No. 97)		X

ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		X
Protocols to the European Convention on Human Rights (list which ones) 1, 4, 6, 7, 13) — excluding Protocol 12 and 16:		X
European Social Charter (ESC) (1961 version, not revised 1996 version)		X
European Convention on the Legal Status of Migrant Workers		X
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		X
American Convention on Human Rights (ACHR)		

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

European Convention on Nationality (ETS No. 166), European Convention on the Legal Status of Children Born out of Wedlock (ETS No. 085)

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

-

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

In Spain, the legal framework governing the right of non-nationals to reside for more than three months is grounded in Ley Orgánica 4/2000, de 11 de enero (LOEX), and its implementing regulation, Real Decreto 1155/2024, de 19 de noviembre. This normative structure establishes a wide range of migratory statuses that allow third-country nationals to remain in the territory beyond short-stay limits, provided that the applicant complies with the general and specific requirements associated with each category. These statuses are designed to reflect various legitimate grounds for residence, including employment, education, family life, humanitarian needs, and other circumstances deemed relevant by the Spanish legal order. Residence authorisations are divided into temporary and long-term forms and may include or exclude the right to work depending on their legal basis.

Temporary residence (*residencia temporal*) is the primary category available for stays exceeding ninety days and lasting up to five years, as outlined in Article 30 bis and Article 31 of the LOEX. It is typically granted initially for one year and renewable, subject to the fulfilment of conditions such as having sufficient resources, adequate housing, and compliance with public order and public health standards. Within this broader category, the law distinguishes between residence without the right to work (*residencia no lucrativa*), residence and employment (*residencia y trabajo*), and residence for family reunification purposes.

Residence for employment purposes is subdivided into residence for employed work (*por cuenta ajena*) and self-employed activity (*por cuenta propia*), as governed by Articles 36 to 38 of the LOEX and Chapters III and IV of Title IV of the Regulation. These authorisations are granted based on an existing job offer, compliance with the national employment situation, and the employer's adherence to legal obligations. A self-employed person must present a viable business plan and proof of financial means and qualifications. In both cases, the residence permit is tied to the nature and duration of the employment activity, and its renewal is contingent upon continued economic activity and social security contributions.

The framework also provides for residence authorisations on the basis of education, training, and voluntary service. These are regulated under Article 33 of the LOEX and Chapter II of Title III of the Regulation. This status is available to third-country nationals admitted to a recognised educational institution for full-time studies, professional training, or voluntary service programmes. Although not considered "residents" in a technical sense, such individuals may remain in Spain legally for the duration of their programme, typically up to one year, renewable under certain conditions. Moreover, students are allowed to engage in limited work activities if compatible with their academic schedule and subject to authorisation.

Family reunification constitutes another key pathway to legal residence for more than three months. Under Articles 16 to 19 of the LOEX and Title IV, Chapter II of the Regulation, foreign residents in Spain may request the reunification of specific family members, including spouses or registered partners, minor children, and dependent ascendants. The sponsor must demonstrate sufficient income, stable housing, and compliance with integration requirements.

Once granted, family members obtain residence authorisations that may or may not include the right to work, depending on their age and duration of stay in Spain.

Spain also provides for temporary residence under *circunstancias excepcionales*—exceptional circumstances—which constitute an important mechanism for regularising migrants in irregular situations. Articles 31.3 and 34 of the LOEX, along with Title VII of the Regulation, enumerate several forms of exceptional residence. These include *arraigo social*, for persons who can demonstrate integration and three years of residence; *arraigo laboral*, based on prior employment; *arraigo familiar*, available to parents of minors with Spanish nationality; and *arraigo socioformativo*, which facilitates regularisation for migrants undergoing professional training. In all these cases, the authorisation includes the right to work and reflects Spain’s constitutional and international commitments to human dignity and social integration.

Additionally, residence may be granted on humanitarian grounds. Article 34 of the LOEX and Sections 3 and 4 of Title VII of the Regulation permit such authorisations in cases involving victims of human trafficking, gender-based or sexual violence, victims of hate crimes, or those with serious medical conditions for which treatment is unavailable in their home country. These permits are normally time-limited but renewable and include the right to work. They may also serve as a pathway to more stable residence statuses in the future.

Beyond these forms of temporary residence, Spain recognises *residencia de larga duración* for non-nationals who have legally and continuously resided in Spain for five years. Regulated in Article 32 of the LOEX and Title X of the Regulation, this status entitles the holder to remain in Spain indefinitely and to work under equal conditions as nationals. It also facilitates intra-EU mobility through the *residencia de larga duración-UE* status, allowing the individual to reside in other Member States under certain conditions.

In addition to the above, Spain recognises status categories tied to specific situations. Residence for highly qualified workers is granted under the EU Blue Card scheme, as established in Article 38 ter of LOEX and regulated in Title IV, Chapter III, Section 2 of the 2024 Regulation. This category transposes Directive (EU) 2021/1883 and is available to third-country nationals possessing higher education qualifications and a binding work contract that meets a salary threshold of at least 1.5 times the national average. The initial permit is valid for up to two years, renewable, and enables both the worker and their family members to reside and work in Spain. Importantly, the regulation permits intra-EU mobility and accumulation of residence periods for long-term status, thus reinforcing the attractiveness of the Spanish labour market for international talent.

Seasonal workers are covered under a separate framework established in Title V of the Regulation, which transposes Directive 2014/36/EU. These residence permits apply to third-country nationals engaging in temporary, cyclical activities—most commonly in agriculture, hospitality, and tourism—for a maximum duration of nine months within a twelve-month period. Applicants must hold an employment contract and satisfy conditions concerning accommodation, medical coverage, and return guarantees. Article 106 of the Regulation affirms their right to fair labour conditions, access to redress mechanisms, and protections against abuse, while also allowing for changes in employer and extensions under specific terms. The

seasonal work permit reflects a calibrated approach to labour mobility and economic need while upholding minimum social rights.

The category of cross-border workers is addressed in Title VIII of the Regulation. These are individuals residing in a neighbouring country who cross into Spain regularly to work, and who do not seek to establish permanent residence. Although geographically limited in scope—primarily affecting mobility across the Moroccan border in Ceuta and Melilla—the framework provides for specific residence and work authorisations linked to the duration of the employment contract. This status balances border control with the need to facilitate lawful economic activity across territorial limits.

Researchers benefit from a dedicated residence category governed by Article 38 bis of LOEX and further developed in Title IV, Chapter III, Section 2 of the Regulation, pursuant to Directive 2016/801/EU. Foreign nationals admitted by officially recognised research institutions may obtain a residence authorisation for one or two years, renewable, and may also circulate within the EU for research purposes. The Regulation explicitly facilitates the mobility of family members and the eventual transition to long-term residence. This category has been key in aligning Spain's migration framework with the European Research Area and the broader goal of promoting scientific cooperation.

Entrepreneurs and investors are primarily regulated by Ley 14/2013, not the LOEX or its Regulation, but their status remains part of Spain's broader migration architecture. The residence permit for entrepreneurs (*residencia para emprendedores*) targets third-country nationals launching innovative business projects considered to be of general interest to the Spanish economy. Eligibility is contingent upon a favourable assessment of the business plan by institutions such as ENISA or ICEX. The regime offers fast-track procedures, flexible financial thresholds, and family reunification rights. This status has gained prominence as part of Spain's strategy to attract foreign direct investment and position itself as a hub for start-ups.

These specific categories represent a functional diversification of Spain's migration system, moving beyond generic residence permits to respond to strategic socio-economic and demographic objectives. Their implementation demonstrates a balance between regulatory control and openness, underpinned by European standards. Nevertheless, disparities in interpretation and procedural consistency across autonomous communities, along with administrative delays, remain ongoing challenges. Continued refinement and monitoring of these special categories are essential to ensuring both legal certainty and the protection of migrants' rights.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

The legal framework governing international protection in Spain is primarily established by Ley 12/2009, de 30 de octubre, which regulates the right to asylum and subsidiary protection, complemented by Ley Orgánica 4/2000 and its implementing regulation under Real Decreto 1155/2024. Spain is a State Party to the 1951 Convention relating to the Status of Refugees and

its 1967 Protocol, and these instruments are directly binding in Spanish law. The system also incorporates relevant EU directives, including Directive 2011/95/EU (Qualification Directive), Directive 2013/32/EU (Procedures Directive), and Directive 2013/33/EU (Reception Conditions Directive).

The principal forms of international protection under Spanish law are (1) refugee status and (2) subsidiary protection, both regulated by Articles 3 to 46 of *Ley 12/2009*. Refugee status is granted to persons who meet the criteria of Article 1A(2) of the 1951 Convention, that is, those with a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or membership of a particular social group. Subsidiary protection, as defined in Article 4 of *Ley 12/2009*, applies to persons who do not qualify as refugees but face a real risk of suffering serious harm, such as the death penalty, torture, or indiscriminate violence due to armed conflict, upon return to their country of origin.

The competent authority for processing asylum claims is the *Oficina de Asilo y Refugio* (OAR), under the Ministry of the Interior. According to Article 17 of *Ley 12/2009*, an application may be lodged at border posts, detention centres, or within the national territory. During the examination of their claim, applicants are granted temporary leave to remain and, after six months, may obtain access to employment, provided their application has been admitted to processing (as clarified in the Additional Provision Fourteen of *Real Decreto 1155/2024*).

The final recognition of refugee status entails the right to reside in Spain, work, and access public services on an equal footing with Spanish nationals, pursuant to Article 36 of *Ley 12/2009*. Beneficiaries are issued a five-year renewable residence permit. Similar provisions apply to those granted subsidiary protection, albeit with some differences regarding access to certain rights or mobility across the EU.

In addition to these core forms, Spain grants residence on humanitarian grounds under Article 46.3 of *Ley 12/2009* and Article 128 of *Real Decreto 1155/2024*. This may be issued to persons who cannot be returned for medical reasons, victims of violence or hate crimes, or where return would pose a significant threat to personal safety. For example, paragraph 3 of Article 128 allows humanitarian residence for foreigners suffering from serious medical conditions that cannot be adequately treated in their home country.

Spain also has a separate pathway for victims of trafficking in human beings, under Articles 59 and 59 bis of *Ley Orgánica 4/2000* and Chapters IV and V of Title VII of the Regulation. These provide temporary residence and work permits to victims who cooperate with authorities, and allow regularisation even in the absence of cooperation when vulnerability is proven. Similarly, women and minors who are victims of gender-based or sexual violence are entitled to residence under Articles 133–141 of *Real Decreto 1155/2024*, based on Article 31 bis of *Ley Orgánica 4/2000*.

Regarding jurisprudence, the Audiencia Nacional and the Tribunal Supremo have established important precedents. In *STS 1214/2020* (ECLI:ES:TS:2020:1214), the Supreme Court ruled that Spain must individually assess the risk of serious harm when evaluating subsidiary protection claims, affirming the duty to examine the country-of-origin information in detail. Another significant judgment, *AN, Sala de lo Contencioso, Sección 8, Sentencia 31/2021*,

annulled a denial of protection on the grounds that the administration failed to properly justify the safe return of an applicant to Cameroon, demonstrating the judiciary's role in ensuring the procedural integrity and substantive fairness of international protection determinations.

Finally, Spain applies temporary protection mechanisms, particularly in response to mass displacement, as foreseen in EU Council Directive 2001/55/EC and Article 128.1(b) of *Real Decreto 1155/2024*. This regime was most recently implemented for Ukrainian nationals under the 2022 activation of the Temporary Protection Directive by the European Commission.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Migration for the purpose of family reunification is explicitly regulated under Spanish law and constitutes one of the principal legal pathways for obtaining residence in the country. The normative basis is primarily found in *Ley Orgánica 4/2000, de 11 de enero* (LOEX), particularly in Articles 16 to 19, and in the implementing *Real Decreto 1155/2024*, Title IV, Chapter II, which together establish the conditions, procedures, and rights associated with family reunification for third-country nationals residing legally in Spain. The regime is structured to reflect both Spain's constitutional commitment to the protection of family life (Article 39 of the Spanish Constitution) and its obligations under international instruments, notably Article 8 of the European Convention on Human Rights and Directive 2003/86/EC on the right to family reunification.

According to Article 16 of LOEX, third-country nationals who have resided legally in Spain for at least one year and have obtained an authorisation for a second year of residence are entitled to request family reunification. The Regulation further details this in Article 54, requiring the applicant to demonstrate sufficient financial means to support the family members, appropriate housing conditions, and adequate integration into Spanish society. The threshold for economic sufficiency is indexed to the *Indicador Público de Renta de Efectos Múltiples* (IPREM), and the required level varies depending on the number of family members to be reunited.

The family members eligible for reunification are exhaustively listed in Article 17 of LOEX and Articles 55 to 58 of the Regulation. These include the spouse or registered partner (provided the marriage or union is not fraudulent or coercive), minor children (including those of the sponsor or of their spouse, where the other parent does not hold custody), adopted children, and dependent ascendants in the first degree, provided they are over 65 years of age and dependent on the sponsor for material support. The 2024 Regulation introduced clarifications regarding the minimum age for sponsoring a spouse (set at 18 years), the definition of "adequate housing," and the possibility of recognising alternative family forms in accordance with evolving EU law.

Residence permits granted to reunited family members are issued for a duration equal to that of the sponsor's residence permit and may include the right to work, especially where the family member is of working age. Article 19 of LOEX allows family members to obtain an autonomous residence permit after one year, contingent upon cohabitation with the sponsor. The Regulation further enables family members to apply for independent status earlier in cases of divorce,

separation, death of the sponsor, or documented situations of gender-based violence, in accordance with Article 60 of the Regulation and Article 19.2 of LOEX.

It is also important to distinguish between family reunification under the general regime and that applicable to beneficiaries of international protection. For recognised refugees and holders of subsidiary protection, the conditions are more favourable, particularly with regard to exemption from income and housing requirements, as provided in Article 41 of *Ley 12/2009* and Article 60 bis of the 2024 Regulation. Moreover, the law ensures that applications by such beneficiaries receive expedited consideration in recognition of their vulnerability and the imperatives of maintaining family unity.

The Spanish judiciary has played a critical role in shaping the interpretation of family reunification norms. In *STS 4527/2022* (ECLI:ES:TS:2022:4527), the Supreme Court clarified that the economic requirements imposed by the administration must be proportionate and compatible with the right to family life under Article 8 ECHR, particularly where minor children are involved. Similarly, the *Audiencia Nacional*, in *SAN 416/2020*, annulled a denial of family reunification based on narrowly construed definitions of economic sufficiency, reaffirming the need to assess each case in light of its specific social and familial context.

5. What are the conditions for naturalization in the reviewed state?

In Spain, the acquisition of nationality through naturalisation is governed by Código Civil (Civil Code), specifically in Articles 21 to 23, and is supplemented by administrative and procedural rules developed by the Ministry of Justice. Unlike in many other European countries where naturalisation is predominantly a right conditioned upon a set of objective criteria, in Spain it is a discretionary act conferred by the government, notably through the Ministry of Justice, via a royal decree (*Real Decreto de concesión de la nacionalidad*). As such, the applicant must not only satisfy the legal requirements, but also be deemed to demonstrate a sufficient degree of integration, civic behaviour, and attachment to Spanish society.

The main pathway is naturalisation by residence (*nacionalidad por residencia*), regulated in Article 22 of the *Código Civil*, which requires continuous and legal residence in Spain for a period of ten years. However, the law establishes several reduced periods for specific groups. The period is reduced to five years for refugees, in recognition of their international protection status; to two years for nationals of Ibero-American countries, Andorra, the Philippines, Equatorial Guinea, Portugal, and Sephardic Jews, reflecting historic, linguistic, and cultural ties; and to one year for several categories, including: (a) persons born in Spanish territory; (b) those married to a Spanish national for at least one year and not legally separated; (c) widows and widowers of Spanish citizens; and (d) persons who have been under the legal guardianship, custody, or foster care of a Spanish citizen or institution for two consecutive years.

In all cases, the residence must be legal, continuous and immediately prior to the application. Legal residence implies possession of an appropriate residence permit (*autorización de residencia*) and registration in the municipal census (*padrón*). Periods of irregular stay or administrative gaps in residence interrupt the computation and may result in the denial of the application, unless adequately justified. The Supreme Court has confirmed in various rulings—

among them *STS 242/2020*, ECLI:ES:TS:2020:242—that the residence requirement must be interpreted strictly, and that discretionary favourable interpretation is not sufficient to substitute for the objective criteria set by law.

Beyond residence, the applicant must demonstrate good civic conduct (*buena conducta cívica*), as required by Article 22.4 of the *Código Civil*. This is generally assessed through the absence of serious criminal records, though the existence of minor convictions does not automatically disqualify the applicant. Administrative records, tax compliance, and interaction with public institutions are also taken into consideration. The degree of integration into Spanish society is assessed through interviews conducted by the Civil Registry and the successful completion of integration exams administered by the Instituto Cervantes. These include the DELE A2 level exam (language) and the CCSE test (constitutional and sociocultural knowledge). Exemptions from these exams apply to minors, illiterate individuals, and persons with recognised disabilities.

Upon the granting of nationality, the applicant must take an oath or pledge (*juramento o promesa*) of fidelity to the King and obedience to the Constitution and laws of Spain, and must declare the renunciation of their previous nationality, except in cases where Spanish law recognises dual nationality—notably with Ibero-American countries, Andorra, the Philippines, Equatorial Guinea, and Portugal—pursuant to Article 24 of the *Código Civil* and bilateral agreements.

It is also worth noting that Spain allows for naturalisation by royal discretion (*carta de naturaleza*) under Article 21 of the *Código Civil*, which does not require a minimum period of residence but must be justified by exceptional circumstances of public interest. This form is rarely granted and typically reserved for individuals who have rendered extraordinary service to Spain in scientific, cultural, or humanitarian fields.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

January 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Switzerland

Author: Giulia Raimondo

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	X	X
1967 Protocol to the Convention relating to the Status of Refugees	X	X
1954 Convention relating to the Status of Stateless Persons	X	X
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Convention on the Rights of the Child (CRC)	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		X
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)	X	X
2014 Protocol to the ILO Forced Labour Convention (No. 29)	X	X
ILO Migration for Employment Convention (Revised) (No. 97)		

ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)	X	
Protocols to the European Convention on Human Rights (list which ones):	- Protocols Nos. 16, 15, 14, 13, 11, 10, 9, 8, 7, 6, 5, 3, 2 NB: CH is not part of Protocol No 4	

European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	X	
American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Switzerland is an associated member state of the Schengen and Dublin systems, meaning it adheres to the rules and regulations of these systems without being a member of the European Union. As such, Switzerland participates in the implementation of various EU regulations and directives, without adopting the whole Common European Asylum System.

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Switzerland has a system that adopts both visa and residence permits.

Since Switzerland's adherence to the Schengen and Dublin agreements came into force (in 2008), Swiss representations abroad can issue two types of visa, depending on the purpose of the proposed stay:

1. Schengen Visa, type C: for entry and a stay of up to 90 days within a period of 180 days, for example in the context of tourism, a visit, short-term language studies, etc. For a stay involving gainful employment a work permit is also required.
2. National visa, also known as type D: for long-term stays in Switzerland (more than 90 days). This visa is issued subject to authorisation from the cantonal migration authority competent for the intended place of residence in Switzerland.

The cantonal migration offices issue temporary and permanent residence permits. It may be possible to work depending on the type of permit issued. Foreigners residing in Switzerland for more than three months receive a residence permit indicating which type of authorisation has been granted.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Here are the different types of residence permits one can get in Switzerland: The main relevant national legislation is the Federal Act on Foreign Nationals and Integration (Art. 35 and 41); the Ordinance on Admission, Residence and Gainful Employment (Art. 71 and 71a),¹⁹⁷⁸ the Asylum Law (Art. 42 et 74);¹⁹⁷⁹ and Host State Ordinance, (Art. 17).¹⁹⁸⁰ The competence to deliver those permits rests generally on the cantonal authorities.

¹⁹⁷⁸ *Loi fédérale sur les étrangers et l'intégration*, 16 december 2005, as amended.

¹⁹⁷⁹ *Loi sur l'asile*, 26 June 1998, as amended.

¹⁹⁸⁰ Ordinance to the Federal Act on the Privileges, Immunities and Facilities and the Financial Subsidies granted by Switzerland as a Host State, 7 December 2007, as amended.

Permit B - Residence permit: For temporary residents (foreigners visiting Switzerland for a specific purpose for a longer period with or without employment).

Permit C - Permanent residence permit: For permanent residents (foreigners who have been granted permanent residence after living in Switzerland for 5 or 10 years. Unlimited right to stay in Switzerland).

Permit G - Cross-border commuter permit: For cross-border commuters (foreigners who live in the border zone of a neighbouring country and work in the adjacent border zone in Switzerland).

Permit L - Short-term residence permit: For short-term employment and other short stays.

Permit F - Provisionally admitted foreigners: For provisionally admitted foreigners. The cantonal authorities issue this permit at the instruction of the Federal Office for Migration.

Permit N - Asylum seekers: For refugees. The cantonal authorities issue this permit following a decision by the Federal Office for Migration.

Permit S - Persons in need of protection (similar to EU temporary protection): For persons in need of protection. The cantonal authorities issue this permit following a decision by the Federal Office for Migration.

Legitimation cards - Staff of institutional beneficiaries established in Switzerland who are entitled to privileges and immunities, and persons entitled to accompany them.

Art. 62 LEI establishes that the competent authority may revoke an authorisation, except a permanent residence permit (for whom stricter conditions apply),¹⁹⁸¹ in the following cases: a. the foreign national or their legal representative has made false statements or concealed essential facts during the authorisation procedure; b. the foreign national has been sentenced to a long term of imprisonment; c. the foreign national seriously or repeatedly undermines public safety and order in Switzerland or abroad, endangers them or poses a threat to Switzerland's internal or external security; d. the foreign national does not comply with the conditions attached to the decision; e. the foreign national themselves or a person for whom they are responsible is dependent on social assistance; f. the foreign national has attempted to obtain Swiss citizenship by fraudulent means or has had their citizenship revoked following a final decision in the context of an annulment of naturalisation; g. without a valid reason, they fail to comply with the integration agreement.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Under Swiss law, the stay of asylum seekers is governed by the Asylum Law (*Loi sur l'Asile - LAsi*) and Ordinance 1 on Asylum (*OA 1*). Article 42 of the Asylum Law provides that anyone who submits an asylum application in Switzerland may remain in the country until the

¹⁹⁸¹ See Art. 63 LEI.

procedure is concluded. The corollary of this right is the prohibition of expulsion as long as the procedure is ongoing.

Swiss law does not differentiate between recognised refugees and beneficiaries of subsidiary protection. Instead, it distinguishes between recognised refugees who have been granted asylum following an application (Art. 2(1) LAsi) and individuals granted “provisional admission”, which is governed by Chapter 11 of the Foreign Nationals and Integration Act (Loi fédérale sur les étrangers et l’intégration - LEI, or FNIA). Asylum is granted to individuals who qualify as refugees, provided there is no reason for exclusion (Art. 49 LAsi). Grounds for exclusion include unworthiness (Art. 53 LAsi) and subjective reasons that arose after the person fled (Art. 54 LAsi refugees *sur place*). When asylum is denied, the State Secretariat for Migration (SEM) orders deportation or a substitute measure (Art. 44 LAsi, which refers to Arts. 83 and 84 LEI). The Asylum Law (Chapter 8, Sections 1 and 2, LAsi) contains specific rules applicable to appeals against asylum requests. With a few exceptions (eg extraditions and decisions by cantonal authorities), asylum decisions can only be challenged before the Federal Administrative Court (Tribunal Administratif Fédéral) and cannot be brought before the Federal Tribunal.

The SEM grants provisional admission if the enforcement of deportation or expulsion is not possible, not lawful, or cannot reasonably be required. Enforcement is not possible when the foreign national, through no fault of their own, is materially unable to leave Switzerland for their country of origin or prior residence. Deportation is not lawful if carrying it out would violate Switzerland's international legal obligations (in practice, this mostly concerns the prohibition of *refoulement*). Lastly, enforcement cannot be reasonably required if deportation or expulsion would place the individual in danger in their country of origin or prior residence — for example, in cases of war, civil war, widespread violence, or medical necessity.

Thus, “provisional admission” provides broader protection than international law, as it offers temporary protection to individuals who do not fall under the refugee status. At the same time, “provisional admission”, as a substitute measure for unenforceable deportation, is a special case: these individuals are tolerated because they cannot be removed (FRA, *Manuel Suisse de Droit des migrations*, 2015, at 67). After five years, an F-permit holder may apply for a B-permit, provided that they meet a number of conditions enumerated in Art. 84 LEI.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Under Swiss law, the conditions allowing for reunification depend primarily on the residence status of the person seeking to bring family members into the country. The typical case of family reunification involves a Swiss citizen being joined by nuclear family members (spouse and unmarried children under 18) from a third country (Art. 42, LEI). The LEI grants these family members the right to obtain a residence permit and extend it, provided they live together with the Swiss family member. The requirement of living together may be waived for serious reasons, such as significant family problems or professional obligations (Art. 49 LEI).

The spouse is entitled to a permanent residence permit (settlement permit) after having legally and continuously resided in Switzerland for five years (Art. 42 (3), LEI), while children under the age of 12 are entitled to it immediately (Art. 42 (4), LEI). The rules on reunification for unmarried minor children apply unconditionally, even when only one parent is a Swiss citizen. One controversial question remains: whether family reunification also extends to the spouse's children. The fact that a family bond, as understood under Article 8 of the European Convention on Human Rights (ECHR), can also exist with the spouse's children suggests that it would be appropriate to apply the same family reunification rules to them as to the children of the principal applicant (FRA, *Manuel Suisse de Droit des migrations*, 2015, at 195).

As regards the “family members” eligible for family reunification, Swiss legislation only permits family reunification with spouses, registered partners and minor children (Art. 51 (1) LAsi; Chapter 7 and Art. 85 c) LEI; Art. 74 Ordinance on Admission, Residence and Employment, as well as adoptive and stepchildren (Motz, *Family Reunification for Refugees in Switzerland*, 2017, at 17 with further jurisprudential references).

While the LEI treats the main scenarios of family reunifications, Article 8 ECHR remains the only provision on which to base a right to family reunification for non-core family members. This is notably the case for the reunification of adult children, parents of adult children living in Switzerland, or siblings or grandparents, where there is a strong relationship of dependency. (FRA, *Manuel Suisse de Droit des migrations*, 2015, at 201).

Family reunification for refugees forsee different rules depending on the type of permit of the people concerned, the question of whether family ties were formed pre- or post-flight, and whether family members applying for family reunification with their refugee family member in Switzerland are already in the country or abroad at the time of the application (Motz, *Family Reunification for Refugees in Switzerland*, 2017).

Spouses, registered partners, and the minor children of refugees are entitled to family reunification. If one family member remains abroad, their entry must be authorised upon request if they and the family member in Switzerland were separated during their flight. If the family was not separated — such as when the marriage or family relationship did not yet exist at that time — there is no entitlement to family reunification under the Asylum Act. In such cases, they may only apply under Article 44 LEI, which has more restrictive conditions and does not grant an automatic right. However, if the spouse and children are already in Switzerland, this restriction does not apply, and they may be included in the family member's asylum request.¹⁹⁸²

Under Art. 85 c) LEI, three years after having received temporary admission, “the spouse and unmarried children under the age of 18 of a person admitted on a temporary basis may benefit from family reunification and the same status as that person, at the earliest three years after the decision on temporary admission, subject to the following conditions:

- a. they live in the same household as that person;
- b. they have suitable accommodation;

¹⁹⁸² TAF, ATAF 2017 VI/4, para 4.4.1.

- c. the family is not dependent on social assistance;
- d. they are able to communicate in the national language spoken at their place of residence or are enrolled in a language support programme for that language;
- e. the person who initiated the family reunification application does not receive annual supplementary social benefits and would not be eligible to receive such benefits as a result of family reunification”.¹⁹⁸³

There is no requirement that the family ties already existed in the country of origin. The requirements are that they all live in the same household as soon as the person arrives in Switzerland, the family has suitable housing, and the family does not depend on social assistance, and the spouse has to speak the national language at the place of residence or be registered for language support services.

Under the Agreement on the Free Movement of Persons (AFMP) between Switzerland and the EU,¹⁹⁸⁴ the category of persons eligible for family reunification for EU nationals is broader than for other foreign nationals under EU or Swiss national law: in addition to the spouse, it includes children up to the age of 21 (or older if they are financially dependent), as well as the ascending relatives (parents) of the applicant and their spouse, provided that their maintenance is ensured. Students, however, may only apply for reunification with their spouse and children who are financially dependent on them. The applicant is not required to prove that they have the financial means to support their family members, nor to live in the same household with them.¹⁹⁸⁵ The only exception to this rule applies to persons not engaged in economic activity but who benefit from the free movement of persons: authorities may require them to prove that they have sufficient resources to support their family members - a condition that Switzerland also applies to self-employed individuals.

In order to avoid disadvantaging Swiss citizens compared to nationals from EU/EFTA countries, more generous conditions are provided for Swiss citizens who wish to be joined by family members holding a long-term residence permit in that area. On the one hand, the category of persons eligible for family reunification is broader (and includes, in addition to the spouse, descendants under the age of 21 or those whose maintenance is guaranteed, as well as the ascending relatives of the Swiss citizen and their spouse, provided their maintenance is guaranteed). On the other hand, family reunification is not subject to any requirement to live in a shared household, nor to any deadline for applying. However, Swiss citizens are still disadvantaged compared to nationals of EU or EFTA member states in that they cannot benefit from the (Swiss Federal Tribunal’s adoption of) the *Metock* case law from the Court of Justice of the European Union (CJEU).¹⁹⁸⁶ That ruling holds that citizens of EU or EFTA countries are

¹⁹⁸³ Author’s translation.

¹⁹⁸⁴ Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, OJ L 114, 21 June 1999 (entry into force: 1 June 2002).

¹⁹⁸⁵ Ibid, Annex I Art 3.

¹⁹⁸⁶ In the *Metock* case, the CJEU established that a non-EU family member of an EU citizen can join or reside with that citizen in a host Member State, regardless of how the family member entered the EU or whether they had prior lawful residence in another Member State. CJEU, case (C-127/08), *Metock*, 25 July 2008, ECLI:EU:C:2008:449.

entitled to bring in third-country nationals who do not have a long-term residence permit in the Schengen area. The same does not hold for Swiss citizens.

5. What are the conditions for naturalization in the reviewed state?

There are three ways in which you can acquire Swiss citizenship:

- Citizenship through paternal or maternal descent (*'ius sanguinis'*);
- Acquiring Swiss citizenship through naturalisation (i.e. by official decision) is steadily becoming more common;
- Swiss citizenship can also be acquired through adoption by a Swiss parent.

*Switzerland recognises three ways of acquiring Swiss citizenship through an official decision (naturalization). These take account of the various circumstances that may apply to foreign citizens:

- Ordinary naturalisation is the option for foreign citizens who have lived for at least 10 years in Switzerland, three of which must be in the five years before they file their application for citizenship, and who hold a permanent residence permit (C permit);
- Simplified naturalisation is the option primarily for persons who are married to a Swiss citizen or were born in Switzerland and belong to the third generation of a family of foreign citizens living in Switzerland. In addition, Switzerland has other simplified naturalisation procedures, such as the procedure for people who are stateless.
- Reinstatement of citizenship is the option for people who have lost their Swiss citizenship at some point following forfeiture or loss of citizenship.

Under Art. 11 of the Federal Act on Swiss Citizenship, the naturalisation licence shall be granted if the applicant a) is successfully integrated; b) is familiar with the Swiss way of life; and c)

he or she does not pose a risk to Switzerland's internal or external security. Art. 12 specifies, but in a non-exhaustive manner, the necessary criteria for a "successful integration". They include in particular:

- "a. showing respect for public security and order;
- b. respecting the values enshrined in the Federal Constitution;
- c. being able to communicate in a national language in everyday situations, orally and in writing;
- d. participating in economic life or by acquiring an education; and
- e. encouraging and supporting the integration of one's wife or husband, registered partner or the minor children for whom one has parental responsibility".

Appropriate account must be taken of the situation of persons who, due to disability or illness or other significant personal circumstances, are unable or only able with difficulty to meet the criteria for integration set out in paragraph 1, letters c and d. The cantons may require additional

criteria for integration. Generally, in Switzerland, continuous residence in the same commune is necessary for ten to twelve years, and people have to pay high fees to apply for naturalisation. For example, in Basel, obtaining citizenship can cost up to 2000 Swiss francs (Sontag, Herzog, Lässer, 2022).

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Switzerland has a domestic legal framework on non-discrimination that also covers non-nationals. Art. 8 of the Federal Constitution guarantees equality before the law and prohibits discrimination on grounds including origin, race, gender, age, language, social position, way of life, religious, ideological or political convictions, or because of a physical, mental or psychological disability.¹⁹⁸⁷ This applies to all persons in Switzerland, regardless of nationality.

The extent of certain political or socio-economic rights of various groups of non-nationals can, however, vary depending on the type of residence permit they hold (see below).

¹⁹⁸⁷ Federal Constitution of the Swiss Confederation of 18 April 1999 SR 101 (entry into force: 1 January 2000).

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Political participation for non-nationals is generally limited at the federal level.¹⁹⁸⁸ They cannot vote or stand for federal elections, but some cantons and municipalities grant voting rights in local elections to non-national residents who meet specific residence requirements, such as a minimum residence period (e.g., 8-10 years).¹⁹⁸⁹

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Distinctions exist: for example, non-nationals do not enjoy political rights at the federal level, and some civil service positions are reserved for Swiss citizens. Notably, public service jobs linked to public authority (e.g. military, police and judiciary) or posts involving the exercise of sovereign powers may require Swiss nationality under federal or cantonal laws.¹⁹⁹⁰ Freedom of movement can be restricted for non-nationals through residence permit conditions. Access to justice is generally available on equal terms, but procedural rights (delays and suspensive effect of decisions) can vary depending on the specific immigration procedure.

Switzerland is not bound by the Fourth Protocol Additional to the ECHR or by the EU Reception Conditions Directive, which requires EU Member States to enshrine alternatives to detention in law. However, under the Dublin Regulation (from 2026, the asylum and migration management Regulation)¹⁹⁹¹ to which Switzerland is bound by virtue of the Dublin Association Agreement,¹⁹⁹² detention should be for as short a period as possible and subject to the principles of necessity and proportionality. In particular, the detention of applicants must comply with

¹⁹⁸⁸ Ibid, Articles 136 and 143.

¹⁹⁸⁹ Non-national long-term residents can vote in local elections in seven cantons: Neuchâtel since 1848, Jura since 1978, Appenzell Ausserrhoden since 1995, Fribourg and Graubünden since 2003, and Geneva and Basel city since 2005. See: Arrighi and Bauböck (2017).

¹⁹⁹⁰ Article 59, Federal Constitution of the Swiss Confederation of 18 April 1999 SR 101 (entry into force: 1 January 2000); Article 5, Loi sur le Tribunal fédéral (LTF) 17 June 2005.

¹⁹⁹¹ Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland, OJ L 53 5, 27 February 2008.

¹⁹⁹² Regulation (EU) No 604/2013 of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L 180 (Dublin Regulation). From 2026: Regulation (EU) 2024/1351 of the European Parliament and of the Council on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 [2024] OJ L, 2024/1351 (AMMR Regulation).

Article 31 of the Geneva Convention Relating to the Status of Refugees.¹⁹⁹³ In addition, the EU Return Directive, which binds Switzerland by virtue of the Schengen Association Agreement,¹⁹⁹⁴ also includes several provisions regarding detention for the purposes of removal, which should be used exceptionally, unless other sufficient but less coercive measures can be applied effectively.¹⁹⁹⁵

In this line, the Swiss legal framework provides for measures alternative to detention such as the assignment of a place of residence and a prohibition of entering a specific region (Art. 74 LEI), as well as the possibility of requiring the foreign national to report regularly to the authorities, provide appropriate financial guarantees, and submit travel documents (Art. 64e LEI). Specific provisions of the LEI expressly stipulate that detention may only be ordered if there are no other less restrictive measures that would achieve the desired objective.¹⁹⁹⁶ Where such a measure is sufficient to ensure the enforcement of the removal, the decision to deprive the person of their liberty is disproportionate and therefore unlawful. Yet, the same legal framework also includes several grounds which give rise to the presumption that the enforcement of the removal can only be guaranteed by deprivation of liberty.¹⁹⁹⁷

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Non-nationals may purchase and own property in Switzerland, but the acquisition of real estate by foreigners who are not resident requires special authorisation for certain transactions, such as the acquisition of immovable property that is not used as a permanent establishment for a business or an effective place of residence.¹⁹⁹⁸

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Non-nationals need a residence and work permit to engage in formal employment, except for specific short-term or exempt categories (eg, some cross-border workers from the EU/EFTA).

¹⁹⁹³ Art. 44, Recital 65, AMMR Regulation.

¹⁹⁹⁴ Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, OJ L 53, 27 February 2008.

¹⁹⁹⁵ Art. 15, Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals [2008] OJ L 348.

¹⁹⁹⁶ See: Art. 78 LEI concerning detention for insubordination and Art. 76a LEI concerning detention pending removal under the Dublin Regulation.

¹⁹⁹⁷ Art. 75, 76, 76 a, and 78, LEI.

¹⁹⁹⁸ Federal Act on the Acquisition of Immovable Property in Switzerland by Foreign Non-Residents, 16 December 1983 (Lex Koller).

Switzerland follows a dual system for granting foreign nationals access to the Swiss employment market. Regardless of their qualifications, workers from EU and EFTA states are granted easier access under the AFMP. Third-state nationals are admitted into a system complementary to the AFMP. Non-EU/EFTA nationals are only allowed to work in Switzerland if it is proven that no suitable domestic employees or citizens of states with which an agreement on the free movement of workers has been concluded can be found for the job.¹⁹⁹⁹ Moreover, only a limited number of highly qualified workers can be admitted, since experience has shown that they have better long-term professional and social integration prospects than people with lower qualifications.²⁰⁰⁰ Some exceptions exist for investors and entrepreneurs, and for people recognised in the world of science, culture, and sport.²⁰⁰¹

The admission criteria are set out in the LEI and the Ordinance on Admission, Period of Stay, and Employment.²⁰⁰²

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

No fixed nationwide quota applies to hiring non-nationals from EU/EFTA states, but quotas exist for third-country nationals and certain permit categories, allocated annually by the Federal Council. Labour market testing is required for most third-country nationals.

EU/EFTA citizens may start working immediately upon arrival in the territory; employers must submit a simple notification, depending on the type and duration of work. Spouses of Swiss nationals or of persons with a permanent residence permit do not require a work permit.

Admissions of non-EU and non-EFTA state nationals are limited. Accordingly, the Federal Council determines the maximum numbers in the Ordinance on Admission, Period of Stay and Employment on an annual basis.

Non-EU/EFTA may be hired if no qualified candidate can be found from the Swiss or EU/EFTA labour market.²⁰⁰³ Priority is given to Swiss citizens, foreign nationals with a permanent residence permit (Permit C), and those with a residence permit that allows work (Permit B, including recognised refugees). The same priority applies to foreign nationals with temporary admission (Permit F), individuals granted temporary protection with work authorisation (Permit S), and citizens of countries that have a free movement agreement with Switzerland (Permits L and B). Employers must demonstrate that, despite serious recruitment efforts, no suitable candidates could be found among these priority groups.

¹⁹⁹⁹ Art. 21 LEI.

²⁰⁰⁰ Art. 23 LEI.

²⁰⁰¹ Art. 23(3) LEI.

²⁰⁰² Ordonnance relative à l'admission, au séjour et à l'exercice d'une activité lucrative, 24 octobre 2007, as amended.

²⁰⁰³ Art. 21 LEI.

Non-EU/EFTA nationals require a work permit, even for short-term employment. Only managers, specialists or other skilled workers may obtain a short-term or residence permit for work purposes.²⁰⁰⁴ The number of permits issued is limited. If a residence permit is granted, the non-national's professional qualifications, professional and social adaptability, language skills and age must also indicate that they will be able to integrate into the professional and social environment on a long-term basis. Yet, exceptions apply, and some categories of people can be admitted without the professional qualifications and integration requirements mentioned above. Under Art. 23(3) LEI, these include: investors and business leaders who will create or maintain jobs; recognised figures in the fields of science, culture or sport; persons with special professional knowledge or skills, if their admission demonstrably meets a need; executives transferred by internationally active companies; persons active in international business relations of major economic importance whose activity is indispensable in Switzerland. Besides prioritising applicants from Switzerland or countries with a free movement agreement, certain job openings must be reported to regional employment agencies.²⁰⁰⁵

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

In general, there is no prohibition for non-nationals working in the general civil service, but certain sensitive or security-related roles explicitly require Swiss citizenship. Where the performance of tasks involving the exercise of public authority so requires, access to a position may be restricted to persons of Swiss nationality for the following categories of public personnel:²⁰⁰⁶

- a. personnel assigned to international crime fighting and for personnel employed in the police or by authorities responsible for criminal prosecution;
- b. personnel assigned to national defence and the Federal Intelligence Service;
- c. personnel assigned to represent Switzerland abroad;
- d. members of the border guard corps;
- e. departmental personnel representing Switzerland in international negotiations;

Since 2017, Swiss diplomats can hold a double nationality.²⁰⁰⁷ For example, Swiss citizenship is commonly required under cantonal regulations governing law enforcement. For example, the citizenship requirement for sworn police officers is set by each canton, and many, including Zürich, Bern, and Geneva, require Swiss citizenship.²⁰⁰⁸ Other restrictions may vary depending

²⁰⁰⁴ Art. 23(1) LEI.

²⁰⁰⁵ Art. 22 LEI.

²⁰⁰⁶ Art. 23, Ordonnance sur le personnel de la Confédération, 3 July 2001.

²⁰⁰⁷ Federal Council in favour of lifting the ban on dual nationality for Swiss diplomats (2 December 2016).

²⁰⁰⁸ See: Arbeiten bei der Kantonspolizei (Zurich); Kantonspolizei Bern (Bern); Règlement général sur le personnel de la police (RGPPol) F 1 05.07, 26 juin 2024 (Geneva). In Vaud, police officers should be either Swiss citizens or be in last phase of the naturalization process Police Vaud (Vaud).

on the canton. For example, a private detective in Canton Ticino needs not only a license but must also be a Swiss citizen.²⁰⁰⁹

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Labour protections, including minimum working conditions, apply equally to nationals and non-nationals with a legal residence permit. In Switzerland, there is no national minimum wage; however, some cantons, such as Geneva, have implemented their own minimum wage laws concerning all employees working in the canton, except for some specific professions.²⁰¹⁰

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Health insurance is mandatory for all residents, including non-nationals. Access to public health services is generally equal if insured, though asylum seekers and undocumented migrants may have more limited coverage in practice. Beyond practical difficulties to afford even the basic insurance, when access to the job market is limited, undocumented migrants generally hesitate to purchase basic health insurance for fear of declaring themselves to the insurance, which, although illegal, could alert the police. In addition, most undocumented migrants are employed without a valid contract and are not registered with social insurance schemes, and are therefore not insured against illness or accidents.²⁰¹¹

Anyone living or working in Switzerland for longer than three months must enrol in basic Swiss health insurance (*assurance de base obligatoire*).²⁰¹² The basic insurance is mandatory for anyone residing in Switzerland, but people required to register for an insurance are free to choose from among the authorised insurers.²⁰¹³

The mandatory insurance applies to all persons domiciled in Switzerland, regardless of the length of their stay or immigration status. Mandatory health insurance and the right to social assistance when income is insufficient apply to all foreigners with a domicile in Switzerland. This concept includes undocumented migrants in particular, as specified in 2002 by the Federal Social Insurance Office in a circular to insurance companies (cited in FRA, *Manuel Suisse de Droit des migrations*, 2015, at 327). Insurers are required to register undocumented migrants

²⁰⁰⁹ [Five jobs in Switzerland with surprising requirements](https://www.swissinfo.ch/fr/actualites/cinq-travailleurs-suisse-a-requis-surprenants) (Swissinfo.ch).

²⁰¹⁰ [Minimum wage in the canton of Geneva](#) (2025).

²⁰¹¹ Yves Jackson, Claudine Burton-Jeangros et al., 'Vivre et travailler sans statut légal à Genève : premiers constats de l'étude Parchemins', Université de Genève (2022) Sociograph – Sociological Research Studies 57 a.

²⁰¹² Art. 3, [Loi fédérale sur l'assurance-maladie](#) (LAMal), 18 March 1994, as amended.

²⁰¹³ Ibid, Art. 4.

and are not permitted to disclose information about them. Healthcare professionals are also bound by confidentiality.²⁰¹⁴

Health insurance for asylum seekers and persons in need of protection who do not hold a residence permit is adapted.²⁰¹⁵ The cantons may restrict asylum seekers and persons in need of protection who do not hold a residence permit in their choice of insurer and designate one or more insurers offering a specific type of insurance, or an insurance with a limited choice of service providers.²⁰¹⁶

People in modest economic circumstances are supported in Switzerland through premium reductions. These are paid directly by the canton to the insurer of the person receiving the benefit.²⁰¹⁷ Although it bears some resemblance to social assistance, it is not considered as such and does not trigger the legal consequences for foreigners associated with receiving social assistance – most notably, the revocation or non-renewal of residence permits (Art. 62e and 63(1)c LEtr). Those eligible for premium reductions are persons who are insured in Switzerland, who reside in an EU/EFTA country and are cross-border commuters, or family members of persons who have at least a short-term residence permit in Switzerland, as well as persons who receive Swiss unemployment insurance benefits.²⁰¹⁸

Specific exceptions to the obligation to have such insurance exist and concern, *inter alia*, people who enjoy the privileges and immunities of staff members of the international organisations and their families,²⁰¹⁹ or some categories of people covered by the AFMP between Switzerland and the EU.²⁰²⁰

Under the AFMP, the EFTA Convention and the new social security Agreement with the United Kingdom, the requirement to obtain health insurance in Switzerland is based on the ‘place-of-work principle’.²⁰²¹ Accordingly, anyone working in Switzerland, as well as non-working family members, is required to take out Swiss health insurance. Cross-border commuters from EU/EFTA/UK who hold a G permit are subject to mandatory health insurance. However, Switzerland has concluded agreements with its neighbouring countries (Germany, Austria, France and Italy) so that cross-border workers with EU citizenship living in these countries have the option of taking out health insurance in their country of residence.²⁰²²

²⁰¹⁴ OFSP, ‘Accès aux soins de santé des sans-papiers’ (2025), available at : https://www.bag.admin.ch/fr/acces-aux-soins-de-sante-des-sans-papiers?utm_source=chatgpt.com.

²⁰¹⁵ Art. 82a LAsi.

²⁰¹⁶ Ibid., Art. 82 a.

²⁰¹⁷ Art. 65 and 65a, LAMal.

²⁰¹⁸ Art. 65a LAMal.

²⁰¹⁹ Ibid, Art. 3(2); Regulations applicable to staff members of the permanent missions (PM), staff members of the international organisations (IO) and their family members relative to the Swiss Federal Law on Compulsory Health Care (LAMal).

²⁰²⁰ See: Art. 2, Ordonnance sur l’assurance-maladie, 27 juin 1995.

²⁰²¹ Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, OJ L 114, 21 June 1999 (entry into force: 1 June 2002); The European Free Trade Association (EFTA) 4 January 1960, as amended; Convention on Social Security Coordination between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation, 9 September 2021 (entry into force: 1 October 2023).

²⁰²² See: Health insurance: Cross-border commuters working in Switzerland, 12 September 2024.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

The extent to which foreign nationals may access education in Switzerland depends on the level of education — primary, secondary, or tertiary — and on the individual's residence status. While Switzerland has not ratified Protocol No. 1 to the ECHR, which enshrines the right to education, important guarantees derive from the Swiss Constitution and, for EU/EFTA citizens, from the AFMP.

Under Art. 19 and 62 of the Federal Constitution, every child in Switzerland has the right to free and compulsory basic education, a right which applies irrespective of nationality or legal status. Cantons are responsible for organising schooling, but in practice, all children residing in Switzerland, including those without legal residence status, should be admitted to public schools.²⁰²³ This right is applicable until the age of majority, which is 18. In most cantons, compulsory education extends until the age of 16. Children aged 16 to 18 are therefore no longer required to attend mandatory schooling and are not required to be enrolled in school. This does not change the fact that these children are entitled to a comprehensive education appropriate to their age. There is only one area in which the right to basic schooling is explicitly extended beyond the age of majority: the Federal Constitution requires cantons to ensure that children with disabilities receive schooling adapted to their needs until their 20th birthday.

Early childhood support and inclusive basic education are often described as the key to equal opportunities in education.²⁰²⁴ Basic education is mandatory until the age of 16 and has to be available to all children in Switzerland. The cantons are responsible for the system of school education, and public schools are free of charge. Schooling for children in asylum procedures, is mainly organised within the reception centres as long as the children are accommodated in a federal centre. Cantonal laws define the age limit for attending basic education for children living in federal asylum centres. In six centres, young people can currently attend school until they reach the age of majority. In the majority of other sites, compulsory education ends at the age of 15.²⁰²⁵ Although access to secondary education is formally guaranteed irrespective of residence status, adolescents who arrive in Switzerland at or after the age of 16 often encounter significant practical obstacles that hinder their effective access to school.²⁰²⁶

The question of whether undocumented migrants' children have access to education is crucial. Among the many difficulties faced by these individuals, two situations are particularly worth mentioning: that of people pursuing initial vocational training after mandatory schooling and the education of rejected asylum seekers. The children of rejected asylum seekers are an exception to the principle of equal access to primary education. As their expulsion or return must be carried out promptly, the cantons often forego school integration (FRA, *Manuel Suisse*

²⁰²³ Giovanni Biaggini, *Kommentar BV*, titre 2, no 6 ad art. 19.

²⁰²⁴ CDIP, *Equité – Discrimination et égalité des chances au sein du système éducatif*, : migration et origine sociale, Conférence suisse des directeurs cantonaux de l'instruction publique, 2015.

²⁰²⁵ *Accéder à l'éducation indépendamment du droit de séjour*, Observatoire suisse du droit, 2021.

²⁰²⁶ *Equité - discrimination et égalité des chances au sein du système éducatif*.

de Droit des migrations, 2015, at 313). After mandatory schooling, Art. 30a of the Ordinance on Admission, Residence and Gainful Employment (OASA) introduced the possibility for young people without residence status to obtain a residence permit for the duration of their vocational training.²⁰²⁷ Yet, despite recent legislative changes, the conditions remain rather strict.²⁰²⁸ Young adults who have completed at least two years of their schooling in Switzerland may obtain a residence permit for the duration of their vocational training if their employer applies for it, if the working and salary conditions are met, if the young person is well integrated, if they respect the legal system and if they can prove their identity.²⁰²⁹ Significantly, this provision does not imply an individual right, but a faculty that the competent public authority can exercise.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Social insurance benefits are generally available to non-nationals who meet contribution requirements; eligibility for some benefits depends on residence status and bilateral agreements.

The cantons are responsible for paying social assistance, and non-nationals receive social assistance from the canton where they reside.²⁰³⁰

Swiss law draws a fundamental distinction between contributory social insurance schemes and social assistance, which functions as a safety-net form of support. In principle, anyone legally residing in Switzerland is entitled to social assistance. However, reliance on such assistance can adversely affect the renewal or extension of a residence permit, as provided in Art. 62(e) and 63(1)(c) of the LEI.

The intersection of migration law and social assistance creates a situation in which migrants living in poverty may be discouraged from claiming the benefits to which they are legally entitled. Research—particularly surveys conducted among social services staff—demonstrates that many migrants refrain from seeking social assistance out of fear of negative repercussions for their residence status. Recent studies confirm that in Switzerland this uncertainty about the immigration-law consequences of claiming social assistance has grown in recent years. Social services, as well as low-threshold public support programs such as parenting advice, report that foreign nationals are increasingly cautious not to draw attention to themselves, fearing closer scrutiny by the migration authorities (Mey and Kurt, 2024).

In Switzerland, asylum seekers (N permit), as well as persons admitted on a temporary basis (F permit) and persons in need of protection (S permits), are subject to the regulations on social assistance. This assistance is, however, lower than the standard social assistance provided to

²⁰²⁷ Ordonnance relative à l'admission, au séjour et à l'exercice d'une activité lucrative (OASA), 24 octobre 2007, as amended.

²⁰²⁸ Asile.ch, OASA | Faciliter l'accès à la formation professionnelle initiale pour les personnes déboutées et sans-papiers, 13 August 2024.

²⁰²⁹ Ibid. Art. 30 a.

²⁰³⁰ Loi fédérale en matière d'assistance (LAS) 24 June 1977, as amended.

residents (Art. 82(3), LAsi; Art. 86(1), LEI). Asylum seekers receive, on average, half of the minimum subsistence level of CHF 1031 set by the Swiss Conference for Social Welfare (CSIAS 2025). In Geneva, for example, social assistance granted to an asylum seeker or a person admitted on a temporary basis in 2022 was CHF 451 per month (Ville de Geneve, 2022).

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Welfare programmes (e.g., social assistance, housing aid) are available to legally resident non-nationals under similar conditions as nationals, but asylum seekers and provisionally admitted persons receive reduced benefits, and undocumented migrants have access only to emergency aid.

Are there any final observations you would like to make? Please write below

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

February 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Thailand

Author: Bongkot Napaumporn

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		
1967 Protocol to the Convention relating to the Status of Refugees		
1954 Convention relating to the Status of Stateless Persons		
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)		X 1996
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X 1999

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X 2007
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X 2003
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X 1985
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X 2000
Convention on the Rights of the Child (CRC)		X 1992
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X 2006
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X 2006
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		X 2012
Convention on the Rights of Persons with Disabilities (CRPD)	X 2007	X 2008
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		X

ILO Migration for Employment Convention (Revised) (No. 97)		
ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		

American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Bilateral Agreements

- Memorandum of Understanding (MOU) between the Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic on Labour Cooperation, 2002
- Memorandum of Understanding (MOU) between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar on Labour Cooperation, 2003
- Memorandum of Understanding (MOU) between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Labour Cooperation, 2003

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

With three amendments in 1980, 1999 and 2018, the Thailand's Immigration Act B.E.2522 (1979)²⁰³¹ is the main legal framework that has governed entry, residence, exit and repatriation of non-nationals since 30 May 1979 until today. The law provides two main legal pathways to admission into and residency status in Thailand: one is in a general circumstance, and another is on an exceptional basis.

In general, non-nationals who wish to enter Thailand are required to meet 11 conditions under Section 12.²⁰³² Issuance of a visa to Thailand, according to Section 12(1) paragraph 2, are divided into 8 categories:²⁰³³ (1) Diplomatic Visa; (2) Official Visa; (3) Tourist Visa; (4) Transit Visa; (5) Courtesy Visa; (6) Non-Immigrant Visa;²⁰³⁴ (7) Immigrant Visa;²⁰³⁵ and (8) Non-Quota Immigrant Visa.²⁰³⁶ Visa conditions including the validity in each type are imposed differently. Moreover, under the Thailand's Visa Exemption Scheme and Visa On Arrival, Thailand allows visitors from 93 countries²⁰³⁷ to enter and stay in Thailand up to 60 days

²⁰³¹ See the Thai version of the most updated Immigration Act here: <https://searchlaw.ocs.go.th/council-of-state/#/public/doc/cEVhclA4am5UUUtFTFZXcGZVNmdwUT09>. Please note that the latest amendments to the Act are not included in the English version here: https://royalthaipolice.go.th/downloads/laws/laws_03_03-03.pdf

²⁰³² Conditions specified under Section 12 include: (1) Having no valid passport or travel document or having no visa; (2) Having no appropriate means of living; (3) Entering Thailand to earn livelihood as a labourer or to be hired to do physical work and not skilled, or technical work, or to do other works in violation of alien working laws; (4) Being of unsound mind or having any of the diseases as prescribed in the Ministerial Regulations; (5) Having not been inoculated against smallpox or undergone vaccination or any other medical operation for protection against communicable diseases as provided by law and having not allowed the immigration physician to do so; (6) Having been imprisoned by a judgement of a Thai court or by a lawful injunction or by a judgement of a court of foreign country, except for punishment for petty offence or offence committed through negligence or as provided as exemption in the Ministerial Regulations; (7) Having been indicated under certain circumstances as likely to cause disruption jeopardizing public peace or safety or the national security or being a person with warrant of arrest issued by a foreign government; (8) Having been indicated under certain circumstances as likely to engage in prostitution, woman or child trafficking, drug trafficking, evasion of customs duty, or to engage in other activities contrary to public order or good morals; (9) Having no money or bond as prescribed by the Minister's publication under Section 14; (10) Being prohibited from entering Thailand by the Minister under Section 16; (11) Being deported by the Government of Thailand or the Government of a foreign country, or the right of stay in Thailand or in foreign country having been revoked, or having been repatriated from Thailand by competent official at the expenses of the Government of Thailand, unless the Minister may consider exemption on a basis of special individual case.

²⁰³³ Article 2 of the Ministerial Regulation on Rules, Procedures, and Conditions of Issuance of Visa, Visa Exemptions, and Change of a Visa Type, 24 September B.E.2545 (2002).

²⁰³⁴ Section 34 of the Immigration Act B.E.2522 (1979).

²⁰³⁵ This type of visa is to enter and take up residency according to Section 41 of the Immigration Act 1979.

²⁰³⁶ This type of visa is to enter and take up residency outside the annual immigration quota set out under Section 40 of the Immigration Act B.E.2522 (1979).

²⁰³⁷ Please see the list of countries here: <https://thaiconsulatela.thaiembassy.org/en/publicservice/visa-exemption-and-visa-on-arrival-to-thailand>

without applying for a visa and allows nationals from 31 countries²⁰³⁸ to apply for visa on arrival at the immigration checkpoints.

In accordance with the Immigration Commission Proclamation on Rules and Conditions for Permanent Residence Permission, 26 December B.E.2546 (2003),²⁰³⁹ those who wish to take up permanent residency later once entering Thailand can apply through the following categories of the application: (1) Investment; (2) Employment; (3) Humanitarian reasons (e.g., being a spouse, child or parents of a Thai national or a permanent resident); (4) Expert; and (5) Special cases.²⁰⁴⁰ To qualify for permanent residency,²⁰⁴¹ the applicants must hold a passport and have held a valid Non-Immigrant Visa staying in Thailand for at least three consecutive years, with three consecutive one-year extensions. They must be able to understand and speak Thai. The applicants who are over 14 years old are required to undergo criminal record check.

Permanent residency status can be granted to not more than 100 nationals of each country and up to 50 stateless persons annually.²⁰⁴² However, the following groups of non-nationals are not subject to the mentioned immigration quotas²⁰⁴³: (1) A permanent resident who has previously resided in and returned to Thailand; (2) A woman who has Thai nationality by birth and has renounced Thai nationality upon marriage to a foreign husband; (3) A child under 20 (having not reached the age of majority) born to a woman who has Thai nationality by birth, whether or not she has renounced Thai nationality upon marriage to a foreign husband; and (4) A child under the age of one year old of permanent residents who was born while the mother was outside Thailand and has returned to Thailand with the mother or the father.

Exceptionally, Section 17 gives the Minister of the Interior the power to permit (subject to Cabinet approval) any alien or any group of aliens to enter and stay in Thailand. This provision provides another legal pathway to temporary and permanent residence for other groups of non-nationals who have illegally entered Thailand in the first place and usually reside in the country without any documentation. These include, for example, irregular migrant workers from Cambodia, Laos and Myanmar, or those who sought refuge in Thailand due to conflicts in Thailand's neighbouring countries after the Second World War such as the Kuomintang Refugees and the ethnic Vietnamese fleeing the first Indochinese War.²⁰⁴⁴ However, this pathway under Section 17 will not be eligible unless there is an approval by the Thai Cabinet.

²⁰³⁸ Ibid.

²⁰³⁹ See the English version of the Proclamation here: <https://www.immigration.go.th/wp-content/uploads/2025/03/1.2.2-Notification-of-Immigration-Commissionมีครุฑ.pdf>

²⁰⁴⁰ Item 2 of the Immigration Commission Proclamation on Rules and Conditions for Permanent Residence Permission, 26 December B.E.2546 (2003).

²⁰⁴¹ Ibid, item 1.

²⁰⁴² Section 40 of the Immigration Act B.E.2522 (1979).

²⁰⁴³ Section 42 of the Immigration Act B.E.2522 (1979).

²⁰⁴⁴ See: Bongkot Napaumporn and Susan Kneebone, 'Asylum and Refugee Protection in Thailand's History: Between Sovereignty and Humanitarianism' in Susan Kneebone et al (eds), *Refugee Protection in Southeast Asia* (Berghahn Books, 1st edn, 2024) 55 <<https://doi.org/10.2307/jj.16275978.9>>.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Section 34 of the Thailand's Immigration Act B.E.2522 (1979) allows non-nationals to enter and stay temporarily in the country for the following purposes: (1) Diplomatic or consular missions; (2) Performance of official duties; (3) Tourism; (4) Sports; (5) Business; (6) Investments as approved by the Ministries and Departments concerned; (7) Investments or activities relating to investments subject to provisions of laws on investment promotion; (8) Being in transit passenger; (9) Being the person in charge of a conveyance or crew of a conveyance arriving at a terminal, port, or station in Thailand; (10) Education or observation; (11) Mass media duties; (12) Missionary work under approval of the Ministries and Departments concerned; (13) Scientific research or training in a research or educational institute in Thailand; (14) Practicing of skilled craftsmen or specialists; (15) Other activities as prescribed in the Ministerial Regulations.²⁰⁴⁵

Excluding tourists, athletes, transit passengers and pilots/captains steering vehicles to Thailand's ports or stations, and crews, non-nationals who enter and stay due to the following reasons can reside in Thailand for more than three months:²⁰⁴⁶

- Not exceeding one year:
 - Business.
 - Education.
 - Mass media duties.
 - Missionary work under approval of the Ministries and Departments concerned.
 - Scientific research or training in a research or educational institute in Thailand.
 - Practicing of skilled craftsmen or specialists.
 - Other activities including, for example, retirees aged 50 or older, staying with family in Thailand, or medical treatment.
- Not exceeding two years:
 - Investments as approved by the Ministries and Departments concerned.
- For as long as necessary:
 - Diplomatic or consular missions.

²⁰⁴⁵ See the Thai version of the Ministerial Regulations here: <https://searchlaw.ocs.go.th/council-of-state/#/public/doc/RGtKN2pRSCtIdEtla11YemZCcFdEUT09>

²⁰⁴⁶ Section 35 of the Immigration Act B.E.2522 (1979).

- Performance of official duties.
- For as long as deemed reasonable by the Bard of Investment
 - Investments or activities relating to investments subject to provisions of laws on investment promotion.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Although Thailand is not a signatory to the 1951 Refugee Convention and its 1967 Protocol or the Convention relating to the Status of Stateless Persons (1954 Statelessness Convention) and Convention on the Reduction of Statelessness (1961 Statelessness Convention), it has applied exceptions to immigration law providing refuge to many groups of refugees from surrounding countries for centuries.²⁰⁴⁷ Prior to 1950, Thai immigration laws used to allow people who did not hold a travel document to enter and stay in the country and also granted them an identification paper at the port of their entry.²⁰⁴⁸ Thai immigration rules have become stricter since the Second World War. However, the current immigration law still leaves some options allowing for special residence permission to be granted to non-nationals including these refugees.

According to the current immigration law of Thailand,²⁰⁴⁹ Section 12 sets forth classes of non-nationals excluded from admission into Thailand. Among others, non-nationals who do not have a valid passport or travel document, or who do not have a visa are not allowed to enter the country. However, Section 17 and Section 54 give power to the competent officials to allow non-nationals who have entered Thailand illegally to be granted permission to stay and acquire some legal statuses in special circumstances.

Section 17 of the Immigration Act 1979 provides that ‘Under special circumstances, the Minister, by the consent of Cabinet, may authorize an entry and residence permit into the Kingdom subject to any condition or exempt any alien from compliance with the Act.’ Using this provision with Cabinet approval, Thailand allowed refugees from Cambodia, China, Malaysia, Laos, Myanmar and Vietnam who fled between the late 1940s and the 1970s to seek asylum and provided them protection including regularising their immigration status, granting them permanent residence, and facilitating their naturalisation. Although *Section 54*²⁰⁵⁰

²⁰⁴⁷ See the details of Thailand’s practices in Bongkot Napaumporn and Susan Kneebone, ‘Asylum and Refugee Protection in Thailand’s History: Between Sovereignty and Humanitarianism’ in Susan Kneebone et al (eds), *Refugee Protection in Southeast Asia* (Berghahn Books, 1st edn, 2024) 55 <<https://doi.org/10.2307/jj.16275978.9>>.

²⁰⁴⁸ Bongkot Napaumporn, ‘Forgotten Stateless Vietnamese in Thailand’ in Sriprapha Petcharamesree and Mark P Capaldi (eds), *Migration in Southeast Asia: IMISCOE Regional Reader* (Springer International Publishing, 2023) 57, 61 <https://doi.org/10.1007/978-3-031-25748-3_4>.

²⁰⁴⁹ The Immigration Act B.E.2522 (1979) as amended by the Act No.2 in 1980, the Act No. 3 in 1999, and the Act No.4 in 2018.

²⁰⁵⁰ Section 54. Any alien entering or staying in the Kingdom without permission, or with permission that is expired or revoked, may be repatriated from the Kingdom by the competent official.

If an investigation is to be conducted for repatriation under paragraph one, the provisions of Sections 19 and 20 shall apply *mutatis mutandis*.

stipulates that aliens or any groups of aliens who have entered or stayed in Thailand without permission may be repatriated from Thailand, it authorises the competent officials to permit them to reside in Thailand while awaiting investigation and repatriation. For instance, this provision was used to allow refugees from Myanmar to stay in the camps along the Thailand-Myanmar borders until now.

In addition, in 2019, the so-called ‘National Screening Mechanism (NSM)’ has been established by the *Regulation of the Office of the Prime Minister on the Screening of Aliens Who Enter into the Kingdom and Are Unable to Return to the Country of Habitual Residence B.E.2562*.²⁰⁵¹ The NSM aims to manage non-nationals who have entered or enter into Thailand and are not able to return to their country of origin due to risks of persecution. Once their ‘Protected Person’ status²⁰⁵² is conferred, this particular group of non-nationals are allowed to stay in Thailand and granted legal status and necessary protection and assistance awaiting determined solutions.²⁰⁵³ Although this does not serve as a comprehensive domestic refugee protection framework and there are still several skepticisms regarding, for example, Thailand’s avoidance to frame these issues as refugees issues and its national security oriented process, the establishment of the NSM demonstrates Thailand’s effort in strengthening refugee protection measures and their human rights.²⁰⁵⁴

Lastly, in Thailand’s nationality law²⁰⁵⁵ itself, *Section 7 bis paragraph 3*²⁰⁵⁶ also provides a legal pathway to a residency status for children who was born in Thailand to foreign parents but is not eligible to acquire Thai nationality by birth. The provision provides that ‘The person who is born within the Thai Kingdom and has not acquired Thai nationality under paragraph one shall reside in the Thai Kingdom under conditions stipulating in the Ministerial Regulation, but principles of national security as well as human rights have to be considered concurrently. The person shall be deemed to have entered and resided in the Thai Kingdom

In a case where there is an order to repatriate an alien from the Kingdom, while waiting for the repatriation to take place, the competent official shall have power to permit the alien to reside at a place provided that such alien shall have to come to meet the competent official on the date, time and place as prescribed, with bond or with bond and security, or the competent official may detain such alien at a place for however long as is necessary. The detention expenses shall be borne by such alien.

The provisions of this Section shall not apply to aliens entering the Kingdom prior to the date the Immigration Act, B.E. 2480 (1937) came into force.

²⁰⁵¹ See the English version here: ‘Thailand: Regulation of the Office of the Prime Minister on the Screening of Aliens Who Enter into the Kingdom and Are Unable to Return to the Country of Origin B.E. 2562’, *Refworld* (25 December 2019) <<https://www.refworld.org/legal/legislation/natlegbod/2019/en/123153>>.

²⁰⁵² According to Article 3 of the Regulation, a ‘Protected Person’ means any alien who enters into or resides in the Kingdom and is unable or unwilling to return to his/her country of origin due to a reasonable ground that they would suffer danger due to persecution as determined by the Committee, and is granted status as a Protected Person under this Regulation.

²⁰⁵³ Article 25, the Regulation of the Office of the Prime Minister on the Screening of Aliens Who Enter into the Kingdom and Are Unable to Return to the Country of Habitual Residence, 2019.

²⁰⁵⁴ See further analysis here: Pawat Satayanurug, ‘Thailand’s National Screening Mechanism: A Case of Partial Acculturation to International Refugee Law’ [2025] *International Journal of Refugee Law* 24 <<https://doi.org/10.1093/ijrl/eeaf010>> (‘Thailand’s National Screening Mechanism’); Jittawadee Chotinukul, *Thailand and the National Screening Mechanism: A Step Forward for Refugee Protection?* (No 25, Graduate Institute of International and Development Studies, Global Migration Centre, 2020) 34.

²⁰⁵⁵ See the English version of the Thai Nationality Act here: <https://report.dopa.go.th/laws/document/2/226.pdf>

²⁰⁵⁶ Section 7 bis paragraph 3 of the Nationality Act B.E.2508 (1965) as amended by the Nationality Law No.4 B.E.2551 (2008).

without permission under the law on immigration unless the Ministerial Regulation is formulated.’ Abandoned children, children of refugees and stateless people, and children born to irregular migrants who are unable to return to the country of origin are the main focus of the protection provided under this provision.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

According to *Section 34 (15)* of the Immigration Act 1979, the same type of a temporary visa, or so-called Non-Immigrant Visa, can be granted to a family member of a Thai national, or non-nationals who have been earlier received this visa to stay in Thailand. The family member specified in this provision means of a father, mother, spouse, biological child, adopted child, or child of his or her spouse.²⁰⁵⁷ Eligible applicants for this Non-Immigrant Visa for a family reunification purpose include:

- Family members of a non-national who has been granted a student visa.
- Family members of a Thai national.
- Family members of a non-national who has been a permanent residency status.
- Family members of a non-national who has been granted a visa for one of the following purposes:
 - Conducting business.
 - Making investments as approved by the Ministries and Departments concerned.
 - Performing official duties.
 - Making other types of investments.
 - Being employed as an academic staff/teacher in a public education institute.
 - Being employed as an academic staff/teacher in a private education institute.
 - Practicing teaching or conducting research in an education or research institute.
 - Being media and film crews.
 - Studying Buddhism and performing Buddhist ritual activities.
 - Performing missionary work or other religious activities.
 - Being skilled craftsmen or specialists in medical, healthcare, or other necessary areas.
 - Working on installation or repair of machinery, aircraft or marine vessels
 - Being actors, singers, musicians at a hotel or an entertainment company in Thailand that has paid up registered capital of not less than 20 million baht.

²⁰⁵⁷ The term ‘child’ in the Thai immigration law means of persons who are under the age of 20.

- Performing voluntary work with foundation or association registered in Thailand, Thai or foreign chambers of commerce, or the Federation of Thai Industries.
- Becoming a long-term resident after retirement.
- Being a contestant or a witness for the judicial process
- Performing duties for government agencies, state enterprise, embassies, consulates or international organisations.
- Conducting a process to prove Thai nationality.
- Being professional athletes.

For humanitarian reasons, *Section 41* of the Immigration Act 1979 also allows a foreign spouse, biological child, and parent of a Thai national or a permanent resident to take up permanent residency to reunite with their family in Thailand if they meet the following requirements:

- In the case of a foreign spouse of a Thai national,
 - Their marriage must be registered for not less than two years in case they have a child together. If they do not have a child and cannot provide a medical certificate to prove their infertility, the period of marriage registration requires for at least five years.
 - If the sponsor partner still works in Thailand, that person or both must have income of at least 30,000 baht per month for at least two consecutive years before the date of application.
 - If the sponsor partner is elderly (at the age of 50 or above), he or she must have income of at least 65,000 baht per month for at least two consecutive years before the date of application.
- In the case of a foreign spouse of a permanent resident,
 - Their marriage must be registered for not less than two years.
 - The partner who has already been granted permanent residence must express his or her wiliness to sponsor the applicant.

- The sponsor partner must have the similar qualification as required for the applicant who enters for the purpose of investment²⁰⁵⁸ or work.²⁰⁵⁹
- In the case of a foreigner born to a Thai national,

²⁰⁵⁸ The followings are qualifications of applicants who wish to invest in Thailand:

- The applicant must brought-in at least Baht 10 million to invest in the Kingdom and this must be certified with a letter issued by the commercial bank in Thailand which reveals evidence of financial remittance into Thailand and
- Investment made by the applicant must be of an interest of national economy in either one or collective nature as follows:
 - 1) Investment made in a limited company or public company with documentary evidence certified by state authority concerned and such business must not be discrepancy to national peace and order, culture or people's morality or,
 - 2) Purchase of state-issued security or state enterprise's security where Ministry of Finance or Bank of Thailand is a guarantor and documentary evidence of such acquisition is required,
 - 3) Investment in the stock market such as ordinary share, bond, preference share or investment unit etc. with a condition that such investment must be approved or certified by the Stock Exchange Commission and documentary evidence of such asset is required to be furnished along with the application
- By the end of September of each year, foreign national who was granted with residential permit must submit documentary evidence of one's investment acquisition to the Immigration Commission or the authorized official. This has to be done for 3 consecutive years starting from the day the residential permit is granted. The Committee and Secretary of the Immigration Commission or the authorized official has authority to investigate the investment to find out whether such investment is made according to the criteria stipulated by the Immigration Commission or not before reporting the findings to the Immigration Commission
- If the investigation reveals later that any foreign national who was granted with residential permit lacks qualification as stipulated by the Immigration Commission, then the Committee and Secretary of the Immigration Commission will report such circumstance to the Immigration Commission and propose an opinion to the Minister of Interior to revoke such permit.

²⁰⁵⁹ The followings are qualifications of applicants who wish to work in Thailand:

- The applicant has to be in a position of executive officer such as President of Committee or Committee of juristic person registered in Thailand with a capital of at least Baht 10 million and is authorized as a signatory for such juristic person, up to the date of application submission, for at least 1 year. The applicant must earn at least Baht 50,000 per month, up to the date of application submission, for a period of 2 consecutive years as minimum and tax return is required and
- The business in which the applicant works must be of an interest of national economy i.e.
 - 1) International commerce where its export value in foreign currency in the past 3 years reached a threshold of Baht 20 million in average. This fact must be certified by a letter issued by commercial bank concerned or a company that provide loan to domestic manufacturing company by bringing into this country, within the past three years, foreign currency at the amount not less than Baht 100 million or,
 - 2) Tourism related business which in the past 3 years has brought into this country, at least 5,000 tourists in average. This fact must be certified by the letter issued by the authority concerned or,
 - 3) Other type of business that the applicant is a shareholder of at least Baht 5 million for a period of at least 2 years up to the date of application submission.
- In case where the applicant lacks any qualification as mentioned in 3.2.1 and 3.2.2 then the following requirement is applied.
 - 1) Be a holder of work permit for at least 3 consecutive years up to the date of application submission and
 - 2) Have been working in the current company for at least 1 year, up to the date of application submission and
- Earn annual income at least Baht 80,000 per month for a period of at least 2 years, up to the date of application submission, or have been filing tax return for the amount of annual income of Baht 100,000 for at least 2 consecutive years, up to the date of application submission.

- If the foreigner wishes to sponsor his or her Thai parent, he or she must be the biological child who have income of at least 30,000 baht per month for at least two consecutive years before the date of application. The Thai parent must already reach the age of 50 and express his or her intention to be sponsored.
- If the foreigner is to be sponsored by the Thai parent, he or she must be the biological child who is not married and under the age of 20. The sponsor parent must have income of at least 30,000 baht per month for at least two consecutive years before the date of application. The sponsor parent has to also express his or her intention to sponsor the child.
- In the case of a foreigner born to a permanent resident,
 - If the foreigner wishes to sponsor his or her parent who have a permanent residency permit, he or she must be the biological child. The parent must already reach the age of 50 and express his or her intention to be sponsored.
 - If the foreigner is to be sponsored by the parent who have a permanent residency permit, he or she must be the biological child who is not married and under the age of 20. The sponsor parent has to also express his or her intention to sponsor the child.
- In the case of a foreign parent of a Thai national,
 - If the foreign parent wishes to sponsor his or her biological who is a Thai national, the child must not be married and under the age of 20. The foreign parent must have income of at least 30,000 baht per month for at least two consecutive years before the date of application.
 - If the foreign parent is to be sponsored by his or her adult child who is Thai, the foreign parent must already reach the age of 50. The sponsor must have income of at least 30,000 baht per month for at least two consecutive years before the date of application, and express his or her intention to sponsor the parent.
- In the case of a foreign parent of a permanent resident,
 - If the foreign parent wishes to sponsor his or her biological child who is a permanent resident, the child must not be married and under the age of 20. The parent must express his or her intention to sponsor the child.
 - If the foreign parent is to be sponsored by his or her adult child who is a permanent resident in Thailand, the parent must already reach the age of 50. The sponsor must express his or her intention to sponsor the parent.

5. What are the conditions for naturalization in the reviewed state?

According to the current nationality law,²⁰⁶⁰ there are three pathways to naturalisation: naturalisation in a general circumstance (Section 10); naturalisation as a special case (Section 11); and naturalisation for vulnerable populations (Section 12/1).

In a general situation, *Section 10* sets out that an applicant must have the following qualifications to be eligible for naturalisation:

- Becoming *sui juris* (reaching the age of majority) according to Thai law and the law of the country of their nationality.²⁰⁶¹
- Having good behaviour, for example, having no serious criminal record, or no activities showing potential threat to national security.²⁰⁶²
- Having a stable occupation to be able to make a living in Thailand.²⁰⁶³
- Having had a domicile in Thailand for a consecutive period of not less than five years until the date of filing the application.²⁰⁶⁴
- Having knowledge of Thai language both speaking and listening.²⁰⁶⁵

As a special case, with an exemption of the Thai language proficiency and a five-year domicile in Thailand, *Section 11* stipulates that a person can apply for naturalisation if he or she meets one of the following sets of requirements:

- Becoming *sui juris* who has rendered a significant contribution to Thailand; having good behaviour; and having a stable occupation.²⁰⁶⁶
- Becoming *sui juris* who is a child, wife or husband of a naturalised Thai national or a Thai national whose Thai nationality was restored; having good behaviour; and having a stable occupation.²⁰⁶⁷
- Becoming *sui juris* who used to have Thai nationality; having good behaviour; and having a stable occupation.²⁰⁶⁸
- Becoming *sui juris* who is a husband of a Thai national; having good behaviour; and having a stable occupation.²⁰⁶⁹

Amended in 2008, *Section 12/1* allows three groups of vulnerable populations to naturalise by the support of a Thai national or a foster home. They include: (1) An incompetent person

²⁰⁶⁰ The Nationality Act B.E.2508 (1965) as amended by the Act No. 2 and 3 in 1992, the Act No.4 in 2008 and the Act No. 5 in 2012.

²⁰⁶¹ Section 10(1) of the Nationality Act B.E.2508 (1965).

²⁰⁶² Section 10(2) of the Nationality Act B.E.2508 (1965).

²⁰⁶³ Section 10(3) of the Nationality Act B.E.2508 (1965).

²⁰⁶⁴ Section 10(4) of the Nationality Act B.E.2508 (1965).

²⁰⁶⁵ Section 10(5) of the Nationality Act B.E.2508 (1965).

²⁰⁶⁶ Section 11(1) of the Nationality Act B.E.2508 (1965).

²⁰⁶⁷ Section 11(2) of the Nationality Act B.E.2508 (1965) as amended by the Nationality Act B.E.2551 (2008).

²⁰⁶⁸ Section 11(3) of the Nationality Act B.E.2508 (1965).

²⁰⁶⁹ Section 11(4) added by the Nationality Act B.E.2551 (2008).

under the care of a Thai guardian appointed by the court;²⁰⁷⁰ (2) A minor child under the care of a foster home for at least 10 years;²⁰⁷¹ and (3) A minor child adopted by a Thai national for at least five years.²⁰⁷² A proof of their birth in Thailand is required in case of the incompetent person and the adopted child to process the naturalisation whereas it is not necessary for the children left in the foster home.

Moreover, *Section 9* of the Nationality Act 1965 also allows an alien woman who marries a Thai husband to apply for Thai nationality by marriage. To do so, she has to basically prove that: (1) her husband is of Thai nationality; and (2) she is married to him at the time of filing the application. The Minister has discretionary power to approve or deny the request for Thai nationality in this regard. However, the law does not frame the acquisition of Thai nationality by marriage as naturalisation.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- m. temporary and permanent resident migrants;*
- n. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- o. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- p. refugees;*
- q. asylum seekers;*
- r. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

²⁰⁷⁰ Section 12/1(1) as added by the Nationality Act (No.4) B.E.2551 (2008).

²⁰⁷¹ Section 12/1(2) as added by the Nationality Act (No.4) B.E.2551 (2008).

²⁰⁷² Section 12/1(3) as added by the Nationality Act (No.4) B.E.2551 (2008).

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

In Thailand's Constitution of 2017,²⁰⁷³ Sections 4, 27 and 70 provide the key non-discrimination principles. These provisions should cover everyone including non-nationals. Due to the way in which some provision is framed or the interpretation of the relevant terms, they are however debatable.

Section 4. Human dignity, rights, liberties and equality of the people shall be protected.

The Thai people shall enjoy equal protection under the Constitution.

As one of the general provisions in Chapter I of the Constitution, Section 4 paragraph one stipulates that 'Human dignity, rights, liberties and equality of the people shall be protected.' In principle and due to the long tradition of Thai constitution, this provision protects everyone regardless of their nationality. However, in this particular constitution, paragraph two was added to Section 4 narrowly mentioning that 'The Thai people shall enjoy equal protection under the Constitution.'

Section 27. All persons are equal before the law, and shall have rights and liberties and be protected equally under the law.

Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of differences in origin, race, language, gender, age, disability, physical or health condition, personal status, economic and social standing, religious belief, education, or political view which is not contrary to the provisions of the Constitution or on any other grounds, shall not be permitted.

Measures determined by the State in order to eliminate an obstacle to or to promote a person's ability to exercise their rights or liberties on the same basis as other persons or to protect or facilitate children, women, the elderly, persons with disabilities or underprivileged persons shall not be deemed as unjust discrimination under paragraph three.

Members of the armed forces, police force, government officials, other State officials, and officers or employees of State organisations shall enjoy the same rights and liberties as those enjoyed by other persons, except those restricted by law specifically in relation to politics, capacities, disciplines or ethics.

Although Section 27 is framed under Chapter III focusing on the rights and liberties of the Thai people, the provision uses the term 'persons' instead of 'Thai nationals.' The first paragraph

²⁰⁷³ See the Thai version of Thailand's Constitution of 2017 here: <https://www.ratchakitcha.soc.go.th/DATA/PDF/2560/A/040/1.PDF>. The English version is available here: https://www.admncourt.go.th/admncourt/upload/webcmsen/Publication/Publication_021220_132718.pdf

confirms the equality before the law, paragraphs two and three specifically address gender inequality and discrimination on various grounds including physical, racial, cultural, political, economic, and social grounds.

Section 70. The State should promote and provide protection for different ethnic groups to have the right to live in the society according to the traditional culture, custom, and ways of life on a voluntary basis, peacefully and without interference, insofar as it is not contrary to public order or good morals or does not endanger the security of the State, health or sanitation.

Section 70 is placed under Chapter IV regarding the directive principles of state policies affirming the responsibility of the Thai state to promote and provide protection for different ethnic groups who may be either Thais or non-Thais but are residing in Thailand.

Apart from the Constitution, the draft Anti-Discrimination Act has been proposed to and is now pending the approval by the Thai Cabinet. According to the Thai Ministry of Justice, this law was drafted in line with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The law aims to strengthen the legal basis for the elimination of discrimination on all grounds, including sex and gender, and address situations of multiple and intersecting discrimination. Moreover, in August 2025, the Thai House of Representatives has recently passed the Act on the Protection and Promotion of the Way of Life of Ethnic Groups. The Act focuses on eliminating discrimination, promoting equality based on cultural diversity and guaranteeing the rights and protecting the way of life of ethnic minority groups in Thailand.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Non-nationals of all categories, including temporary or permanent residents, long-term stateless people and refugees, do not have the right to vote and to be elected at all levels, municipal, district, provincial or national. Section 95 of the 2017 Constitution sets out that only Thai nationals have the right to vote. According to Section 95(1) of the 2017 Constitution, The naturalized nationals can vote if they have held the Thai nationality for not less than five years. Section 97 of the 2017 Constitution stipulates that only Thai nationals by birth can have the right to stand for election.

Regarding the right to freedom of association, foreign non-governmental organizations can operate in Thailand with limitations by applying for permission from the Ministry of Interior. According to the Labour Relations Act B.E.2518 (1975),²⁰⁷⁴ foreign migrants can be a member of existing labour or trade unions and participate in their activities. However, they are not

²⁰⁷⁴ See the English version of the Labour Relations Act of 1975 here: https://www.mol.go.th/wp-content/uploads/sites/2/2019/03/labourRelation2518_en.pdf

permitted to form a trade union which is preserved only to Thai nationals.²⁰⁷⁵ Despite its commitment to improving workers' rights including the right to association, Thailand has neither ratified to the International Labour Organization (ILO) Convention No.87 on Freedom of Association and Protection of the Right to Organise, and No.98 on Right to Organise and Collective Bargaining.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Non-nationals who have a nationality and hold a national passport have a full freedom of movement in Thailand. They can freely travel across the country, and leave and return to Thailand as long as their visa allows. Whereas stateless people who have not yet been granted a permanent residency status in Thailand have their movement restricted. These stateless people are assigned to stay within the province in which they were registered. If they wish, they can apply for permission from the local authority to travel out of their provincial designate area, or even outside Thailand. For several decades, these stateless people with temporary residency from Thailand have been able to apply for a travel document and a visa to travel abroad for a specific purpose.²⁰⁷⁶ They need to apply for the re-entry permit prior to leaving the country, otherwise their stay permit in Thailand is terminated automatically according to Section 39 of the Immigration Act 1979, and they will be unable to return to Thailand.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Yes, there are some limitations. Section 86 of the Land Code Act in 1954 prohibits direct land ownership by non-nationals with an exception under specific limited circumstances such as acquisition through inheritance of a small residential plot or through special government programs and treaties. However, under Sections 19 and 19/1 of the Thailand's Condominium Act, 1979, non-nationals can purchase a condominium unit within the designated foreign ownership quota (limited to 49 percent of the total usable space). Regardless of their nationality, these non-nationals include only those who obtain residence permit in accordance with immigration law or the law on investment promotion.

²⁰⁷⁵ Section 88 of the Labour Relations Act B.E.2518 (1975).

²⁰⁷⁶ For example, the case of Mong Thongdee: <https://www.smh.com.au/world/the-paper-airplane-contest-and-the-stateless-boy-20090921-fx14.html>

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

In according to Thailand's Foreigners' Working Management Emergency Decree, 2017,²⁰⁷⁷ the following categories of non-nationals in general can engage in formal employment.

- **Skilled work:** Non-nationals, excluding tourists and those in transit, who are permitted to enter the country, and may carry out the work that is not prohibited under Section 7 Paragraph one (Section 59).
- **Urgent duty:** Non-nationals who are permitted to enter the country, and engage in necessary, urgent or ad hoc work that can be completed within 15 days (Section 61).
- **Professional work in investment, petroleum and others:** Non-nationals who are permitted to enter the country and work under the law on investment promotion, the law on petroleum or any other law (Section 62).
- **Seasonal work in border areas:** Non-nationals with a nationality of a country sharing its borders with Thailand who use a border pass to enter the country and work temporarily in a specific period or season in a designate area (Section 64).

Focusing on stateless populations, Section 63/1 of the 2017 Foreigners' Working Management Emergency Decree, together with the Cabinet Decision in October 2016, allows stateless persons to engage in every category of works, in addition to unskilled work, in Thailand. The law specifies these four types of stateless persons who can have the right to work in Thailand:

- Stateless persons whose Thai nationality was revoked (Section 63/1(1)).
- Stateless persons who were born in Thailand but did not acquire Thai nationality (Section 63/1(2)).
- Stateless persons who were granted a permanent residency status (Section 63/1(3)).
- Stateless persons who were recently registered and issued with an ID card under the Central Bureau regulation on civil registration (Section 63/1(4)).

For migrants workers from Cambodia, Laos, Myanmar and Vietnam and non-nationals who have received a deportation order, the 2017 Foreigners' Working Management Emergency Decree also allows them to work in case where they are provided with the exemption to work instead of being deported (Section 63(1)), or while awaiting deportation, or allowed to stay while awaiting repatriation (Section 63(2)).

²⁰⁷⁷ See the Thai version of the Thailand's Foreigners' Working Management Emergency Decree of 2017 here: <https://searchlaw.ocs.go.th/council-of-state/#/public/doc/aWFRTmVvOWUvdzZlVnJ4MUFPThEUT09>. Please note that in this English version the latest amendments to the Decree are not included: <https://asean.org/wp-content/uploads/2016/08/Foreigners%E2%80%99-Working-Management-Emergency-Decree-2017.pdf>

By virtue of Section 63(2) of the 2017 Foreigners' Working Management Emergency Decree, and Section 17 of the 1979 Immigration Act, Thailand has recently enacted two proclamations in September 2025: one is the Ministry of Labour's Proclamation re 'Permission for Aliens who are residing in the Control Areas to Work as a Special Case in According to the Cabinet Decision on 26 August 2025,' and another is the Ministry of Interior's Proclamation re 'Permission for Aliens who are residing in the Control Areas to Stay in the Kingdom as a Special Case in According to the Cabinet Decision on 26 August 2025.' These policies allow long-term Myanmar refugees residing in temporary shelters to leave the shelters to work, and granting them legal work rights similar to what provided to migrant workers from Cambodia, Laos, Myanmar and Vietnam. Beginning on 1 October 2025, their work permit is valid up to one year and renewable.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Yes. Section 11 Paragraph two of the 2017 Foreigners' Working Management Emergency Decree specifies that for a business of more than five workers where Thai workers in the area can also be hired, an employer should employ foreigners for no more than 20 percent unless he or she would pay a special fee. However, this quota does not include long-term stateless and ethnic minority groups who are allowed to work under Section 63/1 of the 2017 Foreigners' Working Management Emergency Decree.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Yes. According to Section 7 Paragraph one of the 2017 Foreigners' Working Management Emergency Decree, there are the four lists of occupations that are prohibited for foreigners.²⁰⁷⁸ List 1 includes occupations that are strictly prohibited as they are reserved for Thai nationals, while occupations in Lists 2-4 are prohibited with some exceptions such as when there is an international or bilateral agreement between Thailand and other countries.

List 1: Occupations that are strictly prohibited for foreigners

- (1) Wood carving

²⁰⁷⁸ See the Notification Prescribing the Prohibited Occupations for Foreigners in Thai: https://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/092/T_0014.PDF. Here is the English version from the Thai Department of Employment: https://www.doe.go.th/prd/assets/upload/files/alien_en/6e4d2d43525d215fa74a42f2a69f3f25.pdf

- (2) Driving motor vehicles, driving a non-mechanically propelled carrier or driving a domestic mechanically propelled carrier, except for piloting international aircraft or forklift driving
- (3) Auction
- (4) Cutting or polishing diamond or precious stones
- (5) Haircutting, hairdressing or beauty treatment
- (6) Cloth weaving by hand
- (7) Mat weaving or utensil making from reeds, rattan, hemp, straw, bamboo, bamboo pellicle, grass, chicken feather, coconut leaf stick, fiber, wire or other materials
- (8) Mulberry paper making by hand
- (9) Lacquerware making
- (10) Making Thai musical instruments
- (11) Nielloware making
- (12) Gold ornaments, silverware or pink gold making
- (13) Bronze ware making
- (14) Thai dolls making
- (15) Alms bowl making
- (16) Silk products making by hand
- (17) Buddha images making
- (18) Paper or cloth umbrella making
- (19) Brokerage or agency work, except brokerage or agency working in international trade or investment
- (20) Thai massage
- (21) Cigarette rolling by hand
- (22) Tour guide or sightseeing tour operation
- (23) Peddling
- (24) Manual typesetting of Thai characters
- (25) Silk reeling and twisting by hand
- (26) Clerical or secretarial work
- (27) Legal services or services in legal proceedings, except for the following occupations:
 - a. Performing duties of arbitration

- b. Providing assistance or representation in the arbitral proceedings in the event that the law applicable to the dispute being considered by the arbitrators is not Thai law.

List 2: Prohibited Occupations for foreigners with a condition that foreigners are allowed to work under international agreements or obligations to which Thailand is bound under the provisions of law

- (1) Controlling, auditing, performing or providing accounting services, except for the following occupations:
 - a. Occasional internal audit work;
 - b. Work under international agreements or obligations to which Thailand is bound, for which the Professional Association provides a certificate of qualifications.
- (2) Civil engineer work concerning counselling, project planning, design and calculation, construction supervision or manufacturing, inspection, administration work to organize the system, research and test, except those who are registered as a professional engineer under the ASEAN Mutual Recognition Arrangement (MRA) as well as other international agreements related to cross-border engineering services, or licensee of the controlled engineering profession in the field of civil engineering under the Engineering law.
- (3) Professional architectural work concerning project study, design, construction management and supervision, inspection or consulting, except for professional architects under the ASEAN Mutual Recognition Arrangement (MRA) for architectural services as well as other international agreements on cross-border architectural services from the Architect Council of Thailand or licensee of controlled architecture profession under the Architects law.

List 3: Prohibited Occupations for foreigners with a condition that foreign workers are allowed to do skilled or semi-skilled work when working for an employer

- (1) Agriculture, animal husbandry, forestry or fishery
- (2) Bricklaying, carpentry, or construction works
- (3) Mattress or quilt blanket making
- (4) Knife making
- (5) Shoemaking
- (6) Hat making
- (7) Dressmaking
- (8) Pottery or ceramic ware making

List 4: Prohibited occupations which foreign workers are permitted to perform under the condition of having employers and permitted to enter Thailand by Immigration Law under MoUs or Agreement between Thai Government and Foreign Government

- (1) Labour
- (2) Shop front sellers

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Rights in work including minimum wage, overtime, maternity leave are specified in the Labour Protection Act, 1998. Both Thai and non-national employees are entitled to the same benefits. Regardless of their nationality, the law provides a foundation for equal treatment in a workplace ensuring that employees enjoy fair benefits and welfare without discrimination in all aspects such as wages, overtime compensation, and holiday benefits. However, as mentioned earlier, the employment of foreign workers is governed by the separate law, the 2017 Foreigners' Working Management Emergency Decree, which requires work permits and restricts certain occupations.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

The right to health in Thailand can be divided into two aspects: access to medical treatments and the right to free healthcare. Both Thai nationals and non-nationals have an equal access to public health services. According to Sections 36 and 66 of the Medical Facilities Act B.E.2541 (1998),²⁰⁷⁹ it is unlawful if a public hospital denies accepting a non-national patient even although he or she is undocumented and illegally staying in the country. In addition to Thai nationals, some groups of non-nationals who have had a long residence and been integrated into Thai society are also entitled to free healthcare. These groups include: permanent residents and the long-term stateless people who were registered in the Thai civil registry.

In March 2010, the Thai government initiated a health insurance scheme for the registered long-term stateless populations called '*Health Insurance for People with Citizenship Problems (HI-PCP)*.' Since then, these stateless people have been provided with the right to free healthcare similar to Thais.²⁰⁸⁰ The cabinet opined that these stateless populations have resided in the

²⁰⁷⁹ See the Thai version of the Medical Facilities Act of 1998 here: <https://searchlaw.ocs.go.th/council-of-state/#/public/doc/cIVaVzhORWJTKzhtbmVXVnVoLzRCZz09>.

²⁰⁸⁰ The Thai Cabinet approved two decisions, one on 23 March 2010, and another on 20 April 2015, allowed stateless people were already issued a set of 13-digit ID numbers to access to free healthcare similar to Thai nationals. This covers health promotion, healthcare services, rehabilitation and disease control and prevention. In 2015, the Cabinet approved a budget for additional groups of stateless people who may have been recently registered and were not included in the list of beneficiaries under the previous Cabinet Decision.

country for a long time and, according to the relevant policy, they are the process of acquiring either permanent residence or Thai nationality. Due to this policy, the Thai government has annually provided per-head budget support on account of these groups of stateless persons since 2010.

In addition, there are other health insurance schemes available for migrant workers in Thailand to buy: One is the '*Social Security Scheme (SSS)*' established in 2000, and another is the '*Health Insurance Card Scheme (HICS)*' endorsed by the Cabinet in 2004. The SSS is for foreign workers who are legally permitted to work with their employers who also contribute to the Social Security Fund together with employees and the government. Among other groups, SSS beneficiaries include migrant workers from Cambodia, Laos, Myanmar and Vietnam under the MoUs between Thailand and these countries. The HICS covers migrant workers in the informal sector and their dependants who are not eligible for the SSS. HICS beneficiaries, including undocumented migrant workers, have to buy the insurance card, and renew the card every year.

Section 25(4) of the Regulation of the Office of the Prime Minister on the Screening of Aliens Who Enter into the Kingdom and Are Unable to Return to the Country of Habitual Residence B.E.2562 (the 2019 National Screening Mechanism) permits asylum-seekers or refugees residing in urban settings who were granted the status of 'Person under Protection' to access the right to healthcare. However, the details of the right provided to this group are not yet specified.

Moreover, in accordance with the Ministry of Labour's Proclamation re 'Permission for Aliens who are residing in the Control Areas to Work as a Special Case in According to the Cabinet Decision on 26 August 2025,' long-term Myanmar refugees residing in temporary shelters are eligible to access to the same health insurance schemes available for migrant workers, either the Social Security Scheme, or the Health Insurance Card Scheme, as the case may be.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Thailand's education-for-all policy provides 15 years of free education for all children regardless of their legal status and nationality. This 15-year education includes three years of pre-primary school, six years of primary school, and six years of secondary school. The policy was first adopted in 1990 at the World Conference on Education for All organised in Thailand, then was included in the 1997 Thailand's Constitution providing that 'A person shall enjoy an equal right to receive the fundamental education for the duration of not less than twelve years which shall be provided by the State thoroughly, up to the quality, and without charge' (Section 43).

In July 2005, the Cabinet adopted a decision affirming the right to education for all children although they are undocumented and have no nationality. According to this Cabinet Decision, schools and educational institutions are firstly obliged to admit every child to study and after

graduation to provide them a transcript. Secondly, the Thai government is to provide per-head budget support to allow their access to basic education. The subsidy has been granted since then and is equal to what is given to Thai children.

According to the 2019 National Screening Mechanism, Section 25(4) of the Regulation of the Office of the Prime Minister on the Screening of Aliens Who Enter into the Kingdom and Are Unable to Return to the Country of Habitual Residence B.E.2562 provides asylum-seekers or refugee children residing in urban settings who were granted the status of ‘Person under Protection’ the right to education. However, the details of the right provided to this group are not yet specified.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

According to the Social Security Act, 1990, there are two funds under the Social Security Scheme (SSS) to which employers, employees, and the government equally contribute to: one is the Social Security Fund, and another is the Workmen’s Compensation Fund. Under the Social Security Fund, beneficiaries receive seven types of benefits including sickness, maternity, invalidity, death, child allowance, old-age benefits and unemployment. Thailand’s Workmen’s Compensation Act in 1994 initiated the Workmen’s Compensation Fund providing employees with benefits for work-related illnesses or injuries. The benefits include financial compensation, medical expenses, and rehabilitation costs. Under both fund, Thais and non-nationals registered in this scheme receive all these benefits on an equal basis.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

No. In general, non-nationals are not eligible to welfare programmes, which are currently designed to support Thai nationals. These programmes are, for example, Thailand’s State Welfare Card Program, known as ‘the card for the poor,’ monthly living allowance to registered people with disabilities, and monthly old-age allowance.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Türkiye

Author: Sevim Tuba Mert-Gostynski

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	X	X
1967 Protocol to the Convention relating to the Status of Refugees	X	
1954 Convention relating to the Status of Stateless Persons		X
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)	X	X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	X	X
International Covenant on Economic, Social and Cultural Rights (ICESCR)	X	X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	X	X
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	X	X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	X	X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	X	X
Convention on the Rights of the Child (CRC)	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	X	X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	X	X
Convention on the Rights of Persons with Disabilities (CRPD)	X	X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	X	X
ILO Forced Labour Convention (No. 29)	X	X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		
ILO Equal Remuneration Convention (No. 100)	X	X
ILO Discrimination (Employment and Occupation) Convention (No. 111)	X	X

ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)	X	X
Protocols to the European Convention on Human Rights (list which ones)	Protocol 4	Protocols 1, 6, 7, 13, 14
European Social Charter (ESC)	X	X
European Convention on the Legal Status of Migrant Workers	X	X
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) ²⁰⁸¹	X	X

²⁰⁸¹ Following the Presidential decision published in the Official Gazette of the Republic of Türkiye on 20.03.2021, Türkiye has withdrawn from the Istanbul Convention.

American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

1. 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)
2. 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air
3. 2005 Council of Europe Convention on Action against Trafficking in Human Beings

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Turkish law includes both visa and residence permit systems. Both systems are regulated under the Law on Foreigners and International Protection (Law No. 6458, hereinafter LFIP).²⁰⁸²

Visa

According to the Turkish law, foreigners staying in Türkiye up to 90 days are required to obtain visa from Turkish consulates located where the foreigner is a citizen or legally stays. Visa applications made to consulates should be finalized within 90 days. Visa duration cannot exceed ninety days within a period of one hundred and eighty days. For foreign country diplomats and the foreigners who are eligible for visa due to the national interests, a visa can be issued *ex officio* by the embassies of the Republic of Türkiye.²⁰⁸³

Certain groups are exempted from visa. These groups, stated in Article 12 of LFIP, are the following:

- Foreigners exempted from a visa pursuant to the agreements to which Republic of Türkiye is a party to or pursuant to a Presidential decree;
- Foreigners holding a valid residence or work permit in the time of the entrance to the country;
- Foreigners within the scope of certain legislations stated in the Article 12 para. 1-c and ç of LFIP;
- Foreigners who are aboard vehicles that are obliged to use Turkish air and seaports due to force majeure and who are going to the port city;
- Foreigners arriving at seaports and will tour the port city or neighboring provinces for touristic purposes, provided that their stay does not exceed seventy-two hours.

Under certain conditions, it is possible to obtain visas at border gates. In that case, the foreigner should show documents that guarantees their departure from Türkiye within the visa period. Unless stated in the visa, that visa category allows stay for a maximum of 15 days. The law states that visas obtained at border gates are exceptional.²⁰⁸⁴

²⁰⁸² Law on Foreigners and International Protection (Law No. 6458, last access: <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6458&MevzuatTur=1&MevzuatTertip=5>, 14.08.2025)

²⁰⁸³ Article 11 of LFIP.

²⁰⁸⁴ Article 13 of LFIP.

Airside transit visas may be required from foreigners transiting through Türkiye.²⁰⁸⁵

Residence Permit

Foreigners who stay in Türkiye for longer than the duration of their visa/visa exemption period or longer than 90 days are required to obtain a residence permit. The law lists the foreigners exempt from the residence permit requirement, such as stateless person identify document holders, members of diplomatic and consular missions in Türkiye, and foreigners exempted from residence permit requirement pursuant to the agreements to which Republic of Türkiye is a party.²⁰⁸⁶

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Under Turkish law, there are seven categories of residence permits. These are short-term residence permit, family residence permit, student residence permit, long term residence permit, humanitarian residence permit and victim of human trafficking residence permit.

Short-Term Residence Permit: Regulated between Articles 31-33 of LFIP, this category of residence permit is given for various different reasons stated in the law, such as foreigners coming to Türkiye because of scientific purposes, establishing a business, attending an in-service training, student exchange, touristic reasons, learning Turkish language and so on, given the fact that the applicant has an accommodation that accords with the general health and security standards and can provide criminal records, if asked.

Family Residence Permit: Family residence permit is given to the family members of Turkish citizens, former Turkish citizens whose status is regulated under Article 28 of Law No. 5901, foreigners holding a valid residence permit, refugees and subsidiary protection beneficiaries.²⁰⁸⁷

Student Residence Permit: Foreign students who will study in an associate, bachelor, master or PhD program in a higher education institution in Türkiye are eligible for a student residence permit. Students receiving their primary or secondary education in Türkiye, with the approval of their parents or legal guardians, are also eligible for a student residence permit. This category

²⁰⁸⁵ Article 14 of LFIP.

²⁰⁸⁶ Full list of foreigners exempt from obtaining a residence permit can be found on the Article 20 of LFIP.

²⁰⁸⁷ Turkish Citizenship Law (Law No. 5901) <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5901&MevzuatTur=1&MevzuatTertip=5>, last access: 14.08.2025.

of residence permit does not entitle the parents or other relatives of students to obtain a residence permit.²⁰⁸⁸

Long-Term Residence Permit: Foreigners staying in Türkiye with a valid and continuing residence permit minimum for eight years, or foreigners fulfilling the conditions set out by the Ministry of Interior are entitled to be granted a long-term residence permit. To be able to obtain a long-term residence permit, the foreigner must not have received any social aid in the past three years, must have enough and regular means of income for the right-holder and their family and must not be a threat to public order and security. Long-term residence permit holders enjoy every right conferred to Turkish citizens apart from compulsory military service, the right to vote and be elected, the right to work in public service, exemption from customs while importing vehicles and the regulations under specific provisions, without prejudice to acquired rights with respect to social security. If, after obtaining the permit, the foreigner poses a serious threat to public order security or stays out of Türkiye for more than an uninterrupted year, except for the purposes of health, education or obligatory public service in their country, the permit shall be cancelled.²⁰⁸⁹

Humanitarian Residence Permit: Under certain conditions, without requiring the conditions for other types of residence permits, a humanitarian residence permit can be granted within the timeframe given by the Ministry of Interior and with the approval of General Directorate of Migration. Humanitarian and Victim of Human Trafficking residence permits can be issued *ex officio* even if the beneficiary has not requested so.²⁰⁹⁰ This type of residence permit may be granted in following cases:

- When the best interest of the child so requires;
- When a foreigner cannot be physically deported or in cases where it is not reasonable or possible to deport them even though there is a deportation decision or entry ban;²⁰⁹¹
- When there is not any removal decision about the person pursuant to Article 55 of the law (Article 55 refers to the provisions on deportation);
- During the removal actions of a foreigner to the first country of asylum or a safe third country;
- When there is no other possibility of obtaining a residence permit for other grounds for foreigners who are allowed to enter to and stay in Türkiye due to an emergency, protection of national interests as well as public order and public security reasons; and

²⁰⁸⁸ Article 38 of LFIP.

²⁰⁸⁹ Articles 42-45 of LFIP.

²⁰⁹⁰ Nuray Ekşi, "Mahkeme Kararları Işığında İnsani İkamet İzni." *Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni* 38.2 (2018): 243-283, p. 248.

²⁰⁹¹ For example, several Turkmenistan citizens who have been issued a deportation order and applied to Turkmenistan consulate for renewing their expired passports were granted a humanitarian residence permit. It should be noted that Turkmenistan citizens who did not apply for renewing their old passports did not receive such residence permit. Another example to that exception is the foreigners who had been issued a deportation order but cannot be deported due to non-refoulement principle. If they cannot be deported to a third country, they are granted humanitarian residence permit. *Ibid*, p. 257-259.

- Under extraordinary circumstances.²⁰⁹²

When the compelling reasons for granting a humanitarian residence permit no longer apply, the residence permit shall be cancelled.²⁰⁹³

Victim of Human Trafficking Residence Permit: Victims of human trafficking or persons who are, under strong circumstantial evidence, very possibly victims of human trafficking are eligible to obtain residence permit under that category. They are given a 30-day residence permit to allow them to break from the impact of what they have experienced and to decide whether they will cooperate with the authorities. The permit can be extended for six-month periods due to the safety, health and special conditions of the victim. The extension period cannot exceed three years in total. If the beneficiary contacts the perpetrators of human trafficking on their own initiation, the permit shall be cancelled. Unlike other categories of residence permits, this type of residence permit does not require certain conditions.²⁰⁹⁴ Such conditions are the substantial conditions for acquiring the residence permit, such as having a passport that is valid 60 days longer than the duration of the residence permit, having a health insurance or having a regular and sufficient income.²⁰⁹⁵

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Under Turkish law, there are two main frameworks of protection: International Protection and Temporary Protection. Both frameworks are regulated under LFIP in general, whereas the latter is widely regulated under Temporary Protection Regulation.²⁰⁹⁶

1. **International Protection:** International Protection has three subcategories. These are refugee status, conditional refugee status and subsidiary protection.²⁰⁹⁷

a. **Refugee:** As stated in the chart in the first page of the report, Türkiye is a signatory state to the Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol. Türkiye made a reservation to these instruments, stating that refugee status shall be granted “only to persons who have become refugees as a result of events occurring in Europe”.²⁰⁹⁸ Therefore, under Turkish law, refugee status is given only to persons applying for this status due to events happening in Europe. In that sense, the refugee definition is narrower

²⁰⁹² That wording in the law is ambiguous and neither the law nor the LFIP Regulation includes any provision that clarifies the application of such circumstances.

²⁰⁹³ Articles 46 and 47 of LFIP.

²⁰⁹⁴ Articles 48 and 49 of LFIP.

²⁰⁹⁵ F. Elif Çelik, “Zorunlu-Düzensiz Göçün Yarattığı Sorunlardan Birisi Olarak İnsan Ticareti Mağduru Yabancıların İkametlerine İlişkin Hukuki Düzenlemelerin Değerlendirilmesi”. Public and Private International Law Bulletin 40(2), 2020, 657-706, p. 685.

²⁰⁹⁶ Temporary Protection Regulation, <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=20146883&MevzuatTur=21&MevzuatTertip=5>, last access: 14.08.2025.

²⁰⁹⁷ Articles 61-90 of LFIP.

²⁰⁹⁸ States parties, including reservations and declarations, to the 1967 Protocol Relating to the Status of Refugees, <https://www.unhcr.org/media/states-parties-including-reservations-and-declarations-1967-protocol-relating-status-refugees>, last access: 22.03.2025.

under Turkish law than compared to the Refugee Convention together with its 1967 Protocol.²⁰⁹⁹ Foreigners who are out of their country of origin and cannot enjoy the protection of their country of origin because of a well-founded fear of being persecuted due to their race, religion, membership to certain societal groups, due to events in Europe, or foreigners who do not want to enjoy the protection of their country of origin because of aforementioned reasons shall be granted the status of refugee. This provision is applied also for stateless persons in terms of their country of residence.

b. Conditional Refugee: Conditional refugee status is very similar to refugee status in terms of the conditions. Persons having a well-founded fear of being persecuted because of the same reasons outlined in the Refugee Convention due to the events outside European countries are eligible to apply for the conditional refugee protection.

Conditional refugee is a status unique to Turkish law.²¹⁰⁰ There are several material differences between refugee and conditional refugee statuses:

- Conditional refugees are eligible to stay in Türkiye until they are placed into a third country (Article 62 of LFIP) whereas refugees are entitled to stay in Türkiye during their refugee status last.
- Conditional refugees may be obliged by the Migration Management Directorate to reside in certain cities and notify within the specified time and manner (Article 82 of LFIP).
- While applying for international protection status, conditional refugees must apply both to governorates and UNHCR Representative in Türkiye whereas refugees apply only to governorates.²¹⁰¹
- Refugees are given travel document whereas the request to obtain a travel document of conditional refugees is evaluated in scope of Article 18 of Passport Code. Under this provision, the passport for foreigners is regulated. (Article 84 of LFIP).
- Conditional refugees can apply for work permit 6 months after applying for international protection status. Refugees, once granted refugee status, can work without work permit. (Article 89 para. 4 (a and b))²¹⁰²

Conditional refugees are allowed to stay in Türkiye until placed in a third country.²¹⁰³

²⁰⁹⁹ Neşe Baran Çelik, "Türk hukukunda uluslararası koruma başvurusunda bulunan veya uluslararası korumadan yararlanan yabancıların hak ve yükümlülükleri." İnönü Üniversitesi Hukuk Fakültesi Dergisi 6.3 (2015): 67-148, p. 75.

²¹⁰⁰ Cansu Yanar Keskin, "Yerleşme ve Seyahat Özgürlüğü ile Çalışma Hakkı Bağlamında Şartlı Mülteciler", Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi, 25(1), 2019, 388-433, p. 389.

²¹⁰¹ *Ibid*, p. 411.

²¹⁰² For further information on differences between refugee and conditional refugee statuses, please see the work cited in previous footnote.

²¹⁰³ The resettlement process is held in cooperation with UNHCR. It is not a right or application-based process and resettlement depends on the quotas provided by third countries. Resettlement, UNHCR, <<https://help.unhcr.org/turkiye/resettlement/>>, last access: 01.09.2025.

c. Subsidiary Protection: Applicable to foreigners or stateless persons who do not fulfil criteria to be considered a refugee or conditional refugee but, if returned to their country of origin, are in danger of:

- being sentenced to death or facing the execution of death penalty;
- facing torture, inhuman or degrading punishment or treatment;
- facing serious threat because of indiscriminate violence in international or nationwide armed conflict.

Exclusion from International Protection²¹⁰⁴:

Persons excluded from international protection are listed in the LFIP.

If the applicant:

- Receives protection and assistance from any United Nations (UN) agency or organ other than UN High Commissioner for Refugees;
- Is recognized by the authorities of the country of residence as enjoying the same rights and bearing same responsibilities attached to the citizens of that country;
- Is someone in relation to whom there is strong evidence of guilt regarding the offences under Article 1 Paragraph F of the Refugee Convention;

They are excluded from international protection.

If the protection provided by the UN ends and the status of applicant is not decided by the UN General Assembly, the applicant is eligible to enjoy the protection Turkish law offers. In cases where the applicant is believed to have committed inhuman acts outside of Türkiye prior to the international protection application, their application is considered to fall into the same grounds for exclusion as under Article 1 Paragraph F of the Refugee Convention²¹⁰⁵. Similarly, persons acting as an accomplice to or abetting such crimes are excluded from international protection.

A foreigner or stateless person who is under serious suspicion of posing a danger to public order or public security, and who has previously committed a crime which, if committed in Türkiye, would be punishable by imprisonment, and who has left their country of origin or residence only to avoid serving the penalty for that crime, shall be excluded from subsidiary protection.

Application²¹⁰⁶:

Governorates accept applications for international protection. (Provincial Migration Management Directorates work under the governorates established in every city and the processes related to international protection are dealt by the Directorate.) Every application

²¹⁰⁴ Article 64 of LFIP.

²¹⁰⁵ The law names the acts as “cruel acts” in the text in Turkish. In unofficial translation of the Law on the website of the Presidency of Migration Management, it is translated as “inhuman acts”.

²¹⁰⁶ Regulated under the articles 65-87 of LFIP.

should be made individually. It is possible to apply on behalf of other family members who came to Türkiye because of same reasons. In that case, adult family members are required to approve the application made on their behalf. The applicants shall not be taken under administrative supervision for the sole reason of applying for international protection.²¹⁰⁷

Applicants are required to have an interview. While registering for international protection, applicants are informed about the time of interview. They are also informed of the application procedure in a language they can understand.

The interview is scheduled within 30 days from the submission of the application. Interviews are conducted individually; however, if necessary, pursuant to the approval of the applicant, family members can be included in the interview as well. If the applicant requests, their lawyer can attend the interview as an observer. The applicant is required to submit documents supporting the application and cooperate with relevant authorities. If necessary, applicants are required to attend extra interviews. The decision on the application is made within 6 months after the interview. In certain cases,²¹⁰⁸ such as not mentioning the grounds for applying for international protection in the application, presenting false documents, being under custody for deportation, the application can be reviewed through an accelerated procedure. Applications of unaccompanied children cannot be evaluated through the accelerated procedure.

In case of a negative decision, the applicant, their legal representative or lawyer may appeal to the International Protection Assessment Commission within ten days from the notification of the decision. If the decision has been taken pursuant to Articles 68 (administrative supervision for applicants), 72 (unacceptable applications) or 79 (accelerated evaluation), it can only be challenged through judicial remedies. The decisions made pursuant to Articles 72 and 79 can be appealed within fifteen days from the notification of the decision.

The decision of the Commission can be challenged judicially. Judicial proceedings should be instituted within 30 days from the notification of the decision of Commission. The verdict of the court is final.

2. Temporary Protection

Temporary protection may be granted to foreigners who have been forced to leave their country and are unable to return, who arrive at or crossed Turkish borders *en masse* in search of temporary and immediate protection.²¹⁰⁹ The conditions and regulations related to this group of protection seekers are regulated under the Temporary Protection Regulation. The Regulation introduces the groups of persons who are not eligible for temporary protection, provisions on the start and end of temporary protection as well as the procedures through which temporary protection claims are assessed.

²¹⁰⁷ In the Article 3, para. z/bb of the Regulation on the Application of LFIP, administrative supervision is defined as the detention of persons in the repatriation centres. Regulation on the Application of LFIP, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=21460&MevzuatTur=7&MevzuatTertip=5>>, last access: 22.08.2025

²¹⁰⁸ The complete list can be found under Article 79 of LFIP.

²¹⁰⁹ Article 91 of LFIP.

Registration for Temporary Protection²¹¹⁰:

Foreigners who entered to Türkiye are directed to transfer centers to be registered. Foreigners who are already in Türkiye and eligible to apply for temporary protection shall apply to governorates²¹¹¹ They are directed to transfer centers. During the registration, applicants fill in a form, the data stated in law are collected, and applicants are registered into the system. Afterwards, the applicant receives a temporary protection ID card.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Regulated in the Articles 34-37 of LFIP, the family residence permit is the means of family reunification for foreigners holding a valid residence/work permit, refugees, subsidiary protection status holders, as well as Turkish citizens who have foreign family members and former Turkish citizens who lost their citizenship with an exit permit. These groups are sponsors, and foreigners should have a sponsor to apply for the family residence permit. The law does not include conditional refugees as sponsors, and various scholars have presented different opinions on that matter.²¹¹²

According to the *numerus clausus* list set out in the law, foreign spouses, minor foreign children of the sponsor or their spouse, and dependent adult foreign children of the sponsor or their spouse are the family members that are eligible to obtain a family residence permit. A family residence permit can be granted for a maximum duration of three years. In any case, it cannot exceed the length of the duration of sponsor's residence permit. For the family residence permit of children, the approval of both parents is required.

If the country of nationality of the foreigner permits polygamous marriages and the foreigner has more than one spouse, only one of them shall be granted the family residence permit. However, the foreigner's children from other spouses may be granted a family residence permit.

For the family residence permit of children, if one of the parents is outside of Türkiye and parents hold shared custody, consent of the parent who is outside of Türkiye is required.

Persons who have stayed in Türkiye for a minimum of three years with a family residence permit and have completed 18 years of age in Türkiye can request a short-term residence permit.

²¹¹⁰ Regulated under Article 21 of Temporary Protection Regulation.

²¹¹¹ The law does not introduce an appeal procedure specifically for the rejection of registration for temporary protection request. Therefore, if a foreigner's application for registration for temporary protection is rejected, as this is an administrative act, the applicant can appeal the decision according to the general appeal procedure for administrative acts. This procedure is regulated under the Code of Administrative Procedure. The Code of Administrative Procedure, <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=2577&MevzuatTur=1&MevzuatTertip=5>, last access: 23.08.2025.

²¹¹² For the discussion, please see: Şule Arslan, "Türk Hukukunda Aile Birleşimi", International Conference on Management and Social Sciences, November 17-19, 2018 İstanbul, Turkey, Proceeding Book, 378-386, p. 380.

In case of divorce, the foreign spouse is eligible for a short-term residence permit if they stayed in Türkiye with a family residence permit for a minimum of three years. The condition of three years is not required if it is established by the court that the foreigner has been a victim of domestic violence.

In case of the death of the sponsor, foreigners staying in connection with the deceased may be granted a short-term residence permit regardless of their period of stay in Türkiye.

Conditions for a Family Residence Permit:

The following conditions apply to the sponsor:

- A certain monthly income: The sponsor's monthly income should not be less than one-third of the minimum wage per family member, with a total income not less than the minimum wage;
- Housing conditions in accordance with general health and safety standards and having health insurance covering all family members;
- The sponsor must show in their criminal record that they have not been convicted of any crimes against family order within five years as of the date of application;²¹¹³
- The sponsor must have been living in Türkiye with a valid residence permit for a minimum of one year (not applicable to foreigners staying in Türkiye with a residence permit for purposes of scientific research or work permit, foreigners who have lost Turkish citizenship by obtaining an exit permit, and foreigners married to Turkish citizens);²¹¹⁴
- Registered address.

These conditions may not be required for refugees and subsidiary protection status holders in Türkiye.

The following conditions apply to the foreign applicant:

- Documenting the family relation with the sponsor;
- Showing that the applicant lives or intends to live with the sponsor;
- Not having entered into marriage in order to obtain residence permit;

²¹¹³ The crimes against family order are listed under Turkish Penal Code (Law No. 5237). These crimes are the following: Bigamy, fraudulent marriage, religious ceremony (Article 230), Changing the child's lineage (Article 231), Mistreatment (Article 232), Breach of obligations arising from family law (Article 233) and Abduction and detention of the child (Article 234).

²¹¹⁴ Exit permit is a legal mechanism introduced under the Turkish Citizenship Law (Law No. 5901) Articles 25-28. Turkish citizens acquiring another nationality are eligible to demand an exit permit. They are given the permit if their request is approved by the Ministry of Interior. Turkish Citizenship Law: <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5901&MevzuatTur=1&MevzuatTertip=5>>, last access: 22.03.2025.

- Being over the age of 18 (for each spouse);
- Not falling under the category of foreigners whose entrance into Türkiye is banned.²¹¹⁵

A family residence permit will not be issued, will be canceled if issued, and will not be renewed if expired, in the following cases:

- The conditions sought by the sponsor and applicant are not met or have disappeared;
- Having a valid deportation or entry ban order against the family residence permit holder;
- If the authorities determine that the family residence permit has been used for purposes other than those for which it was issued;
- Staying abroad for more than one hundred and eighty days in total in the previous year, except for compulsory public service, duty, education or health reasons.
- If the applicant has not been granted a short-term residence permit after the conditions for obtaining a family residence permit are no longer applicable. (Both stated above, two options can be taken into consideration here: 1. In case of divorce, the foreign spouse is eligible for a short-term residence permit if they stayed in Türkiye with a family residence permit for a minimum of three years. 2. In case of the death of the sponsor, foreigners staying in connection with the deceased may be granted a short-term residence permit regardless of their period of stay in Türkiye. That case should be read in the light of these information.)

If the presence of a sham marriage for the purpose of enjoying family reunification is detected, the family residence permit shall be cancelled.

Family reunification for foreigners under temporary protection is regulated separately. They may apply for family reunification in order to reunite with their spouses, minor children and dependent adult children in Turkey. These applications shall be evaluated by the Directorate General of Migration Management and necessary work for the reunification process may be carried out in cooperation with relevant public institutions and organizations, international organizations and non-governmental organizations. Regarding children who are found to be unaccompanied, the family reunification procedures shall be initiated immediately, without waiting for the child's request.²¹¹⁶ Here, the law does not set a limit for the place for reunification, whether it entails reunification in Türkiye or abroad, therefore it can be interpreted broadly; meaning that the provisions regarding the reunification can lead both domestic and international reunification processes.

²¹¹⁵ Foreigners banned from entering Türkiye are listed under the Article 7 of LFIP. This list is the following:
 1. Foreigners who do not have a passport, passport replacement document, visa, residence or work permit; those who have obtained these documents or permits by fraudulent means or who are found to have forged them
 2. Foreigners who do not have a passport or passport substitute document valid for at least sixty days from the expiration date of their visa, visa exemption period, or residence permit
 3. Not precluding the second paragraph of Article 15, foreigners listed in the first paragraph of Article 15 (even if they are exempt from visa requirement) [Article 15 lists the foreigners who are not eligible to be granted visa].

²¹¹⁶ Article 49 of Temporary Protection Regulation.

5. What are the conditions for naturalization in the reviewed state?

Turkish citizenship is acquired by birth or naturalization. Naturalization occurs by a decision of the competent authority, by an individual's adoption or exercising the right to choose.²¹¹⁷

Obtaining Turkish Citizenship through the Decision of a Competent Authority: A foreigner wishing to obtain Turkish citizenship can do so if they fulfil the conditions set out by the Turkish Citizenship Law²¹¹⁸ and the competent authority approves the application.

The conditions are the following:

- Being of legal age and having the capacity to discern in accordance with the national law of the foreigner's country of nationality, or in accordance with Turkish law if the foreigner is stateless;
- Having stayed in Türkiye with a valid residence permit for an uninterrupted period of five years prior to the date of application;
- Confirming by their behavior that they have decided to settle in Türkiye;
- Not having a disease that poses a danger to general health;
- Having good morals (In the Regulation on the Application of the Turkish Citizenship Law (Article 15 para. 1/d), this condition is elaborated as following: Demonstrating good morals by acting with a sense of responsibility required for living together in society, inspiring trust in others through one's behavior, and not having any bad habits that are frowned upon by society or contrary to its values);²¹¹⁹
- Having sufficient knowledge of Turkish language (This condition is assessed by the committee that reviews the citizenship application.²¹²⁰);

²¹¹⁷ The competent authority mentioned here is the Ministry of Interior.

²¹¹⁸ Articles 10 and 11 of the Turkish Citizenship Law.

²¹¹⁹ Turkish Constitutional Court evaluated this condition in one of its judgments. In the case, the applicant, whose application to acquire Turkish citizenship was rejected on the ground of "not fulfilling the condition of having good morals" because of having a relationship with a married Turkish citizen for 13 years, challenged that decision claiming that it violated their right to privacy. The Constitutional Court firstly mentioned that in Turkish Citizenship Law's preamble, the condition of "having good morals" is to ensure that the applicant does not have behaviours that contradict with Turkish traditions and society. Highlighting that this condition is intangible and the authorities evaluating citizenship application should take the changes in societal structures in time and societal diversity into consideration, and provide justification for their evaluation if they claim that applicants do not fulfil the condition of having good moral. Evaluating the facts in question, the Court stated that "It is therefore essential to consider whether the applicant has met the naturalization requirements by evaluating their long-term legal residence in Türkiye and whether they have disturbed public order during that period is crucial to ensure a fair balance between the public and individual interest. The record shows that no such assessment was conducted, and the lower court did not investigate whether the applicant fulfilled the condition of good moral character." The Court found violation of the right to privacy, stating that the rejection of applicant's request based on not fulfilling the condition of having good morals based on their extramarital relationship unjustifiedly interferes with right to privacy. (Turkish Constitutional Court, *A.S.*, Application No: 2018/31431, 03.03.2022)

²¹²⁰ Article 19 of the Regulation on the Application of the Turkish Citizenship Law, <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=2010139&MevzuatTur=21&MevzuatTertip=5>, last access: 28.08.2025.

- Having financial resources to be able to provide for oneself and one's dependents in Türkiye;
- Not constituting an obstacle in terms of national security and public order.

Obtaining Turkish Citizenship through Marriage²¹²¹: There is a possibility of obtaining Turkish citizenship through marriage. Marriage does not entitle the foreigner to obtain Turkish citizenship *per se*; however, a foreigner who has been married to a Turkish citizen for a minimum for three years is eligible to apply for Turkish citizenship. The conditions are the following:

- Living in conditions of family unity;
- Not being engaged in any activity non-compliant to the union of marriage;²¹²²
- Not constituting an obstacle in terms of national security and public order.

In case of the death of the Turkish spouse after the application, the fulfilment of the first condition is not required. If the marriage is declared null and void, the foreigner who acquired Turkish citizenship through marriage shall retain Turkish citizenship if they were in good faith while getting married.

The Citizenship Application Review Commission reviews the applications made for obtaining Turkish citizenship. The Commission evaluates whether the applicants fulfil the conditions stated in the law. The Commission does not evaluate the applications for obtaining Turkish citizenship through adoption.

Obtaining Turkish Citizenship through Adoption²¹²³: A minor adopted by a Turkish citizen may acquire Turkish citizenship, provided that there is no obstacle to that in terms of national security and public order.

Obtaining Turkish Citizenship through Exercising the Right to Choose ²¹²⁴ : According to the Article 21 of the Turkish Citizenship Law, children who lose Turkish citizenship due to their parents' choice pursuant to Article 27 (leaving Turkish citizenship through an exit permit) may acquire Turkish citizenship by exercising their right to choose within three years of reaching the age of majority.

It is also possible to obtain Turkish citizenship via a Presidential decision. Regulated under the Article 12 of the Turkish Citizenship Law, the following persons are eligible to obtain Turkish citizenship by Presidential decision, provided that they do not constitute an obstacle in terms of national security and public order:

- Persons who bring industrial facilities to Turkey or who have rendered or are expected to render extraordinary services in scientific, technological, economic,

²¹²¹ Article 16 of the Turkish Citizenship Law.

²¹²² Turkish Citizenship Law does not state what such activities are. The Regulation, on the other hand, states that the Police shall investigate whether the foreigner has “engaged in behavior incompatible with the marriage union, such as prostitution or facilitating prostitution,” Article 28, para. 1/b of the Regulation on the Application of the Turkish Citizenship Law.

²¹²³ Article 17 of the Turkish Citizenship Law.

²¹²⁴ Articles 21 and 22 of Turkish Citizenship Law.

social, sportive, cultural, artistic fields and for whom a reasoned proposal is made by the relevant ministries;

- Foreigners who have obtained a residence permit pursuant to subparagraph (j) of the first paragraph of Article 31 of the Law on Foreigners and International Protection No. 6458 dated 4/4/2013 and numbered 6458, foreigners holding Turkuaz Kart (Turquoise Card)²¹²⁵ and their foreign spouses, their and their spouses' minor or dependent foreign children;
- Persons deemed necessary for naturalization,²¹²⁶
- Persons recognized as immigrants.²¹²⁷

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

²¹²⁵Turkuaz Kart is given to foreigners whose application is approved by the Ministry of Labour and Social Security and whose education level, professional experience, contribution to science and technology, and Turkish economy and employment is taken into consideration. Turkuaz Kart holders enjoy the same rights as foreigners holding work permit for an indefinite period. (Article 11 of International Workforce Law).

²¹²⁶ Neither the Law, nor the Regulation on the application of the Law includes the definition of this category. Persons granted Turkish citizenship under this category are at the discretion of the administration. Banu Şit Köşgeroğlu, "İstisnai Yoldan Vatandaşlığın Kazanılmasına İlişkin Genel Esaslar ve Son Değişiklikler Çerçevesinde Türk Vatandaşlığının İstisnai Yoldan Kazanılması", Hacettepe Hukuk Fakültesi Dergisi, 7(1), 2017, 169-198, p.188.

²¹²⁷ In the Regulation on the Application of the Turkish Citizenship Law (Article 3 Para. 1/g), an immigrant is defined as "A person of Turkish descent and affiliated with Turkish culture who comes to Türkiye alone or in groups for the purpose of settling and is accepted as an immigrant in accordance with the Settlement Law No. 5543." Therefore, the term "immigrant" in the scope of the Turkish Citizenship Law should be understood in this context.

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Generally speaking, regarding the persons under international protection, Turkish law states that this group of foreigners are exempt from the requirement of reciprocity and rights conferred to applicants/rejected applicants/holders of international protection cannot be interpreted in a way to exceed the rights of Turkish citizens.²¹²⁸ It should be noted that because the law states that persons under international protection can enjoy the exemption, application holders do not fall under this exemption.²¹²⁹

The right to non-discrimination is primarily protected under Turkish Constitution.²¹³⁰ Titled as “Equality before Law”, Article 10 of Constitution states that “everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds. ... No privilege shall be granted to any individual, family, group or class.”

The right to non-discrimination is protected also under the Law on Human Rights and Equality Institution of Türkiye. Article 3 ensures the equality before law stating that everyone is equal in terms of enjoying rights and freedoms given by law, and discrimination based on sex, race, color, language, religion, belief, sect, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health status, disability and age is prohibited within the scope of this law.²¹³¹

Article 3 the Turkish Penal Code guarantees the equality in the implementation of the Code. Under paragraph 2 of the article, it is stated that no one shall receive any privilege and there shall be no discrimination against any individual on the basis of their race, language, religion, sect, nationality, colour, gender, political (or other) ideas and thought, philosophical beliefs, ethnic and social background, birth, economic and other social positions.²¹³²

These provisions provide protection for all persons in the jurisdiction of Türkiye. Both nationals and non-nationals enjoy the protection of that right.

²¹²⁸ Article 88 of LFIP.

²¹²⁹ Çelik, *ibid*, p. 83.

²¹³⁰ Constitution of the Republic of Türkiye, <https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf>, last access: 31.03.2025.

²¹³¹ Law on Human Rights and Equality Institution of Türkiye: <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6701&MevzuatTur=1&MevzuatTertip=5>>, last access: 31.03.2025.

²¹³² Turkish Penal Code: <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e)>, last access: 31.03.2025.

In terms of provisions protecting specifically non-nationals, the Article 7 of the Law on Human Rights and Equality Institution of Türkiye underlines that differential treatment of non-citizens arising from the conditions on entering Türkiye and residence permit regulations and legal status is not classified as discrimination.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Turkish Constitution grants the right to vote, be elected, to engage in political activity and to take part in referendum to Turkish citizens.²¹³³ Therefore, no group of foreigners are entitled to political participation.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

According to the Article 16 of Turkish Constitution, fundamental rights and freedoms of foreigners may be restricted by the law, in accordance with the international law. Turkish law limits the freedom of movement of holders of international protection and temporary protection. Law introduces a limit for staying abroad for long-term residence permit holders as well. Furthermore, there is a difference in obtaining travel document between refugees and conditional refugees and subsidiary protection.

a. International protection applicants and temporary protection holders are required to obtain a permission to leave the cities they reside in.

Article 71 of LFIP states that persons who applied for international protection may be put under the obligation of residing in a center, certain place or city. Article 91 of the LFIP Regulation underlines that in case of necessity, the applicants may be granted a 30-day permission to leave the city of residence. It is possible to extend the permission for another 30 days.²¹³⁴

According to the Article 82 of LFIP, for reasons of public order or public safety, conditional refugees and secondary protection beneficiaries may be requested by the Provincial Migration Management Directorates to reside in a specific province and to notify the authorities within a specified time and in a specified manner. Similarly, Article 110, para. 2 of the LFIP Regulation states that, conditional refugees and secondary protection beneficiaries may have the provinces where they will reside determined by the General Directorate, or they may choose from among

²¹³³ Article 67 of Turkish Constitution.

²¹³⁴ Regulation, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=21460&MevzuatTur=7&MevzuatTertip=5>>, last access: 13.04.2025.

the provinces designated by the General Directorate.²¹³⁵ In cases where the General Directorate has not designated a mandatory province of residence, residence in the preferred provinces is permitted.²¹³⁶

Similarly, according to the Temporary Protection Regulation, temporary protection holders are required to reside in the city, temporary refuge center or in a certain place.²¹³⁷

To obtain the permission to travel, both international protection holders and temporary protection holders are required to apply to the Migration Directorate in their cities. It is also possible to apply online, through “e-Devlet” (e-Government) platform.²¹³⁸

b. Secondly, there is a time limit for the holders of long-term residence permit to stay abroad. If the residence permit holder stayed abroad for a period longer than 1 year, except for the reasons of health, education and obligatory public service in their country, the residence permit shall be cancelled.²¹³⁹

c. Refugees are given a travel document; however, request to obtain a travel document of conditional refugees and subsidiary protection status holders are evaluated in accordance with the Article 18 of Law. No 5682 (Passport Law).²¹⁴⁰

4. Are there any limitations to non-nationals’ right to buy and own property within the reviewed state?

Yes, there are such limitations introduced by the law. Land Registry Law (Law No. 2644) regulates the main frame for the purchase of land by foreigners.²¹⁴¹ According to Article 35, citizens of a list of countries determined by the President are allowed to acquire property in Türkiye. The total area of properties and limited real rights of a permanent nature cannot exceed:

- 10% of the area of district of the city where the properties in question located,

²¹³⁵ General Directorate is the Directorate General of Migration Management.

²¹³⁶ In practice, conditional refugees are required to reside in certain cities and they not allowed to go out without special permit. For details, please see Yanar Keskin, *ibid*, p. 409.

²¹³⁷ Article 33 of Temporary Protection Regulation. <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=20146883&MevzuatTur=21&MevzuatTertip=5>, last access: 13.04.2025.

²¹³⁸ E-Devlet is a website which allows Turkish citizens and foreigners with a ID number to access government services. For more information, see: <https://ico.ku.edu.tr/wp-content/uploads/2021/04/e-Devlet.pdf>, last access: 15.04.2025.

²¹³⁹ Article 45 of LFIP.

²¹⁴⁰ Article 84 of LFIP.

²¹⁴¹ Land Registry Law, <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=2644&MevzuatTur=1&MevzuatTertip=3>, last access: 15.04.2025.

- 30 hectares per a person countrywide.

The president may extend the personal limit up to twofold, and president may, if the national interests require, also decide, limit or cease temporarily or permanently foreigners' acquirement of property or limited real rights by country, person, region, duration, number, percentage, type, characteristic, area and amount.

It should be noted that the law does not have any condition of reciprocity.²¹⁴²

Foreigners acquired a land without any building on it are required to request permission for the project developed for the acquired land from the Ministry in charge within two years after the purchase.

According to the Article 9 of the Law on Military Exclusion Zones and Security Zones (Law No. 2565), foreigners are forbidden to acquire property within the second-degree land military exclusion zones, nor can they enter, rent or work in the zone without permission.²¹⁴³

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

As a rule, non-nationals are required to have a valid work permit to work in Türkiye. Having a residence permit does not grant work permit. However, there are certain exemptions regulated in the law.

Article 89 of LFIP states that refugee and subsidiary protection beneficiary IDs are valid also as a work permit. (Persons holding such documents can apply for a work permit six months after their registration.) Therefore, refugees and subsidiary protection beneficiaries are exempted from obtaining a work permit.

Temporary protection holders are not allowed to work without a work permit. Foreigners under temporary protection can apply for a work permit six months after their registration under temporary protection system. From that group of foreigners, the ones working in seasonal agriculture and animal husbandry are exempted from obtaining work permit; however, a quota

²¹⁴² Earlier version of this provision included a condition of reciprocity for foreigners to acquire a property in Türkiye. The Constitutional Court annulled that condition. For more details on the discussion, please see: Alper Çağrı Yılmaz, "6302 Sayılı Kanun Hükümleri Uyarınca Yabancı Gerçek Kişilerin Türkiye'de Taşınmaz Edinimi." Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi 17.2 (2013): 1095-1126 (pages 1113-1115), and Feyzan.Olgunsoy, "Yabancıların Taşınmaz Ediniminde Karşılıklı İlkesinin Kaldırılmasının Anayasaya Aykırılığı." Sakarya Üniversitesi Hukuk Fakültesi Dergisi 12.1 (2024): 211-233.

²¹⁴³ Law on Military Exclusion Zones and Security Zones (Law No. 2565), <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=2565&MevzuatTur=1&MevzuatTertip=5>>, last access 15.04.2025.

and city-based limitation can be introduced for this group.²¹⁴⁴ The city where the temporary protection holder is given permission to stay is taken as basis in consideration of granting the foreigner to apply for a work permit.²¹⁴⁵ That provision may be considered as a means to reduce negative effects of migrant labor to Turkish labor market.²¹⁴⁶

The Regulation of International Workforce Law, in its Article 48, introduces a comprehensive list of groups that are exempt from work permit. The list can be found in the link in the footnote.²¹⁴⁷

According to the Article 14 of the Regulation, Blue Card holders (persons who were Turkish citizenship by birth but renounced their Turkish citizenship through the permission of the Ministry of Interior) and their descendants up to the third degree who have a Blue Card or who certify that they are registered in the Blue Card Registry are not required to obtain a work permit to work in Türkiye.

Article 35 of the Regulation states that the citizens of Turkish Republic of Northern Cyprus (TRNC) are allowed to work at public institutions without a work permit, however, they have to obtain a work permit in order to work out of public institutions.

International Workforce Law also includes a list of foreigners, such as EU citizens, TRNC citizens, spouses of Turkish citizens, who may be granted work permit exceptionally.²¹⁴⁸

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

In Turkish law, a quota for workplaces employing foreigners under temporary protection is set. During the evaluation of work permit applications of temporary protection holders, the Ministry of Labour and Social Security can apply changing quotas taking number of Turkish employees in the workplace, job vacancies and employments in sectors and cities into consideration. In workplaces, number of workers under temporary protection status cannot be higher than 10% of number of Turkish workers. If the employer certifies that within one month prior to the work permit application, it was not possible to find any Turkish worker, this quota does not apply.²¹⁴⁹

²¹⁴⁴ Article 4 and 5 of the Regulation on Work Permits for Foreigners under Temporary Protection, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=20168375&MevzuatTur=3&MevzuatTertip=5>>, last access: 15.04.2025.

²¹⁴⁵ Article 7 of the Regulation on Work Permits for Foreigners under Temporary Protection.

²¹⁴⁶ İlker Karaönder, "Geçici Koruma Statüsündeki Yabancıların Çalışma ve Sosyal Güvenlik Haklarına Yönelik Düzenlemelerin Değerlendirilmesi", IX. International Non-Governmental Organizations Congress, Migration and Society Congress Proceedings E-Book, 258-263 p. 262.

²¹⁴⁷ The Regulation of International Workforce Law, <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=39337&MevzuatTur=7&MevzuatTertip=5>>, last access: 15.04.2025.

²¹⁴⁸ Article 15 of International Workforce Law.

²¹⁴⁹ Article 8 of the Regulation on Work Permits for Foreigners under Temporary Protection.

Workplaces employing less than ten workers are allowed to have maximum one worker holding temporary protection status.²¹⁵⁰

The access of foreigners under international protection to labor market may be restricted due to the current situation in the market and in cases where certain sectoral and economic conditions require various limits. Such limits can be enforced for certain period, sector, profession or region. Persons residing in Türkiye for more than three years, married to a Turkish citizen or who are a parent to a Turkish citizen are exempted from such limits.²¹⁵¹

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Yes, various professions such as certified public accountant, lawyer, dentist, pharmacist and notary can be practiced only by Turkish citizens.²¹⁵²

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Labor Law (Law No.4857) regulates various elements of labor relations such as ending labor contracts, overtime work, severance and notice pay, maternity leave and so on.²¹⁵³

Article 5 of the Labor Law states that in the labor relation, there shall be no discrimination based on language, race, color, gender, disability, political thought, philosophical belief, religion et cetera. Therefore, there is no legal basis for differentiated approach to non-nationals than nationals in terms of labour protection. In the allegations of discrimination based on nationality, the worker may claim their deprived rights in addition to an appropriate compensation in the amount of up to four months' wages.

Foreign workers benefit the same social security and insurance scheme as Turkish citizens. Employers are obliged to pay the contributions to Social Security Institution (SGK) for their employees. Foreign employees benefit from the health insurance as Turkish employers do.

Pursuant to the Occupational Health and Safety Law (Law No. 6331), employers are obliged to protect the occupational health and safety of all their employees.²¹⁵⁴

²¹⁵⁰ Article 8 of the Regulation on Work Permits for Foreigners under Temporary Protection.

²¹⁵¹ Article 89 of LFIP.

²¹⁵² Please find full list here (in Turkish): Türk Vatandaşlarına Hasredilen Meslekler, <<https://www.csgeb.gov.tr/uigm/calisma-%C4%B1zni/turk-vatandaslarina-hasredilen-meslekler/>>, last access: 16.04.2025.

²¹⁵³ Labor Law (Law No.4857), <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=4857&MevzuatTur=1&MevzuatTertip=5>>, last access: 16.04.2025.

²¹⁵⁴ Occupational Health and Safety Law (Law No. 6331), <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6331&MevzuatTur=1&MevzuatTertip=5>>, last access: 01.09.2025.

The only difference in terms of nationality comes with the requirement to obtain work permit for foreigners. That is discussed above.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Turkish Constitution does not include a direct right to health, but it is included indirectly, through interpreting other rights present in the Constitution.²¹⁵⁵

Foreigners holding a valid work permit have access to public health services as nationals do. Employers are required to pay contribution to the SGK; thus, the foreigner is allowed to benefit public health care. International Workforce Law states that the foreigners having a work permit or who are exempt from obtaining work permit and their employers shall fulfill the obligations arising from Social Security and General Health Insurance Law.²¹⁵⁶

Foreigners who have applied for or already benefit international protection and have no health insurance and income to afford one benefit from the public health insurance for one year, starting from the application date for international protection. Persons having special needs or persons whose insurance registration is deemed appropriate by the Ministry, there is no one-year limit.²¹⁵⁷ However, it can be said that there is a duality in law, as according to Article 60 paragraph 2 of Social Insurance and General Health Insurance Law (Law No. 5510), international protection applicants and status holders, as well as stateless persons, are in the scope of general health insurance. Overall, international protection applicants and status holders are eligible to benefit from the public health insurance.

Foreigners holding a valid residence permit without a work permit can enjoy the general health insurance if they do not have insurance according to any other foreign law, taking the reciprocity principle into account.²¹⁵⁸ Foreign students studying in Türkiye, if requested within the first three months of the academic year, are entitled to enjoy general health insurance as well.²¹⁵⁹

Foreigners under temporary protection status can access to the primary healthcare. They do not have right to enjoy the public health insurance. The cost of the healthcare is paid by the Presidency of Migration Management, not exceeding the cost in the health practice communiqué determined by the SGK for general health insured persons. Except the vaccinations, temporary protection status holders cannot benefit any healthcare which is not covered by the SGK.²¹⁶⁰

²¹⁵⁵ Bahar Küpe, "Sağlık Hakkının ve Genel Sağlık Sigortasının Öznesi Olarak Yabancılar." Türkiye Adalet Akademisi Dergisi 62, 2025, 465-498, p. 491.

²¹⁵⁶ Article 22 of International Workforce Law.

²¹⁵⁷ Article 89 of LFIP.

²¹⁵⁸ Article 60, para. 10 (d) of Social Insurance and General Health Insurance Law (Law No. 5510), <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5510&MevzuatTur=1&MevzuatTertip=5>>, last access: 17.04.2025.

²¹⁵⁹ Article 60 of Social Insurance and General Health Insurance Law.

²¹⁶⁰ Article 27 of Temporary Protection Regulation.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

There is no restriction in access to educational services in Türkiye in terms of nationality. Turkish Constitution, in its Article 42, states that nobody shall be deprived right to education.

Persons holding a valid residence permit can access to education. Family residence permit gives access to persons the right to education in primary and secondary education without acquiring student residence permit, until the age of eighteen. Foreigners studying in an associate, bachelor, master or PhD program are required to obtain a student visa. Foreigners who have applied for or benefits international protection and their family members can study in primary and secondary education.²¹⁶¹ Similarly, persons under temporary protection can access to primary and secondary education. Their access to tertiary education is regulated by the Council of Higher Education.²¹⁶²

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Accessing social security benefits, in most cases, is connected to working legally under a labor contract with a valid work permit, unless the foreigner is exempted from obtaining a working permit.

As stated above, foreigners with a valid work permit have access to public health insurance. Thus, they have access to the public health services. Article 4 of the Social Insurance and General Health Insurance Law states that foreigners working with a labor contract are covered with insurance. They are also entitled to pension and other social security benefits such as invalidity pension or age pension if the conditions are fulfilled.

Foreigners legally residing in Türkiye can apply for voluntary insurance.²¹⁶³

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Foreigners who have applied for or already benefit international protection who are in need may be assisted to access social help and services. The applicant who is found to be in need may be

²¹⁶¹ Article 89 of LFIP.

²¹⁶² Article 28 of Temporary Protection Regulation.

²¹⁶³ Article 50 of Social Insurance and General Health Insurance Law

granted an allowance within the framework of the procedures and principles to be determined by the Ministry of Interior with the approval of the Ministry of Finance.²¹⁶⁴

Foreigners under temporary protection may benefit from social services.²¹⁶⁵ Those in need can be beneficiary of social help in accordance with Law on Encouraging Social Assistance and Solidarity. They can also receive psychological support.

Furthermore, foreigners, without distinction in their legal status, can apply for welfare programs under the Law on the Encouragement of Social Assistance and Solidarity (Law No. 3294).²¹⁶⁶ They should be in the financial need, out of the scope of any other social security institutions and not having been received any support from such institutions. As such, they can benefit from the Social Assistance and Solidarity Fund.

Are there any final observations you would like to make? Please write below.

²¹⁶⁴ Article 89 of LFIP.

²¹⁶⁵ Article 26 of Temporary Protection Regulation.

²¹⁶⁶ Article 1 of the Law on the Encouragement of Social Assistance and Solidarity (Law No. 3294), <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=3294&MevzuatTur=1&MevzuatTertip=5>>, last access 01.05.2025.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

July 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

The country under review: Tuvalu

Author(s): Logovaka Marilyn Moira Simmons

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		Yes 1986
1967 Protocol to the Convention relating to the Status of Refugees	No	No
1954 Convention relating to the Status of Stateless Persons	No	No
1961 Convention on the Reduction of Statelessness	No	No
International Covenant on Civil and Political Rights (ICCPR)	No	No
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	No	No
International Covenant on Economic, Social and Cultural Rights (ICESCR)	No	No

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	No	No
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	No	No
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		Yes 25/3/24
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	No	No
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	No	No
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		Yes 6/10/99
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	No	No
Convention on the Rights of the Child (CRC)		Yes 22/09/1995
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	No	No
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	No	No
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	No	No
Convention on the Rights of Persons with Disabilities (CRPD)		Yes 18/12/2013
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	No	No
ILO Forced Labour Convention (No. 29)	No	No
2014 Protocol to the ILO Forced Labour Convention (No. 29)	No	No
ILO Migration for Employment Convention (Revised) (No. 97)	No	No
ILO Equal Remuneration Convention (No. 100)	No	No

ILO Discrimination (Employment and Occupation) Convention (No. 111)	No	No
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	No	No

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	No	No
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	No	No
Convention governing the Specific Aspects of Refugee Problems in Africa	No	No
African Charter on the Rights and Welfare of the Child	No	No
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	No	No
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	No	No
European Convention on Human Rights (ECHR)	No	No
Protocols to the European Convention on Human Rights (list which ones):	No	No
European Social Charter (ESC)	No	No
European Convention on the Legal Status of Migrant Workers	No	No
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	No	No
American Convention on Human Rights (ACHR)	No	No
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	No	No

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	No	No
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	No	No
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	No	No
Inter-American Convention against All Forms of Discrimination and Intolerance	No	No
Inter-American Convention Protecting the Human Rights of Older Persons	No	No

If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:

1. *Convention on the Law of the Sea (UNCLOS) – 2002*
2. *Geneva Conventions of 12 August 1949 - Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at https://www.dfae.admin.ch/eda/fr/dfaе/politique-exterieure/droit-international-public/traites_internationaux/depositaire/protection-des-victimes-de-la-guerre.html.*
3. *Conventions on refugees and stateless persons*
4. *ILO Convention No 182 concerning the prohibition and immediate Action for the elimination of the worst forms of child labour*
5. *2017 - National Human Rights Institution (NHRI) Act.*
6. *Tuvalu's National Strategy for Sustainable Development 2021-2030 (NSSD).*
Reference: [Tuvalu Country Implementation Plan 2023-2024 \(Online\).pdf](#)
7. *2006 - Maritime Labour Convention*
8. *Pacific Regional Framework for Climate Mobility*
9. *Pacific Agreement on Closer Economic Relations Plus (PACER Plus) - Tuvalu as a Party to PACER Plus, the agreement entered into force in December 2020. The agreement includes provisions relating to movement of natural persons, regional labour mobility cooperation, skills recognition, temporary worker mobility, PACER Plus is supported by a dedicated Labour Mobility Arrangement, which aims to improve Pacific labour mobility schemes, strengthen labour migration governance, facilitate recognition of qualifications, improve access to labour market opportunities in Australia and New Zealand.*

10. *Australia–Tuvalu Falepili Union Treaty (2023)* This is currently the most significant migration-related treaty for Tuvalu. The Treaty entered into force on 28 August 2024 and creates a special migration pathway for Tuvalu citizens, it allows eligible Tuvaluans to live, work, and study in Australia. It recognizes Tuvalu's continuing sovereignty despite climate-related sea-level rise, provides a framework for "mobility with dignity."

Source: [Australia-Tuvalu Falepili Union treaty | Australian Government Department of Foreign Affairs and Trade](#)

The Falepili Mobility Pathway provides access to permanent residency opportunities, allows movement between Australia and Tuvalu, is specifically designed to support climate resilience and long-term migration options.

Source: [Explanatory memorandum - Falepili Union between Tuvalu and Australia | Australian Government Department of Foreign Affairs and Trade](#)

Part I – Rights to stay

- 1. What is the general structure of the visa and migratory permits system in the reviewed state?**

In Tuvalu, visitors must obtain a visa that is obtained and stamped on arrival unless they are citizens of one of the visa-exempt countries. All visitors must have a passport valid for at least 6 months. Under Tuvalu's immigration Act (Cap.24.15) section 8 permit conditions and section 9 Visitors permit conditions that does not explicitly state 6 months but derived from section 6 (1) (d) (ii) that explicitly states 6 months and in practice.

- 2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories. For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.**
For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

The Tuvalu National Labour Migration Policy (2015) provides a migration strategy and aims to ensure that the Government has a cohesive policy framework. The Immigration Regulations of 2014,²¹⁶⁷ under section 18 of the Immigration Act, set out the requirements and conditions

²¹⁶⁷ https://www.un.int/tuvalu/sites/www.un.int/files/Tuvalu/Images/immigrationregulations2014_1.pdf.

for entry and residence in Tuvalu, and outline the application process for entry and residence permits.

Source: Tuvalu National Labour Migration Policy (2015) ²¹⁶⁸

Source: Tuvalu Immigration Regulations 2014²¹⁶⁹

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

There is no website clearly outlining visa options. Neither is there a formal system for applying for specific visa types prior to arrival. Visas can be obtained only on arrival. Tuvalu has no border information management system. There is no formal governmental programme or dedicated policy focused on attracting nationals who have migrated from Tuvalu. Neither is there a formal government programme that focuses on facilitating migrant reintegration in Tuvalu.

Section 6(1) (a) (b) “No person shall enter Tuvalu from any place outside Tuvalu unless he is in possession of a valid permit lawfully issued to him under this act or he is exempted from the provisions of this section under Section 7.

Immigration Act 2022 (Cap. 24.15)

The Immigration Act 6(1) a, b (2) a-h – emphasizes that a visitor’s permit or a permit to enter and reside can be cancelled if the person granted to enter fails to enter Tuvalu within any specific period or is convicted in Tuvalu or elsewhere of any offence and has been sentenced to a period of imprisonment of one year or more and has not received a free pardon.

Immigration Act 2022 (Cap. 24.15)

Additionally: A trafficked person cannot be prosecuted for being trafficked. Section 72(1)(a) of the Counter Terrorism and Transnational Organised Crime Act 2009 (CTTOCA), which means that the victim cannot be charged with:

- being trafficked; or
- participating in the trafficking offence,

where their involvement was as a victim rather than a willing offender

Source: Counter Terrorism and Transnational Organised Crime Act page: 47

It also states that A trafficked person cannot be prosecuted for illegal entry Section 72(1)(b) means that if someone was brought into Tuvalu by traffickers without proper authorization, they cannot be criminally charged simply because they entered the country illegally.

²¹⁶⁸ https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-suva/documents/publication/wcms_431831.pdf

²¹⁶⁹ https://www.un.int/tuvalu/sites/www.un.int/files/Tuvalu/Images/immigrationregulations2014_1.pdf

Source: Counter Terrorism and Transnational Organised Crime Act page: 47

The section²¹⁷⁰ says that if a person has been trafficked into Tuvalu, they generally cannot be criminally punished for:

1. being trafficked,
2. entering Tuvalu illegally because of the trafficking,
3. overstaying because of the trafficking, or
4. using false travel or identity documents supplied by traffickers.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Source: Tuvalu Immigration Act 2022²¹⁷¹

The Immigration Act (Cap.24.15) under section 2 (c) iii, defines "family" as: "wife and children under 18 years of age." ²¹⁷² This definition refers to a legally recognized spouse ("wife") and does not mention:

- de facto partners,
- common-law partners,
- unmarried partners,
- domestic partnerships.

Several categories of persons who are exempt from obtaining an entry permit may also bring their family members, including:²¹⁷³

- serving members of His Majesty's Forces and their families;
- diplomatic and consular representatives and their families;
- government employees and their families;
- certain official staff and household members of diplomatic personnel and their families.

The Immigration Act also recognises family members in immigration decision-making:²¹⁷⁴

- Where a person's immigration status ends, the lawful presence of their family may also be affected unless family members hold their own permits.
- Family members of a prohibited immigrant may themselves be treated as prohibited immigrants unless the Minister decides otherwise.
- During immigration appeals, interim permits may be granted to the appellant, their family members, and dependants while the appeal is being determined.

5. What are the conditions for naturalization in the reviewed state?

²¹⁷⁰ Counter Terrorism and Transnational Organised Crime Act, s 72(1).

²¹⁷¹ https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1968/1968-0010/1968-0010_2.pdf

²¹⁷² Immigration Act 2022, s 2 (c).

²¹⁷³ Immigration Act 2022, s [7] (1).

²¹⁷⁴ Immigration Act 2022, s [11].

The Citizenship Act (Cap. 24.05),²¹⁷⁵ Under section 2 (c) a foreign national may apply for naturalisation after seven years of ordinary residence in Tuvalu. The Citizenship Committee must be satisfied that the applicant intends to make Tuvalu their permanent home, is financially self-supporting, is familiar with Tuvaluan laws and customs, is of good character, and is free from any permanent communicable disease. Prior to naturalisation, applicants must renounce any other nationality and take an oath of allegiance to Tuvalu. The legislation does not prescribe a formal citizenship or language test, although knowledge of Tuvaluan laws and customs forms part of the assessment process.

Source: https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1968/1968-0010/1968-0010_2.pdf

Part II – Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. Refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The primary source is the Constitution of Tuvalu, which contains fundamental rights and freedoms and generally applies to "persons" rather than only citizens in many contexts. The National Human Rights Institution of Tuvalu Act 2017 also establishes a human rights

²¹⁷⁵ Tuvlu Citizenship Act, available at <https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1979/1979-0005/1979-0005_2.pdf>.

framework. There are however certain distinctions between citizens and non-citizens are expressly permitted in matters such as immigration status, political participation and public office.

Source: The Constitution of Tuvalu Act 2023²¹⁷⁶

II.2 — Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

The Tuvalu Electoral Provisions (Parliament) Act CAP. 4.04 under section 5 (2) only citizens of Tuvalu aged 18 and over are entitled to be registered as electors. It further states in section 9 (1) (a) that a person is qualified to be elected as a member of parliamentary only if he or she is a citizen of Tuvalu. Therefore, No political participations as voting and candidature for Parliament are generally restricted to Tuvaluan citizens. Non-citizens do not enjoy electoral rights and cannot participate in national elections as voters or candidates.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Yes:

The Constitution of Tuvalu Under section 26 on Freedom of movement: Non-nationals are guarantee freedom of movement as a constitutional rights however they are subject to immigration controls under the Immigration Act, including: visa/permit requirements, conditions attached to residence permits, cancellation of permits, removal and deportation procedures and limitation for public interest.

Citizens are entitled to enter Tuvalu without permits, whereas non-citizens generally require immigration authorization.

Access to Justice: There is no indication that lawful non-citizens are denied access to courts. Non-nationals may generally access the judicial system and may appeal immigration decisions. Under section 11 of the constitution that guarantees an independent and impartial court and fair hearing for ‘any person’.

The Immigration Act expressly provides appeals to the Minister against immigration decisions. As clearly stated under section 17 of the Immigration Act (Cap.24.15)

²¹⁷⁶ https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0001/1986-0001_2.pdf.

Residence rights: Citizens enjoy an unconditional right to remain in Tuvalu, whereas non-citizens remain subject to permit conditions and possible removal under Immigration Act and Constitutional provisions.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Yes. The Land tenure in Tuvalu is highly customary. The Native Lands Act²¹⁷⁷ and customary land tenure system significantly restrict ownership and transfer of land. Land is generally held under customary ownership by Tuvaluan families and communities. Non-citizens face substantial limitations on acquiring interests in land and typically require government approval or lease arrangements rather than outright ownership. Accordingly, non-nationals do not appear to enjoy the same access to land ownership as Tuvaluan citizens and customary landowners.

Under section 5(1) of the Native Lands Act (Cap. 22.20) Native lands shall not be alienated , whether by sale, gift , lease or otherwise , to a person who is not a native. Further states section 5(2) this section shall in no way prohibit or restrict the alienation of native lands to the crown, a Kaupule or a society registration under the Co-operative Societies Act. Therefore Non-citizens cannot lease native land except through special government approved arrangements.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Non-nationals generally require lawful entry and residence status, an immigration permit authorizing residence compliance with any employment conditions attached to the permit. Source: Immigration Act

The Immigration Act specifically allows permits to contain conditions relating to profession or occupation, employer, employment restrictions. Source: Immigration Act

The Labour and Employment Relations Act 2017 then governs employment relationships once lawful employment exists. Source: Labour and Employment Relations Act ²¹⁷⁸

²¹⁷⁷ Native Lands Act, available at <[https://tuvalu-](https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1956/1956-0005/1956-0005_2.pdf)

[legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1956/1956-0005/1956-0005_2.pdf](https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1956/1956-0005/1956-0005_2.pdf)>.

²¹⁷⁸ https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/2017/2017-0014/2017-0014_2.pdf

- 6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).**

There is none for now but work authorization is controlled through the immigration permit system.

- 7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.**

Yes, Most notably positions within the public service may be limited or preferentially reserved for citizens under the Public Service framework and electoral and constitutional offices are generally restricted to citizens.

Rights in work

- 8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.**

Labour protections apply equally to all employees working lawfully in Tuvalu.

The Labour and Employment Relations Act 2017 establishes protections relating to: employment contracts, wages, working conditions, leave entitlements, occupational safety and health and dispute resolution.

Source: Labour and Employment Relations Act²¹⁷⁹

Right to health

- 9. To what extent, compared to nationals, can non-nationals access public health services?**

Public health legislation generally focuses on public health protection rather than nationality.

Lawfully resident migrants can generally access public health services, although access to a nationally designed medical treatment scheme is for Tuvalu Nationals only.

Right to education

- 10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary**

²¹⁷⁹ https://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/2017/2017-0014/2017-0014_2.pdf

education.

Lawfully resident migrant children can generally access public schooling, although enrolment procedures, residency requirements, administrative fees may apply.

For tertiary Education Access to tertiary education is generally available, but scholarships, government sponsorship, and student financial assistance is reserved for citizens with some priority given to those living and schooling in Tuvalu.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

There are no social security benefits for non-Tuvalu nationals.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

There are no welfare programmes that non-nationals can apply to.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Uganda

Author: Bwambale Asiimwe Micheal

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons		X
1961 Convention on the Reduction of Statelessness		
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		X
International Covenant on Economic, Social, and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		X
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		X
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		
ILO Migration for Employment Convention (Revised) (No. 97)		X
ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X

ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		X
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		X
Convention governing the Specific Aspects of Refugee Problems in Africa		X
African Charter on the Rights and Welfare of the Child		X
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		X
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		
Protocols to the European Convention on Human Rights (list which ones):		
European Social Charter (ESC)		
European Convention on the Legal Status of Migrant Workers		
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)		
American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

The Treaty for the Establishment of the East African Community²¹⁸⁰ was signed in 1999 and entered into force in 2000 as a foundational treaty to promote regional integration, including the movement of persons in East Africa.

The Protocol on the Establishment of the East African Common Market²¹⁸¹ was signed and ratified in 2010 to actualise the common market, including visa-free entry, mutual recognition of qualifications, and migrant rights.

The Intergovernmental Authority on Development (IGAD) Regional Migration Policy Framework²¹⁸² was adopted in 2012 to guide regional migration management, labour mobility, and anti-trafficking.

GAD Protocol on Free Movement of Persons in the IGAD Region²¹⁸³ to realise the phased approach to visa abolition, residence rights, and labour mobility.

²¹⁸⁰ <https://www.eacj.org/wp-content/uploads/2012/08/EACJ-Treaty.pdf>

²¹⁸¹ <https://eacj.org/wp-content/uploads/2012/08/Common-Market-Protocol.pdf>

²¹⁸² <https://igad.int/wp-content/uploads/2023/12/IGAD-Migration-Policy-Framework.pdf>

²¹⁸³ <https://igad.int/uganda-ratifies-the-igad-free-movement-of-persons-protocol/>

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

In Uganda, a visa is the document generally required to enter the country for short-term purposes, such as holidays, tourism, business, study, visit, and/or medical treatment.²¹⁸⁴ Foreign nationals must apply for visas online through the official portal before travel, resulting in a travel authorization in the form of an approval letter that allows entry upon secondary verification at the port or point of entry.²¹⁸⁵ After entry, if the person wishes to stay in Uganda for one of the purposes outlined in the Fourth Schedule of the Uganda Citizenship and Immigration Control Act, Cap. 313,²¹⁸⁶ i.e., for employment, business, agriculture, or professional activities, they are required to apply for an entry permit in accordance with Section 49 of the same Act. The validity periods of the visa and the entry permit are independent, with entry permits typically issued for renewable periods determined by the immigration board (Section 49(2) and (3)).

In specific instances, migrants coming to Uganda are required to obtain an entry permit prior to entry. This is the case for migrants coming for the purpose of employment as an employee (Class G, Fourth Schedule of the Act) in accordance with Section 48(4) of the same Act. For other classes, such as business or trade (Class D), agriculture (Class B), mining (Class C), manufacturing (Class E), or professional services (Class F), the entry permit may be applied for after entry if the individual holds a valid short-term visa (Section 48(1) of the Act), though in practice, all applications are handled online in advance. Long-term or permanent stay can be achieved through the issuance of a certificate of permanent residence, under Section 50 of the Act, to those who have legally resided for at least 10 years with contributions to socio-economic development, or to those married to a Ugandan citizen for at least 3 years.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

²¹⁸⁴ <https://washington.mofa.go.ug/consular/visas>

²¹⁸⁵

<https://washington.mofa.go.ug/consular/visas#:~:text=TRAVEL%20AUTHORIZATION,in%20the%20passport.>

²¹⁸⁶

<https://www.immigration.go.ug/sites/default/files/2025-10/UGANDA%20CITIZENSHIP%20AND%20IMMIGRATION%20CONTROL%20ACT%20Cap%20313.pdf>

Uganda allows the residence of non-nationals for the following purposes through entry permits (s. 48(1), Uganda Citizenship and Immigration Control Act, Cap. 313), with classes specified in the Fourth Schedule:

- (a) Government and diplomatic service (Class A, Fourth Schedule of the Immigration Control Act);
- (b) Government contractors, including those serving in tertiary institutions (Class A2, Fourth Schedule of the Act);
- (c) Agriculture or animal husbandry (Class B, Fourth Schedule of the Act);
- (d) Prospecting for minerals or mining (Class C, Fourth Schedule, of the Immigration Control Act);
- (e) Business or trade (Class D, Fourth Schedule of the Immigration Control Act);
- (f) Manufacturing (Class E, Fourth Schedule of the Immigration Control Act);
- (g) Professional activities, such as medical, dental, legal, engineering, accounting, or architecture (Class F, Fourth Schedule of the Immigration Control Act);
- (h) Employment, including as expatriates, missionaries, volunteers, or NGO staff (Class G, Fourth Schedule of the Act; with subclasses G1 for non-profit/missionary/voluntary roles and G2 for salaried employees under Uganda Citizenship and Immigration Control Regulations, 2004²¹⁸⁷); and
- (i) Ordinary residence with assured income from external sources, without engaging in employment (Class H, in the Regulations).

Residence may also be authorised to those who fall within the following categories (Sections. 49-50, Uganda Citizenship and Immigration Control Act, Cap. 313; and the Uganda Citizenship and Immigration Control Regulations, 2004):

- (a) Dependants, including spouses or children, of lawful residents holding an entry permit or certificate of permanent residence (Dependent Pass);
- (b) Students or pupils accepted by a licensed educational institution (Student Pass);
- (c) Persons requiring short-term stay for medical treatment, inquiries, or contracts not exceeding initial periods (Special Pass, up to 3 months extendable by 2 months);
- (d) Visitors for holiday, travel, business investigation, or medical treatment (Visitor's Pass, up to 2 months extendable to 6 months aggregate);
- (e) Refugees or asylum seekers recognised under international instruments (Section 2(s) of the Immigration Control Act; governed primarily by Refugees Act, Cap.312²¹⁸⁸);
- (f) Stateless persons or those benefiting from protection (potentially under certificate of permanent residence or refugee provisions);

²¹⁸⁷ <https://www.immigration.go.ug/sites/default/files/2021-06/Uganda-Citizenship-and-Immigration-Control-Regulations-2004.pdf>

²¹⁸⁸ https://media.ulii.org/media/legislation/17969/source_file/8e8fdb1328892b29/2006-21.pdf

(g) Victims of trafficking in persons or forced labour (under Prevention of Trafficking in Persons Act, Cap. 131), which provides for protection and possible residence regularisation) and;

(h) Persons serving a sentence or on parole in Uganda, where deportation is deferred (Section 59, of the Immigration Control Act), allowing control over prohibited immigrants including convicts).

Additionally, citizens of East African Community (EAC) Partner States may enter visa-free and stay up to 6 months, with facilitated access to residence for work, self-employment, or establishment (Article 7 of the EAC Common Market Protocol, 2010).²¹⁸⁹ They can also apply for an Inter-State Pass for up to 2 years, extendable to 10 years (the Regulations of 2004). Nationals from Kenya and Rwanda are exempt from work permit fees, while those from Tanzania pay reduced fees (USD 1500 per year)²¹⁹⁰. There are no broad extensions to non-EAC nationals, though humanitarian provisions apply to refugees from neighbouring countries under the Refugees Act Cap. 312.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Uganda has three main avenues for granting international protection, that is, (i) refugee status; (ii) recognition as a stateless person; and (iii) political asylum.

While there is no separate framework for humanitarian visas, the broad refugee definition under Section 4 of the Refugee Act Cap 312²¹⁹¹ incorporates elements of complementary or humanitarian protection, such as for those fleeing generalised violence or disasters. Additionally, specific protections exist for victims of human trafficking.

Uganda is a party to the 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol, as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention). In 2006, Uganda adopted the Refugees Act Cap. 312, which is the primary legal instrument regulating the recognition of refugee status in the country, supported by the Refugees Regulations of 2010²¹⁹². Section 4 of the Refugees Act repeats the grounds for refugee status in Article 1(A)(2) of the Refugee Convention and incorporates the expanded definition from Article I(2) of the OAU Convention, covering persons compelled to leave their country owing to external aggression, occupation, foreign domination, or events seriously disturbing public order. This broader ground allows for protection in situations of generalised violence, civil war, or other mass displacements.

In practice, Uganda applies *prima facie* refugee recognition for arrivals from certain countries experiencing widespread conflict or instability, such as South Sudan, the Democratic Republic

²¹⁸⁹ <https://eacj.org/wp-content/uploads/2012/08/Common-Market-Protocol.pdf>

²¹⁹⁰ <https://www.immigration.go.ug/permit/entry-permit#:~:text=Work%20Permit%20Fees,1500%20per%20year.>

²¹⁹¹ https://media.ulii.org/media/legislation/17969/source_file/8e8fdb1328892b29/2006-21.pdf

²¹⁹² https://www.ecoi.net/en/file/local/1237978/1930_1414507514_544e4f154.pdf

of the Congo, and Burundi, leading to expedited group-based status without individual assessments.²¹⁹³ However, as of December 2025, Uganda has announced a temporary halt to granting refugee status to new arrivals from Ethiopia, Somalia, and Eritrea, citing security concerns, though the legal framework remains unchanged.²¹⁹⁴ There are no explicit, objective criteria in law for classifying situations warranting prima facie recognition, and decisions are made on a situational basis by authorities (The minister responsible for refugees).

Applications for refugee status are decided by the Refugee Eligibility Committee (REC), established under Section 11 of the Refugees Act. The REC is an administrative body composed of representatives from various government ministries, including the Office of the Prime Minister (OPM), Ministry of Internal Affairs, Ministry of Foreign Affairs, and others, as appointed by the Minister responsible for refugees (Section 11(1) of the Refugees Act). There are no statutory requirements for members of REC to have specific expertise in refugee or human rights law. The UNHCR participates in REC proceedings as an observer with speaking rights but no vote (Section 11(3) of the Refugees Act). The OPM's Department of Refugees handles overall refugee management, including registration and assistance (Section 9 of the Refugees Act).

Refugee status applications are typically filed upon arrival at entry points or reception centers, where asylum seekers are registered and issued attestation letters pending determination (Regulations 12-13 of the Refugees Regulations). An individual interview is conducted by REC officials, except in prima facie cases, and Applicants have the right to an interpreter if needed (Regulation 11 of the Refugees Regulations). While the Refugees Act does not mandate free legal assistance, asylum seekers can access legal aid through UNHCR partners, NGOs, or the Justice, Law and Order Sector (JLOS), and refugees have equal access to courts as nationals (Section 29(1)(h) of the Refugees Act; Regulations 18 and 31 of the Refugee Regulation of 2010; Article 126 of the Constitution of Uganda, 1995 as amended²¹⁹⁵).

Decisions by the REC are made by majority vote (Sections 11-13 of the Refugee Act), and recognition has a declaratory effect (Sections 4 and 12 of the Refugees Act). All decisions must be reasoned (Regulation 24 of the Refugees Regulations). If rejected, the applicant may appeal to the Refugee Appeals Board (RAB) within 30 days, with suspensive effect (Section 17(1) of the Refugees Act; Regulation 30 of the Refugees Regulations). The RAB's decision is final administratively, but judicial review is available under Article 42 of the Constitution of Uganda, 1995 (as amended), which guarantees the right to a fair hearing, and courts can only review for procedural fairness or ultra vires acts.

Uganda recently launched the National Migration Policy, 2025²¹⁹⁶, which emphasises addressing root causes of forced migration and commits to enhancing protection for vulnerable

²¹⁹³ <https://landinfo.no/wp-content/uploads/2025/05/Uganda-report-Asylum-seekers-and-refugees-Registration-documentation-and-other-aspects-10022025.pdf>

²¹⁹⁴ <https://www.refugeesinternational.org/statements-and-news/uganda-refugee-ban-aid-cuts-a-step-in-the-wrong-direction/>

²¹⁹⁵ <https://ulii.org/en/akn/ug/act/statute/1995/constitution/eng@2023-12-31>

²¹⁹⁶

https://mia.go.ug/sites/default/files/resources/NATIONAL%20MIGRATION%20POLICY%202025.15th%20August%202025_CL%20-%20Final_signed%20copy.pdf

migrants, including through integration into national systems. In practice, Uganda's Comprehensive Refugee Response Framework (CRRF)²¹⁹⁷, adopted in 2017 and aligned with the Global Compact on Refugees, promotes self-reliance and inclusion for refugees and asylum seekers from countries in crisis, such as through access to land, education, and health services. As of 2025, this applies to over 1.7 million refugees, primarily from neighbouring countries.²¹⁹⁸

Uganda is a party to the 1954 Convention relating to the Status of Stateless Persons but not the 1961 Convention on the Reduction of Statelessness. The Refugees Act does not explicitly address statelessness, but stateless persons may qualify for refugee status if they meet the criteria under Section 4 of the Refugees Act. Under Uganda's immigration control Act, stateless persons can apply for a certificate of permanent residence after 10 years of legal residence and demonstration of socio-economic contributions (Section 50 of the Immigration Control Act). The National Migration Policy, 2025, commits to establishing legal frameworks for identifying and protecting stateless persons, including pathways to nationality. Applications for recognition as stateless are handled by the Directorate of Citizenship and Immigration Control (DCIC) under the Ministry of Internal Affairs, with UNHCR support for identification and assistance. Negative decisions can be appealed administratively or judicially under constitutional provisions. Recognized stateless persons may apply for naturalisation after 20 years of residence, subject to good character, language proficiency, and integration requirements (Article 12 of the Constitution of Uganda; Section 14 of Immigration Control Act). If not naturalising, they may receive residence permits (Section 49 of the Immigration Control Act). Finally, international protection may occur through political asylum, which is not separately regulated in domestic law but is a discretionary executive practice under the Refugees Act and international obligations. It is granted by the Minister or OPM for individuals persecuted for political reasons, often on a case-by-case basis, and aligns with non-refoulement principles (Section 20 of the Refugees Act).

Though not a distinct protection status, Section 53 of the Prevention of Trafficking in Persons Act Cap. 131 provides that foreign victims of trafficking may remain in Uganda during investigations and apply for residence and work permits. There is no requirement for victims to cooperate with authorities as a condition for residence, but granting is discretionary (Section 53(2) of the Prevention of Trafficking in Persons Act). The National Referral Guidelines for Management of Victims of Trafficking in Persons, 2022, outline victim protection elements, including legal immunity from criminal liability and physical security. Victims are entitled to psychosocial support, shelter, and work rights, often through NGOs (Section 54 of the Prevention of Trafficking in Persons Act). If residence is refused, appeals can be made to higher authorities or courts. The number of such permits remains low; specific 2023-2024 figures are not publicly detailed.

²¹⁹⁷ <https://opm.go.ug/comprehensive-refugee-response-framework-uganda/>

²¹⁹⁸ https://www.unhcr.org/us/where-we-work/countries/uganda?dataset=POP&yearsMode=range&selectedYears=%5B2012%2C2026%5D&level=OPR&category=PTY&fundingSource=ALS&compareBy=%5B%22category%22%5D&levelCompare=%5B%5B%20UGA_ABC%22%5D%5D&viewType=chart&chartType=bar&contextualDataset=BUD&tableDataView=absolute

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Section 49 of Uganda's Immigration Control Act Cap. 313 lists the Dependent Pass as one of the categories of passes a person may obtain to enter or reside in Uganda for family reunification purposes. Furthermore, family reunification is laid down as a right of refugees (Sections 26-27 of the Refugees Act Cap. 312), and the National Migration Policy, 2025 commits to facilitating family unity and reunification for migrants, including through streamlined processes for dependants.

Regulation 33 of Uganda's Immigration Control Regulations, specifies which family members may benefit from a Dependent Pass or family reunification under the Refugees Act:

- (a) Spouses or civil partners, without discrimination (Uganda recognises marriages and civil unions);
- (b) Children under 18 years of a foreign resident holding an entry permit, certificate of permanent residence, or recognised refugee status. The Refugees Act extends this to dependants beyond 18 if they are economically reliant or students (Section 26-27 of the Refugees Act);
- (c) Children of a refugee or immigrant parent who also has a Ugandan child or another immigrant child holding a residence permit or refugee status (Section 26-27 of the Refugees Act);
- (d) Other relatives or dependants of a foreign resident with proof of legal stay and economic dependence, subject to discretionary approval by the immigration board (Regulation 33 of the Immigration Control Regulations; Section 26-27, Refugees Act).

In case an applicant seeks family reunification with an immigrant who is residing in Uganda already on the basis of a Dependent Pass, the new applicant may benefit from family reunification if they meet the eligibility criteria, though chaining is limited in practice to prevent abuse (Regulation 33(3) of the Immigration Control Regulations). Moreover, family reunification for spouses is not granted if the marriage is not legally recognised or proven (e.g., no provision for marriages by proxy without verification). In case of divorce or separation, the Ugandan law does not provide a specific avenue for the spouse with a Dependent Pass to regularise their migratory status independently; the pass may be revoked, and they must apply for alternative regularisation under general Immigration Control Act provisions.

It is important to highlight that family reunification procedures in Uganda do not require the sponsor to prove sufficient means to support their family or not to have recourse to public funds, though proof of the sponsor's legal residence and ability to accommodate may be requested in practice (Directorate of Citizenship and Immigration Control guidelines). However, for refugees, the Refugees Act emphasises family unity without financial thresholds, aligning with international standards (Section 27 of the Refugees Act; National Migration Policy, 2025).

The Courts, as a general rule, uphold family reunification in line with constitutional rights to family protection (Article 31 of the Constitution of Uganda) and may intervene in cases of

administrative delays or denials, particularly for children under the best interest principle (Article 34 of Constitution of Uganda).

5. What are the conditions for naturalization in the reviewed state?

Naturalization is one of the main pathways to citizenship in Uganda, alongside citizenship by birth and registration. Citizenship by naturalisation is granted to an alien who falls within one of the following categories (Section 16, the Immigration Control Act, Cap. 313):

- (a) Has resided in Uganda for an aggregate period of twenty years;
- (b) Has resided in Uganda throughout the period of twenty-four months immediately preceding the date of application;
- (c) Has adequate knowledge of a prescribed vernacular language or of the English language; (d) Is of good character; and
- (e) Intends, if naturalised, to continue to reside permanently in Uganda.

There are no special or provisory naturalisation categories are provided in the Ugandan law.

May be important to add is that, adopted children under 18 years who are not citizens may be registered as citizens upon application by a Ugandan adoptive parent (Article 11(2) of the Constitution of Uganda), and foundlings under 5 years are presumed citizens by birth (Article 11(1) of the Constitution of Uganda).

There are not many distinctions between naturalised and natural-born Ugandans (Articles 9-16 of the Constitution of Uganda), save for two cases provided in the Ugandan Constitution, which are, 1) certain public offices (like President and Vice-President of the Republic) can only be held by citizens by birth (Articles 102(b), 106(2)(b) of the Constitution of Uganda); and, 2) whereas citizens by birth or registration cannot be extradited under any circumstances, this protection also applies to naturalised citizens (Article 17(2), Constitution of Uganda).

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- y. *temporary and permanent resident migrants;*
- z. *regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- aa. *undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- bb. refugees;*
- cc. asylum seekers;*
- dd. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Article 21 of the Constitution of Uganda, 1995 (as amended)²¹⁹⁹ provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law. Further, Article 21(2) of the Constitution, prohibits discrimination on the grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability. Uganda does not have a general law regulating discrimination.

The main legal instruments in this field are sector-specific, such as the Employment Act, Cap. 226²²⁰⁰, which prohibits discrimination in employment on grounds including sex, race, colour, religion, HIV status, disability, or social origin (Section 5), and the Penal Code Act, Cap. 128²²⁰¹, which criminalizes certain acts of discrimination or incitement to hatred based on race, tribe, or religion (Sections 41 and 51).

More specific non-discrimination guarantees regarding migrants are found in the Refugees Act Cap. 312²²⁰², which ensures that recognised refugees are not discriminated against and enjoy rights in accordance with international conventions to which Uganda is a party (Section 28 and 29), including in relation to: access to education on the same terms as nationals (Section 29 (e) (iii)); self-employment and access to employment (Section 29 (e)(iv) and (vi)); and freedom of movement (Section 32).

²¹⁹⁹ <https://ulii.org/en/akn/ug/act/statute/1995/constitution/eng@2023-12-31>

²²⁰⁰ <https://ulii.org/en/akn/ug/act/2006/6/eng@2023-12-31>

²²⁰¹ https://media.ulii.org/media/legislation/18164/source_file/58e6bc19786c7549/1950-12.pdf

²²⁰² https://media.ulii.org/media/legislation/17969/source_file/8e8fdb1328892b29/2006-21.pdf

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Non-nationals are not allowed to vote in any kind of elections to public office in Uganda, regardless of whether they are local, regional, or national (Article 59 of the Constitution of Uganda). Nevertheless, Article 29 of the Constitution (which is based on international human rights obligations) establishes that every person, including non-nationals, shall have the right to participate in peaceful civic activities, but there is no specific reciprocity for voting rights. More broadly, political participation is allowed in the sense that migrants can participate in associations, including labour unions (Article 29(1)(e), Constitution of Uganda). Accordingly, nothing prohibits migrants from participating in public consultations and audiences, which are sometimes held by government actors when seeking to gauge the population's views about a potential law or policy.

The Office of the Prime Minister and partners have sought to enhance refugees' voices in political issues by establishing Refugee Welfare Committees (RWCs) in refugee settlements, where refugees elect representatives and can debate local policies affecting them. However, no initiative in this sense has been undertaken for urban migrants or non-refugees. The inclusion of migrants in political discussions in the country remains marginal, with refugees restricted from engaging in political activities that could compromise national security (Section 35(c) of the Refugees Act Cap 312).

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Aside from the right to vote, Ugandan law places limited restrictions upon non-nationals' exercise of civil and political rights. In fact, the Constitution of Uganda, 1995 provides that fundamental rights and freedoms apply to all persons, including non-nationals, unless expressly limited to citizens. Chapter 4 of the Constitution of Uganda entitles non-nationals to civil rights and freedoms such as the right to respect for human dignity and protection from inhuman treatment (Article 24), the right to a fair hearing and access to justice (Article 28), the right to privacy (Article 27), the right to freedom of speech, expression, and information (Article 29(1)(a)), freedom of religion (Article 29(1)(c)), and freedom of assembly and association (Article 29(1)(d) and (e)).

The Refugees Act Cap. 312 further ensures that recognised refugees shall enjoy rights in accordance with the Constitution and international conventions (Section 29), including freedom of movement subject to reasonable restrictions (Section 30), right of association in non-political and non-profit organizations (Section 29 (1)(g)), and access to courts and legal aid on equal

terms (Section 29(1)(h)). However, refugees are explicitly prohibited from engaging in any political activities within Uganda, whether at local or national level, or activities subversive to their country of origin (Section 35(d)). The National Migration Policy, 2025 commits to promoting, respecting, and protecting migrant rights in line with constitutional and international standards, though it does not create additional specific entitlements beyond existing frameworks.

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

Non-nationals in Uganda are prohibited from owning land under freehold, mailo, or customary tenure systems, which confer perpetual or indefinite ownership rights reserved exclusively for Ugandan citizens (Article 237(1) and (2)(c) of the Constitution of Uganda, 1995; Section 41, Land Act, Cap. 236²²⁰³). Non-nationals may only acquire interests in land through leasehold tenure, for a maximum term of 99 years (Section 41(3) of the Land Act; Article 237(2)(c) of the Constitution of Uganda).

Leases can be granted by Ugandan citizens (on their freehold, mailo, or customary land), government entities (through District Land Boards or the Uganda Land Commission on public land), or other authorized lessors. During the lease term, the non-national leaseholder enjoys rights similar to ownership, including use, development, sub-leasing, and transfer of the lease interest, subject to the lease terms and registration with the land registry.

There are no specific size limits, percentage caps on foreign-held land, or requirements for prior governmental approval based on location. However, for leases intended for commercial crop or animal production (agriculture), additional approval from the Uganda Investment Authority or Cabinet may be required under the Investment Code Act Cap. 74.

Foreign-majority companies are treated as non-nationals and subject to the same leasehold restrictions (Section 41(7) of the Land Act).

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

As a general rule, non-nationals seeking to engage in formal employment (as employees) in Uganda need an entry permit under Class G (particularly G2 for salaried employees or G1 for missionaries/volunteers/NGO staff), which serves as a work permit and is obtained through application to the Directorate of Citizenship and Immigration Control (DCIC) under the Ministry of Internal Affairs (Sections 48-49 and Fourth Schedule, Uganda Citizenship and

²²⁰³ https://media.ulii.org/media/legislation/111703/source_file/85832ffe280c283a/1998-16.pdf

Immigration Control Act, Cap. 313). Applicants seeking to work under an employer must prove a job offer, typically through a contract of employment, sponsorship by a registered organisation or company (with organisational code), and demonstration that the skills are not readily available locally or meet specific criteria (Class G2 requirements, Immigration Control Act). For certain sectors (e.g., NGOs), additional recommendations from bodies like the National Bureau for NGOs are required.

Class G permits for employment must often be approved prior to entry (Section 48(4) of the Immigration Control Act). Self-employment or business-related work may fall under other classes (e.g., Class D for trade/business), requiring proof of investment or business plan, but formal salaried employment is tied to Class G. There are, however, several migrant statuses that allow a person to engage in formal employed or self-employed work without a standard Class G work permit, including:

- a) Recognised refugees (Section 29(1)(iv) and (vi), Refugees Act, granting the right to access employment opportunities and engage in gainful employment on the same terms as the most favoured foreigners, with no work permit requirement in practice);
- b) Asylum seekers (upon registration, though formal employment access is limited pending recognition);
- c) Nationals of East African Community (EAC) Partner States (facilitated access under the EAC Common Market Protocol, 2010; citizens of Kenya and Rwanda are exempt from work permit fees and must only apply for the permit without payment; Tanzanians pay reduced fees of USD 1500 per year; others apply within 15 days of entry for contracts over 90 days).

All persons authorised to work in Uganda, including non-nationals with permits or refugee status, are subject to the Employment Act, Cap. 226, which governs contracts, wages, and protections. Formal employment relationships require compliance with labour laws. Refugees and permitted non-nationals enjoy the same labour protections as Ugandans once legally employed.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Ugandan law does not impose numerical quotas on the proportion of non-national workers in private companies' staff, such as a fixed percentage. However, any company or organization seeking to hire a non-national for salaried employment must justify the choice to the Directorate of Citizenship and Immigration Control (DCIC) by demonstrating that the position requires skills, qualifications, or experience not readily available in the local labour market, effectively requiring a form of labour market testing (Fourth Schedule, Class G2, Uganda Citizenship and Immigration Control Act, Cap. 313). This justification is typically provided through a cover letter from the employer, evidence of recruitment efforts (where applicable), professional

credentials of the applicant, and sometimes sector-specific recommendations (e.g., from the National Bureau for NGOs for voluntary roles or the Petroleum Authority of Uganda for oil and gas positions under the Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016)²²⁰⁴.

In specific sectors, such as oil and gas, additional national content requirements prioritise Ugandan nationals for employment and mandate succession plans to transfer skills to locals (Petroleum (Exploration, Development and Production) (National Content) Regulations, 2016).

Recognized refugees are generally exempt from work permit requirements and face no such justifications (Section 29(1) Refugees Act).

Nationals of East African Community Partner States benefit from facilitated access without full labour market testing (EAC Common Market Protocol, 2010).

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Ugandan law generally allows non-nationals to work in most professions and sectors, subject to obtaining the appropriate entry permit (work permit) under the Uganda Citizenship and Immigration Control Act, Cap. 313. However, significant restrictions apply in the public sector. The public service (civil service positions) is effectively reserved for Ugandan citizens, as appointments are made through the Public Service Commission (Articles 165-170 of the Constitution of Uganda, 1995; Public Service Commission Act, Cap.92; Public Service Act Cap. 91). While the Constitution does not explicitly prohibit non-nationals in all cases, public service roles are defined as service by or for the Government in a civil capacity, and in practice, such positions require citizenship. Exceptions exist for specific contractual roles, such as:

- a) Foreign professors
- b) Technicians Scientists in public universities or tertiary institutions (Class A2, Fourth Schedule, Uganda Citizenship and Immigration Control Act, Cap. 313)
- c) Certain government contractors.

Certain high-level or sensitive positions, such as in the judiciary, armed forces, or police, are explicitly or implicitly limited to citizens (e.g., Articles 102, 208-210 of the Constitution of Uganda, requiring citizenship by birth for roles like President).

There are no constitutional or statutory restrictions on employment in media and broadcasting companies. Non-nationals can work in the media sector with a valid work permit (typically Class G2 or other relevant classes), though foreign journalists require accreditation from the Media Council or relevant authorities under the Press and Journalist Act, Cap. 100. Ownership of media companies may face investment licensing requirements, but employment itself is not barred on nationality grounds.

²²⁰⁴ https://www.unoc.co.ug/wp-content/uploads/2021/07/Upstream_National_Content_2016.pdf

As of December 2025, no broad laws reserve other private sector professions (e.g., law, medicine) exclusively for citizens, though professional registration bodies may impose additional qualifications or reciprocity requirements for practice.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Non-nationals are entitled to the same labour protections as Ugandan nationals once they are legally employed, regardless of migratory status (Section 2 of the Employment Act, Cap. 226, which defines “employee” broadly without nationality restrictions). This applies to key protections including, weekly rest (Section 50), working hours and overtime pay (Section 52), annual leave (Section 53), maternity leave (Section 55, providing 60 working days fully paid for female employees), paternity leave (Section 56, providing 4 working days), protection against unfair termination (Sections 64-80), and non-discrimination in employment (Section 5).

Recognized refugees explicitly enjoy the right to wage-earning employment and associated labour protections on the same terms as nationals (Section 29 of the Refugees Act).

In practice, irregular migrants or those without valid work permits may face enforcement challenges, but the Employment Act does not exclude them from protections if an employment relationship is established, and courts have upheld claims by non-nationals (including undocumented ones) for unpaid wages or unfair dismissal under common law and constitutional rights (Article 40 of the Constitution of Uganda). This approach aligns with Uganda’s obligations under ILO Conventions (e.g., C097 Migration for Employment Convention, ratified) and regional frameworks.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Non-nationals' access to public health services in Uganda varies significantly depending on their migratory status, with recognised refugees and asylum seekers entitled to the same access as Ugandan nationals, while other non-nationals (such as tourists, expatriates, or irregular migrants) generally face fees for services. Recognised refugees and asylum seekers are integrated into the national public health system and entitled to free access to public health services on the same terms as nationals (Section 29 of the Refugee Act; Health Sector Integrated Refugee Response Plan (HSIRRP) 2019-2024²²⁰⁵; Refugee and Migrant Health System Review, WHO/Ministry of Health, 2024²²⁰⁶). Uganda's public health system is decentralised, with responsibility shared between the national Ministry of Health, district local governments, and health facilities. Services cover primary, secondary, and tertiary care, including emergency care,

²²⁰⁵ <https://reliefweb.int/report/uganda/health-sector-integrated-refugee-response-plan-2019-2024>

²²⁰⁶ <https://www.who.int/publications/i/item/9789240098824>

preventive services, maternal and child health, and disease management, delivered free at public facilities (abolition of user fees policy since 2001 for nationals²²⁰⁷ and extended to refugees).

Despite the progressive legal and policy framework, refugees' access can be hindered in practice by challenges such as stock-outs of essential medicines, language and cultural barriers, long distances to facilities, and resource constraints in refugee-hosting districts (Refugee and Migrant Health System Review, WHO/Ministry of Health, 2024).

Refugees receive identification and attestation documents that facilitate access to health services. For other non-nationals (non-refugees), public health services are not free and require payment of user fees or out-of-pocket costs, though emergency care may be provided initially (general practice in public hospitals). Private facilities are commonly used by expatriates and visitors, often requiring upfront payment or insurance.

The openness of Uganda's public health system to refugees has been affirmed by international bodies like WHO and UNHCR as a model of inclusion²²⁰⁸.

While the legal framework is highly favorable for refugees, challenges remain, especially regarding resource availability, workforce capacity, and equity in high-burden districts.

For non-refugee migrants, access is more limited and fee-based, contributing to reliance on private care or international insurance.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Non-nationals' access to public education in Uganda differs markedly from that of nationals, with recognised refugees and asylum seekers enjoying near-equal treatment at primary (and often secondary) levels through integration into the national system, while other non-nationals (e.g., expatriates, economic migrants, or visitors) generally face restrictions, fees, or reliance on private/international schools.

At primary level, recognised refugee and asylum seeker children are entitled to free access to public primary education on the same terms as Ugandan nationals, as part of Universal Primary Education (UPE) introduced in 1997 and extended to refugees (Section 29(1)(e)(iii) of the Refugees Act; Education (Pre-Primary, Primary and Post-Primary) Act Cap. 247²²⁰⁹). This includes enrolment in public schools without tuition fees, though hidden costs (e.g., uniforms, books, examination fees) may apply equally to all. The Education Response Plan for Refugees

²²⁰⁷ <https://gsdrc.org/document-library/social-protection-and-health-experiences-in-uganda/#:~:text=The%20abolition%20of%20fees%20in,to%20services%20is%20still%20constrained.>

²²⁰⁸ <https://www.afro.who.int/countries/uganda/news/ugandas-health-system-addresses-health-needs-refugees-migrants-and-host-communities>

²²⁰⁹ <https://ulii.org/en/akn/ug/act/2008/13/eng@2023-12-31>

and Host Communities (ERP II²²¹⁰) reinforces inclusion, aiming for equitable access alongside host communities.

At secondary level, refugees have access to public secondary education under Universal Secondary Education (USE), but on the same terms as other aliens (i.e., often fee-paying in practice, as government capitation grants do not fully cover refugee students in all cases) (Section 29(1)(e)(iii) of the Refugees Act). Enrolment rates remain low due to costs and infrastructure in refugee-hosting areas. Other non-nationals typically pay fees or attend private schools.

At tertiary level, non-nationals, including refugees, are treated as international students at public universities and pay higher international tuition fees, with no access to government-sponsored places reserved for nationals. Admission requires passing national exams or equivalence recognition, and refugees may benefit from targeted scholarships (e.g., DAFI program through UNHCR, MasterCard scholarships or other partner initiatives).

The National Migration Policy, 2025 commits to promoting migrant inclusion, including education, but does not mandate equal tertiary access. In acknowledgement of documentation barriers for refugees, UNHCR and partners support certificate evaluation and enrolment, but no binding resolution exists prohibiting denial based on lack of documents.

Most inclusion efforts occur through the Education Response Plan and UNHCR partnerships at national and district levels, with challenges including overcrowding, teacher shortages, language barriers (e.g., for Sudanese refugees using Arabic curriculum), and resource gaps in refugee-hosting districts. While the framework is progressive for refugees, and often cited as a regional model, non-refugee migrants face greater limitations, relying on private institutions.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Non-nationals who are legally employed in Uganda can participate in the contributory social security scheme under the National Social Security Fund (NSSF) on the same terms as Ugandan nationals, including access to benefits such as age/retirement pension (from age 55), invalidity/disability benefit, withdrawal benefit (from age 50 if unemployed), survivor's benefit, and emigration benefit (for those permanently leaving Uganda) (National Social Security Fund Act, Cap.230²²¹¹). This includes non-nationals with valid work permits, expatriates, and recognised refugees, who are explicitly eligible to contribute and claim accrued benefits (including emigration grants upon departure or repatriation). Voluntary contributions are also open to non-nationals working in Uganda with valid identification (e.g., passport) or refugees with refugee ID.

There is no statutory entitlement for non-nationals to non-contributory social security benefits for elderly or disabled persons. Uganda's primary non-contributory program, the Social

²²¹⁰ https://www.education.go.ug/wp-content/uploads/2023/08/ERP-II- Final-Printed-Version_24052023.pdf

²²¹¹ https://www.nssfug.org/site/assets/files/1501/nssf_act_cap_230.pdf

Assistance Grants for Empowerment (SAGE), providing monthly cash transfers to senior citizens (Senior Citizens Grant, typically for those aged 65+ or 80+ depending on rollout phase) and vulnerable persons with disabilities, is targeted at Ugandan nationals based on age, residency, and poverty criteria, with no provisions extending it to non.

Recognised refugees and asylum seekers rely primarily on humanitarian assistance (e.g., cash transfers through UNHCR or partners) rather than national non-contributory schemes. Naturally, irregular migratory status or lack of employment authorisation prevents participation in contributory schemes, and non-nationals do not qualify for non-contributory benefits.

The National Social Protection Policy, 2015²²¹², and recent commitments (including Uganda's 2025 ratification of the AU Protocol on Social Protection) aim to expand coverage, particularly to informal workers, but as of December 2025, implementation remains limited for non-nationals beyond contributory participation where employed.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Non-nationals are generally not entitled to the same access to social assistance or welfare programmes as Ugandan nationals, with eligibility typically restricted to citizens under the National Social Protection Policy, 2015. Uganda's primary welfare initiative is the Social Assistance Grants for Empowerment (SAGE) programme under the Expanding Social Protection Programme, which provides direct cash transfers primarily through the Senior Citizens Grant (monthly payments to older persons aged 65+ or 80+ depending on rollout phase) and limited Vulnerable Family Grants. These are targeted at Ugandan citizens based on age, residency in covered districts, and vulnerability criteria, with no provisions extending eligibility to non-nationals. Registration requires national identification, reinforcing citizenship-based access. Recognised refugees and asylum seekers do not participate in SAGE or equivalent national welfare schemes; instead, they receive targeted humanitarian assistance, including cash transfers or in-kind food aid primarily from the World Food Programme (WFP) and UNHCR partners, often at reduced rations due to funding shortfalls (as of 2025, assistance prioritised for the most vulnerable, with many receiving partial or no support). This humanitarian aid is separate from national welfare and not equivalent to programmes like SAGE.

There are no broad national subsidized housing programmes open to non-nationals. Initiatives such as those by the National Housing and Construction Company (NHCC) or private-public partnerships focus on Ugandan citizens, particularly low- and middle-income nationals, with eligibility tied to citizenship or long-term residency requirements.

Refugees are allocated plots of land in settlements for self-built shelter under the Refugees Act, but this is not subsidized housing in the urban or formal sense.

²²¹² <https://www.studocu.com/row/document/makerere-university/bachelor-of-laws/national-social-protection-policy-uganda/124787386>

Temporary or emergency welfare responses (e.g., during crises) are typically channelled through humanitarian mechanisms for refugees rather than integrated national programmes.

The National Social Protection Policy, 2015, emphasizes protection for vulnerable Ugandans, with limited inclusion of migrants beyond contributory schemes or refugee-specific aid. As of December 2025, no reforms have extended SAGE or similar welfare to non-nationals, and resource constraints continue to prioritise citizens.

Are there any final observations you would like to make? Please write below.

Uganda's legal framework provides for migrants' enjoyment of civil, economic, social, and cultural rights in a differentiated manner, with recognised refugees and asylum seekers benefiting from near-equal treatment to nationals in many areas (e.g., health, primary education, labour protections, freedom of movement within settlements), while other non-nationals (economic migrants, expatriates, visitors) face more restrictions and generally pay fees or require permits for services.

Distortions arise primarily from the sharp distinction between refugee and non-refugee migrants. Refugees are integrated into national systems under the progressive Refugees Act, and the Comprehensive Refugee Response Framework (CRRF), but non-refugee migrants often lack comparable avenues for regularisation beyond work permits or dependent passes, leading to limited access to public services and welfare.

While Uganda offers pathways like certificates of permanent residence after long-term legal stay, most non-refugee migrants remain on temporary permits without broad inclusion in social programmes. Political rights for migrants remain highly limited, with no right to vote in any elections and no consistent policies promoting migrant participation in political debates. Refugee Welfare Committees in refugee settlements provide a platform for refugee voices on local issues, but these are advisory and confined to settlement governance, with refugees explicitly barred from national or local political activities. Urban migrants and non-refugees have no equivalent structures.

Most challenges facing migrants in Uganda stem not from an inadequate legal framework for refugees, widely praised as a regional model, but from resource constraints, insufficient implementation, and the exclusion of non-refugee migrants. Public authorities and service providers in refugee-hosting districts often struggle with overcrowding, medicine stock-outs, and staffing shortages, affecting equitable service delivery. Discrimination, xenophobia, and cultural insensitivity toward certain migrant groups persist, though less structurally documented than in some contexts. Accommodation of migrants' needs, including language barriers (e.g., for non-English/Swahili speakers) and religious sensitivity, is addressed mainly through UNHCR and NGO partnerships rather than comprehensive national policies. The National Migration Policy, 2025, signals growing awareness and commitment to orderly, safe, and rights-based migration management, building on initiatives from civil society, UNHCR, IOM, and government bodies. Further engagement and resource allocation from state authorities remain essential to extend protections beyond refugees and ensure full implementation across all migrant categories.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

September 2025

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: United Kingdom

Author: Yago Freire

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees		X
1967 Protocol to the Convention relating to the Status of Refugees		X
1954 Convention relating to the Status of Stateless Persons		X
1961 Convention on the Reduction of Statelessness		X
International Covenant on Civil and Political Rights (ICCPR)		X
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)		
International Covenant on Economic, Social and Cultural Rights (ICESCR)		X
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)		

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)		X
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		X
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)		X
Convention on the Rights of the Child (CRC)		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		X
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure		
Convention on the Rights of Persons with Disabilities (CRPD)		X
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)		X
ILO Forced Labour Convention (No. 29)		X
2014 Protocol to the ILO Forced Labour Convention (No. 29)		X
ILO Migration for Employment Convention (Revised) (No. 97)		X
ILO Equal Remuneration Convention (No. 100)		X
ILO Discrimination (Employment and Occupation) Convention (No. 111)		X

ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		X

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)		
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights		
Convention governing the Specific Aspects of Refugee Problems in Africa		
African Charter on the Rights and Welfare of the Child		
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)		
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa		
European Convention on Human Rights (ECHR)		X
Protocols to the European Convention on Human Rights (list which ones) 1, 4, 6, 7, 13) — excluding Protocol 12 and 16:		X
Protocol 1 (1952)		X
Protocol 4 (1963)		
Protocol 6 (1983)		X
Protocol 7 (1984)	X	
Protocol 13 (2002)		X
European Social Charter (ESC) (1961 version, not revised 1996 version)		X
European Convention on the Legal Status of Migrant Workers		

Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	X	
American Convention on Human Rights (ACHR)		
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)		
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)		
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities		
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance		
Inter-American Convention against All Forms of Discrimination and Intolerance		
Inter-American Convention Protecting the Human Rights of Older Persons		

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

In the United Kingdom, the system regulating non-nationals' entry and stay is governed by the Immigration Rules, issued under section 3(2) of the Immigration Act 1971²²¹³. Unlike jurisdictions that distinguish clearly between entry visas and separate residence permits, the UK operates a unitary system based on what is legally termed “permission to enter” and “permission to stay”. These two statuses encompass both short- and long-term immigration pathways and

²²¹³ Immigration Act 1971, Section 3(2). Available at: <https://www.legislation.gov.uk/ukpga/1971/77/section/3>

are granted through a visa process, or in certain cases, through in-country applications for status changes or extensions.

While the UK does not issue a “residence permit” *per se* as in continental Europe, it does provide Biometric Residence Permits (BRPs) as documentary evidence of a migrant’s lawful immigration status. The BRP is not a permit in itself but a physical confirmation of an individual’s permission to stay—whether temporary or indefinite. It indicates the type of leave granted (e.g. work, study, family), its duration, and any attached conditions (e.g. recourse to public funds).

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

The United Kingdom offers a variety of immigration categories that permit non-nationals to reside in the country for periods exceeding three months. These are defined under the *Immigration Rules* and structured according to the purpose of stay, including employment, study, family reunification, humanitarian protection, long-term residence, and other special categories. Each is governed by a distinct appendix or part of the Rules.

Work-based categories are among the most prominent and include the Skilled Worker visa (*Appendix Skilled Worker*) and the Health and Care Worker route (*Appendix Skilled Worker*). High-skilled migration is also supported through the Global Talent visa (*Appendix Global Talent*) and the Scale-up visa (*Appendix Scale-up*). For entrepreneurs and innovators, the UK provides the Innovator Founder route (*Appendix Innovator Founder*). Temporary work opportunities are regulated under the Temporary Worker routes (*Appendix Temporary Work*), covering sectors such as creative industries, charity work, and religious activity.

Study-related categories allow non-nationals to reside in the UK for the duration of their educational pursuits. The Student visa (*Appendix Student*) permits residence throughout the academic programme, and graduates may remain in the country for two additional years—or three, in the case of PhD holders—under the Graduate visa (*Appendix Graduate*).

The family migration framework (*Appendix FM – Family Members*) enables British citizens and settled persons to sponsor their spouses, partners, children, or dependent relatives. This category typically leads to settlement after five years, or ten in more complex or exceptional circumstances.

Humanitarian protection is provided under several routes. Refugee status and humanitarian protection are governed by the general provisions of Part 11 and further detailed in Appendix Settlement Protection. Victims of trafficking or modern slavery may be granted leave to remain under the Temporary Permission to Stay for Victims of Human Trafficking or

Slavery (*Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery*), while family members of protected persons may reunite under the Family Reunion route (*Appendix Family Reunion (Protection)*). Other vulnerable migrants, including children and long-term residents, may apply under the Private Life route (*Appendix Private Life*) or through the Long Residence route (*Appendix Long Residence*), both of which can lead to regularisation and permanent status.

Following Brexit, the EU Settlement Scheme (*Appendix EU*) confers either pre-settled or settled status to EU, EEA, and Swiss citizens and their family members who resided in the UK before 31 December 2020.

Additional residence categories exist under specific schemes, such as the Youth Mobility Scheme (*Appendix Youth Mobility Scheme*), the UK Ancestry visa (*Appendix UK Ancestry*), and the British National (Overseas) visa for eligible Hong Kong residents (*Appendix Hong Kong BN(O) Status Holder Visa*). In response to humanitarian crises, the UK has also created bespoke migration pathways, including the Ukraine Family Scheme and Homes for Ukraine Scheme (*Appendix Ukraine Scheme*).

Altogether, these visa and status categories permit lawful residence for more than three months and are defined across a complex yet codified framework of appendices and parts of the *Immigration Rules*, each with specific eligibility criteria, timeframes, and conditions for renewal or settlement.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

The legal framework for granting international protection in the United Kingdom is grounded in both domestic legislation and the UK's international obligations under instruments such as the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, both of which the UK has ratified. The main domestic legal instruments include the Immigration Rules (specifically *Part II*, *Part IIA*, and *Part IIB*), the Nationality, Immigration and Asylum Act 2002²²¹⁴, and the Immigration Act 1971²²¹⁵. These provisions are supplemented by statutory guidance and Home Office policy instructions.

The core category of international protection is refugee status, defined according to Article 1A(2) of the 1951 Refugee Convention. The procedural and substantive rules governing asylum claims are codified in *Part II* of the *Immigration Rules*, which outlines the criteria for recognition, the rights attached to refugee status, and the procedures for cessation or withdrawal of protection. Additional protections for those not qualifying as refugees may be granted under the category of Humanitarian Protection (*Part IIB*), available to individuals who face a real

²²¹⁴ Nationality, Immigration and Asylum Act 2002. Available at: <https://www.legislation.gov.uk/ukpga/2002/41/contents>

²²¹⁵ Immigration Act 1971. Available at: <https://www.legislation.gov.uk/ukpga/1971/77/contents>

risk of serious harm upon return, including torture, inhuman or degrading treatment, or indiscriminate violence in situations of armed conflict.

Applicants for asylum are also entitled to procedural safeguards, including the right to remain in the UK while their claim is pending (*Immigration Rules, para 328*), the right to legal representation (subject to eligibility for legal aid), and access to an independent appellate body—the First-tier Tribunal (Immigration and Asylum Chamber)—to challenge negative decisions. Further appeal may be sought at the Upper Tribunal and, in certain cases, before the High Court or Court of Appeal via judicial review.

Legal aid in asylum and immigration cases is governed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)²²¹⁶. To qualify, applicants must pass three cumulative tests. First, a scope test, which checks if the case falls within the limited categories that Parliament has decided to protect (asylum claims, detention, and related human rights matters: Schedule 1, Part 1). Second, a means test, which ensures that only those without sufficient income or capital receive public funding (section 21). Third, a merits test, which confirms that the case has reasonable prospects of success, is important to the individual, and is proportionate to fund (section 10(3)). In exceptional circumstances, funding can also be granted outside these categories through Exceptional Case Funding, to prevent a breach of rights under the European Convention on Human Rights (sections 10(3)-(5)).

In addition to refugee status and humanitarian protection, the UK provides Temporary Permission to Stay (TPT) for certain vulnerable groups. These include victims of human trafficking or modern slavery, regulated under *Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery*²²¹⁷, and unaccompanied asylum-seeking children, who may be granted leave to remain outside of the Immigration Rules on the basis of their best interests, under section 55 of the Borders, Citizenship and Immigration Act 2009.

Permission may be granted where necessary to assist recovery from harm, to enable the victim to pursue compensation, or to allow cooperation with national authorities in investigations or criminal proceedings (VTS 3.1). Crucially, cooperation is not a mandatory condition, and victims may be granted leave solely on recovery or compensation grounds, reflecting the recognition that many cannot safely engage with law enforcement due to trauma or fear of reprisals.

Although the validity provisions mention that “any required fee must have been paid” (VTS 1.1(d)), victims under this route are exempt from both application fees and the Immigration Health Surcharge, pursuant to the Immigration and Nationality (Fees) Regulations 2018²²¹⁸,

²²¹⁶ Legal Aid, Sentencing and Punishment of Offenders Act 2012. Available at: <https://www.legislation.gov.uk/ukpga/2012/10/contents>

²²¹⁷ Immigration Rules, Appendix Temporary Permission to Stay for Victims of Human Trafficking or Slavery Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-temporary-permission-to-stay-for-victims-of-human-trafficking-or-slavery>

²²¹⁸ Immigration and Nationality (Fees) Regulations 2018, Schedule 2. Available at: <https://www.legislation.gov.uk/uksi/2018/330/contents>

Sch. 2, and the Immigration (Health and Social Care Staff and Trafficking Victims) (Exemption from Immigration Health Charge) Regulations 2022 (reg. 3)²²¹⁹

The UK also implements family reunification provisions under *Appendix Family Reunion (Protection)*, which allow spouses, partners, and minor children of recognised refugees or beneficiaries of humanitarian protection to join them in the UK without being required to meet the financial or English language thresholds applicable under general immigration law.

While the UK does not formally operate a humanitarian visa system, it has made discretionary use of resettlement schemes and bespoke visa routes in response to international crises. These include:

- the UK Resettlement Scheme and its predecessors (e.g., the Vulnerable Persons Resettlement Scheme),
- the Afghan Citizens Resettlement Scheme and Afghan Relocations and Assistance Policy (ARAP),
- and the Ukraine Schemes, as regulated under *Appendix Ukraine Scheme*.

These pathways are primarily policy-based rather than grounded in permanent legislation and have been subject to evolving criteria and levels of political discretion.

Despite the existence of this legal framework, the UK has been subject to criticism for its increasingly restrictive asylum environment. This includes legislative efforts such as the Illegal Migration Act 2023, which limits the ability to claim asylum for individuals arriving irregularly, mandates detention, and introduces provisions for offshore processing and third-country removals—particularly to Rwanda. Although some aspects of the Act have yet to be fully implemented or cleared by judicial review, they represent a significant shift away from the traditional refugee protection model and raise concerns regarding compatibility with international law obligations.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Family reunification in the United Kingdom is primarily governed by *Appendix FM (Family Members)* of the *Immigration Rules*, which sets out the substantive and procedural requirements for family-based migration. The rules apply to individuals seeking to enter or remain in the UK as the family member of a British citizen, a person settled in the UK (i.e., holding Indefinite Leave to Remain), or a person with refugee status or humanitarian protection.

Eligible family members under *Appendix FM* include spouses and civil partners, unmarried partners in a durable relationship, fiancés(e)s, dependent children, parents of British children, and, in more limited cases, adult dependent relatives (such as elderly parents or disabled siblings). Applications under this route are subject to stringent conditions, including:

²²¹⁹ Immigration (Health and Social Care Staff and Trafficking Victims) (Exemption from Immigration Health Charge) Regulations 2022, reg. 3. Available at: <https://www.legislation.gov.uk/uksi/2022/516/contents/made>

- proof of a genuine and subsisting relationship;
- compliance with financial requirements (e.g., a minimum income threshold of £18,600 for a sponsoring partner, higher if children are included);
- English language proficiency²²²⁰; and
- the absence of serious criminal convictions or immigration violations.

The category of unmarried partners in a “durable relationship” is further defined through the Immigration Rules and Home Office practice²²²¹. In general, applicants must demonstrate that they have lived together in a relationship akin to marriage or civil partnership for at least two years prior to the application²²²². Evidence typically required includes satisfactory evidence that the couple are in a current, long-term relationship, evidence that the couple have been or are co-habiting usually with official correspondence addressed to both partners at the same address or joint tenancy agreements, that they share financial responsibilities. The relationship must also be shown to be genuine, subsisting, and exclusive, reflecting a long-term commitment comparable to that of spouses or civil partners.

Once granted, leave under the family route is generally issued for 30 months (2.5 years), with the possibility of renewal and eventual eligibility for settlement (Indefinite Leave to Remain) after five years of continuous lawful residence. Applicants who do not meet all the requirements under the five-year route may be granted leave under a ten-year route based on exceptional circumstances, particularly where removal would breach Article 8 of the European Convention on Human Rights (right to respect for private and family life), as incorporated into domestic law by the Human Rights Act 1998.

If the relationship breaks down before the expiry of leave granted under the family route, there are limited pathways for the spouse to remain independently in the UK. Where the breakdown results from domestic violence, the partner may apply for indefinite leave to remain under Appendix FM (DVILR)²²²³, without a minimum residence requirement, provided the abuse can be evidenced. Parents of British or settled children may switch into the parent route of Appendix FM²²²⁴, if they can demonstrate parental responsibility and active involvement in the child’s

²²²⁰ Applicants under the family migration route must demonstrate a minimum level of English language proficiency. This is normally evidenced through a Secure English Language Test (SELT) at the required CEFR level. However, the Immigration Rules (Appendix FM-SE, paras. 32D–32F) also allow alternative forms of proof such as nationals of majority English-speaking countries, holders of UK degrees, or foreign degrees taught in English (certified by UK ENIC).

²²²¹ See Home Office Guidance – Family Policy: Partners, Divorce and Dissolution. Available at: https://assets.publishing.service.gov.uk/media/68889d86a11f859994409142/Partners_divorce_and_dissolution.pdf

²²²² See Immigration Rules, Appendix FM-SE, para. 18A (durable partners – evidentiary requirements). Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-se-family-members-specified-evidence>

²²²³ Immigration Rules, Appendix FM: Domestic Violence (DVILR). Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-family-members#domestic-violence-dvilr>

²²²⁴ Immigration Rules, Appendix FM: Parent Route. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-family-members#parent>

life. Another possibility is to apply under the private life route (Appendix Private Life²²²⁵), if the applicant can prove they have developed strong ties in the UK and would face significant obstacles in reintegrating into their country of origin. This pathway is, however, more demanding and normally follows a 10-year qualifying period before eligibility for settlement. In addition, applicants who meet the requirements for a work or study visa may transition to those categories, although this requires satisfying the independent financial and sponsorship criteria applicable to such routes.

For individuals granted refugee status or humanitarian protection, a separate framework applies under *Appendix Family Reunion (Protection)*. This permits a more favourable treatment by waiving the usual income, accommodation, and language requirements, allowing spouses and minor children (under 18 and unmarried) to apply for family reunification without meeting the broader criteria of *Appendix FM*. This route is available only where the family relationship existed before the sponsor fled their country of origin.

In addition, children born in the UK to parents with limited or settled status may acquire citizenship or leave to remain depending on the parent's immigration status at the time of the child's birth, in accordance with the *British Nationality Act 1981* and associated Immigration Rules.

Despite the existence of these frameworks, the UK's family reunification policy has drawn criticism from human rights bodies due to its relatively restrictive financial thresholds, long processing times, and narrow definition of "family." The income requirement, in particular, has been the subject of legal challenge and public debate, as it often exceeds the national minimum wage and disproportionately affects sponsors from marginalized or low-income backgrounds.

Nonetheless, the Home Office retains a limited discretion to grant leave outside the Immigration Rules on a case-by-case basis in particularly compelling or compassionate situations — although the threshold for this is high, and the legal basis for such decisions remains discretionary rather than mandatory.

5. What are the conditions for naturalization in the reviewed state?

Naturalization in the United Kingdom is governed by the British Nationality Act 1981²²²⁶, particularly sections 6 and 7, and supplemented by policy guidance issued by the Home Office. It constitutes the main legal mechanism through which a non-national may acquire British citizenship following a period of lawful residence. Naturalization is a discretionary process, meaning that satisfying the legal criteria does not automatically confer a right to citizenship, but allows the Secretary of State to grant it on application.

There are two main pathways for naturalization under section 6 of the Act: one for those married to British citizens (*section 6(2)*), and another for those who are not (*section 6(1)*). The conditions for each route vary slightly.

²²²⁵ Immigration Rules, Appendix Private Life. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-private-life>

²²²⁶ British Nationality Act 1981. Available at: <https://www.legislation.gov.uk/ukpga/1981/61/contents>

For individuals not married to a British citizen, the applicant must:

- Have resided in the UK for at least five years preceding the application;
- Have held Indefinite Leave to Remain (ILR) or another form of permanent residence (such as settled status under the EU Settlement Scheme) for at least one year prior to applying;
- Have been physically present in the UK exactly five years before the date of the application;
- Not have been in breach of immigration laws during the qualifying period;
- Have spent no more than 450 days outside the UK in the five-year period, and no more than 90 days in the final year;
- Be of good character (a criterion broadly defined and assessed by the Home Office);
- Have sufficient knowledge of the English language (or Welsh or Scottish Gaelic) and of life in the UK, proven through a Life in the UK Test and, where applicable, a language qualification (*Appendix KOLL* of the Immigration Rules).

For individuals married to a British citizen, the residence requirement is reduced to three years, and there is no requirement to hold ILR for a full year before applying—though the applicant must still have obtained ILR or settled status by the time of application. The same conditions relating to absences, good character, and knowledge of language and life apply, albeit with adjusted thresholds (e.g., no more than 270 days outside the UK in the three-year period, and no more than 90 days in the final year).

Children born in the UK to non-British parents may be registered as British citizens under section 1(3) of the 1981 Act once at least one parent acquires ILR or becomes a British citizen. This registration route is distinct from naturalization and is treated as an entitlement, not a discretionary process.

There is no general requirement to renounce previous citizenships: the UK permits dual nationality, and applicants are not required to give up their prior nationality upon naturalization. However, the laws of the applicant's country of origin may restrict or prohibit dual citizenship.

Successful applicants must attend a citizenship ceremony and take an Oath or Affirmation of Allegiance to the Crown and a pledge of loyalty to the United Kingdom before becoming British citizens.

Overall, the UK's naturalization regime is relatively stable but has faced critiques in recent years regarding the high application fees, lengthy processing times, and discretionary denials based on the nebulous “good character” requirement. Additionally, the government has broad powers to deprive individuals of citizenship under *section 40* of the British Nationality Act 1981, particularly where naturalization was obtained by fraud or where it is deemed “conducive to the public good,” a provision that has raised concerns under international human rights law.

This last provision has been most prominently applied in cases involving British citizens who travelled abroad to join Daesh (ISIS). As an example, one may mention the case of Shamima

Begum, which has become emblematic of the UK's use of deprivation powers. Born in London in 1999, Begum left the UK at the age of 15 to join Daesh in Syria. In 2019, the Home Secretary revoked her British citizenship on national security grounds, arguing that she was eligible for Bangladeshi citizenship and thus would not be rendered stateless. Bangladesh, however, refused to recognise her as a citizen, leaving her effectively stateless and stranded in a camp in Syria. Begum challenged the decision through multiple appeals: the Special Immigration Appeals Commission (SIAC) upheld the deprivation order; the Court of Appeal initially allowed her to return to the UK to pursue her appeal; but the Supreme Court reversed this in 2021²²²⁷, holding that security concerns outweighed her right to a fair hearing in person. In 2023, SIAC again dismissed her substantive appeal²²²⁸, and in 2024 the Court of Appeal confirmed that the deprivation of her citizenship was lawful²²²⁹. The Begum case thus illustrates both the breadth of ministerial discretion under section 40 and the profound human rights concerns raised by the deprivation of nationality on national security grounds.

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. *temporary and permanent resident migrants;*
- b. *regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. *undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. *refugees;*
- e. *asylum seekers;*
- f. *other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

²²²⁷ Begum v Secretary of State for the Home Department [2021] UKSC 7 (Supreme Court). Available at: <https://www.supremecourt.uk/cases/uksc-2020-0156.html>

²²²⁸ Shamima Begum v SSHD (SIAC, 2023 decision). Available at: <https://www.judiciary.uk/judgments/shamima-begum-v-secretary-of-state-for-the-home-department/>

²²²⁹ Begum v SSHD (Court of Appeal, 2024). Available at: <https://www.bailii.org/ew/cases/EWCA/Civ/2024/152.html>

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

The United Kingdom has a domestic framework on non-discrimination that applies to nationals and non-nationals alike.

(i) The Equality Act 2010²²³⁰ prohibits discrimination on a wide range of protected characteristics, with “race” expressly defined to include nationality and ethnic or national origins (s.9). These protections apply across employment, education, housing, the provision of goods and services, and the exercise of public functions.

(ii) The Human Rights Act 1998²²³¹, incorporating Article 14 ECHR²²³², guarantees protection against discrimination to all persons under UK jurisdiction. Accordingly, temporary and permanent residents, EU citizens and other groups with preferential treatment, refugees, asylum seekers and other beneficiaries of international protection may rely on these protections. Even undocumented migrants are covered in principle, though their practical access to rights is restricted by immigration control measures.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Political participation in the United Kingdom is closely tied to nationality. Under the Representation of the People Acts 1983 and 1985, the general rule is that only British citizens may vote in parliamentary elections. However, Irish citizens and qualifying Commonwealth citizens lawfully resident in the UK are also entitled to vote in general, local and devolved elections.

Prior to the UK’s withdrawal from the European Union, all EU citizens legally resident in the UK were entitled to vote in local elections and in elections to the European Parliament, in accordance with the EU treaties and secondary legislation (notably Directive 94/80/EC on municipal elections and Directive 93/109/EC on European Parliamentary elections). These rights were transposed into domestic law through the Representation of the People Act 1983 and the European Parliamentary Elections Act 2002. Importantly, EU citizens did not enjoy voting rights in UK parliamentary general elections or national referenda, but their ability to participate in local governance and to elect Members of the European Parliament was regarded as an important element of EU citizenship.

²²³⁰ Equality Act 2010, section 9(1). Available at: <https://www.legislation.gov.uk/ukpga/2010/15/section/9>

²²³¹ Human Rights Act 1998. Available at: <https://www.legislation.gov.uk/ukpga/1998/42/contents>

²²³² European Convention on Human Rights, Article 14. Available at: https://www.echr.coe.int/documents/convention_eng.pdf

Following Brexit and the end of the transition period in 2020, EU law ceased to apply in the United Kingdom. As a result, the automatic franchise previously enjoyed by EU citizens was removed. The new regime distinguishes between categories of EU nationals:

In England and Northern Ireland, only EU citizens with “retained rights” under the EU Settlement Scheme (settled or pre-settled status) and who are nationals of countries with which the UK has concluded reciprocal voting agreements (Spain, Portugal, Luxembourg and Poland) continue to be entitled to vote in local elections.

By contrast, Scotland and Wales have exercised their devolved powers under the Scotland Act 1998 and the Government of Wales Act 2006 to expand the franchise, allowing all legally resident foreign nationals, including EU citizens regardless of bilateral agreements, to participate in devolved and local elections.

Refugees and other beneficiaries of protection are treated according to their nationality: those who are Irish or Commonwealth citizens may vote, while others may not. Asylum seekers and undocumented migrants do not enjoy political participation rights.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

4. Are there any limitations to non-nationals’ right to buy and own property within the reviewed state?

There are no general nationality-based restrictions on the right of non-nationals to buy or own property in the United Kingdom. Both temporary and permanent residents, as well as Irish citizens, Commonwealth nationals, and EU citizens under the Settlement Scheme, may acquire and register real estate under the same rules as British citizens. Refugees and beneficiaries of international protection are treated similarly.

Practical barriers nevertheless exist. For asylum seekers and undocumented migrants, there is no formal prohibition against property ownership, but several factors make acquisition effectively inaccessible. Asylum seekers are prohibited from working and are supported by subsistence-level state allowances, which precludes saving or accessing mortgage credit.

Undocumented migrants face additional restrictions under the Immigration Act 2014²²³³, which introduced the “right to rent” scheme, limiting their ability to rent or occupy housing lawfully and making it difficult to register property or engage with financial institutions. Even for

²²³³ Immigration Act 2014, Part 3 (Right to Rent scheme). Available at: <https://www.legislation.gov.uk/ukpga/2014/22/section/21>

temporary migrants with lawful status, access to mortgage finance is often contingent on visa length and credit history, creating indirect barriers to ownership.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

In the United Kingdom, the right of non-nationals to work formally is determined by immigration status and the conditions attached to leave. The governing framework is set by the Immigration Act 1971²²³⁴ (s.3, on conditions of leave), the Immigration, Asylum and Nationality Act 2006²²³⁵ (ss.15–25, on illegal working and employer sanctions), and the detailed visa provisions of the Immigration Rules.

First, non-nationals admitted under work visas may engage in formal employment if their visa expressly authorises it. The principal route is the Skilled Worker visa, regulated under Immigration Rules, Appendix Skilled Worker²²³⁶. Applicants must have a confirmed job offer from a Home Office–licensed sponsor (para. SW 4.1), meet skill and salary thresholds (paras. SW 6.1–6.2), and work only for the sponsoring employer.

Within the broader framework of the Skilled Worker route, several specialised visa categories exist to meet specific policy needs. The Health and Care Worker visa, a sub-route of the Skilled Worker scheme, facilitates the recruitment of health and social care professionals by lowering minimum salary thresholds and exempting applicants from the Immigration Health Surcharge. The Global Talent visa, regulated separately under Appendix Global Talent, is designed to attract leaders or potential leaders in science, research, technology, and the arts; it does not require employer sponsorship but rather endorsement by designated bodies, and confers broad labour market freedom. The Seasonal Worker visa, established under Appendix Temporary Work²²³⁷, addresses short-term labour shortages in agriculture and horticulture, allowing up to six months of employment with no path to settlement.

Second, student migrants may engage in work, but only within strict limits. Under Immigration Rules, Appendix Student²²³⁸, paras. ST 26.1–ST 27.3, students at degree level may work a maximum of 20 hours per week during term time and full-time during vacations. They are prohibited from self-employment, professional sport, and filling permanent full-time roles. Breach of these restrictions constitutes a violation of visa conditions under the Immigration Act 1971, s.3(1)(c)(ii).

²²³⁴ Immigration Act 1971. Available at: <https://www.legislation.gov.uk/ukpga/1971/77/contents>

²²³⁵ Immigration, Asylum and Nationality Act 2006, ss.15–25. Available at: <https://www.legislation.gov.uk/ukpga/2006/13/contents>

²²³⁶ Immigration Rules, Appendix Skilled Worker. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-skilled-worker>

²²³⁷ Immigration Rules, Appendix Temporary Work – Seasonal Worker. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-temporary-work-seasonal-worker>

²²³⁸ Immigration Rules, Appendix Student. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-student>

Third, permanent residents enjoy unrestricted access to the labour market. Holders of Indefinite Leave to Remain (ILR), granted under various parts of the Immigration Rules, are free from immigration restrictions (Immigration Act 1971, s.1(2)) and therefore may take any employment. Refugees recognised under Immigration Rules, Part 11²²³⁹ (para. 334) and beneficiaries of Humanitarian Protection (para. 339C) are normally granted five years' leave to remain with full work rights, after which they may apply for ILR.

Outside these categories, access to employment is much more constrained. Asylum seekers are prohibited from working while their claim is pending (Immigration Rules, Part 11B²²⁴⁰, para. 360). After 12 months, they may apply for permission to work, but only in shortage occupations listed in the official Immigration Rules Appendix Shortage Occupation List²²⁴¹. Victims of trafficking or modern slavery granted leave under Immigration Rules, Appendix VTS²²⁴² are explicitly entitled to work, study and access public funds (VTS 5.2).

Undocumented migrants are entirely barred from formal employment. The Immigration, Asylum and Nationality Act 2006, s.15 imposes civil penalties on employers of up to £20,000 per illegal worker, and s.21 establishes criminal liability for knowing employment of a person without permission. The Immigration Act 1971, s.24B criminalises the act of working without lawful leave.

Finally, some categories enjoy preferential treatment by nationality. Irish citizens are exempt from immigration control and have full labour rights under the Common Travel Area arrangements, reflected in the Immigration Act 1971, s.1(3). Commonwealth citizens with the right of abode (Immigration Act 1971, s.2) likewise have unrestricted access to employment. EU citizens retain unrestricted rights only if they hold settled or pre-settled status under the EU Settlement Scheme, established by the Immigration Rules, Appendix EU²²⁴³. New arrivals from the EU must qualify under the general post-Brexit visa system, such as the Skilled Worker route.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

The United Kingdom does not impose company-level quotas limiting the proportion of non-nationals in the workforce, nor does it currently require employers to demonstrate that no

²²³⁹ Immigration Rules, Part 11 – Asylum. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum>

²²⁴⁰ Immigration Rules, Part 11B – Permission to Work for Asylum Applicants. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11b-permission-to-work-for-asylum-applicants>

²²⁴¹ Immigration Rules, Appendix Shortage Occupation List. Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-shortage-occupation-list>

²²⁴² Immigration Rules, Appendix VTS (Temporary Permission to Stay for Victims of Human Trafficking or Slavery). Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-temporary-permission-to-stay-for-victims-of-human-trafficking-or-slavery>

²²⁴³ Immigration Rules, Appendix EU (EU Settlement Scheme). Available at: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>

British worker is available before hiring a foreign national. Until December 2020, however, the immigration system included the Resident Labour Market Test (RLMT)²²⁴⁴. This mechanism required sponsoring employers to advertise a job domestically for at least 28 days and to demonstrate that no suitably qualified settled worker was available before recruiting a migrant. The RLMT was abolished with the introduction of the post-Brexit points-based immigration system and the Skilled Worker route (Immigration Rules, Appendix Skilled Worker), thereby removing the requirement to prioritise resident workers.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Most professions in the United Kingdom are open to non-nationals with lawful permission to work. Specific nationality restrictions remain in sectors connected to state sovereignty and national security.

Under the Civil Service Nationality Rules²²⁴⁵, issued pursuant to s.75 of the Constitutional Reform and Governance Act 2010²²⁴⁶, civil service posts are open only to British, Irish and certain Commonwealth citizens, with “reserved posts” in defence, diplomacy and intelligence restricted exclusively to British citizens.

The Armed Forces Act 2006²²⁴⁷ and Ministry of Defence policy similarly restrict recruitment to British, Irish and Commonwealth nationals, with sensitive intelligence and nuclear roles requiring sole British nationality.

Police eligibility under the Police Regulations 2003²²⁴⁸ has been liberalised to include EEA and Swiss nationals and migrants with Indefinite Leave to Remain, though certain posts remain closed to foreigners. Judicial appointments under the Constitutional Reform Act 2005²²⁴⁹ and the Judicial Appointments Order 2008²²⁵⁰ are limited to British, Irish and qualifying Commonwealth citizens.

Finally, employment in the security and intelligence agencies (MI5, MI6, GCHQ), established under the Security Service Act 1989²²⁵¹ and Intelligence Services Act 1994²²⁵², is reserved to British citizens alone. Beyond these exceptions, the UK does not impose general sectoral bans on non-nationals in the labour market.

²²⁴⁴ See <https://www.gov.uk/government/publications/uk-points-based-immigration-system-sponsorship-roadmap/the-uks-points-based-immigration-system-sponsorship-roadmap-accessible-version>

²²⁴⁵ Civil Service Nationality Rules. Available at: <https://www.gov.uk/government/publications/nationality-rules>

²²⁴⁶ Constitutional Reform and Governance Act 2010, s.75. Available at: <https://www.legislation.gov.uk/ukpga/2010/25/section/75>

²²⁴⁷ Armed Forces Act 2006. Available at: <https://www.legislation.gov.uk/ukpga/2006/52/contents>

²²⁴⁸ Police Regulations 2003 (SI 2003/527). Available at: <https://www.legislation.gov.uk/uksi/2003/527/contents>

²²⁴⁹ Constitutional Reform Act 2005, s.50. Available at: <https://www.legislation.gov.uk/ukpga/2005/4/section/50>

²²⁵⁰ Judicial Appointments Order 2008 (SI 2008/1204). Available at: <https://www.legislation.gov.uk/uksi/2008/1204/contents>

²²⁵¹ Security Service Act 1989, s.1. Available at: <https://www.legislation.gov.uk/ukpga/1989/5/section/1>

²²⁵² Intelligence Services Act 1994, s.1. Available at: <https://www.legislation.gov.uk/ukpga/1994/13/section/1>

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Labour protections in the United Kingdom apply equally to nationals and non-nationals, provided the latter are employed lawfully. Under the Employment Rights Act 1996, National Minimum Wage Act 1998, and Working Time Regulations 1998, all workers enjoy rights to minimum pay, limits on working hours, paid annual leave, and protection from unfair dismissal. The Equality Act 2010 further prohibits discrimination on grounds including nationality.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Access to the National Health Service (NHS) in the United Kingdom depends on immigration status. British citizens, Irish citizens, and permanent residents (ILR holders) enjoy free and full access. Temporary migrants (workers and students) are required to pay the Immigration Health Surcharge introduced by the Immigration Act 2014, after which they may use the NHS on equal terms with nationals. EU citizens benefit only if they hold settled or pre-settled status under the EU Settlement Scheme, otherwise they are subject to the surcharge. Refugees, asylum seekers, and beneficiaries of humanitarian protection are exempt from charges under the NHS (Charges to Overseas Visitors) Regulations 2015, and victims of trafficking with Temporary Permission to Stay are similarly exempt. Undocumented migrants have no general entitlement but retain access to emergency treatment, communicable disease care, and certain public health services. Overall, once lawful entitlement is established, non-nationals enjoy parity of healthcare rights with nationals, though access is conditioned either on immigration status or payment of the health surcharge.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Access to public education in the United Kingdom depends on the level of study and immigration status. At the primary and secondary level, all children resident in the UK are entitled to free state education under the Education Act 1996 and equivalent devolved legislation, regardless of nationality or immigration status. This includes the children of refugees, asylum seekers and undocumented migrants, with schools prohibited from discriminating on nationality grounds under the Equality Act 2010.

At the tertiary level, distinctions are more significant. British citizens, Irish citizens, and holders of Indefinite Leave to Remain are treated as “home students” and may access public student finance. Temporary migrants on work or study visas are always treated as overseas students,

with no access to public funding. Refugees and beneficiaries of humanitarian protection are granted home student status and may access student support, while asylum seekers and undocumented migrants are classified as overseas students and excluded from public funding, though some may benefit from institutional scholarships.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Access to social security benefits in the United Kingdom is conditioned by immigration status and the “no recourse to public funds” (NRPF) rule. Under s.115 of the Immigration and Asylum Act 1999 and the Immigration Rules, para.6.2, most temporary migrants are excluded from benefits such as Universal Credit, Housing Benefit or Child Benefit, although they may accrue entitlement to the State Pension through National Insurance contributions.

Holders of Indefinite Leave to Remain, Irish citizens, and Commonwealth citizens with the right of abode enjoy full access on the same basis as British nationals, subject to the habitual residence test. EU citizens with settled status are treated as home residents, while those with pre-settled status face more limited entitlements.

Refugees, persons with humanitarian protection, and victims of trafficking are exempt from the NRPF condition and have full benefit access. By contrast, asylum seekers are excluded from mainstream welfare but receive dedicated subsistence support under ss.95–98 of the Immigration and Asylum Act 1999, and undocumented migrants have no entitlement beyond emergency local authority support.

Parity with nationals is achieved once permanent residence or protection status is granted, but temporary and undocumented migrants remain largely excluded from social security.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Access to welfare programmes in the United Kingdom is closely tied to immigration status and the “no recourse to public funds” (NRPF) condition. British citizens, Irish citizens, permanent residents (ILR holders), and EU citizens with settled status may apply for financial aid, housing support, and other social welfare programmes under the Housing Act 1996 and welfare legislation on equal terms.

By contrast, temporary migrants on work or study visas are excluded from such programmes under s.115 of the Immigration and Asylum Act 1999 and the definition of public funds in the Immigration Rules, para. 6.2. Refugees, beneficiaries of humanitarian protection, and victims of trafficking with Temporary Permission to Stay are exempt from the NRPF restriction and have full access. Asylum seekers receive only limited support under ss.95–98 of the Immigration and Asylum Act 1999.

Undocumented migrants have no entitlement to welfare programmes, though local authorities may provide minimal support in cases involving children or serious care needs under the Children Act 1989 and the Care Act 2014.

Are there any final observations you would like to make? Please write below.

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

April 2026²²⁵³

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: United States of America

Authors: Jaya Ramji-Nogales and Geoffrey Scott

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	Y	N
1967 Protocol to the Convention relating to the Status of Refugees	Y	Y
1954 Convention relating to the Status of Stateless Persons	N	N
1961 Convention on the Reduction of Statelessness	N	N
International Covenant on Civil and Political Rights (ICCPR)	Y	Y
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	N	N
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Y	N

²²⁵³ Please note that immigration law and policy in the United States continues to undergo rapid and dramatic changes, and as a result, information contained in this report may be outdated.

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	N	N
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	N	N
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Y	Y
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	N	N
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)	Y	Y
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Y	N
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	N	N
Convention on the Rights of the Child (CRC)	Y	N
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	N	N
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict	N	N
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	N	N
Convention on the Rights of Persons with Disabilities (CRPD)	Y	N
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	N	N
ILO Forced Labour Convention (No. 29)	N	N
2014 Protocol to the ILO Forced Labour Convention (No. 29)	N	N
ILO Migration for Employment Convention (Revised) (No. 97)	N	N
ILO Equal Remuneration Convention (No. 100)	N	N

ILO Discrimination (Employment and Occupation) Convention (No. 111)	N	N
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	N	N

Regional treaties:

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	N/A	N/A
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	N/A	N/A
Convention governing the Specific Aspects of Refugee Problems in Africa	N/A	N/A
African Charter on the Rights and Welfare of the Child	N/A	N/A
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	N/A	N/A
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	N/A	N/A
European Convention on Human Rights (ECHR)	N/A	N/A
Protocols to the European Convention on Human Rights (list which ones):	N/A	N/A
European Social Charter (ESC)	N/A	N/A
European Convention on the Legal Status of Migrant Workers	N/A	N/A
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	N/A	N/A
American Convention on Human Rights (ACHR)	Y	N

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	N	N
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	N	N
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	N	N
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	N	N
Inter-American Convention against All Forms of Discrimination and Intolerance	N	N
Inter-American Convention Protecting the Human Rights of Older Persons	N	N

If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:

- Compacts of Free Association with the Marshall Islands, Micronesia, and Palau²²⁵⁴
- The United States-Canada-Mexico Agreement²²⁵⁵
- United States-Chile Free Trade Agreement²²⁵⁶
- United States-Singapore Free Trade Agreement²²⁵⁷

²²⁵⁴ Congressional Research Service, *The Freely Associated States and Issues for Congress* (Oct. 7, 2020), <https://www.congress.gov/crs-product/R46573>; Congressional Research Service, *The Compacts of Free Association* (Dec. 3, 2025), <https://www.congress.gov/crs-product/IF12194>

²²⁵⁵ U.S. Citizenship and Immigration Services, *TN USMCA Professionals*, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/tn-usmca-professionals>; Congressional Research Service, *The United States-Mexico-Canada Agreement (USMCA)* (May 29, 2024), <https://www.congress.gov/crs-product/R44981>

²²⁵⁶ Office of the United States Trade Representative, *Chile Free Trade Agreement*, <https://ustr.gov/trade-agreements/free-trade-agreements/chile-fta>

²²⁵⁷ Office of the United States Trade Representative, *Singapore Free Trade Agreement*, <https://ustr.gov/trade-agreements/free-trade-agreements/singapore-fta/final-text>

Part I – Rights to stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Visas are required for entry (except for eligible citizens of one of the 42 countries that are part of the Visa Waiver Program).²²⁵⁸ Visas are issued by consular officers at embassies and consulates abroad who work for the US Department of State. Entry to the United States is then authorized by US Customs and Border Protection, which is part of the US Department of Homeland Security. This means that both agencies must approve in order to enable non-citizens to enter the country.²²⁵⁹

In the United States, visas are divided into immigrant and non-immigrant visas. Non-immigrants are admitted for a specific time period and a designated purpose.²²⁶⁰ There are 24 major non-immigrant categories, including tourists, investors, students, temporary professional workers, and cultural exchange participants.²²⁶¹ Applicants for non-immigrant visas must establish that they do not have intent to remain in the United States and plan to return to their home country before the term of stay permitted in their visa expires.²²⁶² Non-immigrant visas entail two timeframes: the length of validity for entry and the length of authorized stay in the United States.²²⁶³

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories.

For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

²²⁵⁸ Congressional Research Service, *Primer on U.S. Immigration Policy*, at 1 (Mar. 31, 2025), <https://www.congress.gov/crs-product/R45020>. See also Congressional Research Service, *Visa Waiver Program* (Oct. 15, 2024), <https://www.congress.gov/crs-product/RL32221>.

²²⁵⁹ *Id.*

²²⁶⁰ Congressional Research Service, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*, at p. 1 (Sept. 10, 2019), <https://www.congress.gov/crs-product/R45040>.

²²⁶¹ *Id.*

²²⁶² Congressional Research Service, *Visa Waiver Program* (Oct. 15, 2024), <https://www.congress.gov/crs-product/RL32221>.

²²⁶³ Congressional Research Service, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*, at 2 (Sept. 10, 2019), <https://www.congress.gov/crs-product/R45040> (referencing INA Section 214 and 8 C.F.R. Sec. 214 as the statute and regulation governing length of stay).

Immigrant visas enable permanent immigration, known as lawful permanent resident status.²²⁶⁴ These visas are available based on family sponsorship, employment-based immigration, origin-country diversity, and humanitarian assistance.²²⁶⁵ Permanent immigration is limited to 675,000 people per year, of which 480,000 are family-based immigrants, or immediate relatives of U.S. citizens and other family-sponsored immigrants; 140,000 are employment-based immigrants; and 55,000 are diversity visa immigrants.²²⁶⁶ The diversity immigrant visa enables lawful immigration from countries from which a low number of immigrants originate.¹²²⁶⁷ The number of refugees to be admitted annually is decided by the President in consultation with Congress, and there is no cap on the number of asylum seekers.²²⁶⁸ In 2025, President Biden set the refugee admissions cap at 125,000, and in 2024, the cap was 100,000.²²⁶⁹ There are also a few additional pathways to permanent residence that include cancellation of removal, T nonimmigrant status, and U nonimmigrant visas. Under 20,000 immigrants per year access these three pathways combined.²²⁷⁰

There are also humanitarian pathways to remain in the United States, including Temporary Protected Status (TPS), Deferred Enforced Departure (DED), humanitarian parole, and Deferred Action for Childhood Arrivals (DACA). These are temporary statuses that can be granted for six to eighteen months and extended. They provide access to work permits and protection from removal but do not offer a pathway to citizenship.²²⁷¹ The Secretary of the Department of Homeland Security can designate countries for TPS if they are facing ongoing armed conflict, an environmental disaster, or extraordinary and temporary conditions that prevent its nationals from returning.²²⁷² DED is a discretionary and temporary form of relief generally granted to nationals of countries in situations of civil unrest, war, or natural disasters. Unlike TPS, it does not have a statutory basis; DED is a purely executive authority. The president designates a time frame for DED when it is issued.²²⁷³ The executive also has what is known as parole authority to enable a non-citizen to enter for urgent humanitarian reasons or to provide significant public benefit. Again, the president designates parole for a specific time frame; parolees generally are not able to obtain lawful permanent residents, but are granted employment authorization and protection from removal.²²⁷⁴ DACA provides protection from

²²⁶⁴ Congressional Research Service, *Primer on U.S. Immigration Policy*, at 3 (Mar. 31, 2025), <https://www.congress.gov/crs-product/R45020>.

²²⁶⁵ *Id.*

²²⁶⁶ *Id.*, referencing INA Sec. 201(c), (d), and (e).

²²⁶⁷ *Id.* at 6, citing INA §203(c) and 8 U.S.C. §1153(c) as the relevant statutory and regulatory provisions. *See also* Congressional Research Service, *The Diversity Immigrant Visa Program* (Oct. 15, 2019), <https://www.congress.gov/crs-product/R45973>

²²⁶⁸ *Id.* at 7-8; Congressional Research Service, *U.S. Refugee Admissions Program* (Jan. 20, 2023), <https://www.congress.gov/crs-product/R47399>

²²⁶⁹ <https://www.state.gov/wp-content/uploads/2024/10/Report-Proposed-Refugee-Admissions-for-FY25.pdf>

²²⁷⁰ *Id.* at 8.

²²⁷¹ *Id.* at 11.

²²⁷² Congressional Research Service, *Temporary Protected Status and Deferred Enforced Departure* at 2 (Dec. 5, 2024), <https://www.congress.gov/crs-product/RS20844>, citing INA Sec. 244 as the relevant statutory provision.

²²⁷³ *Id.* at 4.

²²⁷⁴ Congressional Research Service, *Primer on U.S. Immigration Policy*, at 12 (Mar. 31, 2025), <https://www.congress.gov/crs-product/R45020>, referencing INA §212(d)(5) as the relevant statutory provision. *See also* Congressional Research Service, *Immigration Options for Immigration Parolees* (Aug. 17, 2023), <https://www.congress.gov/crs-product/R47654> (detailing President Biden's use of humanitarian parole for Afghans, Cubans, Haitians, Nicaraguans, Venezuelans, and Ukrainians)

removal and employment authorization for two years, subject to renewal, to noncitizens who were brought to the United States as children and meet other criteria.²²⁷⁵

Non-immigrant visas enable immigration for a limited time for specific reasons. The descriptions below provide the visa eligibility categories, though not everyone who is eligible for a visa will receive a visa.

A range of non-immigrant visas allow non-citizens to remain in the United States for the *duration of their assignment*, including:

Visas for ambassadors and other foreign government officials and their immediate families. Their personal employees and those employees' immediate family may remain for up to *three years*.²²⁷⁶ NATO officials and their immediate family members are authorized to remain in the U.S. for the *duration of their tour of duty*. Their personal employees and those employees' immediate family may remain for up to *three years*.²²⁷⁷ Similarly, representatives of foreign media are authorized to stay in the United States for the *duration of employment*.²²⁷⁸

Student visas, including vocational students, permit non-citizens and their spouses and children to remain in the United States for the *duration of study*. That time frame is limited to 12 months for secondary school students.²²⁷⁹ Similarly, cultural exchange visitors and their spouses and children may stay in the U.S. for the *duration of their program*.²²⁸⁰

Temporary work visas for professional specialty occupations, known as H-1B visas, authorize non-citizens to remain in the United States for *up to three years*.²²⁸¹ That time frame is extended to up to five years for Department of Defense research and development. Temporary worker-trainees are able to remain in the U.S. for *up to three years* while special education exchange visitor programs enable non-citizens to reside in the United States for *up to 18 months*. United States-Mexico-Canada Agreement professionals and their spouses and children may remain in the United States for *up to three years*.²²⁸² Free trade agreement professionals from Chile and Singapore as well as temporary agricultural and non-agricultural workers can remain in the U.S. for *up to one year*.²²⁸³

Internationally recognized athletes or members of an internationally recognized entertainment group and their spouses and children and support may receive individual visas for *up to five years* or group/team visas for *up to one year*.²²⁸⁴ Non-citizens with extraordinary ability in science, art, education, business, or athletics and their spouses, children,

²²⁷⁵ Congressional Research Service, *Primer on U.S. Immigration Policy*, at 12 (Mar. 31, 2025), <https://www.congress.gov/crs-product/R45020>. See also Congressional Research Service, *Deferred Action for Childhood Arrivals (DACA): By the Numbers* (Apr. 14, 2021), <https://www.congress.gov/crs-product/R46764>

²²⁷⁶ Congressional Research Service, *Nonimmigrant and Immigrant Visa Categories: Data Brief*, at 2 (Oct. 15, 2024), <https://www.congress.gov/crs-product/R45938>

²²⁷⁷ *Id.* at 4.

²²⁷⁸ *Id.* at 4.

²²⁷⁹ *Id.* at 3.

²²⁸⁰ *Id.* at 4.

²²⁸¹ *Id.* at 3.

²²⁸² *Id.* at 6.

²²⁸³ *Id.* at 3. Some non-agricultural workers can remain for up to three years.

²²⁸⁴ *Id.* at 5.

and assistants may stay in the United States for *up to three years*.²²⁸⁵ International cultural exchange program participants are authorized to stay in the United States for *up to 15 months*.²²⁸⁶ Artists and entertainers in exchange programs or culturally unique programs and their spouses and children and support may remain in the U.S. for *up to one year*.²²⁸⁷

Victims or informants of criminal activity and their spouses and children, and, if the victim is under 21, the victim's parents and unmarried siblings under the age of 18, are authorized to remain in the U.S. for *up to four years* and may adjust to permanent residence if they meet certain conditions.²²⁸⁸ Victims of severe trafficking in persons and their spouses and children, and, if the victim is under 21, the victim's parents and unmarried siblings under the age of 18 plus their children, are authorized to remain in the U.S. for *up to four years* and may adjust to permanent residence if they meet certain conditions.²²⁸⁹ Witnesses and informants in criminal and terrorism matters and their spouses and children are able to stay in the United States for *up to three years*.²²⁹⁰

Religious workers and their spouses and families are allowed to remain in the United States for *up to 30 months*.²²⁹¹

Investor visas and specialty professional visas enable non-citizens and their immediate families to remain in the United States for *up to two years*.²²⁹²

Several categories of non-immigrant visas, including **business and tourist visas**, allow non-citizens to remain in the United States for *six months to one year*.

Fiancées of U.S. citizens and their children are able to remain in the United States for *four months*, and must marry within 90 days to receive permanent residence. Spouses of U.S. citizens awaiting lawful permanent residence and their children under the age of 21 may remain in the U.S. for *up to two years*.²²⁹³ Spouses and children under the age of 21 of lawful permanent residents whose immigrant visa has been pending for at least three years, and their spouses and children under the age of 21, may remain in the U.S. for *up to two years*.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

The legal pathways include asylum (affirmative and defensive), protection under the Convention Against Torture, refugee resettlement, Temporary Protected Status (TPS), Deferred Enforced Departure (DED), humanitarian parole, and Deferred Action for Childhood Arrivals (DACA);

²²⁸⁵ *Id.* at 5.

²²⁸⁶ *Id.* at 5.

²²⁸⁷ *Id.* at 5.

²²⁸⁸ *Id.* at 6.

²²⁸⁹ *Id.* at 5.

²²⁹⁰ *Id.* at 5.

²²⁹¹ *Id.* at 5.

²²⁹² *Id.* at 2.

²²⁹³ *Id.* at 4.

Non-citizens who are located in the United States, regardless of their immigration status, and are not in removal proceedings, are eligible to apply for asylum affirmatively. They can do so by submitting an asylum application to US Citizenship and Immigration Services, and will receive a non-adversarial interview with an asylum officer. The officer will determine whether the applicant meets the refugee definition and whether any bars to asylum apply, and will run biographical and biometric background and security checks. One year after a grant of asylum, asylees may apply for lawful permanent residence.²²⁹⁴ If the asylum office does not grant asylum, applicants who do not have lawful immigration status are placed into a formal removal process before an immigration judge, where they are able to request asylum as a defense to removal.

Non-citizens physically present in the United States or at a port of entry, who have been placed in removal proceedings, are able to apply for asylum defensively – as a defense to removal.²²⁹⁵ In a full removal proceeding, known as a 240 hearing (referring to the relevant provision of the immigration statute), protection seekers may apply for:

- (1) Asylum, which is discretionary and requires that:
 - a. applicants demonstrate a well-founded fear of persecution in their country of origin on the basis of race, religion, nationality, political opinion, or membership in a particular social group and
 - b. that they are not barred from asylum due to firm resettlement in a third country; previous application and denial; failure to meet the one-year filing deadline; or a safe third country agreement; or any of the bars to withholding listed below.²²⁹⁶
- (2) Withholding of removal, which is mandatory and requires that:
 - a. applicants establish that it is more likely than not that they would face persecution on one of the five protected grounds if returned to their home country, and
 - b. that they are not barred from withholding due to persecution of others on account of one of the five protected grounds; conviction of a particularly serious crime in the United States; commission of a serious nonpolitical crime outside of the United States; or on national security/terrorist activity grounds.²²⁹⁷
- (3) Withholding under the Convention Against Torture, which is mandatory and requires that:
 - a. applicants demonstrate that it is more likely than not that they will be tortured by or with the consent or acquiescence of a public official, and

²²⁹⁴ Congressional Research Service, *What is Affirmative Asylum?*, at 2 (Oct. 24, 2024), <https://www.congress.gov/crs-product/R48249>.

²²⁹⁵ Congressional Research Service, *Credible Fear and Defensive Asylum Processes: Frequently Asked Questions*, at 2-3 (Sept. 25, 2024), <https://www.congress.gov/crs-product/R48078>.

²²⁹⁶ Congressional Research Service, *An Overview of the Statutory Bars to Asylum: Limitations on Applying for Asylum (Part One)* (Sept. 7, 2022), <https://www.congress.gov/crs-product/LSB10815>.

²²⁹⁷ Congressional Research Service, *An Overview of the Statutory Bars to Asylum: Limitations on Granting Asylum (Part Two)* (Sept. 7, 2022), <https://www.congress.gov/crs-product/LSB10816>.

b. that they are not barred from withholding due to persecution of others on account of one of the five protected grounds; conviction of a particularly serious crime in the United States; commission of a serious nonpolitical crime outside of the United States; or on national security/terrorist activity grounds.

(4) Deferral of removal under the Convention Against Torture, which is mandatory and requires only that applicants demonstrate that it is more likely than not that they will be tortured by or with the consent or acquiescence of a public official.

Asylees are able to apply for lawful permanent residence within a year of their asylum grant and can apply for US citizenship after five years. They can extend their asylum status to immediate family members. Recipients of withholding and withholding under the Convention Against Torture are not eligible for permanent residence or citizenship; their status prevents their removal to their country of origin and provides work authorization. They cannot extend their status to protect immediate family members. Recipients of deferral of removal face similar restrictions and may be detained for the duration of their stay in the United States.²²⁹⁸

Non-citizens who arrive at a port of entry without valid entry documents or who are apprehended in the interior of the country – previously within two weeks of entry and 100 miles of the border but currently within two years of entry and anywhere within the United States – can be placed into expedited removal proceedings, also known as 235 proceedings (referencing the relevant provision of the immigration statute).²²⁹⁹ If a non-citizen in expedited removal proceedings requests asylum or express a fear of persecution, torture, or return to their home country, the relevant immigration officer is legally obligated to refer that person to an asylum officer for what is known as a credible fear interview. If the non-citizen can establish a significant possibility that they will face persecution or torture in their home country, the asylum officer refers them to immigration court for removal proceedings. If they cannot establish a credible fear of persecution or torture, they can appeal the decision to an immigration judge. Non-citizens are detained during the credible fear process and pending the outcome of their removal proceedings.²³⁰⁰

Non-citizens who are located abroad and meet the refugee definition may be granted refugee status and resettled into the United States. The President sets annual numerical caps on refugee admissions from different regions and groups after consultation with Congress that includes an annual *Proposed Refugee Admissions* report that the President sends to Congress.²³⁰¹ The State Department's Bureau of Population, Refugees, and Migration manages the U.S. Refugee Admissions Program. Officials from the Department of Homeland Security's US Citizenship and Immigration Services interview applicants for refugee status and determine their eligibility

²²⁹⁸ Congressional Research Service, *Credible Fear and Defensive Asylum Processes: Frequently Asked Questions*, at 2-3 (Sept. 25, 2024), <https://www.congress.gov/crs-product/R48078>.

²²⁹⁹ *Id.* at 6-7.

²³⁰⁰ *Id.* at 8-14.

²³⁰¹ See, e.g., *Proposed Refugee Admissions for Fiscal Year 2025: Report to the Congress Submitted on Behalf of the President of the United States to the Committees on the Judiciary, United States Senate and United States House of Representatives, in fulfillment of the Requirements of Sections 207(d)(i) and 6 of the Immigration and Nationality Act*, available at <https://www.state.gov/wp-content/uploads/2024/10/Report-Proposed-Refugee-Admissions-for-FY25.pdf>

for resettlement into the United States. The number of refugees to be admitted annually is decided by the President in consultation with Congress. After one year in the United States, refugees must apply to become lawful permanent residents.²³⁰² After five years in the United States, refugees are eligible to apply for US citizenship.

There are also humanitarian pathways to remain in the United States, including Temporary Protected Status (TPS), Deferred Enforced Departure (DED), humanitarian parole, and Deferred Action for Childhood Arrivals (DACA), as discussed earlier under Question 2. These are temporary statuses that can be granted for six to eighteen months and extended. They provide access to work permits and protection from removal but do not offer a pathway to citizenship.²³⁰³ The Secretary of the Department of Homeland Security can designate countries for TPS if they are facing ongoing armed conflict, an environmental disaster, or extraordinary and temporary conditions that prevent its nationals from returning.²³⁰⁴ DED is a discretionary and temporary form of relief generally granted to nationals of countries in situations of civil unrest, war, or natural disasters. Unlike TPS, it does not have a statutory basis; DED is a purely executive authority. The president designates a time frame for DED when it is issued.²³⁰⁵ The executive also has what is known as parole authority to enable a non-citizen to enter for urgent humanitarian reasons or to provide significant public benefit. Again, the president designates parole for a specific time frame; parolees generally are not able to obtain lawful permanent residents, but are granted employment authorization and protection from removal.²³⁰⁶ DACA provides protection from removal and employment authorization for two years, subject to renewal, to noncitizens who were brought to the United States as children and meet other criteria.²³⁰⁷

The United States passed the Victims of Trafficking and Violence Protection Act (TVPA) in 2000, which created the T category of noncitizens; for those who are victims of a severe form of trafficking in persons. To meet the criteria to obtain T status, the applicant must be the victim of severe trafficking, meaning sex trafficking induced by force/fraud/coercion (or if induced person is under 18) OR trafficking for labor/services using force/fraud/coercion with the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Additionally, they must be admissible (or possess a waiver of inadmissibility) and within the U.S. (or its territories or a port of entry), agree to assist law enforcement in investigating/prosecuting the

²³⁰² Congressional Research Service, *Nonimmigrant and Immigrant Visa Categories: Data Brief*, at 7-8 (Oct. 15, 2024), <https://www.congress.gov/crs-product/R45938>; Congressional Research Service, *U.S. Refugee Admissions Program* (Jan. 20, 2023), <https://www.congress.gov/crs-product/R47399>

²³⁰³ Congressional Research Service, *Nonimmigrant and Immigrant Visa Categories: Data Brief*, at 11 (Oct. 15, 2024), <https://www.congress.gov/crs-product/R45938>.

²³⁰⁴ Congressional Research Service, *Temporary Protected Status and Deferred Enforced Departure* at 2 (Dec. 5, 2024), <https://www.congress.gov/crs-product/RS20844>, citing INA Sec. 244 as the relevant statutory provision.

²³⁰⁵ *Id.* at 4.

²³⁰⁶ Congressional Research Service, *Primer on U.S. Immigration Policy*, at 12 (Mar. 31, 2025), <https://www.congress.gov/crs-product/R45020>, referencing INA §212(d)(5) as the relevant statutory provision. See also Congressional Research Service, *Immigration Options for Immigration Parolees* (Aug. 17, 2023), <https://www.congress.gov/crs-product/R47654> (detailing President Biden's use of humanitarian parole for Afghans, Cubans, Haitians, Nicaraguans, Venezuelans, and Ukrainians)

²³⁰⁷ Congressional Research Service, *Primer on U.S. Immigration Policy*, at 12 (Mar. 31, 2025), <https://www.congress.gov/crs-product/R45020>. See also Congressional Research Service, *Deferred Action for Childhood Arrivals (DACA): By the Numbers* (Apr. 14, 2021), <https://www.congress.gov/crs-product/R46764>

trafficking (subject to a reasonable standard; no requirement if under 18), and removal must present a severe hardship.²³⁰⁸ Applicants are exempt from form fees. The yearly quota for T status is 5,000, though a victim's family does not count toward this total. The status lasts for four years, and a beneficiary can apply for adjustment of status to lawful permanent residence after three. To adjust, an applicant must have been continuously physically present in the United States for three years, or for the duration of the investigation, as certified by the Attorney General, be admissible, been a person of good moral character, and establish that they complied with reasonable requests to assist law enforcement in the investigation/prosecution of the crime, or that they would suffer extreme hardship if removed.²³⁰⁹ There is a yearly adjustment of status quota from T status of 5,000, though the number issued rarely approaches this cap. Work authorization is incident to the status, and derivative status holders are eligible to apply for work authorization from the Department of Homeland Security (DHS).

Division B of the TVPA created the U category for noncitizens that are victims of a qualifying crime involving physical or mental abuse, one of which is human trafficking. The status requires the applicant to be certified by a law enforcement official to have information about the underlying criminal activity, be helpful to the investigation/prosecution of the crime, and the crime must be one against the laws of the United States or have occurred within the United States.²³¹⁰ Applicants are exempt from form fees. The status is limited to 10,000 principal beneficiaries, a number which has been reached each year since 2010. The status lasts for four years, and a beneficiary can apply for adjustment of status to permanent residence after three. To adjust, an applicant must have been physically present in the United States for at least three years, not participated in Nazi persecution/torture/extrajudicial killing, not unreasonably refused assistance to law enforcement concerning the criminal activity the beneficiary was granted the status under, and established to the Secretary of State that their continued presence is justified on humanitarian grounds, or is in the public good.²³¹¹ The popularity of the status has led to a backlog of applicants; even after an applicant has been conditionally approved, which takes approximately four years, the typical wait time as of March 2020 was as much as 15 years.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Immediate relatives of U.S. citizens – meaning spouses, unmarried children under the age of 21, and parents, are eligible for lawful permanent residence.²³¹² Unmarried adult sons and daughters (over the age of 21) of U.S. citizens and permanent residents, spouses and minor children of lawful permanent residents, and siblings of adult U.S. citizens are also eligible for lawful permanent residence but face stringent numerical caps on how many visas are

²³⁰⁸ Congressional Research Service, *Immigration Relief for Victims of Trafficking* (Oct. 28, 2020), <https://www.congress.gov/crs-product/R46584>

²³⁰⁹ *Id.*

²³¹⁰ *Id.*

²³¹¹ *Id.*

²³¹² Congressional Research Service, *Nonimmigrant and Immigrant Visa Categories: Data Brief*, at 7 (Oct. 15, 2024), <https://www.congress.gov/crs-product/R45938>

available.²³¹³ In this context, spouses are defined as two people who have entered into a marriage that is “legally valid in the place of celebration; . . . consistent with the public policy of the United States; . . . bona fide or entered into in good faith; and [d]emonstrate the parties to the marriage were legally free and able to marry.”²³¹⁴

Parents of United States citizens are viewed as immediate relatives and thus eligible for lawful permanent residence based on their family relationship under category IR-5. There is no quota for immediate relatives of citizens, though the sponsoring citizen must be at least 21 years old. Other family sponsored preferences exist, such as siblings, however they’re subject to quotas and often significant wait times. The date the initial petition is filed on behalf of the beneficiary is one’s priority date.

Each month, U.S. Citizenship and Immigration Services publishes “dates for filing,” and those with priority dates prior to the relevant published date can file their adjustment of status application.²³¹⁵ Unmarried sons and daughters of U.S. citizens over the age of 21 can apply for an First Preference Family visa, known as an F1, which has a quota of 23,000 yearly, as well as any unused Fourth Preference, or F4 visas. F1 applicants born in Mexico and the Philippines have wait times of roughly 18 and 10.5 years respectively, while applicants from all other countries have a roughly 8 year wait.²³¹⁶ Unmarried sons and daughters of lawful permanent residents may seek an F2 visa, which has a quota of 114,200, along with any unused F1 visas, with 26,900 allocated for the unmarried children (F2A). There is less than a month of wait for all F2A applicants. Married sons and daughters of U.S. citizens may apply for an F3 visa, which has a quota of 23,400, as well as any unused F1 and F2 visas. Applicants from Mexico and the Philippines have wait times of roughly 24.5 years and 20 years respectively, while all others have about eight and a half. Siblings of citizens 21 years or older may apply for an F4 visa, which has a quota of 65,000, along with any unused F1, F2, and F3 visas. Applicants from India must wait roughly 19 years for an F4 visa, Mexico for almost 25 years, Philippines for 18 years, while all others must wait over 16.5 years.²³¹⁷ The Immigration and Naturalization Act (INA) does not provide for other types of relatives to be family sponsored. Additionally, there is no clear path for non-married couples to reunite.

5. What are the conditions for naturalization in the reviewed state?

Lawful permanent residents may apply for citizenship if they:

- (1) Are at least 18 years of age;

²³¹³ *Id.* at 7.

²³¹⁴ <https://www.uscis.gov/policy-manual/volume-6-part-b-chapter-6>

²³¹⁵ U.S. Citizenship & Immigration Services, *When to File Your Adjustment of Status Application for Family-Sponsored or Employment-Based Preference Visas*, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/when-to-file-your-adjustment-of-status-application-for-family-sponsored-or-employment-based-119>

²³¹⁶ This Family F1 visa is different from a student F1 visa. U.S. Citizenship and Immigration Services, *Green Card for Family Preference Immigrants* <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-family-preference-immigrants>; U.S. Department of State, *Family Immigration*, <https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration.html>

²³¹⁷ *Id.*

- (2) Have resided continuously in the United States for five years (three years for spouses of U.S. citizens);
- (3) Demonstrate good moral character;
- (4) Can read, write, speak, and understand English;
- (5) Pass an examination on U.S. government and history; and
- (6) Are willing and able to take the naturalization Oath of Allegiance.²³¹⁸

There also is an interview based on one's application, during which the USCIS officer will evaluate the person's ability to speak and understand English. The language requirement is waived for those older than 50 and 55 who have resided in the U.S. for at least the past 20 or 15 years, respectively. Finally, there is a naturalization test that consists of three parts: reading, writing, and civics. The reading facet requires an applicant to correctly read aloud in English one of three given sentences; the writing requires writing one out of three sentences correctly in English; and the civics test consists of questions regarding U.S. history and government.^{65F}²³¹⁹ Those exempt from the language requirement still must take the civic portion, though in their native language.²³²⁰

Part II - Rights while staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- s. temporary and permanent resident migrants;*
- t. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- u. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- v. refugees;*
- w. asylum seekers;*
- x. other beneficiaries of international protection, if applicable.*

²³¹⁸ Congressional Research Service, *U.S. Naturalization Policy*, at 3-7 (Apr. 15, 2024), <https://www.congress.gov/crs-product/R43366>

²³¹⁹ Congressional Research Service, *U.S. Naturalization Policy* (Apr. 15, 2024), <https://www.congress.gov/crs-product/R43366>

²³²⁰ U.S. Citizenship and Immigration Services, *Exceptions and Accommodations*, <https://www.uscis.gov/citizenship/exceptions-and-accommodations>

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

There are two categories of federal law that combat discrimination against noncitizens: those that prohibit discrimination based on immigration status, for example Section 274(b) of the Immigration and Nationality Act (INA) prohibits discrimination against employees and applicants specifically on the basis of citizenship, others prohibit discrimination on the basis of national origin, race, and religion, such as Title VII of the Civil Rights of 1964. The latter category of laws do not explicitly cover discrimination on the basis of citizenship, as the Supreme Court decided in *Espinoza*, but they do end up protecting noncitizens in some cases.²³²¹, Further information regarding protections available to noncitizens in the workplace can be found in the rights in work section of this survey.

The Federal Fair Housing Act (FHA) prohibits discrimination based on national origin in nearly all facets of public and private housing proceedings, including the financing side. Besides exemptions for private clubs, specific small communities of three homes or less, and zoning/occupancy restrictions, the FHA applies.²³²² While the FHA does not prohibit discrimination based on immigration status on its face, it can still be applicable given how strongly national origin can be tied to immigration status.

In the United States, some crimes motivated by xenophobia can be charged under different statutes than those that cover the traditional offenses, both at the federal and state level; all but six states punish specific offenses motivated by race, religion, or ethnicity, known as “hate crimes,” more harshly than crimes lacking this bias.²³²³ Again in this case, immigration status itself is not included as a ground for unlawful bias, but there is significant overlap in the populations; noncitizen hate crime victimization is more than twice as high than it is for citizens.²³²⁴

Related to the provisions discussed in the political participation portion of this survey, INA § 212(f) allows for the President to suspend the entry of noncitizens who the President determines would be detrimental to the interests of the United States.²³²⁵ President Trump has used this

²³²¹ *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86 (1973).

²³²² Congressional Research Service, *The Fair Housing Act (FHA): A Legal Overview* (June 24, 2024), <https://www.congress.gov/crs-product/R48113>, citing 42 U.S.C §§ 3604–3606

²³²³ National Ass'n for the Advancement of Colored People, *State-By-State Hate Crime Laws* (2021), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/naacp_hate_crime_laws_by_state.pdf

²³²⁴ McCann, Wesley S. & Boateng, Francis D., *An Analysis of Hate Crime Victimization Amongst Immigrants*, 47 *Am. J. Crim. Just.* 795 (2022), <https://doi.org/10.1007/s12103-021-09616-x>

²³²⁵ Congressional Research Service, *Presidential Actions to Exclude Aliens Under INA § 212(f)* (May 4, 2020), https://www.congress.gov/crs_external_products/LSB/PDF/LSB10458/LSB10458.1.pdf

provision to authorize restrictions of entire populations of specific nationalities from entry. Apart from permanent residents, noncitizens with lawful status have been barred from reentry with little chance of recourse, as they could not challenge the ban in federal court.²³²⁶

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Political participation by noncitizens in the United States is limited. It is unlawful for any noncitizen to vote in a federal election, and even the most noncitizen-friendly states generally limit noncitizens to voting in local elections. A study in 2020 found that many citizens with positive views of legal immigration to the U.S. still opposed noncitizen enfranchisement.²³²⁷ As of July 2025, seven states have outright banned noncitizen suffrage: Alabama, Arizona, Colorado, Florida, Louisiana, North Dakota, and Ohio. Further, eight more states have approved ballot measures banning noncitizen voting in the past two years.²³²⁸

Some noncitizens are permitted to vote in some local elections in California, Maryland, and Vermont. While the localities have varying specific rules, generally the only distinction between specific noncitizen categories is whether the potential voter's presence is legal or not.²³²⁹ In San Francisco, for example, noncitizens are permitted to vote in school board elections only, and must meet qualifying criteria such as having a child who is a resident of the city.²³³⁰ In other areas such as Burlington, Vermont, noncitizen voting is allowed for all municipal elections; the residency requirements preclude those who are in the U.S. unlawfully.²³³¹

Noncitizen populations do count toward the apportionment for legislative districts, so there is an indirect and slower-moving political participation element related to where noncitizens choose to live.²³³² It seems intuitive that people want to live in areas where they are treated the most fairly, and if those areas are given more congressional representation, the policies of those areas could be more likely to spread. Moreover, recent research has shown that on a national level, the voting turnout decreases for Latino citizens who operate in social networks primarily

²³²⁶ American Immigration Council, *Understanding INA Section 212(f): The President's Authority to Suspend the Entry of Migrants* (2025), https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/understanding-ina-212f-suspend-entry-migrants_0.pdf

²³²⁷ Hannah Alarian & Stephanie Zonszein, *Conditional Enfranchisement: How Partisanship Determines Support for Noncitizen Voting Rights*, 119 *Am. Political Sci. Rev.* 1068 (2025), <https://doi.org/10.1017/S0003055424000522>

²³²⁸ Ballotpedia, *Laws Permitting Noncitizens to Vote in the United States*, Ballotpedia, https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States#cite_note-33

²³²⁹ Ballotpedia, *Laws permitting noncitizens to vote in the United States*, Ballotpedia, https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States#cite_note-33

²³³⁰ *Non-citizen Voting Rights for Local Board of Education Elections*, CITY AND COUNTY OF S.F., <https://www.sf.gov/non-citizen-voting-rights-local-board-education-elections>

²³³¹ *Recent Legislation, Vt. Stat. Ann. tit. 24 app., §§ 3-8 to -8a* (2024), HARV. L. REVIEW. (Feb. 2024), <https://harvardlawreview.org/print/vol-137/vt-stat-ann-tit-24-app-§§-3-8-to-8a-2024/>

²³³² James A. McCann & Michael Jones-Correa, *In the Public but Not the Electorate: The "Civic Status Gap" in the United States*, 2 RSF: RUSSELL SAGE FOUND. J. SOC. SCI. 1 (2016).

consisting of noncitizens when there are threats to the stability of that network, while other forms of political participation, such as attending a protest or engaging with a campaign, increase.²³³³ Beyond voting, there is a wide gap in the prevalence of political participation between citizens and noncitizens.²³³⁴

While noncitizen participation in political speech should be protected by the First Amendment, ideological exclusion in the United States has a long history.²³³⁵ Courts in the United States have traditionally been extremely reluctant to engage in judicial review of federal immigration laws or their enforcement.²³³⁶ One contemporary example is the Trump administration's well publicized use of provisions in the Immigration and Nationality Act (INA) that allow for the removal of individuals whose actions the secretary of state personally believes will have "potentially serious adverse foreign policy consequences for the United States" 8 U.S.C. § 1182(a)(3)(C), or noncitizens who "endors[e] or espous[e] terrorist activity or persuade[s] others to endorse or espouse terrorist activities" 8 U.S.C. § 1182(a)(3)(B).²³³⁷ Litigation over this question is still ongoing, but the directive is visible and these policies have a serious chilling effect on free speech, a principle that is essential to political participation, especially for non-voters.²³³⁸

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Generally, the judiciary has espoused that the constitutional protections that apply to all persons encompass noncitizens, as the word citizen appears in other parts of the constitution, suggesting there was a specific purpose to using "person." Courts have also stated that those whose presence in the states is unauthorized are still entitled to those protections.²³³⁹ Vexingly, in other cases when discussing constitutional protections generally, the judiciary has stated in various

²³³³ Mackenzie Israel-Trummel et al., *Mobilizing Fears? How Proximity to Deportation Threat Affects Political Participation*, 53 POL'Y STUD. J. 1138 (2025), <https://doi.org/10.1111/psj.12583>

²³³⁴ *Id.*

²³³⁵ Knight First Amendment Institute at Columbia University, *Views on First: Speech & the Border: At the frontiers of censorship and surveillance* (Oct. 24, 2024), available at <https://knightcolumbia.org/content/views-on-first-speech-the-border>; Julia Rose Kraut, *THREAT OF DISSENT: A HISTORY OF IDEOLOGICAL EXCLUSION AND DEPORTATION IN THE UNITED STATES* (2023).

²³³⁶ Azadeh Shahshahani & Chiraayu Gosrani, *Known Adversary: The Targeting of the Immigrants' Rights Movement in the Post-Trump Era*, 72 Emory L.J. 1055 (2023).

²³³⁷ *Mahmoud Khalil v. President, United States of America*, Nos. 25-2162 & 25-2357, slip op. (3d Cir. Jan. 15, 2026 (unpublished disposition)).

²³³⁸ *AAUP v. Rubio*, Case 1:25-cv-10685-WGY, Findings of Fact and Rulings of Law, Pursuant to F.R.C.P. 52(A) (D.Mass. Sept. 30, 2025).

²³³⁹ Congressional Research Service, *Aliens in the United States*, in *Constitution of the United States: Analysis and Interpretation* (Art. I, § 8, cl. 18), https://constitution.congress.gov/browse/essay/artI-S8-C18-8-7-2/ALDE_00001262/

opinions that they depend on whether the noncitizen was lawfully admitted or has developed substantial ties to the United States.²³⁴⁰

The Supreme Court has used circular logic to toss out First Amendment protections. For example in *Reno v. American-Arab Anti-Discrimination Committee*, eight noncitizens were set to be deported as a result of their membership in a political group, which they challenged on First Amendment grounds. The majority opinion described deportation as a consequence of being held to the terms of being admitted to the U.S. rather than a punishment. From that lens, the Court held that their ongoing presence was in violation of U.S. law, and as a result, the government “does not offend the constitution...” by deporting them.²³⁴¹ Additionally, the Supreme Court has held that selective prosecution is almost never a viable defense in removal proceedings.²³⁴²

Due process standards in removal proceedings are also unclear. The Supreme Court has held that due process protections vary based on the noncitizen’s status and circumstance.²³⁴³ In some cases, immigration law can require the detention of those who are removable on criminal or terrorist grounds. Federal courts have held that mandatory detentions for a brief period are constitutional, but have not prescribed a clear length of detention that is per se a due process violation.²³⁴⁴ Though judges acknowledge that deportation is a harsh penalty, it is not considered a criminal punishment and therefore does not garner the full procedural due process protections of criminal court. If a noncitizen in removal proceedings is not subject to mandatory detention, immigration officers may release them at any point during the proceedings. The determination of whether a noncitizen is subject to mandatory detention must be made within 48 hours of the noncitizen’s arrest if it is performed without a judicial warrant.²³⁴⁵

Noncitizens are entitled to freedom of movement within the U.S. However, immigration officers can request identification at will, so it is advised that individuals traveling domestically still carry the same documents they would as if they were traveling internationally.²³⁴⁶ While there are generally no restrictions on movement once a noncitizen is in the U.S., immigrants on employment-based visas could have their movement effectively restricted as a consequence of having to work in person.

The lack of clarity around the availability of civil and political rights for noncitizens in general makes it difficult to distinguish between the protections available in different visa categories. That said, lawful permanent residents generally receive the strongest protections, while undocumented migrants are the least protected. One example is that An additional distinction lawful permanent resident (LPR) status confers in the periphery of political and civil rights is

²³⁴⁰ *Id.*

²³⁴¹ *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999).

²³⁴² M. Kagan, *Protecting Immigrant Free Speech Without Relying on the First Amendment*, 56 *GA. L. REV.* (No. 4, Art. 3, 2022), <https://digitalcommons.law.uga.edu/glr/vol56/iss4/3/>

²³⁴³ *Aliens in the United States*, *supra* note 81, art. I, § 8, cl. 18

²³⁴⁴ *Reid v. Donelan*, 17 F.4th 1 (1st Cir. 2021).

²³⁴⁵ Congressional Research Service, *Immigration Detention: A Legal Overview* (Sept. 16, 2019), <https://www.congress.gov/crs-product/R45915>

²³⁴⁶ Harvard International Office, *Travel Within the U.S.*, Harvard University, <https://www.hio.harvard.edu/preparing-travel>

that is generally harder to remove an LPR than it is a nonimmigrant or undocumented migrant. For example, those with LPR cannot be removed in expedited proceedings pursuant to INA §238(a). Further, LPR status can only be revoked by an immigration judge, and there are more plentiful relief options available to them.²³⁴⁷

4. Are there any limitations to non-nationals' right to buy and own property within the reviewed state?

At the federal level, noncitizens face few if any restrictions to buy property in the United States. Historically, states have had the power to regulate real property for the purposes of public good within the state, part of what is known as a state's "police power".²³⁴⁸ Thus there is an inherent tension in noncitizen property ownership at a state level, because the federal government has largely unchecked power over immigration policy. There is no requirement to show proof of immigration status in purchasing a house, but the ability to obtain a mortgage might require either a lawful immigration status or documents that accompany a given immigration status. As of 2021, there are almost three times more noncitizen unbanked households (meaning no one in the house as a checking/savings account) than there are unbanked U.S. born citizen households.²³⁴⁹ Additionally, it is rare for a noncitizen's financial history in a foreign country to transfer adequately to the U.S. banking system.²³⁵⁰ There is also often a language barrier that contributes to the difficulty of obtaining a fair mortgage, and in the home buying/selling process at large.²³⁵¹ FHA-insured loans (loans guaranteed by federal government and administered by the Fair Housing Administration) were previously a route that allowed less qualified applicants to obtain a mortgage. However, as of March 2025, they are no longer available to non-permanent noncitizens, and proof of status is now required to obtain one.²³⁵²

State regulation over foreign ownership of real property is becoming increasingly prevalent. As of 2025, most states have at least some foreign ownership restrictions, with many states focusing on agricultural land and land near areas of public interest such as critical infrastructure.²³⁵³ Others go farther. Florida for example is defending a lawsuit based on an equal protection violation claim over a bill that prevented many individuals from the People's

²³⁴⁷ Congressional Research Service, *Alien Removals and Returns: Overview and Trends* (Audrey Singer updated Feb. 3, 2015), <https://www.congress.gov/crs-product/R43892>

²³⁴⁸ Kit Johnson, *Buying The American Dream: Using Immigration Law To Bolster The Housing Market*, 81 Tenn. L. Rev. 829, 874 (2014).

²³⁴⁹ Sharon Cornelissen & Livesey Pack, *Immigrants' Access to Homeownership in the United States: A Review of Barriers, Discrimination, and Opportunities* (Joint Ctr. for Hous. Studs. of Harvard Univ., Working Paper, July 2023), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_immigrant_homeownership_cornelissen_pack_2023.pdf

²³⁵⁰ *Id.*

²³⁵¹ *Id.*

²³⁵² U.S. Department of Housing & Urban Development, *Title I Letter 490: Revisions to Residency Requirements* (Mar. 26, 2025), <https://www.hud.gov/sites/default/files/OCHCO/documents/TI-490.pdf>

²³⁵³ Jeanne Roig-Irwin, Dawn Goldberg, Ronald Britt, Grace Mayes, Renée Latour & Holly Bauer, *U.S. Restrictions on Foreign Ownership Analysis* (Clifford Chance Aug. 30, 2024), <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2024/08/US%20Restrictions%20on%20Foreign%20Ownership%20Analysis.pdf>

Republic of China from owning and purchasing land.²³⁵⁴ Besides these restrictions, all groups of noncitizens are generally free to purchase property in the United States, including undocumented migrants.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Engaging in formal employment lawfully in the United States as a noncitizen requires employment authorization obtained incident to status or using a separate application, as employers are required to verify the noncitizen's permission to work and identity. Noncitizens fit into the following categories of employment authorization: unrestricted, authorization to work for a specific employer, authorization at the discretion of the Department of Homeland Security (DHS), and ineligible for employment authorization.²³⁵⁵ In addition to work authorization, all noncitizens need a Social Security number (SSN) to enable their employer to report their earnings to the government. Noncitizens in the U.S. are able to apply for an SSN at the same time they apply for work authorization or for their green card. It is unclear whether SSNs will still be issued automatically under the current administration, as the Enumeration-Beyond-Entry (EBE) program, which enabled issuance of SSNs incident to employment authorization or green card approval, was paused in March 2025.²³⁵⁶

Immigrant or long-term resident

Lawful permanent residents (LPRs) may engage in formal employment incident to their status without further process.

Family-based applicants for permanent residence are able to apply for employment authorization once they apply for adjustment of status to permanent residence. Immediate relatives of citizens can file for employment authorization concurrently with their adjustment of status application, so they are able to obtain authorization immediately. Family-sponsored applicants that are not immediate relatives must wait until their filing date becomes current before they can work lawfully in the U.S.²³⁵⁷

²³⁵⁴ Congressional Research Service, *State Regulation of Foreign Ownership of U.S. Land: January 2023 to July 2024* (Aug. 28, 2024), <https://www.congress.gov/crs-product/LSB11013>

²³⁵⁵ Congressional Research Service, *Noncitizen Eligibility for Employment Authorization and Work-Authorized Social Security Numbers (SSNs)* (Mar. 22, 2023), <https://www.congress.gov/crs-product/R47483>

²³⁵⁶ Letter from Gerald E. Connolly, Ranking Member, Subcomm. on Gov't Operations & the Fed. Workforce, House Comm. on Oversight & Accountability, to Leland Dudek, Acting Comm'r, Soc. Sec. Admin. (Apr. 16, 2025), <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/2025-04-16.gec-to-ssa-dudek-re-ebe-program-pause.pdf>

²³⁵⁷ Congressional Research Service, *Permanent Legal Immigration to the United States: Policy Overview* (Nov. 4, 2024), <https://www.congress.gov/crs-product/R42866>

Most applications for employment-based visas such as B-2 and B-3 require the sponsoring employer to obtain a permanent labor certification from the USCIS. (The only exceptions are those listed by the Department of Labor (DOL) as “Schedule A” occupations, which have a pre-certified shortage of U.S. workers and thus do not require labor certification.²³⁵⁸) The labor certification requires the employer to show that they will pay the noncitizen employee at least as much as the prevailing wage determination (PWD) for the role, and attest that they met mandatory recruitment requirements to attempt to recruit U.S. workers for the job. The process of obtaining the certification is done using the Program Electronic Review Management (PERM).²³⁵⁹ Because LPRs have no conditions to employment, those who adjust status to LPR from an employment-based immigrant category such as EB-2 or EB-3 are then free to engage in employment outside the position or even field that afforded them the visa in the first place. Employment-based immigrants who have not adjusted status do have some flexibility to change their specific position in certain cases: applications that have been pending at least 180 days are generally viewed to be “portable,” which allows the applicant to change positions or even employers as long as the new job is in the same or similar occupational category.²³⁶⁰

Refugees

Refugees are authorized to work incident to their status. Refugees arriving after December 10, 2023 receive an employment authorization document (EAD) that is automatically created and sent to them. This practice has been inconsistent under the Trump administration.

Asylees

Asylees are authorized to work incident to their status. Asylum applicants are eligible to apply for work authorization after their asylum application has been pending for at least 150 days, and are eligible to receive work authorization after 180 days.²³⁶¹ The application filing cost for an initial EAD is \$560.²³⁶² Any delays caused by the applicant prior to 180 days will stop the employment authorization “clock”, meaning that the asylum seeker will not receive employment authorization unless and until they are granted asylum.^{110F}²³⁶³ “Clock”-stopping

²³⁵⁸ Congressional Research Service, *Permanent Employment-Based Immigration: Labor Certification and Schedule A* (Dec. 20, 2023), <https://www.congress.gov/crs-product/IF12555>

²³⁵⁹ PERM is a system which is managed by the DOL’s Employment and Training Administration (ETA), the certification process typically takes at least seventeen months. *Id.*

²³⁶⁰ U.S. Citizenship and Immigration Services, *USCIS Policy Manual* Vol. 7, Part E, Ch. 5 (current as of Jan. 5, 2024), <https://www.uscis.gov/policy-manual/volume-7-part-e-chapter-5>

²³⁶¹ *Noncitizen Eligibility for Employment Authorization and Work-Authorized Social Security Numbers (SSNs)*, *supra* note 98.

²³⁶² U.S. Citizenship and Immigration Services, *Form I-765, Application for Employment Authorization* (last updated Mar. 1, 2026), <https://www.uscis.gov/i-765>

²³⁶³ American Immigration Lawyers Association, *EOIR Memo on Asylum EAD Clock in Immigration Proceedings* (Dec. 19, 2024) (“AILA Doc. No. 25021034”), <https://www.aila.org/eoir-memo-on-asylum-ead-clock-in-immigration-proceedings>; U.S. Citizenship and Immigration Services, *Applicant-Caused Delays in Adjudications of Asylum Applications and Impact on Employment Authorization* (Aug. 2024), <https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf>

delays include requests for a continuance of the initial scheduling hearing in order to locate legal representation..²³⁶⁴

Other beneficiaries of international or humanitarian protection

Temporary Protected Status (TPS)

TPS beneficiaries are eligible for employment authorization incident to their TPS status, but they must apply for the authorization (concurrently with or after the TPS application). The application filing cost for an initial EAD is \$560.²³⁶⁵ If an applicant is prima facie eligible for TPS status, they typically can obtain their EAD prior to the full adjudication of their TPS application. In practice, employment eligibility under this status can be precarious. While the eligibility for employment authorization stems from TPS status, the EAD does not necessarily have the same timeline as the underlying TPS status.²³⁶⁶ Further, TPS designations last six, twelve, or eighteen months. TPS beneficiaries typically must re-register for the status after a country's TPS designation has been extended. There is also lack of consistency in how individuals from varying TPS designated countries renew their EADs when a TPS designation is extended. In some cases, there is automatic renewal and a TPS beneficiary can continue to use their EAD that is on its face expired but actually has the expiration date of the extended EAD. In other cases they must re-apply for the EAD.²³⁶⁷

Deferred Enforced Departure (DED)

DED recipients' employment authorization varies on a country-by-country basis. Individuals can be eligible for employment authorization if the President included it in their country's DED designation. However they still must apply, and are subject to a \$520 filing fee (\$470 if done online).²³⁶⁸

DACA

DACA recipients are able to apply for employment authorization, but must show that employment is an economic necessity. There is an application filing fee of \$520 (\$470 if done online).²³⁶⁹ The work authorization lasts for the duration of the DACA grant. Renewal of employment authorization is incident to the renewal of an individual's DACA status.²³⁷⁰

Parolees

In most cases, those paroled into the country are eligible for employment authorization on a case by case basis. The main exception is that parolees may be authorized for employment

²³⁶⁴ <https://www.aila.org/eoir-memo-on-asylum-ead-clock-in-immigration-proceedings;https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf>

²³⁶⁵ *Form I-765, Application for Employment Authorization*, *supra* note 104.

²³⁶⁶ American Immigration Lawyers Association, *Practice Pointer: Demystifying Employment Authorization Under TPS* (AILA Doc. No. 23120600, Jan. 15, 2025), <https://www.aila.org/library/practice-pointer-demystifying-employment-authorization-under-tps>

²³⁶⁷ *Id.*

²³⁶⁸ *Form I-765, Application for Employment Authorization*, *supra* note 104.

²³⁶⁹ *Id.*

²³⁷⁰ Congressional Research Service, *Deferred Action for Childhood Arrivals (DACA): By the Numbers* (Apr. 14, 2021), <https://www.congress.gov/crs-product/R46764>

incident to their status as a parolee.²³⁷¹ Guidance suggests that parolees' employment authorization applications can be granted where consistent with the purpose and duration of the underlying parole grant. Employment authorization or the status itself is time-limited and can be rescinded at any point.²³⁷²

Nonimmigrant

Work authorization for nonimmigrants varies depending on the specific visa category; generally, the authorization's scope is much narrower than the employment authorization granted to other categories such as LPRs and refugees/asylees.²³⁷³ The three most common nonimmigrant statuses under which many noncitizens engage in formal employment are H-1B, H-2A, and H-2B. H-1B visas require a labor condition application submitted by the employer that functions similarly to the permanent labor certification described above, but it only describes what the employer will do, rather than documenting the steps they have taken.²³⁷⁴ H-2A and H-2B visas also require a similar certification, however but do not require a prevailing wage determination.²³⁷⁵

Undocumented migrant

Undocumented migrants are not eligible to receive work authorization unless they obtain lawful status.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Immigrant or long term resident

There are no direct limits for businesses in the U.S. to hire lawful permanent residents. There are indirect limits to the hiring of immigrants in the quotas for non-immediate family based and employment-based applicants that are waiting to adjust status. Family sponsored immigrants must wait until their filing date becomes current before they can get work authorization. Apart from the petition and labor certification, employment-based immigrants must stay in essentially the same job until they're able to adjust status.

Refugees and asylees

There are no restrictions or limitations on employers hiring refugees and asylees.

²³⁷¹ 8 C.F.R. § 274a.12 (Classes of Aliens Authorized to Accept Employment) (2025).

²³⁷² U.S. Citizenship and Immigration Services, *Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States* (last reviewed Jan. 24, 2025), https://www.uscis.gov/humanitarian/humanitarian_parole

²³⁷³ A complete list of nonimmigrant statuses eligible for work authorization can be found at <https://www.congress.gov/crs-product/R47483>

²³⁷⁴ Congressional Research Service, *The H-1B Visa for Specialty Occupation Workers* (Feb. 18, 2025), <https://www.congress.gov/crs-product/IF12912>

²³⁷⁵ Congressional Research Service, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues* (May 11, 2023), <https://www.congress.gov/crs-product/R44849>.

Other beneficiaries of international or humanitarian protection

Generally, businesses have no restrictions on the hiring of those with employment authorization, apart from limited cases involving licensure for exports that are discussed in the following section.

Nonimmigrant

For H-2A and H-2B visa-holders, the employment limits consist of the labor certifications and numerical quotas. Employers of H-2B visas face a nationwide numerical quota of 66,000 visas per year. Employers of H-1B workers are also subject to a numerical quota of 65,000. However, renewals of H-1B status do not count towards the quota, and an additional 20,000 visas are available to those with masters degrees or higher. Specific to this status is a soft limit that imposes additional conditions for employers whose workforce is comprised of 15% or more H-1B workers, though the criteria varies slightly depending on size of employer. Known as H-1B dependency, it requires the employers to additionally attest that they met requirements related to recruiting U.S. workers before seeking foreign workers, and that they will not displace any similarly positioned U.S. worker for at least 90 days before or after the petition was filed.²³⁷⁶

Undocumented migrants

Businesses cannot knowingly hire undocumented workers without being in violation of the law.

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

In almost all cases in the private sector, jobs available to citizens are equally available to noncitizens, as discrimination based on immigration status is unlawful under the INA, and discrimination based on national origin is unlawful under Title VII of the Civil Rights Act.²³⁷⁷ Discrimination in the public sector is less straightforward: most jobs in the federal government are part of the competitive civil service, meaning only those who meet certain qualifications are able to apply, and the hiring process is subject to civil service laws that emphasize meritocracy. Courts have repeatedly upheld the citizenship requirement to enter the competitive civil service.²³⁷⁸

Laws or regulations that discriminate based on immigration status in the state and local public sectors are subject to strict scrutiny, a type of review that in almost all cases results in the law being struck down. There is, however, a notable exception in cases where the state government is able to argue that there is a political function to the regulation, lowering the standard of review to rational basis, which is a much easier standard to satisfy.²³⁷⁹ Thus for the most part, federal

²³⁷⁶ U.S. Department of Labor, *Employment Law Guide: Work Authorization for Non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1, and E-3 Visas)*, updated Dec. 2016, <https://webapps.dol.gov/elaws/elg/h1b.htm>

²³⁷⁷ 8 U.S.C. § 1324b(a)(1) (prohibiting employers from discriminating based on citizenship or immigration status) (2026); 42 U.S.C. § 2000e-2(a) (prohibiting employment discrimination based on race, color, religion, sex, or national origin) (2026).

²³⁷⁸ *Yuen v. IRS*, 649 F.2d 163 (2d. Cir. 1981).

²³⁷⁹ *Zadvydas v. Davis*, 467 U.S. 216 (1984).

positions and many positions in state governments are unavailable to noncitizens, regardless of immigration status, with few exceptions. For example, some export treaties such as the International Traffic in Arms (ITAR) distinguish “U.S. persons,” meaning LPRs, refugees, and asylees from other immigration statuses for the purposes of licensing.

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Noncitizens working lawfully in the U.S. are generally protected by the same agencies and laws that protect citizen workers. On paper, the regulations set forth by the National Labor Relations Board (NLRB), the Department of Labor (DOL), the Equal Employment Opportunity Commission (EEOC), and the Occupational Safety and Health Administration (OSHA) cover all eligible workers, regardless of immigration status.²³⁸⁰ In practice however, these protections do not cover all workers equally. Courts have limited the remedies available to undocumented workers whose labor rights have been violated, and there has been lax enforcement against employers who do so.²³⁸¹

Labor protections for undocumented migrants eroded significantly in 1986 with the passage of the Immigration Reform and Control Act (IRCA), which outlawed *knowingly* hiring undocumented workers as well as seeking employment without authorization.²³⁸² IRCA’s criminalization of working illegally serves as a base to undercut protections: in *Hoffman Plastic Compounds v. NLRB* (2002), the Supreme Court held that workers wrongfully terminated but working unlawfully were not entitled to back pay for work not performed under the National Labor Relations Act (NLRA), a critical remedy that prevented employers from firing workers who engaged in protected activities such as unionization.²³⁸³ Protections afforded by other legislation, such as the Fair Labor Standards Act (FLSA) have allowed undocumented migrants to receive back pay for work performed without pay, though the extent of the protections is not firmly established.²³⁸⁴

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Access to healthcare in the United States in a functional sense depends on being able to pay for it. Even though 92% of citizens are insured, about 100 million of them are currently in medical

²³⁸⁰ 29 U.S.C. § 152(3); 8 U.S.C. § 1324b(a)(1)-(2); EEOC Policy and Compliance Manual § 8-I.B.1; OSHA Fact Sheet: *Workers’ Rights and Immigration Status* (2025).

²³⁸¹ <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=2762&context=llr>

²³⁸² 8 U.S.C. § 1324a(a)(1) (prohibiting employers from knowingly hiring unauthorized workers).

²³⁸³ *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002).

²³⁸⁴ National Immigration Law Center & National Employment Law Project, *Assessing the Impact of the Supreme Court’s Decision in Hoffman Plastic on Immigrant Workers and Recent Developments* (Apr. 2016), https://www.nilc.org/wp-content/uploads/2016/04/Hoffman_NELP_NILC_FINAL.pdf

debt. Studies have found that there are three times more uninsured lawfully present noncitizens than citizens, and half of all undocumented migrants are uninsured.²³⁸⁵ Medical debt for noncitizens also represents more than a financial burden; lawsuits stemming from debt can lead to scrutiny into immigration status. Citizens do not experience this combination of high uninsured rates and fear of accruing medical debt, suggesting that as a baseline, access to healthcare in the United States is significantly more limited for noncitizens than citizens.²³⁸⁶

Besides obtaining health insurance through an employer, subsidized healthcare is also provided through federally funded programs such as Medicare, Medicaid, and /Children's Health Insurance Program (CHIP), which provide healthcare assistance to those 65 years and older, to those eligible based on low income, and to minors, respectively. Medicaid and CHIP are viewed as federal public benefits, and thus subject to the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).²³⁸⁷ That law defines who is and is not eligible to receive federal public benefits, and limits benefits to only those that are in a "qualified alien" category.²³⁸⁸

States have some autonomy in expanding coverage to non-qualified non-citizens in limited cases, so specific eligibility criteria and policies vary dramatically state to state. For example, states have the option to expand Medicaid to pregnant women and children who are lawfully present, which is easier satisfied than being in a "qualified" status. States can also waive the five year bar for these groups, which would otherwise preclude those who had entered from benefits for the first five years of residing in the U.S.²³⁸⁹ Inconsistencies in access to healthcare exist elsewhere, with some states like California electing to create state funded Medicaid to provide health care coverage to all individuals regardless of immigration status, while others, like Texas, bar LPRs from federal Medicaid, even after the five year bar has passed.²³⁹⁰ States also can elect to participate in Medicaid expansion, which allows for those earning up to 138% of the national poverty line to apply for federal healthcare assistance.²³⁹¹ While still subject to the qualified alien requirement, the new criteria helped many noncitizens get coverage, as previously Medicaid was generally unavailable to those under 65 without a disability.

Medicare and state health care exchanges use differing definitions of "lawfully present" as criteria for immigration status, but generally both definitions are *less* restrictive than the qualified alien standard used in Medicaid. Medicare consists of several "parts," but essentially

²³⁸⁵ Medha D. Makhlouf, *Charity Care for All: State Efforts to Ensure Equitable Access to Financial Assistance for Noncitizen Patients*, 23 Hous. J. Health L. & Pol'y 57 (2024), <https://houstonhealthlaw.scholasticahq.com/article/94070>
<https://houstonhealthlaw.scholasticahq.com/article/94070> (Makhlouf)

²³⁸⁶ *Id.*

²³⁸⁷ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

²³⁸⁸ Kathryn E. Hodges, *Medicaid Coverage for Immigrants* (Nat'l Health Law Program May 2021), <https://healthlaw.org/wp-content/uploads/2021/05/Medicaid-Coverage-for-Immigrants-FINAL.pdf>

²³⁸⁹ *Id.*

²³⁹⁰ National Immigration Law Center, *Medicaid and Other Health Coverage for Immigrants in States* (Dec. 2022), <https://www.nilc.org/wp-content/uploads/2022/12/med-services-for-immigrants-in-states-2023-1-1.pdf>

²³⁹¹ Nabarun Dasgupta, *Cost of Public Health Insurance for US-Born and Immigrant Adults*, 6 JAMA Network Open e34008 (Sept. 15, 2023), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2809604>

it provides coverage for health care services for many individuals 65 and older and typically does not require the payment of a premium. Typically, if one receives social security benefits, they will not be required to pay Medicare premiums.²³⁹²

State health care exchanges allow more categories of noncitizens to obtain federally subsidized health insurance. States are entitled to determine residency requirements for their exchanges as long as the residence is lawful. Conversely to Medicaid, healthcare purchased through the Affordable Care Act is subsidized in the form of a premium tax credit (PTC) if an eligible individual has an income at or above the federal poverty line.²³⁹³ There is an important exception to the PTC income criteria that will remain valid until December 31, 2026: if a noncitizen is ineligible for Medicaid but lawfully present, they do not have to meet the income threshold required to receive the PTC.²³⁹⁴

Immigrants and long-term residents

Under current law, LPRs are generally able to obtain the same health coverage and services as citizens but are prohibited from receiving Medicaid for the first five years after they have been admitted into the United States. During this time, they are still able to purchase coverage using the ACA marketplace and could receive PTCs. Beginning January 1, 2027, LPRs will no longer be eligible to obtain ACA subsidies if their income falls below the required level.

Asylees

Under current law, asylees are generally eligible for federal Medicaid for the first seven years after the grant of asylum. After this period many states continue to cover them, but as of 2021, seven states do not continue coverage after the initial seven-year period.²³⁹⁵ However as of July 2025, asylees are no longer eligible for Medicare, and starting October 2026, and January 1, 2027, they will no longer eligible for Medicaid or ACA subsidies, respectively.²³⁹⁶ In order to obtain healthcare, asylees must adjust status to LPR, though it's unclear whether the five year bar for LPRs would then apply.²³⁹⁷

Refugees

As of July 2025, refugees are no longer eligible for Medicare, and starting October 2026, and January 1, 2027, they will no longer eligible for Medicaid or ACA subsidies, respectively.²³⁹⁸

²³⁹² Congressional Research Service, *Noncitizens' Access to Health Care* (Oct. 24, 2022), <https://www.congress.gov/crs-product/R47351>

²³⁹³ *Id.*

²³⁹⁴ *Id.*

²³⁹⁵ *Medicaid Coverage for Immigrants*, *supra* note 131, at 8.

²³⁹⁶ National Immigration Law Center, *New Law Limits Health Care & Food Aid for Immigrants* (July 31, 2025), <https://www.nilc.org/resources/new-law-limits-health-care-food-aid-for-immigrants/>

²³⁹⁷ American Medical Association, *Summary: Changes to ACA Marketplace Eligibility and Access for Immigrants* (2025), <https://www.ama-assn.org/system/files/aca-immigrant-impact-summary.pdf>

²³⁹⁸ National Immigration Law Center, *New Law Limits Health Care & Food Aid for Immigrants* (July 31, 2025), <https://www.nilc.org/resources/new-law-limits-health-care-food-aid-for-immigrants/>

Refugee Medical Assistance (RMA) can provide medical coverage for refugees who have been in the country for less than a year, and lost Medicaid due to an increase in income.²³⁹⁹

Nonimmigrants

Prior to the enactment of the “One Big Beautiful Bill Act” nonimmigrants who were ineligible for Medicaid/CHIP but could purchase coverage using the ACA marketplace and could receive subsidies.²⁴⁰⁰ However, beginning January 1, 2027, essentially all nonimmigrants will be ineligible for ACA subsidies.²⁴⁰¹

Undocumented migrants

Undocumented migrants are ineligible for federally funded Medicaid/CHIP and Medicare, and cannot purchase private health insurance. Additionally, community health centers as of July 2025 have been categorized as a federal public benefit, so they cannot seek treatment there. Survey data suggest that noncitizens, particularly the undocumented, were more likely to use community health centers than citizens.²⁴⁰² With that avenue to care closed, undocumented migrants are in a difficult position, and are largely dependent on Emergency Medicaid, hospital charity programs, and free clinics. Vexingly, from a cost standpoint, treatment using preventative medicine is far cheaper than essentially requiring health issues to progress to the point of a medical emergency before allowing care to be administered. Preventative medicine also makes much more sense morally. Emergency Medicaid allows those who are uninsured because of their immigration status to receive cost free emergency treatment at any hospital that accepts Medicare and can provide emergency services. As in other aspects of healthcare policy, states have significant discretion in determining what services or treatments fall under this definition.²⁴⁰³

An additional route for obtaining treatment could come in the form of hospital charity care, which is discounted or free medical care that tax exempt hospitals are required to provide as a community benefit. As of July 2025, hospital charity care is still not considered a federal public benefit under PRWORA. However, there is little regulation of charity care; a number of hospitals bar individuals from receiving treatment based on their immigration status, and few states have prohibitions against doing so. Even hospitals that do not expressly refuse care based on immigration status can indirectly do so by having vague policies or requiring documents that most noncitizens of precarious status would not have.²⁴⁰⁴ Fear of identification as an unlawful

²³⁹⁹ Louise Norris, *What Health Insurance Benefits Are Available to Refugees and Asylees Arriving in the United States* (Sept. 19, 2025), <https://www.healthinsurance.org/faqs/what-health-insurance-benefits-are-available-to-refugees-and-asylees-arriving-in-the-united-states/>

²⁴⁰⁰ *Noncitizens' Access to Health Care*, *supra* note 135.

²⁴⁰¹ National Immigration Law Center, *New Law Limits Health Care & Food Aid for Immigrants* (July 31, 2025), <https://www.nilc.org/resources/new-law-limits-health-care-food-aid-for-immigrants/>

²⁴⁰² Drishti Pillai et al., *Health and Health Care Experiences of Immigrants: The 2023 KFF/LA Times Survey of Immigrants* (Kaiser Family Foundation Sept. 17, 2023), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-and-health-care-experiences-of-immigrants-the-2023-kff-la-times-survey-of-immigrants/>

²⁴⁰³ Jin K. Park, Clarisa Reyes-Becerra & Medha D. Makhoul, *State Flexibility in Emergency Medicaid to Care for Uninsured Noncitizens*, 4 JAMA Health Forum e231239 (July 14, 2023), <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2807182>

²⁴⁰⁴ Makhoul, *supra* note 128.

resident plays a large role in preventing unauthorized migrants from seeking medical care when they need it.

Other beneficiaries of international or humanitarian protection

Not eligible for Medicaid, and as of July 2025, and January 1, 2027, they are no longer eligible for Medicare or ACA subsidies respectively.²⁴⁰⁵

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

In the United States, there is no federal constitutional right to primary and secondary school education; however it is widely recognized as fundamental to a functional democracy. The implementation and management of primary and secondary schools, known more commonly in the United States as elementary/middle school, and high school, is primarily a state and local government matter, as schools are funded primarily through local property taxes. Children are typically eligible attend the public school that their family's tax dollars benefit. While the specific limits vary by state, every state requires compulsory school attendance for children 6-17 years old, and mandates that individuals in this age range are offered tuition free education.²⁴⁰⁶ Tertiary education in the United States is not compulsory, and there are a variety of public post-secondary institutions that one can attend. While some post-secondary institutions are tuition free for eligible individuals, in most cases they require payment to attend.

Primary and Secondary Education

In *Plyler v. Doe*, 457 U.S. 202 (1982), the United States Supreme Court established that states cannot restrict access or require tuition to public primary and secondary school for any school-age individual residing in the state, even if their presence in the country is unlawful. It follows that all immigration categories of noncitizen children should have the same access to public primary and secondary education as U.S. nationals.²⁴⁰⁷ While a child may not be restricted from attending school, they are still subject to the requirements and durations of stay afforded by their visa.

Additionally, while schools are prohibited from discriminating based on national origin and immigration status (in addition to other grounds), they are able to require that students attending the school actually live in the relevant district. Utility bills and lease agreements are examples of proof that can establish one's residency. Schools also can require proof of any student's age,

²⁴⁰⁵ National Immigration Law Center, *New Law Limits Health Care & Food Aid for Immigrants* (July 31, 2025), <https://www.nilc.org/resources/new-law-limits-health-care-food-aid-for-immigrants/>

²⁴⁰⁶ National Center for Education Statistics, *Compulsory School Attendance Laws by State* (last reviewed [if available]), https://nces.ed.gov/programs/statereform/tab5_1.asp

²⁴⁰⁷ U.S. Department of Justice & U.S. Department of Education, *Dear Colleague Letter on the Education Rights of All Children Regardless of Their Immigration Status* (May 6, 2011) (AILA Doc. No. 11050631), <https://www.aila.org/doj-doe-letter-on-the-education-rights-children>

though any evidence offered cannot be used for the purposes of excluding the student based on factors such as national origin or race.²⁴⁰⁸

Tertiary Education

Immigrant or Long-Term Resident

Lawful permanent residents may enroll in post-secondary institutions, and are eligible for federal financial aid to do so.

Nonimmigrant

Most nonimmigrant visa categories permit both the principal holder and unmarried minor children to engage in at least part-time postsecondary education, with many allowing full-time, though in either case, education cannot be the primary purpose for the visit. The notable exceptions are B, C, and D visa holders, who may not engage in any non-avocational or non-recreational post-secondary education.²⁴⁰⁹ There are three visas tied directly to education: F, M, and J. F visas are for academic institutions, M visas are for vocational/nonacademic institutions, and J visas are for approved exchange visitor programs. The J visa covers a wide swath of individuals, but is mainly used by professors/researchers and foreign medical school graduates receiving training in the United States.

While many nonimmigrants may attend postsecondary institutions, the vast majority are not able to receive federal financial aid. State programs and private scholarships may be available to individuals ineligible for federal financial aid, but eligibility varies by institution and state. In a general sense, there are no tuition-free post-secondary institutions in the United States.

Undocumented migrants

Unlike primary and secondary education, no federal policy guarantees undocumented migrants access to post-secondary education. State policies and programs vary dramatically from state to state, with some states such as California creating pathways to in-state tuition for all residents, regardless of immigration status, while others such as Alabama and South Carolina barring undocumented migrants from post-secondary institutions entirely.²⁴¹⁰ These policy differences across states makes advising undocumented students extremely difficult, and presents an additional barrier to access that does not exist for U.S. nationals. In addition to being ineligible for federal financial aid, undocumented migrants cannot work lawfully, which limits many individuals to unstable employment at best; this situation makes attending post-secondary education even more difficult. Relatedly, the insecurity that accompanies undocumented and other precarious immigration statuses such as TPS and DED pose an additional burden on students to not only accessing but also succeeding in their studies.

²⁴⁰⁸ *Id.*

²⁴⁰⁹ U.S. Immigration and Customs Enforcement, *Nonimmigrants: Who Can Study?* (Student and Exchange Visitor Information System), <https://www.ice.gov/doclib/sevis/pdf/Nonimmigrant%20Class%20Who%20Can%20Study.pdf>

²⁴¹⁰ Tanya Broder & Ignacia Rodriguez Kmec, *Toolkit: Higher Education for Immigrant Students*, National Immigration Law Center (Sept. 8, 2025), <https://www.nilc.org/resources/toolkit-higher-education-for-immigrant-students/>

Refugees

Refugees are able to access post-secondary education and are eligible for federal financial aid. Additionally, many of the states containing the most refugees, both per capita or by an absolute count, allow refugees to receive in-state (i.e. discounted) tuition at public universities.²⁴¹¹

Asylees

Asylees can access post-secondary education and are eligible for federal financial aid. Additionally, many of the states containing the most asylees, both per capita or by an absolute count, allow for in-state tuition.²⁴¹² Asylum applicants are also able to access post-secondary education, but they are not eligible for federal financial aid. Fewer states grant asylum applicants in-state tuition as compared to those with approved asylum status.²⁴¹³

Other beneficiaries of international or humanitarian protection

DACA

DACA students' eligibility to attend post-secondary education is similar to undocumented migrants in that accessibility varies by state. They are ineligible for federal financial aid.²⁴¹⁴

TPS

TPS recipients have similar access to post-secondary education as asylum applicants. They should be able to freely access post-secondary education, but they are not eligible for federal financial aid. There are states that extend in-state tuition to TPS recipients.²⁴¹⁵

DED

DED status holders are eligible to attend post-secondary education, but they are not eligible for federal financial aid and in most cases cannot receive in-state tuition.

Parolees

Parolees are eligible to attend post-secondary education, and if paroled for more than one year, they are eligible for federal financial aid.²⁴¹⁶

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

In the United States, Social Security provides retired or disabled individuals (or their dependents/survivors) with a monthly cash benefit. Funding for the program comes from

²⁴¹¹ Lisa Unangst, Ishara Casellas Connors & Nicole Barone, *State-Based Policy Supports for Refugee, Asylee, and TPS-Background Students in U.S. Higher Education*, 38 *Refuge* 95, 102 (2022), <https://www.erudit.org/en/journals/refuge/2022-v38-n1-refuge07186/1091347ar/>

²⁴¹² *Id.*

²⁴¹³ *Id.*

²⁴¹⁴ *Id.* at 105.

²⁴¹⁵ *Id.* at 102.

²⁴¹⁶ Federal Student Aid, *Eligibility Requirements for Non-U.S. Citizens*, U.S. Department of Education, <https://studentaid.gov/understand-aid/eligibility/requirements/non-us-citizens>

payroll taxes on most jobs in the U.S, which are referred to as “covered” by Social Security. Eligibility to receive benefits is based on an individual accumulating enough “earning credits” by working a job covered under Social Security: as of 2017, a worker earns one credit for every \$1,300 they make, with a maximum of four per year.²⁴¹⁷ In most cases, workers need 40 of these credits to become “insured,” meaning they have met the labor requirements for receiving Social Security benefits and are thus entitled to them.²⁴¹⁸ Those entitled to Social Security benefits become eligible for them once they turn 62, though claiming them before they meet full retirement age reduces their monthly benefit.²⁴¹⁹

The only immigration status requirement to receive Social Security is that one be “lawfully present.”²⁴²⁰ However, workers under some statuses are exempt from paying into the program and thus do not receive earning credits for Social Security.²⁴²¹ When benefits are received by workers’ dependents or survivors, there is an additional requirement that the dependent/survivor must have resided in the U.S. (lawfully or unlawfully) for at least five years (in cases of a spouse/widower etc. the spousal relationship must have existed during that period).²⁴²²

Individuals issued Social Security Numbers (SSNs) after January 1, 2004 are subject to the work authorization requirement. Once they obtain work authorization, work performed prior to authorization counts toward insured status. For those issued SSNs prior to January 1, 2004, work authorization is not required for their earnings to count toward insured status.²⁴²³

Social security payments do not cease until a noncitizen has resided outside the country for more than six consecutive months. There are several exemptions that allow for noncitizens to continue receiving payments after six months abroad, including citizens of a country that has a similar social insurance or pension program that allows payments to eligible U.S. citizens living outside of that country, and citizens of countries with which the U.S. have totalization agreements with (tax agreements that prevent noncitizens from having to pay into two countries’ pension programs).²⁴²⁴ Besides these limitations, all categories of lawfully present noncitizens are eligible to receive social security benefits once insured, including immigrants, nonimmigrants, asylees, refugees, and other beneficiaries of international protection. Efforts have been made to prevent DACA recipients from eventually claiming benefits, though recipients with work authorization in Social Security covered jobs earn credits currently.²⁴²⁵

²⁴¹⁷ Congressional Research Service, *Social Security Benefits for Noncitizens: Current Policy and Legislation*, July 20, 2006, <https://www.congress.gov/crs-product/RL32004>

²⁴¹⁸ *Id.*

²⁴¹⁹ Full retirement age and the reduction from claiming benefits early are both dependent on when the claimant was born; individuals born before 1954 have a full retirement age of 66, while those born after 1960 must be 67. The reduction in benefit when claiming at age 62 increases the later one is born, <https://www.ssa.gov/benefits/retirement/planner/agereduction.html>

²⁴²⁰ *Social Security Benefits for Noncitizens: Current Policy and Legislation*, *supra* note 160.

²⁴²¹ The principal beneficiaries of A, D, F, J, M, Q, and H-2A visa are exempt, <https://www.irs.gov/individuals/international-taxpayers/aliens-employed-in-the-us-social-security-taxes>

²⁴²² *Id.*

²⁴²³ *Social Security Benefits for Noncitizens: Current Policy and Legislation*, *supra* note 160.

²⁴²⁴ *Id.*

²⁴²⁵ *Id.*

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

In the United States, there are several main federal benefit programs: the Supplemental Nutrition Assistance Program (SNAP), Department of Housing and Urban Development (HUD) programs, Supplemental Security Income Program (SSI), and Temporary Assistance for Needy Families (TANF).²⁴²⁶ SNAP is the primary nutrition assistance program for low income households; HUD programs such as the Public Housing and Housing Choice Voucher programs provide subsidized housing; SSI distributes cash benefits to those over 65 or disabled (as described in Section 11 above); and TANF provides funds to states to distribute as cash benefits to indigent households.

Of these programs, USCIS considers only TANF and SSI when making a public charge determination. Few noncitizens are eligible for the federal benefits in the first place if they are subject to a public charge determination; however, state funded cash assistance programs with broader eligibility categories are also considered in the determination.²⁴²⁷

The above programs are subject to a myriad of different eligibility criteria, with changes made to noncitizen eligibility for SNAP as recently as July 2025 with the passage of the One Big Beautiful Bill Act (OBBBA).²⁴²⁸ The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and its amendments largely set eligibility requirements for TANF, SSI, and effectively HUD programs; the policy covering HUD program eligibility largely parallels the PRWORA categories.²⁴²⁹ PRWORA established the following categories of noncitizens as “qualified aliens” (i.e. eligible for benefits): LPRs, asylees, refugees, and parolees with a grant longer than a year. Though programs that fall under PRWORA typically have a five-year bar for newly arrived qualified noncitizens, many qualified categories are exempted, including asylees and refugees.

SNAP is only available to LPRs outside of a few narrow exceptions.²⁴³⁰

HUD programs are only available to qualified aliens. Households with noncitizens that are not all qualified are at risk of losing their housing benefit.²⁴³¹

²⁴²⁶ Medicaid is discussed in the Right to Health section of this report.

²⁴²⁷ U.S. Citizenship and Immigration Services, *Public Charge Resources*, last reviewed/updated Nov. 20, 2023, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources>

²⁴²⁸ Angela Rachidi, *Perspective on the OBBBA's SNAP Cuts*, AEI (Aug. 7, 2025), <https://www.aei.org/articles/perspective-on-the-obbbas-snap-cuts/>

²⁴²⁹ *Id.*; Congressional Research Service, *Noncitizen Eligibility for Federal Housing Programs*, Jan. 23, 2023, <https://www.congress.gov/crs-product/R46462>

²⁴³⁰ National Immigration Law Center, *The Anti-Immigrant Policies in Trump's Final “Big Beautiful Bill,” Explained*, Aug. 20, 2025, <https://www.nilc.org/resources/the-anti-immigrant-policies-in-trumps-final-big-beautiful-bill-explained/#restrictions-on-immigrants-health-and-nutrition>

²⁴³¹ Patrick Sisson, *Trump Revisits a First-Term Goal: Cutting Housing Aid for Immigrants*, Bloomberg L.P., Aug. 19, 2025, <https://www.bloomberg.com/news/articles/2025-08-19/trump-revisits-a-first-term-goal-cutting-housing-aid-for-immigrants>

SSI and TANF are only available to qualified aliens. TANF is typically limited to five total years of assistance per household, regardless of immigration status.²⁴³² Asylees and refugees may only receive SSI for a maximum of seven years. LPRs are subject to a five-year waiting period from their entry or adjustment of status for both programs and must have 40 qualifying quarters of work to be eligible for SSI.²⁴³³

Are there any final observations you would like to make? Please write below.

All of this information is changing rapidly as the Trump administration alters laws and policies to deter immigrants from remaining in the United States. Readers should confirm the validity of all sources before relying on them.

²⁴³² Congressional Research Service, *Temporary Assistance for Needy Families (TANF) Block Grant: A Primer*, Feb. 5, 2026, <https://www.congress.gov/crs-product/R48413>

²⁴³³ Congressional Research Service, *Noncitizen Eligibility for Supplemental Security Income (SSI)*, Feb. 16, 2023, <https://www.congress.gov/crs-product/R46697>

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

January 2026

*For each question, please pinpoint the relevant **domestic normative framework** on the issue (laws, regulations, ordinances, etc.) and any relevant **domestic practice, including case-law**, if applicable, **providing the links for the respective online databases**. Any comments on the effectiveness of the regulatory framework in place are welcome, including on legislative proposals for amendments that are being discussed in the country under review.*

Country under review: Vietnam

Author: Huong Nguyen

Please indicate the treaties to which the country under review is a party.

UN system treaties:

Treaty	Signed	Ratified
Convention relating to the Status of Refugees	No	No
1967 Protocol to the Convention relating to the Status of Refugees	No	No
1954 Convention relating to the Status of Stateless Persons	No	No
1961 Convention on the Reduction of Statelessness	No	No
International Covenant on Civil and Political Rights (ICCPR)		Yes (1982)
First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)	No	No
International Covenant on Economic, Social and Cultural Rights (ICESCR)	No	Yes (1982)

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)	No	No
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)	No	No
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	No	Yes (2015)
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	No	No
International Convention for the Elimination of All Forms of Racial Discrimination (ICERD)		Yes (1982); Declaration under Article 14 accepted in 2003
International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes	Yes (1982)
Optional Protocol to the International Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)	Yes	Yes (2001)
Convention on the Rights of the Child (CRC)	Yes	Yes (1990)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography	Yes	Yes (2001)
Optional Protocol to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict		Yes (2001)
Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure	No	No
Convention on the Rights of Persons with Disabilities (CRPD)	Yes	Yes (2015)
Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)	No	No

ILO Forced Labour Convention (No. 29)		Yes (2007)
2014 Protocol to the ILO Forced Labour Convention (No. 29)	No	No
ILO Migration for Employment Convention (Revised) (No. 97)		No
ILO Equal Remuneration Convention (No. 100)		Yes (1997)
ILO Discrimination (Employment and Occupation) Convention (No. 111)		Yes(1977)
ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		No

Regional treaties: - Not applicable to Vietnam, so the answer is N/A to all questions.

Treaty	Signed	Ratified
African Charter on Human and Peoples' Rights (ACHPR)	n/a	n/a
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	n/a	n/a
Convention governing the Specific Aspects of Refugee Problems in Africa	n/a	n/a
African Charter on the Rights and Welfare of the Child	n/a	n/a
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)	n/a	n/a
Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa	n/a	n/a
European Convention on Human Rights (ECHR)	n/a	n/a
Protocols to the European Convention on Human Rights (list which ones):	n/a	n/a
European Social Charter (ESC)	n/a	n/a

European Convention on the Legal Status of Migrant Workers	n/a	n/a
Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)	n/a	n/a
American Convention on Human Rights (ACHR)	n/a	n/a
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)	n/a	n/a
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará)	n/a	n/a
Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities	n/a	n/a
Inter-American Convention against Racism, Racial Discrimination and related Forms of Intolerance	n/a	n/a
Inter-American Convention against All Forms of Discrimination and Intolerance	n/a	n/a
Inter-American Convention Protecting the Human Rights of Older Persons	n/a	n/a
<i>ASEAN Convention Against Trafficking in Persons, Especially Women and Children</i>	Yes (2015)	Yes (2016)
19 December 2016	Yes(2000)	Yes (2012)

*If available, please provide a list of **other multilateral and bilateral treaties** to which the country under review is a party. If it is not possible to list all of them, please indicate any others that you find relevant in the field of migration:*

- ASEAN Convention Against Trafficking in Persons, Especially Women and Children- Signed in 2015 and ratified 2016.

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), Signed: 2000, Ratified: 2012

Bilateral and Regional Cooperation Agreements

- Agreement between the Government of the Socialist Republic of Viet Nam and the Royal Government of Cambodia on Cooperation in Preventing and Combating Human Trafficking and Protecting Victims, Signed: 2010
- Agreement between the Government of the Socialist Republic of Viet Nam and the Government of the Lao People's Democratic Republic on Cooperation in Preventing and Combating Human Trafficking, Signed: 2010
- Memorandum of Understanding between the Government of Viet Nam and the Government of the Kingdom of Thailand on Cooperation to Combat Trafficking in Persons, Signed: 2008
- Cooperation Agreements between Viet Nam and China on Prevention and Combat of Human Trafficking and Victim Repatriation along the Border Areas, Various bilateral cooperation frameworks between law enforcement authorities.

Part I – Rights to Stay

1. What is the general structure of the visa and migratory permits system in the reviewed state?

For example, some countries such as China have both visa and residence permit. In Australia, only visa is required and there is no separate permit requirement. Visa conditions may be imposed.

Legal Framework: The entry and residence of foreigners are governed by the Law on Entry, Exit, Transit, and Residence of Foreigners in Vietnam (Law No. 47/2014/QH13, as amended in 2019 and 2023)²⁴³⁴ with work visa provisions further guided by Decree No. 152/2020/NĐ-CP²⁴³⁵. This law defines various visa categories, temporary residence permits, and permanent residence status. Vietnam operates a visa system plus residence permit system, meaning that foreigners receive visas for entry and may need to obtain residence cards for longer stays. Key definitions include: a “visa” is a document issued by Vietnamese authorities for entry; a “temporary residence card” (TRC) is a card issued to foreigners who are allowed to reside in Vietnam for a certain period (it serves in lieu of a visa during its validity); and a “permanent residence card” (PRC) is issued to those permitted to reside indefinitely in Vietnam.

²⁴³⁴ Law No. 47/2014/QH13 on Entry, Exit, Transit, and Residence of Foreigners in Vietnam, as amended by Law No. 51/2019/QH14, available at <<https://english.luatvietnam.vn/law-no-51-2019-qh14-dated-november-25-2019-of-the-national-assembly-on-amending-and-a-number-of-articles-of-the-law-on-foreigners-ent-179053-doc1.html>>, Article 8 (visa symbols and purposes); Article 9 (supplementing maximum validity periods of visas).

²⁴³⁵ Decree No. 152/2020/NĐ-CP dated 30 December 2020 on Foreign Workers Working in Viet Nam and the Recruitment and Management of Vietnamese Workers Working for Foreign Organisations and Individuals in Viet Nam, effective 15 February 2021.

Visa Categories: Vietnam currently offers approximately twenty visa categories, classified by purpose, each identified by a specific visa symbol and maximum period of validity, including:

- Tourist visas (DL) are generally issued for stays of up to three months.
- business visitor visas (DN) for up to twelve months;
- work visas (LD1, LD2) for up to two years; investor visas (ĐT) for periods of up to five years depending on investment scale;
- student and intern visas (DH) for up to twelve months; and
- family reunion visas (TT) for up to twelve months and renewable.
- Diplomatic and official visas (NG categories) are issued to foreign officials and representatives of international organisations, while specialised visas exist for journalists (PV1, PV2), conference or seminar participants (HN), and other specific purposes.

Each foreign national entering Vietnam is issued a visa in the form of a visa sticker, loose leaf, or electronic visa indicating the permitted category and duration of stay. Where a foreigner wishes to remain in Vietnam beyond the authorised period of stay, they must apply for a visa extension, amendment, or conversion to an appropriate longer-term visa or residence permit in accordance with Vietnamese law.

Temporary Residence Permits: Upon arrival, a foreigner is granted a temporary residence stamp corresponding to their visa and permitted stay period. For longer term stays, Vietnamese law provides for Temporary Residence Cards (TRCs), which may be issued to foreigners holding work visas, investor visas, and other long-term visas. A TRC typically has a validity aligned with the underlying visa category, for example up to two years for work related residence and up to five years for investor residence and allows multiple entries without the need to apply for new visas during its validity. TRCs are issued by the Immigration Department under the Ministry of Public Security. Foreigners holding work, investor, or family reunion visas may apply for a TRC after lawful entry, and the card serves as proof of legal residence in Vietnam. In practice, foreign workers with valid work permits are commonly granted TRCs for periods of up to two years, while spouses and children of Vietnamese citizens or of foreign residents may receive TRCs under family reunion categories, generally issued for renewable periods of one to three years.

2. What are the categories of migratory status that allow a non-national to reside for more than three months within the reviewed state? Please provide a brief overview of these categories. For example, visa/permit for labour reasons, for educational reasons, health reasons, among others.

For example, in Australia, permanent resident visas (PR) include: family visas (child, parents, partner), business visas, employer sponsored visas, skilled visas and refugee visas. Temporary visas (TR) include student visas and employer sponsored visas, and etc. There are also bridging visas in addition to PR and TR.

Permanent Residence: Vietnamese immigration law allows foreign nationals to be granted permanent residence status only in limited and exceptional circumstances. Article 39 of the Law on Entry, Exit, Transit, and Residence of Foreigners in Vietnam lists four eligible categories:

- foreigners who have made significant contributions to Vietnam and have been awarded state honours;
- foreign scientists or experts currently residing in Vietnam.
- foreigners sponsored by a Vietnamese citizen who is their parent, spouse, or child; and
- stateless persons who have resided continuously in Vietnam since 2000 or earlier.

Applicants in these categories must also satisfy additional conditions set out in Article 40, including compliance with Vietnamese law, stable livelihood and accommodation, and, in family sponsorship cases, lawful temporary residence in Vietnam for at least three consecutive years. The granting of permanent residence is discretionary and requires approval by the Minister of Public Security. Successful applicants are issued a Permanent Residence Card, which permits indefinite stay and multiple entry into Vietnam, subject to administrative renewal for identification purposes.

Regulatory Practice: All foreigners residing in Vietnam are subject to temporary residence registration requirements and must declare their place of stay to local police authorities, a process typically undertaken by accommodation providers or landlords. Foreigners must comply with the conditions attached to their visa or residence status, and violations such as engaging in unauthorised employment may result in administrative sanctions, visa cancellation, or expulsion. Legislative amendments in 2019 introduced electronic visas and expanded visa exemption frameworks, while a further amendment in 2023 extended electronic visa validity to ninety days with multiple entry and increased visa free stays for certain nationalities to forty-five days. Vietnam's immigration system thus distinguishes between short term visas, temporary residence permits, and permanent residence status, all administered by the Immigration Department of the Ministry of Public Security and implemented through decrees and guiding circulars.

3. What is the existing legal framework for granting international protection (refugee status, humanitarian visas, among others) to non-nationals in the state under review? Please indicate what legal pathways are available and briefly describe them.

Viet Nam does not have a formal refugee status determination system under domestic law. The country is not a party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, and there is no dedicated asylum legislation. Consequently, Vietnamese immigration law does not provide a structured legal pathway for granting refugee status or subsidiary international protection.

Entry, exit, and residence of foreigners are regulated primarily by the Law on Entry, Exit, Transit and Residence of Foreigners in Viet Nam (Law No. 47/2014/QH13, as amended in 2019 and 2023). This law governs visa issuance, temporary residence cards, and permanent

residence but does not include provisions for asylum, humanitarian protection, or refugee status determination.

In practice, individuals seeking international protection in Viet Nam are typically managed through administrative or diplomatic arrangements, often in cooperation with the United Nations High Commissioner for Refugees (UNHCR). Temporary stay may be tolerated on humanitarian grounds while durable solutions, such as resettlement to third countries, are pursued. These arrangements operate on an ad hoc basis rather than through a formal legal procedure.

Foreign nationals may obtain temporary residence through standard immigration pathways, including work visas, investment visas, family reunification visas, or temporary residence cards. However, these mechanisms are not designed as protection pathways for asylum seekers or refugees.

Residence and Protection Rights for Victims of Trafficking

Protection for victims of trafficking is governed primarily by the Law on Prevention and Combat of Human Trafficking (Law No. 66/2011/QH12), which was comprehensively revised by Law No. 53/2024/QH15, adopted on 28 November 2024²⁴³⁶. The revised law applies to both Vietnamese victims and foreign nationals trafficked into Vietnam, and emphasises victim centred protection, assistance, and safe return. This law establishes a framework for procedures for identification, protection, assistance, and reintegration of trafficking victims. Viet Nam is also a party to international and regional anti-trafficking instruments, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), ratified in 2012, and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), ratified in 2016.

Principles of Protection for Victims: The law establishes fundamental principles for protecting trafficked persons. These include protection of the life, health, dignity, honour, and personal information of victims and their family members. Victims must not be discriminated against and are entitled to support throughout the recovery and reintegration process.

Relevant provisions include Article 4 (general principles) and Article 24 of the Law on Prevention and Combat of Human Trafficking 2011, which set out the obligation of authorities to ensure protection of victims and safeguard their personal information.

Protection during Criminal Investigation and Court Proceedings: Victims who participate in criminal investigations and judicial proceedings are entitled to specific safeguards. Article 30 of the 2011 Law provides protection measures including confidentiality of personal information and safety protections for victims and their relatives where necessary. These measures aim to prevent intimidation, retaliation, or further harm during the investigation and prosecution of trafficking offences.

²⁴³⁶ National Assembly of Viet Nam, *Law on Prevention and Combat of Human Trafficking*, Law No. 66/2011/QH12, adopted 29 March 2011, effective 1 January 2012. Available at <https://thuvienphapluat.vn/van-ban/EN/Trach-nhiem-hinh-su/Law-No-66-2011-QH12-on-Human-Trafficking-Prevention-and-Combat/129107/tieng-anh.aspx>

Support for Victims Returning from Abroad: Vietnamese victims trafficked abroad who return to Viet Nam are entitled to reception and reintegration support. Under Article 25 of the 2011 Law, victims are entitled to a range of assistance measures, including temporary accommodation, medical care, psychological counselling, legal assistance, and access to social protection services. These protection measures are designed to ensure the immediate safety and recovery of victims following identification. **Article 26** regulates the reception and verification of returning victims and requires authorities to provide temporary accommodation and other essential support services.

Reintegration Support: Additional support is provided to facilitate longer-term reintegration. Article 27 provides for reintegration measures including vocational training, employment assistance, and other forms of social support to reduce vulnerability to re-trafficking. The law also provides special safeguards for victims participating in criminal proceedings. Under Article 30, victims involved in criminal investigations or court proceedings are entitled to protection measures such as confidentiality of personal information and protection from intimidation or retaliation.

The law further establishes procedures for assisting Vietnamese victims who are trafficked abroad and subsequently returned to the country. Article 26 regulates the reception and support of returning victims, including verification procedures, provision of temporary accommodation, and coordination between relevant authorities to ensure safe reception and reintegration.

Residence and Temporary Stay for Foreign Victims: The trafficking law focuses primarily on protection and assistance rather than immigration status. Foreign victims may be allowed to remain temporarily in Viet Nam during the process of victim identification, recovery, or participation in criminal proceedings. Immigration matters are generally governed by the Law on Entry, Exit, Transit and Residence of Foreigners in Viet Nam (Law No. 47/2014/QH13, amended in 2019), which allows authorities to grant or extend temporary residence where necessary.

With respect to foreign victims trafficked into Viet Nam, the trafficking law provides for protection and assistance during the period of victim identification and recovery. The 2024 Law on Prevention and Combat of Human Trafficking, particularly Article 31, establishes procedures for the reception, verification, protection, and return of foreign victims trafficked into Viet Nam. Responsibilities are assigned to public security authorities, border guards, and social protection agencies, which must coordinate to ensure that victims receive immediate protection and essential services while arrangements are made for safe return to their country of nationality or habitual residence.

During their stay in Viet Nam, foreign victims are entitled to protection and assistance comparable to that provided to Vietnamese victims. This includes access to emergency medical care, safe accommodation at social protection facilities or victim support centres, psychological counselling, legal assistance, and provision of essential needs such as food and clothing. Interpretation services must also be provided where necessary to ensure effective access to protection and support services.

With respect to residence rights, Vietnamese trafficking legislation focuses primarily on victim protection rather than immigration status. Foreign victims may be permitted to remain temporarily in Viet Nam during the process of victim identification, recovery, or participation in criminal investigations and prosecutions of trafficking offences. Their immigration status is generally managed under the Law on Entry, Exit, Transit and Residence of Foreigners in Viet Nam (Law No. 47/2014/QH13, amended in 2019), which allows authorities to grant or extend temporary residence where necessary.

Return of Foreign Victims: The 2024 Law on Prevention and Combat of Human Trafficking, particularly Article 31, establishes procedures for the reception, verification, protection, and return of foreign victims trafficked into Viet Nam. Public security forces, border guards, and social protection agencies are responsible for identifying victims, providing immediate assistance, and coordinating with the authorities of the victim's country of origin to arrange safe return.

During their period of stay in Viet Nam, foreign victims are entitled to protection and assistance comparable to that provided to Vietnamese victims, including safe accommodation, medical care, counselling, legal assistance, and interpretation services where necessary.

However, Vietnamese law does not establish a specific humanitarian residence permit or long-term protection status for foreign victims of trafficking. The legal framework prioritises victim identification, protection, temporary stay during recovery or legal proceedings, and safe return to the country of origin once conditions permit. Vietnamese law does not make access to assistance conditional on cooperation with law enforcement authorities. Victims may receive protection and support regardless of whether they participate in criminal investigations or prosecutions. Victims also have the right to legal representation and may seek compensation from traffickers through criminal proceedings.^[87] Measures to protect victims during proceedings, including closed hearings or recorded testimony, are permitted to reduce retraumatisation.

Overall, Viet Nam's legal framework emphasises criminal justice responses and victim assistance, including shelter, medical support, legal assistance, and reintegration services. While these protections are broadly consistent with Viet Nam's commitments under international and regional anti-trafficking instruments, long-term residence or international protection pathways for non-national victims remain limited, as the legal framework prioritises protection and safe return rather than permanent local integration.

Temporary Stay During Criminal Proceedings: Where a foreign trafficking victim is required as a witness in criminal proceedings, Vietnamese authorities may facilitate their continued stay in Viet Nam for the period necessary to participate in the investigation or trial. Protection measures for victims who participate in criminal proceedings are provided under Article 30 of the Law on Prevention and Combat of Human Trafficking 2011 (Law No. 66/2011/QH12), which requires competent authorities to ensure the safety, confidentiality, and dignity of victims during investigations and court proceedings.

In practice, victims may be permitted to remain in Viet Nam temporarily while investigations or court proceedings are ongoing. Immigration status during this period is generally managed

under the Law on Entry, Exit, Transit and Residence of Foreigners in Viet Nam (Law No. 47/2014/QH13, as amended in 2019), which allows authorities to grant or extend temporary stay where necessary for humanitarian or legal reasons.

The Criminal Procedure Code 2015 (Law No. 101/2015/QH13) also provides procedural mechanisms to facilitate victim participation in criminal proceedings. Article 187 allows testimony to be taken through audio visual link or other remote methods where necessary. In practice, trafficking victims may therefore be allowed to return to their country of origin before trial and provide testimony remotely or through previously recorded statements.

The 2024 Law on Prevention and Combat of Human Trafficking (Law No. 53/2024/QH15) further strengthens victim protection measures by providing procedures for victim identification and certification, which may be used to confirm victim status and ensure access to protection and assistance during recovery and legal proceedings.

Fee Waivers and Return Procedures: All protection and assistance services for trafficking victims in Vietnam are provided free of charge. Under Article 25 of the Law on Prevention and Combat of Human Trafficking 2011, victims are entitled to support services including temporary accommodation, medical care, counselling, legal assistance, and access to social protection without cost. The law expressly prohibits the collection of fees related to rescue, protection, rehabilitation, or return. Return of foreign victims is organised by Vietnamese authorities in coordination with diplomatic missions, competent foreign authorities, or international organisations such as the International Organization for Migration, and must be carried out in a manner that ensures safety, dignity, and voluntariness (Article 26). For foreign victims trafficked into Viet Nam, the 2024 Law on Prevention and Combat of Human Trafficking establishes procedures for their protection and return. Article 31 regulates the reception, verification, protection, and return of foreign victims, assigning responsibilities to public security authorities, border guards, and social protection agencies. These authorities must coordinate with diplomatic missions, competent foreign authorities, or relevant international organisations to ensure that return procedures are carried out safely and in accordance with the dignity and voluntary will of the victim.

Return procedures must prioritise the safety, dignity, and best interests of victims, and are generally coordinated with relevant authorities in the victim's country of nationality or habitual residence, as well as with international organisations involved in victim support and repatriation.

Vietnam distinguishes assisted return of trafficking victims from deportation procedures applied to immigration offenders. Return is conducted with safeguards to prevent trafficking and may include a reflection period and coordination of reintegration support.[93] Vietnam has also concluded bilateral memoranda of understanding with neighbouring countries including China, Cambodia, Laos, and Thailand to facilitate safe return of trafficked persons, particularly women and children.

Non-Punishment Principle: Vietnamese law provides that trafficking victims shall not be penalised for unlawful acts committed as a direct consequence of being trafficked, including immigration violations or prostitution related offences (Article 4 &5). This principle, expressly

reaffirmed in the 2024 Law, aligns with international standards on non-punishment of victims. Once identified as a victim, a foreign national is processed under protection mechanisms rather than immigration enforcement. Individuals who do not meet the legal definition of a trafficking victim, such as smuggled migrants without exploitation, are not entitled to these protections and may be subject to ordinary immigration measures.

Long Term Solutions and Limitations: Vietnam's anti trafficking framework prioritises return rather than long term residence for foreign victims. The law does not provide a right for foreign trafficking victims to settle permanently in Vietnam, except potentially in exceptional and discretionary circumstances. Vietnam is not a party to the 1951 Refugee Convention and does not operate a formal asylum system. Although Article 49 of the Constitution allows asylum to be granted to foreigners persecuted for progressive causes, this provision has not been applied in trafficking contexts. In practice, cases involving an inability to return safely may be addressed on an ad hoc basis, including referral to UNHCR or third country solutions.

Assessment: In summary, foreign victims of trafficking in Vietnam are entitled to immediate protection, temporary humanitarian stay, and comprehensive assistance without fees or mandatory cooperation with law enforcement.[87] They do not, however, have a legal entitlement to permanent residence. Vietnam's 2024 reforms strengthen victim centred language and protections, including clearer application of the non-punishment principle and improved return procedures.[98][99] While Vietnam broadly meets its international obligations in terms of protection and assistance, long term residency solutions for foreign victims remain limited and dependent on international cooperation.

4. How, if at all, is migration for purposes of family reunification regulated in the reviewed state?

Family Immigration Visas

Vietnamese law provides avenues for nuclear family reunification, primarily through the TT (thăm thân) visa category and corresponding residence status. A TT visa may be issued to foreign family members of Vietnamese citizens or of certain categories of foreign residents lawfully residing in Vietnam. Under Article 8 of the Law on Entry, Exit, Transit, and Residence of Foreigners in Vietnam, a TT visa is available to foreigners who are parents, spouses, or children under eighteen years of age of Vietnamese citizens, or of foreigners holding visas such as LV1 or LV2 (official missions), ĐT (investors), NN1 or NN2 (heads of representative offices or NGOs), DH (students), PV1 (resident journalists), or LĐ (workers). Accordingly, a foreign spouse or minor child of a Vietnamese citizen may obtain a TT visa, typically valid for up to twelve months and extendable or convertible to a temporary residence card. Dependents of foreign workers or investors in Vietnam are likewise eligible for TT visas. TT visas facilitate lawful entry and residence for immediate family reunification. Family members residing under TT status are not automatically authorised to work in Vietnam and must obtain a separate work permit if they seek employment.

Temporary and Permanent Residence for Family Members (article 36-40 Law on Entry, Exit, Transit and Residence of Foreigners in Viet Nam 2014 amended 2019): Spouses and

children of Vietnamese citizens may seek longer term residence following entry on a TT visa. Upon lawful entry, they may apply for a Temporary Residence Card (TRC) sponsored by their Vietnamese family member. Family reunion TRCs are commonly issued for renewable periods of up to two or three years. In addition, a foreign spouse or child of a Vietnamese citizen may qualify for permanent residence. Article 39 of the law permits a foreigner sponsored by a Vietnamese parent, spouse, or child to apply for permanent residence, subject to the conditions set out in Article 40. These conditions include compliance with Vietnamese law, secure livelihood and accommodation, and, in family sponsorship cases, lawful temporary residence in Vietnam for at least three consecutive years. Sponsorship by the Vietnamese family member is mandatory and must include a written guarantee. Permanent residence is discretionary and requires approval by the Minister of Public Security. In practice, this framework enables long term integration of immediate family members, although approval is not automatic.

Non-nuclear and Extended Family Members: Vietnamese immigration law limits family reunification primarily to the nuclear family, defined as spouses, minor children, and parents. Extended family members such as adult children, siblings, grandparents, or unmarried partners are not automatically eligible for family visas. Vietnamese law does not recognise unmarried cohabiting partners for immigration purposes, and only legally married spouses qualify for spousal visas. Vietnam does not legally recognise same sex marriage, and therefore same sex partners have no dedicated family visa category, although some may reside under alternative visa types in practice.

A foreign parent of a Vietnamese citizen may be issued a TT visa to reside in Vietnam with their Vietnamese child, provided the parental relationship is legally documented. However, where a foreign worker seeks to bring a foreign parent who has no Vietnamese nationality or lineage, Vietnamese immigration law does not provide a specific dependent relative visa. The law does not list siblings, grandparents, or adult children as eligible beneficiaries under the TT category, and Vietnam has no general dependent relative migration framework beyond immediate family.

Overseas Vietnamese and Facilitated Entry: Overseas Vietnamese persons who have acquired foreign nationality benefit from facilitated entry arrangements. Vietnam operates a five-year visa exemption scheme for overseas Vietnamese and their accompanying spouses and children, allowing extended lawful stay without a visa. This mechanism indirectly facilitates long term residence for some family members, but eligibility is based on Vietnamese origin rather than family sponsorship within Vietnam.

Marriage Migration and Practice: For a foreign spouse to obtain residence through a Vietnamese citizen, the marriage must be legally registered or recognised in accordance with Vietnamese law. Vietnamese authorities maintain measures to prevent marriage fraud and trafficking, and fraudulent marriages may be investigated. Immigration law does not impose a minimum duration of marriage for residence eligibility, but the termination of marriage may affect the basis for visa extension or residence renewal unless alternative grounds exist.

Effectiveness and Recent Developments: Vietnam's family reunification regime remains conservative, prioritising formal nuclear family relationships. There have been no major legislative reforms in 2024 or 2025 expanding family reunification categories. While

humanitarian discretion may be exercised in exceptional cases, non nuclear family reunification remains limited. Foreign spouses and children of Vietnamese citizens may reside long term through TT visas and TRCs, but marriage alone does not confer citizenship or full political rights, which are governed separately by nationality legislation.

5. What are the conditions for naturalization in the reviewed state?

Nationality Law: Vietnamese nationality is governed by the Law on Vietnamese Nationality 2008 (Law No. 24/2008/QH12), as amended in 2014 and further amended in 2025²⁴³⁷ Vietnam does not recognise citizenship by birth on the territory (*jus soli*). Nationality is acquired primarily through descent or naturalisation. Foreign nationals may apply for naturalisation, but the conditions are stringent and grants of citizenship are relatively rare. Historically, naturalisation numbers have been low and have largely involved former Vietnamese nationals who had lost citizenship rather than first time foreign applicants. Naturalisation is treated as a privilege rather than a right, and Vietnamese law generally requires applicants to renounce their existing nationality, subject to limited presidential exemptions.

Standard Naturalisation Requirements: Article 19 of the Nationality Law sets out the standard criteria for naturalisation. An applicant must:

- be at least eighteen years of age and have full legal capacity.
- have lawfully resided in Vietnam for at least five consecutive years immediately prior to application; possess sufficient Vietnamese language ability to integrate into the community; have a stable livelihood in Vietnam.
- comply with Vietnamese law and respect the Constitution; and
- not pose a risk to national security or public order.

As a general rule, applicants must also renounce their foreign nationality and adopt a Vietnamese name upon naturalisation, unless exempted by the President of Vietnam.

Vietnam does not require a formal citizenship test or standardised civics examination. The statutory language requirement is expressed as knowing Vietnamese “sufficiently,” which is assessed administratively, typically through an interview conducted in Vietnamese rather than through an exam.

Exceptions and Facilitated Naturalisation: The law allows for waivers of the residence, language, or livelihood requirements in special cases. Article 19 permits exemptions for individuals who have made special meritorious contributions to Vietnam’s national development or where naturalisation is deemed beneficial to the State. In practice, this provision applies narrowly and requires discretionary approval by the President following inter ministerial review. Vietnamese law also provides facilitated pathways for stateless persons who have resided long term in Vietnam.

²⁴³⁷ Law Amending and Supplementing a Number of Articles of the Law on Vietnamese Nationality No. 79/2025/QH15 dated June 24, 2025 of the National Assembly. Available at <https://english.luatvietnam.vn/tu-phap/law-amend-law-on-vietnamese-nationality-law-79-2025-qh15-404188-d1.html>

For spouses or children of Vietnamese citizens, citizenship is not automatic. However, Article 19 allows the President to waive the residence and language requirements for a foreign spouse, or child of a Vietnamese citizen. Amendments adopted in 2014 expanded the ability of overseas Vietnamese to reacquire nationality without renouncing foreign citizenship, creating limited dual nationality exceptions.

The 2025 amendment further broadened discretionary exemptions, allowing foreign investors, scientists, and experts with significant contributions to Vietnam to be exempted from residence, language, and livelihood requirements, and expanded presidential discretion to permit retention of foreign nationality in exceptional cases, including for those with Vietnamese spouses or parents. This is addressed in Article 22 of the Law on Vietnamese Nationality, which regulates the naturalisation of stateless persons residing in Viet Nam and allows them to apply for Vietnamese nationality under simplified conditions compared with ordinary naturalisation procedures. Implementation of these provisions is guided by Government Decree No. 16/2020/NĐ-CP²⁴³⁸, which details the implementation of several articles of the Law on Vietnamese Nationality, including procedures for nationality applications, documentation requirements, and administrative review processes.

Naturalisation Procedure and Integration: Applications for naturalisation are lodged with provincial Departments of Justice and undergo review by the Ministry of Justice and the Ministry of Public Security before submission to the President for final decision. Applicants must provide criminal record checks, proof of lawful residence and income, evidence of language ability, and documentation relating to nationality renunciation or exemption. Processing commonly takes one year or longer.

There is no formal integration or civic test. Integration is assessed indirectly through residence history, language proficiency, and confirmation by local authorities that the applicant has complied with Vietnamese laws and social norms.

Dual Nationality: Vietnam follows a restrictive approach to dual nationality. Article 4 of the Law on Vietnamese Nationality provides that Vietnamese citizens normally possess only one nationality, Vietnamese nationality, unless otherwise provided by law. Nevertheless, the law permits limited exceptions, particularly where individuals acquiring or restoring Vietnamese nationality are authorised by the President to retain their foreign nationality. These exceptions have been applied primarily to overseas Vietnamese and to certain naturalisation cases deemed beneficial to the State. Amendments adopted in 2014 and 2025 have expanded these possibilities, but dual nationality remains discretionary and relatively limited in practice.⁵

Practice and Assessment: Naturalisation in Vietnam remains infrequent and selective. The renunciation requirement, language expectation, and discretionary approval process act as significant barriers for many foreign residents. Vietnamese citizenship continues to reflect a cautious approach grounded in sovereignty considerations, with recent reforms signalling only

²⁴³⁸ Decree No. 16/2020/NĐ-CP dated 03 February 2020 detailing the implementation of a number of articles of the Law on Vietnamese Nationality. Available at <https://english.luatvietnam.vn/decreed-no-16-2020-nd-cp-dated-february-03-2020-of-the-government-on-detailing-a-number-of-articles-and-measures-to-implement-the-law-on-vietnamese-n-180260-doc1.html>

a modest liberalisation aimed at attracting high value talent and accommodating family-based cases.

Part II – Rights While Staying

*In answering the following questions, please indicate the legal framework applicable to **at least each of the following categories** of non-nationals:*

- a. temporary and permanent resident migrants;*
- b. regular migrants benefiting from more favourable treatment based on their nationality (e.g. EU citizens in EU countries, New Zealanders in Australia, etc.);*
- c. undocumented migrants.*

If the framework is different from the ones already described, please also specify the legal framework applicable to:

- d. refugees;*
- e. asylum seekers;*
- f. other beneficiaries of international protection, if applicable.*

If there are other relevant categories of non-nationals, according to the reviewed state's domestic law, please indicate them and submit the information accordingly.

(Note: In discussing rights of non-nationals “while staying” in Vietnam, it is important to consider different categories of migrants. The legal framework can vary for (a) temporary vs. permanent residents, (b) foreign nationals from countries with special agreements (e.g. some neighbouring countries or under ASEAN frameworks), and (c) undocumented migrants. Vietnam’s laws generally apply to all individuals on Vietnamese territory, but certain rights and benefits are reserved to Vietnamese citizens. Below, the extent to which non-citizens enjoy each right is examined. Where applicable, distinctions for specific groups (refugees, stateless persons, etc.) are noted; however, Vietnam has very small populations in those categories and no separate legal regime for them, as it is not party to the Refugee or Statelessness Conventions.)

II.1 – Non-discrimination

1. Does the reviewed state have a specific domestic legal framework on non-discrimination also covering non-nationals?

Constitutional Equality: Vietnam’s Constitution enshrines equality and non-discrimination as fundamental principles. Article 16 of the 2013 Constitution provides that: *“All people are equal before the law. No one shall be discriminated against in political, civil, economic, cultural or social life.”*²⁴³⁹

The use of the term “all people” (*mọi người*), rather than “citizens,” indicates that the constitutional guarantee of equality applies in principle to everyone within Vietnam’s jurisdiction, including non-nationals.

The Constitution’s human rights chapter further contains specific equality clauses. Article 26 affirms gender equality and prohibits discrimination on the basis of gender, while Article 24 guarantees freedom of belief and religion to “everyone” and affirms that all religions are equal before the law. Together, these provisions suggest that core non-discrimination principles are not formally limited to citizens, even though some rights elsewhere in the Constitution are citizen specific.

Laws Against Discrimination: Vietnam does not have a single comprehensive anti-discrimination statute. Instead, non-discrimination principles are embedded across sectoral legislation. In the field of employment, the Labour Code 2019 expressly prohibits discrimination in labour relations on grounds including gender, race, skin colour, social origin, nationality, religion, belief, disability, age, or other status (Article 8)²⁴⁴⁰. The Code also affirms workers’ right to freely choose employment and occupation and to be treated equally in labour relations, including entitlement to equal pay for work of equal value (Article 5).

Although Article 12 of the Labour Code concerns State labour management responsibilities rather than an independent equality clause, read together the Code’s general principles establish that employers in Vietnam, including those hiring foreign workers, must not engage in discriminatory practices in recruitment, remuneration, or working conditions on prohibited grounds. In principle, a foreign worker performing the same work under comparable conditions as a Vietnamese worker is entitled to equal labour protections and pay. Hiring practices that exclude candidates solely on the basis of nationality may therefore be inconsistent with labour law, though enforcement in practice remains uneven.

Related legislation reinforces these norms. Employment Law affirms equality in access to employment and vocational training opportunities without discrimination while the Trade

²⁴³⁹ Constitution of the Socialist Republic of Viet Nam (2013), adopted by the National Assembly on 28 November 2013, effective 1 January 2014. Available at: <https://xaydungchinh sach.chinhphu.vn/toan-van-hien-phap-nuoc-cong-hoa-xa-hoi-chu-nghia-viet-nam-119231225213002261.htm>

²⁴⁴⁰ Socialist Republic of Vietnam, Labour Code (Law No. 45/2019/QH14), adopted by the National Assembly on 20 November 2019, effective 1 January 2021. Available at: <https://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11135>

Union Law requires respect for the lawful rights and interests of workers and prohibits acts that infringe upon equality in labour relations.

Outside the workplace, Vietnam has enacted a number of laws addressing discrimination against specific vulnerable groups, including the Law on Gender Equality 2006²⁴⁴¹, the Law on Persons with Disabilities 2010²⁴⁴², the Law on Children 2016²⁴⁴³, and the Law on the Elderly 2009²⁴⁴⁴. These statutes prohibit discrimination against women, persons with disabilities, children, and older persons, respectively, and require equal access to services such as education, health care, transportation, and participation in social life.

These laws generally do not expressly distinguish between citizens and non-citizens. For example, the Law on Gender Equality refers broadly to equality between “men and women” across political, economic, labour, and social domains, and the Law on Persons with Disabilities mandates accessibility and non-discrimination in public facilities and services without reference to nationality. In practice, however, implementation is largely citizen-focused. Many social assistance benefits created under these laws, such as monthly allowances for elderly or severely disabled persons, are provided to Vietnamese citizens through implementing decrees and budgetary mechanisms.

Nonetheless, a foreign resident may still invoke these laws where relevant. For instance, a foreign woman employed in Vietnam may rely on the Labour Code and the Law on Gender Equality to challenge gender-based wage discrimination, and a foreign person with a disability is, in principle, entitled to accessibility standards imposed on public and private service providers, even if they are not eligible for state-funded social benefits.

Protection of Foreigners’ Rights:

The Constitution of the Socialist Republic of Viet Nam explicitly affirms the legal protection of foreigners. Article 48 of the 2013 Constitution provides that “*Foreigners residing in Viet Nam shall abide by the Vietnamese Constitution and law; and have their lives, property, rights and legitimate interests protected by Vietnamese law.*” This establishes that, at least in principle, non-nationals are entitled to legal protection on an equal footing with citizens. Accordingly, a foreigner who is a victim of a criminal offence or a civil wrong is entitled to seek redress before Vietnamese authorities and courts in the same manner as a Vietnamese national.

²⁴⁴¹ Law on Gender Equality, Law No. 73/2006/QH11, adopted by the National Assembly of the Socialist Republic of Vietnam on 29 November 2006, effective 1 July 2007. Available at: <https://thuvienphapluat.vn/van-ban/EN/Quy-en-dan-su/Law-No-73-2006-QH11-of-November-29-2006-on-gender-equality/91540/tieng-anh.aspx>

²⁴⁴² Law on Persons with Disabilities, Law No. 51/2010/QH12, adopted by the National Assembly of the Socialist Republic of Vietnam on 17 June 2010, effective 1 January 2011.

²⁴⁴³ Law on Children, Law No. 102/2016/QH13, adopted by the National Assembly of the Socialist Republic of Vietnam on 5 April 2016, effective 1 June 2017.

²⁴⁴⁴ Law on the Elderly, Law No. 39/2009/QH12, adopted by the National Assembly of the Socialist Republic of Vietnam on 23 November 2009, effective 1 July 2010.

Limitations in Scope:

Despite these constitutional guarantees, a number of laws expressly reserve specific rights to citizens, resulting in differentiation based on nationality rather than formal discrimination. For example, the Law on Children (2016) defines a “child” as a person under 16 years of age without reference to nationality, implying protection for all children in Viet Nam. However, implementing regulations governing social assistance and allowances limit eligibility to Vietnamese citizens.] Similarly, political rights such as voting, candidacy, and participation in political organizations are constitutionally and legislatively restricted to citizens under the Constitution and electoral laws. These distinctions are generally framed as citizenship-based differentiation, a practice permitted under international law.

A notable domain of differentiation is land ownership. Article 54 of the Constitution and the Land Law confirm that land is under collective ownership of the people and managed by the State. Only Vietnamese individuals and entities may hold land-use rights, while foreigners are limited to leasing land or owning buildings in accordance with specialized legislation.

Migrant-Specific Protections:

Viet Nam has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, it is a party to core human rights treaties including ICERD, CEDAW, and the CRC, which require non-discriminatory application of rights to all persons within its jurisdiction. Viet Nam also ratified ILO Convention No. 111 on Discrimination (Employment and Occupation) in 2020, reinforcing its obligation to eliminate discrimination in employment, including on grounds of nationality. Following ratification, domestic labour legislation was revised to strengthen equal opportunity and non-discrimination principles.

Permanent Residents: Foreigners granted permanent residence status in Viet Nam are, by regulation, entitled to most civil, economic, and social rights enjoyed by citizens, excluding political rights and other citizen-only obligations such as military service. Government regulations governing permanent residence expressly state that permanent resident foreigners enjoy rights and obligations equivalent to those of Vietnamese citizens, except where the law reserves rights exclusively for citizens ²⁴⁴⁵. In practice, however, the number of foreign permanent residents remains very small, and the scope of these rights has rarely been tested through litigation or administrative practice.

Enforcement and Practice: In practice, overt legal discrimination against foreigners is limited. Instances of unequal treatment tend to arise in employment practices, such as nationality preferences in recruitment, which are technically unlawful under the Labour Code. Other challenges reported by foreigners relate primarily to administrative procedures and social

²⁴⁴⁵ Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam 2014 (as amended 2019) Law No. 47/2014/QH13, adopted by the National Assembly on 16 June 2014, effective 1 January 2015, amended by Law No. 51/2019/QH14, Article 39.

integration rather than formal legal exclusion. Ethnic discrimination within Viet Nam remains a human rights concern, but it primarily affects Vietnamese citizens belonging to ethnic minority groups rather than non-nationals.

Overall, Viet Nam's legal framework formally prohibits discrimination on major grounds and extends legal protection to all individuals within its territory, including non-nationals. Enforcement mechanisms remain uneven, and citizenship-based distinctions persist in areas such as political participation and access to certain public benefits. In its 2023 review, the UN Committee on the Elimination of Racial Discrimination encouraged Viet Nam to adopt more comprehensive anti-discrimination legislation and to clarify protections for non-citizens across a range of social and economic rights.

II.2 – Civil and political rights

2. To what extent, if at all, is political participation ensured to non-nationals in the reviewed state?

Viet Nam is a one-party socialist republic, and political rights such as voting, candidacy, and participation in political institutions are reserved exclusively for Vietnamese citizens. Non-nationals do not have the right to vote or stand for election at any level. Article 27 of the 2013 Constitution provides that citizens of Viet Nam who reach 18 years of age have the right to vote, while citizens who reach 21 years of age have the right to stand for election to the National Assembly and People's Councils. Article 28 further affirms citizens' rights to participate in state and social management and to discuss and recommend policies to state authorities. Consistent with the Constitution, the Law on Election of Deputies to the National Assembly and People's Councils 2015 (Law No. 85/2015/QH13) confirms that only Vietnamese citizens aged 18 or older may vote, and citizens aged 21 or older may stand as candidates in elections. There is no provision in Vietnamese law allowing foreign residents to vote in local or national elections.

Foreigners are also ineligible to become members of the National Assembly or People's Councils, as eligibility for these bodies is restricted by law to Vietnamese citizens. Likewise, membership in the Communist Party of Viet Nam is limited to citizens, and there is no legal mechanism through which a foreign resident may participate directly in formal political decision-making.

This exclusion reflects a general principle of Vietnamese constitutional law that political rights attach to citizenship. Even for Vietnamese citizens, political participation is institutionally constrained within the framework of a single-party system, with no competitive multi-party elections for national leadership positions. As a result, non-nationals have virtually no role in formal political life.

A limited form of consultative engagement exists in practice. In major cities, foreign residents or business groups may be invited to participate in advisory or consultative forums, such as foreign business associations or ad hoc consultations facilitated by the Viet Nam Fatherland

Front. These mechanisms are informal, discretionary, and non-decision-making in nature, and do not constitute political rights under domestic law.

Historically, Viet Nam has adopted a more inclusive approach toward overseas Vietnamese (Việt Kiều), allowing dual nationality in certain cases and encouraging participation in national development. However, this facilitation is based on Vietnamese origin rather than foreign nationality. Foreign nationals without Vietnamese lineage do not benefit from comparable inclusion in political life.

3. Aside from the right to vote, are there any distinctions in the enjoyment of civil and political rights between nationals and non-nationals in the reviewed state?

For example, freedom of movement and access to justice. One example is that, in Australia, regional sponsored visa holders have obligations to stay in a specific Australian state (e.g., SA or Victoria) for two years, thus having their movement restricted.

Civil Liberties: Non-nationals in Vietnam enjoy many civil liberties on paper, but with some differences in how they are exercised:

Freedom of Movement: The 2013 Constitution guarantees freedom of movement and residence to citizens (Article 23). Foreigners lawfully admitted to Viet Nam may travel and reside within most parts of the country, subject to compliance with visa conditions and residence registration requirements. Certain areas, particularly border regions, islands, and zones of military or national security significance, may be restricted to foreigners by administrative or security regulations. Accordingly, freedom of movement for non-nationals is conditional rather than absolute, and violations of immigration rules may result in detention or expulsion.

Freedom of Speech, Press, Assembly, and Association: Article 25 of the Constitution guarantees freedoms of speech, press, assembly, association, and demonstration to “citizens.” As a result, non-nationals do not enjoy constitutional protection for political expression or collective civic action. In practice, restrictions on political speech and public assembly apply broadly, and foreign nationals who engage in unauthorized protests or political advocacy may be subject to administrative sanctions, criminal liability, or expulsion under national security and public order laws. Foreign journalists are subject to specific visa requirements and regulatory oversight.

Freedom of Religion or Belief: Freedom of belief and religion is guaranteed to “everyone” under Article 24 of the Constitution. Foreigners may attend religious services and practice their faith as congregants. However, the Law on Belief and Religion 2016 requires foreign religious practitioners or missionaries to obtain official approval to conduct religious activities in Viet Nam. Thus, while personal worship is protected, organized religious activities by foreigners are regulated.

Access to Justice: Foreigners have full legal standing before Vietnamese courts. Civil, administrative, and criminal procedure laws provide that foreigners may initiate proceedings, defend their rights, and participate in judicial processes on an equal procedural footing with citizens. In criminal proceedings, foreign defendants and witnesses are entitled to interpretation

if they do not speak Vietnamese. While penalties under substantive criminal law apply equally, deportation may be imposed as an additional or alternative measure for foreign offenders. The Constitution also provides that Viet Nam may grant asylum to foreigners persecuted abroad for progressive causes (Article 49), though this provision has been applied sparingly in practice.

Privacy and Inviolability of Home: The Constitution guarantees the inviolability of private life, correspondence, and domicile to “everyone” (Articles 21 and 22). These protections apply equally to foreigners. In practice, inspections of foreign residences for immigration compliance occur more frequently, but such actions remain subject to legal authorization requirements.

Non-discrimination in Civil Life: In civil and commercial matters, foreigners are generally treated on an equal basis with citizens. Contract law, tort law, and procedural rules do not distinguish on the basis of nationality. The principal categorical exclusions concern land-use rights and certain inheritance-related restrictions, which are addressed separately under property law.

In summary, non-nationals in Viet Nam enjoy broad civil rights protections, including access to justice, protection of person and property, freedom of religion, and privacy. However, political rights are reserved to citizens, and foreigners are excluded from voting, candidacy, political association, and collective political expression. These distinctions reflect Viet Nam’s constitutional structure, under which political participation is closely linked to citizenship, while basic human rights are guaranteed to all persons within the territory.

Restrictions: Vietnamese law permits the administrative expulsion of foreign nationals on grounds of national security, public order, or public safety. Under the Law on Entry, Exit, Transit, and Residence of Foreigners, the competent authorities, including the Minister of Public Security, may order expulsion, deny entry, or place a foreigner on an inadmissibility list where the individual is deemed to threaten national security or social order. In practice, foreign nationals have been expelled for participating in unauthorized protests, engaging in political activities, or violating national security provisions, including offences related to subversion or espionage.

Foreigners may also be subject to restrictions on residence or movement in exceptional circumstances. While not expressly framed as punitive measures, such restrictions may be imposed through administrative or emergency regulations, particularly in areas designated for national defense or security, or during public emergencies. During the COVID-19 pandemic, for example, foreign residents were subject to quarantine, travel limitations, and public health controls on the same legal basis as Vietnamese citizens, although in practice foreign nationals sometimes experienced heightened scrutiny in enforcement.

Conclusion: Overall, non-nationals in Vietnam enjoy a fundamentally secure status in civil law. They benefit from legal protection of their life, property, privacy, and access to justice, and are generally treated on an equal footing with citizens in civil and commercial matters. However, they have no role in formal governance and face significant limitations on political participation and collective civic action. Political rights in Vietnam are constitutionally linked to citizenship, while fundamental human rights are recognized as applicable to all persons within the territory.[154][155]

The distinction between citizens and non-citizens is consistently maintained in Vietnamese law in areas such as electoral rights, eligibility for public office, land-use rights, and access to public benefit entitlements. By contrast, equality before the law is broadly upheld in areas such as criminal justice, contract law, and civil liability. This balance is encapsulated in the constitutional guarantee that Vietnam “protects the lawful rights and interests of foreigners residing in Vietnam,” while regulating those rights within the framework of its socialist legal order and national security priorities.

4. Are there any limitations to non-nationals’ right to buy and own property within the reviewed state?

Land and Real Property: In Vietnam, all land is owned by the people as a whole and managed by the State (socialist public ownership of land). Citizens and organizations receive land use rights (LURs) rather than outright ownership. Foreign individuals, under the Land Law, are not eligible to receive land use rights directly except in certain controlled circumstances. They cannot own land in their own name. The only real property foreigners can “own” is housing (buildings) under the Housing Law, and even that with restrictions.

Housing (Apartment/House Ownership): A major change came with the Housing Law 2014²⁴⁴⁶, which greatly expanded foreigners’ rights to purchase residential property. Under Article 159 of that law, foreign individuals who are permitted to enter Vietnam (i.e. who hold a valid visa) are allowed to buy and own homes in Vietnam. This was a liberalization compared to earlier law that required residency or marriage to a Vietnamese. Now, any foreigner with a valid entry (not a short blacklist) can purchase: (a) apartments (condominiums) in commercial housing developments; (b) detached houses (villas or townhouses) in designated commercial projects (not in areas vital to national defense and security). There are quantitative limits: a foreign individual may own at most 30% of the units in a given apartment building, or for landed houses, not more than 250 houses in one administrative ward. These caps ensure that foreigners cannot collectively own an overwhelming share of housing in any locality, protecting against foreign takeover of neighborhoods. Another key limit is duration: foreign ownership of a home is typically for 50 years (from the issuance date of the ownership certificate), though the law allows a one-time extension of another 50 years subject to approval. After that, presumably the foreigner must transfer or dispose of the property (or possibly, by then, the law could allow further renewal). If the foreigner has a Vietnamese spouse, then the ownership is as stable and long-term as a Vietnamese (no time limit).

Foreigners who own homes *do not own the land* – they get a share of the land use rights corresponding to the property (for an apartment, a proportionate share of the land of the condo; for a landed house, a leasehold on the land for the duration). Effectively, it’s like a 50-year leasehold property. The law treats this as ownership for most purposes: the foreigner gets a

²⁴⁴⁶ Socialist Republic of Vietnam, Law on Housing, Law No. 65/2014/QH13, adopted by the National Assembly on 25 November 2014, effective 1 July 2015. Available at: <https://thuviennhadat.vn/van-ban-phap-luat-viet-nam/law-no-65-2014-qh13-on-housing-264778.html>

“certificate of house ownership” (often the pink book) indicating their ownership and term. They have rights to sell, rent out, or bequeath the property within the term. For instance, a foreigner can purchase a condo and later sell it to another (the buyer could be Vietnamese or eligible foreigner; if to a Vietnamese, it converts to freehold). If the foreign owner dies, their heirs (even if foreign) can inherit the property but must also dispose of it within 12 months if not eligible to own it (e.g. if inheritance exceeding the 30% limit, authorities can require a sale).

Restrictions for National Security: Foreigners are barred from owning property in areas critical to national defense and security. The Ministry of National Defense and Ministry of Public Security, together with provinces, designate which projects or locations are off-limits. For example, real estate near military bases, border zones, or on certain islands may not be sold to foreigners. This is an important caveat – even if a foreigner is willing to buy, if the housing project is in a restricted location, they cannot. In practice, lists of permitted projects are issued in cities. Most urban areas (Hanoi, Ho Chi Minh city) have many projects open to foreigners, whereas border provinces might restrict sales.

Other Real Property (Commercial land, factories): A foreign individual cannot directly own commercial property (like a shop or factory) in their name, but they can form a foreign-invested company which can lease land and own buildings. For instance, if a foreigner wants to buy a building for business, they typically establish a Vietnamese company (with them as owner) – that company (as a legal entity) can acquire land use rights on a leasehold from the State (common leases are 50 years). The distinction is between foreign individual vs. foreign-invested enterprise: The latter, being a Vietnamese legal entity, can be granted land by the State or lease from landlords. Many foreigners use this route for long-term commercial needs ²⁴⁴⁷.

Movable Property: Foreigners face few restrictions on owning movable assets. They can own cars, motorbikes (must register and get a local driver’s license), bank accounts, stocks (with some limits on buying shares of companies in sectors with foreign ownership caps, but that’s more about foreign capital than the person’s residence status). ²⁴⁴⁸ They can also operate businesses (with licensing) ²⁴⁴⁹. **Intellectual property** can be owned by foreigners and protected under IP law equally ²⁴⁵⁰.

Agricultural land: Not open to foreign individuals. Even Vietnamese citizens have usage rights but cannot sell agricultural land freely (only transfer within quotas). Foreigners cannot own farmland; they could lease it via enterprises for agricultural projects with government approval ²⁴⁵¹.

²⁴⁴⁷ Land Law, Law No. 45/2013/QH13, adopted 29 November 2013, effective 1 July 2014, article 5, 169, and 174; Law on Investment, Law No. 61/2020/QH14, adopted 17 June 2020, article 22, Law on Housing, Law No. 65/2014/QH13, adopted 25 November 2014, effective 1 July 2015, article 159, 160, 161.

²⁴⁴⁸ Civil Code, Law No. 91/2015/QH13, adopted 24 November 2015, article 158. Road Traffic Law, Law No. 23/2008/QH12 2008

²⁴⁴⁹ Law on Investment, Law No. 61/2020/QH14, art. 22

²⁴⁵⁰ Intellectual Property Law, Law No. 50/2005/QH11. 2005 (amended 2009, 2019, 2022), article 5

²⁴⁵¹ Land Law, Law No. 45/2013/QH13, adopted by the National Assembly on 29 November 2013, effective 1 July 2014, Article 5, 179, 191, 169, 126. Available at: <https://english.luatvietnam.vn/the-law-no-45-2013-qh13-dated-november-29-2013-of-the-national-assembly-on-land-83386-doc1.html>

Comparative Context: Compared to many neighboring countries, Vietnam's regime since 2015 is actually quite open in letting foreigners buy apartments, albeit with leasehold terms. For example, Thailand allows condo ownership (freehold) up to 49% of a building; Vietnam allows 30% but with a term. China, as noted in the China report, requires one-year work/study and only one home for self-use. Vietnam does not require one-year prior residence – even a newly arrived foreigner can buy (subject to aforementioned conditions)[100]. This change was to attract foreign investment in real estate. By mid-2018, over 700 foreign individuals had bought properties in Ho Chi Minh City under the new law, and that number has grown ²⁴⁵².

Land Use Rights via Vietnamese Spouse: A foreigner married to a Vietnamese citizen can jointly own property as a marital asset. The 2014 Housing Law allows that if one spouse is Vietnamese, the couple can get a long-term ownership certificate (no 50-year limit) in both names, and the foreign spouse is not treated as foreign for that property. Essentially, marriage to a local confers the same property rights as locals for their home. If the Vietnamese spouse passes away and leaves the property to the foreigner, the foreigner can keep it as a Vietnamese would (if they inherit as the sole owner and are still on a long-term visa, in practice authorities have allowed continuing ownership, though eventually if they leave Vietnam permanently, they might have to transfer it).

Inheritance by Foreigners: Foreigners can inherit houses/land from Vietnamese relatives or others. The Law on Housing permits a foreign heir who is not eligible to own the house (say the foreigner already owns too many in that ward, or the foreigner doesn't want to reside in VN) to receive the value by selling the house. If eligible, they can keep the house under a 50-year ownership (starting from the inheritance date if they didn't have one before).

Rental and Other Rights: A foreign property owner (apartment) has the right to lease it out for income. They must register the lease with authorities and pay tax on rental income, but it is allowed – one reason Vietnam opened housing to foreigners was to spur investment and the rental market. Many foreigners who bought condos simply rent them to tenants (often local or other expats).

Non-nationals' Right to Use Public Land: Foreigners cannot directly be allocated land by the State except via investment projects. But they can use public land for rent (like renting state-owned premises) – e.g. a foreign NGO can rent a building or office ¹⁸.

Protection of Property: Foreigners' property is protected by law. Article 32 of the Constitution covers ownership rights of organizations and individuals (not distinguishing nationality) and declares that lawful possession is not arbitrarily expropriated. In Vietnam, there have been no cases of the government seizing a foreign individual's apartment without due legal basis (the law would require compensation if for public purpose taking, just as for locals). However, because all foreign ownership of land is leasehold, ultimately the land reverts to the State after lease expiry, which is part of the known legal framework (and presumably accounted for in property values).

²⁴⁵² <https://vir.com.vn/clarifying-rules-on-foreign-property-ownership-122406.html&link=autochanger>

Conclusion: Non-nationals in Vietnam have broad rights to own movable property and significant rights to own immovable property (housing) introduced by the 2014–2015 reforms. They cannot own land outright and face limits on type, location, quantity, and duration of real estate ownership. These limitations are rooted in Vietnam’s socialist land regime and national interest concerns. Nonetheless, it is *possible* for a foreigner to buy a home for personal residence in Vietnam – something not possible in the past. Permanent resident foreigners, as noted earlier, are excepted from some of the Housing Law limits (though practically few PR foreigners exist). For example, a foreigner with permanent residence may be treated similarly to a citizen regarding property (the 30% cap might still formally apply, but they have indefinite tenure on owned property).

Illustrative Example: If a foreign professional has worked in Vietnam 5 years and wants to settle, they can purchase a condominium in Hanoi in their own name (50-year renewable leasehold). They must ensure the building’s foreign ownership quota isn’t exceeded. They will get a pink ownership certificate. They can live in it or rent it. But they cannot purchase a plot of empty land to build a house from scratch – that would require setting up a company or having a Vietnamese joint owner. Many foreigners thus opt for condos or villas in managed estates which are designated as eligible for foreign ownership. There have been calls from developers and expatriates to extend the 50-year term to freehold for foreigners, but as of 2025, the law remains unchanged.

In rural or sensitive areas, foreigners effectively may not own property. For example, a foreign spouse of a farmer cannot own the farmland; at most, if they inherit, they must transfer it to an eligible owner. Vietnam’s rationale is to prevent foreign speculative control of land and maintain sovereignty – a concern shared with China’s approach. However, for encouraging investment, Vietnam found a balance by allowing significant but controlled foreign property rights.

II.3 – Economic, social, and cultural rights

Right to work

5. What conditions apply for non-nationals to be able to engage in formal employment?

Legal Framework: Foreign nationals are allowed to work in Vietnam, but employment is highly regulated. The key instruments are the Labor Code 2019 (effective 2021) and Decree 152/2020/ND-CP guiding foreign worker management²⁴⁵³. Vietnam’s principle is that foreign workers are only permitted for skilled or necessary positions that local workers cannot readily fill, ensuring protection of the domestic labor force. At the same time, the law affirms that

²⁴⁵³ Socialist Republic of Viet Nam, *Labour Code*, Law No. 45/2019/QH14, adopted by the National Assembly on 20 November 2019, effective 1 January 2021. Available at: <https://thuvienphapluat.vn/van-ban/EN/Lao-dong-Tien-luong/Law-45-2019-QH14-Labor-Code/432162/tieng-anh.aspx>

foreign employees with work authorization enjoy equal labor rights as Vietnamese employees in terms of wages, working conditions, and protection under labor laws.

Work Permit Requirement: As a general rule, a foreigner must have a work permit to be employed in Vietnam (Article 151 of Labor Code). The conditions to obtain a work permit include being at least 18 years old, in good health, having no criminal record or pending criminal charges, and having “technical qualifications or expertise” suitable for the job. The employer in Vietnam must sponsor the application. Certain categories of foreign workers are exempt from needing a permit (Article 154 of Labor Code) – these include for example: owners or shareholders of companies in Vietnam, chiefs of representative offices, internal transferees within multinational companies in 11 service sectors, volunteers, experts coming for under 30 days, etc. (Decree 152 lists 20 exemption cases). Exempt foreign workers still need to notify labor authorities of their status.

A work permit is typically valid for up to 2 years, renewable once (after which a new application is needed). Foreign workers must also hold an appropriate visa or TRC (usually an LD visa/temporary residence card marked as working).

Employment of Family Members: Dependents on a TT visa (spouses) are not automatically allowed to work. They would need to convert to a work visa and obtain a permit if they find a job. One exemption in Decree 152 is for foreign spouses of Vietnamese citizens – they are exempt from work permit requirements (Article 154 of Labor Code) as a gesture to mixed families, although they still should notify authorities. Similarly, foreign students (DH visa) and internal company transferees might be exempt from permits but have limits on work.

Unemployment and Change of Jobs: A foreign worker who loses their job or resigns can stay in Vietnam for the remaining duration of their visa/TRC, but to take a new job they need a new work permit and sponsor. There is no “open market” for foreigners to freely change jobs without repeating the permit process (unlike a permanent resident who could work anywhere). Foreign workers are not covered by unemployment insurance (which is a benefit for Vietnamese only), and they do not receive state assistance if unemployed. They also cannot claim the severance payment from the employer if they didn’t meet the criteria (though generally they do get severance pay like locals if they worked 12+ months)²⁴⁵⁴.

Enforcement: Hiring a foreigner without a permit can result in fines for the employer and deportation for the worker. Vietnam does enforce these rules; periodic inspections occur in industries known to hire foreigners (education, tourism, restaurants). However, enforcement is not perfect – some foreigners work illegally (especially as English teachers or consultants) and if caught, are usually expelled rather than prosecuted.

Summary: Foreign nationals can access the formal employment market in Vietnam in skilled positions, *provided they and their employers go through the work permit process*. They enjoy equal labor rights under Vietnamese law once employed. Permanent residents (if any) are treated as local workers and do not need work permits; they can work freely except in restricted sectors. Irregular migrants (those without valid visas) are not allowed to work at all; if found

²⁴⁵⁴ Labour Code 2019, article 151 and Decree No.152/2020/ND-CP, article 12

working they face deportation. Refugees (Vietnam has a tiny number under UNHCR mandate) do not have a recognized right to work – since Vietnam is not a Refugee Convention member, refugees are treated under ad hoc arrangements, often not permitted to work legally (the China section noted refugees recognized by UNHCR in China cannot work – Vietnam is similar, as UNHCR-recognized refugees in Vietnam have no domestic legal status and typically are resettled to third countries, not integrated into the workforce).

In recent years, Vietnam, through free trade agreements (like CPTPP, EVFTA), has committed to more openness: it pledged not to impose nationality-based hiring caps in certain sectors and to treat foreign workers fairly. For example, under the ASEAN Economic Community, some mutual recognition arrangements allow easier movement for certain professionals (doctors, architects) from ASEAN countries, but Vietnam still requires them to get permits, albeit with recognized credentials.

Conclusion on Right to Work: A non-national has the right to work in Vietnam only if conditions are met, and this right is not as freely exercisable as for a citizen (who obviously doesn't need permission). Once those conditions are met, the law protects foreign employees equivalently to Vietnamese – e.g. minimum wage, maximum hours, overtime pay, rest, safety, and social insurance are guaranteed. Violations (like an employer failing to pay a foreigner due wages or discriminating) can be pursued through the labor inspectorate or court, just as by any worker. In practice, foreign professionals often negotiate contracts above labor law minima, but if issues arise they do have legal recourse. The biggest limitations remain the bureaucratic barrier to entry into the job market and exclusion from certain jobs. Vietnam is gradually refining these policies to ensure needed foreign talent can contribute to the economy while safeguarding opportunities for its citizens.

6. Are there any quotas or limitations for businesses to hire non-nationals? For example, some countries permit only 10% of companies' employees to be non-nationals, while other countries require companies to prove that they tried to hire national workers before hiring a non-national (e.g. labour market testing in Australia).

Labor Market Test: Vietnamese Labour law requires employers to justify the hiring of a foreigner. Companies must submit an annual report to the provincial labor department explaining their need for foreign workers and get approval for each job position to be filled by a foreigner (article 152). This is in effect a labor market test – authorities will only approve if they believe no qualified Vietnamese is available for that position. However, in occupations requiring high expertise (e.g. language teachers, technical experts), this is often a formality. Still, Vietnam does impose strict quotas in some contexts: for example, foreign teachers at certain education institutions must not exceed a ratio (though this is more about visa category than a fixed percentage).

Small businesses and even state agencies can employ foreigners if requirements are met; even government departments occasionally hire foreign experts (though foreigners cannot be formal civil servants or hold posts of authority in the state).

7. Are there any professions or sectors that non-nationals are not allowed to work in? For example, work as a public civil servant or in the media sector.

Public sector jobs (like government officers, police, military) are reserved for citizens – Vietnamese nationality is required by law to enter the public service. Additionally, certain professions have nationality conditions (e.g. lawyers practicing Vietnamese law in court must have a Vietnamese law degree and be a Vietnamese citizen, though foreign lawyers can operate as consultants on foreign law). Media: foreigners cannot work as editors-in-chief of Vietnamese press or as journalists gathering news without accreditation (there is a licensing scheme for foreign media).

Rights in work

8. To what extent, compared to nationals, do labour protections apply to non-nationals? For example, minimum wage, overtime, maternity leave, among others.

Equality at Work: Once legally employed, a foreign worker has the same rights to minimum wage, maximum working hours, overtime pay, rest days, social insurance, etc., as Vietnamese workers. The Labor Code explicitly states that foreign workers are protected by Vietnamese labor law just like locals (except for union leadership rights which are citizen-only). For instance, Vietnam has region-based minimum wages that apply to all employees – a foreign employee's contract must comply with these minimum wages. The Code's anti-discrimination clause (Article 8) means an employer cannot pay a foreigner less (or more) solely due to nationality (in fact, oftentimes foreigners are paid more due to skills, which is not illegal if based on merit). Working conditions like safety standards and working hour limits (8 hours/day, 48 hours/week standard) protect foreigners equally. Maternity rights: female foreign employees are entitled to 6 months maternity leave and related benefits under the Social Insurance Law if they contribute to the compulsory insurance.

Trade Union and Collective Bargaining: Foreign employees may join trade unions in their enterprise. Vietnam's Trade Union Law doesn't explicitly forbid foreign workers from union membership. In practice, few foreigners join unions (due to short stays or being in managerial roles), but legally if a labor union exists in the company, any employee with a labor contract (including foreigners) can be a member. They cannot, however, found their own separate unions or become union officers above company level. Vietnam in 2019 allowed independent worker representative organizations at the grassroots level (as part of CPTPP commitments), but those are also generally envisioned for Vietnamese workers.

As noted, Vietnam's labor law provisions on wages, hours, and benefits apply equally to foreign workers. Specifically, minimum wage laws do not differentiate by nationality – foreigners must be paid at least the regional minimum wage (which is adjusted yearly). Overtime: The same overtime limits (usually ≤ 40 hours/month and ≤ 200 hours/year, or 300 in special sectors) and overtime pay rates (150% normal pay for extra hours, higher on weekends/holidays) apply to foreigners. Leave: Foreign employees are entitled to the standard 12 days annual leave (increases with seniority) and public holidays with pay. Maternity leave: 6 months at maternity allowance (paid via social insurance) is available to foreign women who have contributed to

social insurance for at least 6 months before childbirth. There has been uncertainty among some employers about foreign workers' eligibility for certain benefits – for instance, originally foreigners weren't included in mandatory social insurance for maternity, but since 2018 they are (except for unemployment). Now a foreign woman employee does receive maternity benefits just like a local, funded by the social insurance that both she and the employer contribute to²⁴⁵⁵.

Health and Safety: The Law on Occupational Safety and Health covers all “workers” without excluding foreigners. Employers must ensure a safe workplace, provide protective equipment, and conduct regular health checks. Foreigners often undergo the same annual health examinations and safety trainings at workplaces as their Vietnamese colleagues. If a foreigner is injured at work, they are entitled to workers' compensation (through the compulsory work-injury insurance fund) provided they have a work permit and the employer is paying into the insurance. If a foreign worker dies or is permanently disabled by a work injury, they or their survivors can claim benefits from the Occupational Accident and Disease Insurance, which employers pay into (0.5% of wage fund).

Right to Join Trade Unions: As discussed, foreign workers can join the labor union of their enterprise. They cannot form separate unions for foreigners nor assume certain leadership positions (since union leadership tends to be tied to political criteria), but on paper the law does not forbid them from union membership. In reality, unionization rates in foreign-invested enterprises are significant, but foreign employees (often managers) rarely participate. Nonetheless, if a union calls a strike or collective action, it does represent all workers including foreigners. There have been no known legal cases of a foreign worker prosecuted for taking part in a lawful strike. However, an important caveat: if a foreigner's work permit is tied to being in management, they might be considered part of the employer representation rather than the rank-and-file.

Protection from Unjust Dismissal: The Labor Code outlines grounds for termination that apply equally. If a foreign employee is unjustly dismissed, they can file a complaint to the labor arbitration council or court. For example, if an employer tried to fire a foreigner for discriminatory reasons (nationality, race, etc.), it would violate the Labor Code. The remedy would be reinstatement or compensation similar to a Vietnamese worker's case. Because foreign workers typically have fixed-term contracts (max 2 years for work permit reasons), non-renewal might not count as unjust dismissal once contract ends, but early termination without cause could be contested.

One note: certain regulations in Vietnam specifically mention foreigners. For instance, the **maximum duration of labor contracts for foreigners is indirectly capped by work permit duration** (2 years). A local worker can have an indefinite contract, but a foreigner usually has a 1- or 2-year term linked to their permit. This is a legal distinction that effectively means foreign workers have less job security (since they cannot easily get indefinite-term contracts).

Social Security (as related to employment): Foreign workers employed in Vietnam are subject to certain mandatory social insurance obligations. Under Decree No. 143/2018/ND-CP

²⁴⁵⁵ Labour Code 2019 Article 151, 90, 107, 98, 113, 112 respectively

on compulsory social insurance for foreign employees working in Vietnam²⁴⁵⁶, foreign employees holding work permits or practicing certificates and working under labour contracts of one year or more must participate in Vietnam's compulsory social insurance system, which includes coverage for sickness, maternity, occupational accidents and diseases, retirement, and survivorship benefits (articles. 2 & 4). They are also required to participate in health insurance under the Law on Health Insurance 2008 (as amended 2014).

Foreign employees, however, are not covered by unemployment insurance, which under Article 43 of the Law on Employment 2013, Law No. 38/2013/QH13²⁴⁵⁷ applies only to Vietnamese employees. Nevertheless, foreign workers participating in the social insurance system may claim a lump-sum social insurance payment when they reach retirement age without qualifying for a pension or when they leave Vietnam permanently, pursuant to Article 60 of the Law on Social Insurance 2014 (Law No. 58/2014/QH13). The extension of compulsory social insurance to foreign employees since 2018 represents an effort to align the social protection framework for foreign and Vietnamese workers, providing access to benefits such as sickness and maternity leave under the same statutory rules.

Enforcement and Support: The enforcement of labour standards and employment protections in Vietnam falls under the authority of the former Ministry of Labour, Invalids and Social Affairs (MOLISA) and its labour inspectorate. Under the Labour Code 2019 (Law No. 45/2019/QH14), labour authorities are responsible for supervising compliance with labour laws and protecting employees' rights (see article 10 & 181–185). Foreign workers, like Vietnamese employees, may seek remedies through administrative complaints to labour authorities or by bringing disputes before labour dispute resolution bodies and the courts under the procedures established in the Labour Code 2019 (articles 188–191).

In practice, foreign workers may also seek assistance from legal aid providers, professional associations, or their diplomatic missions. While labour disputes involving highly skilled expatriate workers are often resolved through contractual arrangements or private negotiation, Vietnamese law formally provides equal access to labour dispute resolution mechanisms, allowing foreign employees to pursue claims for breach of labour contracts or other employment-related violations under the same legal framework applicable to Vietnamese workers.

In conclusion, labor protections (wages, hours, safety, social insurance) *de jure* apply to non-national workers as they do to nationals. The difference lies primarily in access to employment (permits and restricted sectors) rather than in rights during employment. Vietnam has made strides to eliminate explicit legal disparities in working conditions. Remaining challenges are mainly administrative and practical: language barriers may make it harder for foreigners to understand their rights or to use complaint mechanisms; some employers may assume foreigners won't use local grievance systems. But from a legal standpoint, non-nationals

²⁴⁵⁶ Decree No. 143/2018/ND-CP on compulsory social insurance for foreign employees working in Vietnam

²⁴⁵⁷ Law on Employment 2013, Law No. 38/2013/QH13. Available at: <https://thuvienphapluat.vn/van-ban/EN/Bao-hiem/Law-No-38-2013-QH13-of-16-November-2013-on-employment/219995/tieng-anh.aspx>

working in Vietnam should enjoy “national treatment” in the workplace, consistent with Vietnam’s international commitments to non-discrimination in employment.

Right to health

9. To what extent, compared to nationals, can non-nationals access public health services?

Healthcare System: Vietnam has a mixed public-private healthcare system. Public hospitals and clinics form the backbone, with a network from central hospitals to commune health stations, and there is also a growing private hospital sector. Vietnamese citizens are increasingly covered by the national health insurance (HI) scheme, which subsidizes care. Non-nationals’ access to healthcare in Vietnam is not explicitly guaranteed as a right by law, but in practice no person in need of emergency care is turned away from public hospitals – they will be treated, then billed. The key difference is that foreigners generally do not benefit from the heavily subsidized rates that insured Vietnamese enjoy (unless they themselves are insured under Vietnam’s system).

Health Insurance for Foreigners: From 2018 onward, many foreign workers have been required to join Vietnam’s compulsory health insurance. Specifically, any foreign employee with a labor contract of 12 months or more must contribute to the state Health Insurance Fund (with 1.5% of salary from employee, and 3% from employer) ²⁴⁵⁸. This enrolls them in the same HI scheme as locals, issuing them a HI card. With that card, a foreign worker can access public healthcare and get costs reimbursed typically at 80% (the standard scheme) just like a Vietnamese insured person. If they go to the assigned hospital (usually a local public hospital) they pay only the co-pay. If they go to a different hospital or higher-level one without referral, they pay a higher share, similarly to Vietnamese rules. So, foreign workers who pay into social/health insurance do have access to public health services at subsidized rates – practically equal to citizens for covered services ²⁴⁵⁹.

For foreigners not in the mandatory insurance (e.g. those on short contracts, dependents, retirees, or others), the law does not allow them to voluntarily join the state HI scheme (the voluntary HI is also mainly for citizens). They must pay out-of-pocket or have private insurance. Many expats carry private international health insurance for care at private hospitals or for evacuation.

Public Hospitals: Legally, no discrimination is allowed in treatment. Hospitals under the Ministry of Health are instructed to treat foreigners and Vietnamese with equal attention. In practice, due to language barriers and administrative differences, foreigners are often directed to “International” departments in major hospitals or to separate international clinics. For instance, Hanoi’s Bach Mai Hospital has an International Clinic for foreigners. These often

²⁴⁵⁸ Law on Health Insurance, Law No. 25/2008/QH12, adopted 14 November 2008, effective 1 July 2009. Amended by Law No. 46/2014/QH13, articles 2, 12, & 22

²⁴⁵⁹ Decree No. 143/2018/ND-CP on compulsory social insurance for foreign employees working in Vietnam, issued 15 October 2018.

charge higher fees (on a full cost-recovery basis). It's not a legal requirement to charge foreigners more, but since foreigners typically lack the local insurance and may demand more comfort, they often end up paying more. Some provincial hospitals also may require a foreign patient to pay a deposit up front if they are admitted, whereas a Vietnamese with insurance might not need to.

Primary Care and Preventive Services: Vietnam's public health programs (immunizations, infectious disease control) are citizen-focused but generally inclusive. For example, the National Immunization Program provides free vaccines to all children in Vietnam – in practice, foreign children can receive them too at local clinics, though foreigners often go to private clinics for vaccinations. During COVID-19, Vietnam eventually included foreigners in the vaccination program; initially citizens were prioritized, but by late 2021 all foreign residents were offered free vaccines as well, showing the inclusive approach in a public health crisis.

Health Outcomes and Choices: Many expatriates and well-off locals opt for private hospitals (like Franco-Vietnamese Hospital in Saigon, or Vinmec chain) for more English-speaking staff and comfort, paying premium fees or via private insurance. However, foreigners, especially migrant workers from regional countries, if any, might rely on public hospitals and face higher out-of-pocket expenses. For example, a Cambodian or Chinese trader crossing the border for care would be charged foreigner rates at a provincial hospital unless there's a bilateral agreement.

Undocumented/Irregular Migrants: This is a sensitive area – since Vietnam isn't a magnet for undocumented migrant labor on a large scale, policies are underdeveloped. An irregular migrant technically has no coverage and might fear going to hospital due to status. Vietnam does not have a formal firewall like some countries that separate healthcare access from immigration enforcement. In practice, if an undocumented person shows up sick at a hospital, the hospital will treat first and later might notify immigration. The cost would not be waived; if they cannot pay, the hospital absorbs or seeks charity help. Cases like stateless refugees (e.g. some ethnic minority people from Cambodia in the past) were often assisted by international NGOs for healthcare costs.

International Agreements: Vietnam has some reciprocal healthcare arrangements on paper (e.g. with Laos, Cambodia for emergency care of border residents, or under ASEAN frameworks), but these are limited. Generally, a foreign tourist is expected to carry travel insurance or pay if they use Vietnamese healthcare.

Quality and Language: A practical barrier is that many local clinics lack English-speaking staff, so foreigners navigate towards big urban hospitals or clinics geared to them. Recognizing this, many large hospitals maintain a staff of interpreters. The Ministry of Health in 2018 issued guidelines for hospitals to improve foreign patient services, given the rise in medical tourism and expats.

HIV/AIDS and Other Sensitive Care: Foreigners can access HIV testing and treatment in Vietnam. There is no legal bar to an HIV-positive foreigner receiving ART (anti-retroviral therapy) in Vietnam, but they would likely have to pay or have donor-funded support (PEPFAR, etc., historically covered some foreign key populations as well). The new Law on HIV/AIDS

(amended 2020) doesn't differentiate foreigners, aside from some entry restrictions that were removed in 2012 (Vietnam eliminated HIV travel bans).²⁴⁶⁰

Emergency Services: Foreigners can call the same emergency numbers (115 for ambulance). Response time and triage do not officially prioritize by nationality. If anything, sometimes ambulances might be quicker to respond to calls from tourist areas (for image reasons). There have been tragedies (e.g. tourist accidents) where foreigners were well-treated in emergency and state even subsidized some costs to maintain reputation as a safe destination²⁴⁶¹.

Conclusion: Non-nationals can access Vietnam's healthcare services, but mostly on a paying basis unless they are part of the compulsory insurance system. No legal prohibition exists – a foreigner can go to any public hospital and will be received. However, access is not free or equal in cost: Vietnamese citizens (especially the poor, children under 6, the elderly, etc.) receive substantial state subsidies or free care, whereas foreigners generally must cover their own cost. This is consistent with international practice – national health schemes seldom cover non-resident foreigners. In Vietnam, foreign *residents* who contribute are covered, which is a fair inclusion. Irregular foreigners and short-term visitors rely on humanitarian attention or personal means. As Vietnam's healthcare system continues to develop universal health coverage for its population, the inclusion of foreigners will likely remain limited to those who either pay in or have separate insurance. The Vietnamese state does not currently view healthcare for foreigners as its responsibility beyond emergency humanitarian duty and controlling communicable diseases that could affect the public.

Nevertheless, it can be said that **in principle “no one in Vietnam is denied medical treatment”** – the difference lies in who bears the cost. For regular health needs, foreigners are advised (and often able) to seek care at private facilities or through insurance. For critical needs, they have access to some of the region's better public hospitals (given Vietnam's rising standards). The system thus provides adequate, if not equal, healthcare access for non-nationals, with the main gap being financial coverage and language support.

Right to education

10. To what extent, compared to nationals, can non-nationals access public education services? Please consider the relevant criteria for primary, secondary, and tertiary education.

Basic Education System: Vietnam's general education system consists of five years of primary education (grades 1–5) and four years of lower secondary education (grades 6–9), followed by three years of upper secondary education (grades 10–12). Primary and lower secondary education together form the nine-year universal general education framework under the

²⁴⁶⁰ Socialist Republic of Viet Nam, Law on Prevention and Control of HIV/AIDS, Law No. 64/2006/QH11, adopted 29 June 2006, as amended by Law No. 71/2020/QH14, adopted 16 November 2020. Available at: <https://vietnamlawmagazine.vn/revised-law-on-prevention-and-control-of-hiv-aids-37783.html>

²⁴⁶¹ Law on Medical Examination and Treatment 2023 Law No. 15/2023/QH15, adopted 9 January 2023, effective 1 January 2024, article 43 and Law on Health Insurance Law No. 25/2008/QH12, as amended by Law No. 46/2014/QH13, article 22

Education Law 2019 (arts. 6 and 14). Public primary education is tuition-free for Vietnamese citizens, and the language of instruction in public schools is Vietnamese (arts. 11 and 99). While the law primarily frames education rights and obligations in relation to citizens (art. 13; Constitution 2013, art. 61), it does not explicitly prohibit foreign children from attending Vietnamese schools. In practice, however, public schools primarily serve Vietnamese citizens, and most foreign children instead attend private or international schools due to language barriers and administrative admission policies.²⁴⁶²

Foreign Children in Vietnamese Schools: Legally, there is no explicit prohibition on foreign children attending public schools. The Education Law 2019 defines “citizens have the obligation to complete compulsory education”, implying an obligation on citizens rather than a right of everyone. Article 13 of the Education Law states, “All citizens are equal in learning opportunities” and that the State creates conditions for “the ethnic minorities and disadvantaged groups” to learn – it doesn’t mention foreigners. In practice, public schools primarily serve Vietnamese citizens. Foreign children (e.g. children of an expat) *may* be admitted to a local public school in some cases, but this is relatively uncommon. There are several reasons: language barrier (the curriculum is in Vietnamese), capacity issues, and policy ambiguity on fee arrangements.

Public primary and lower-secondary schools in Vietnam are free of tuition for Vietnamese citizens (per policy, and explicitly in the Education Law for primary). If a foreign child were to enroll, the school would likely charge fees because the State subsidy is allocated based on local population (citizens). Some big cities have allowed foreign kids in public schools if they pass Vietnamese language tests or if one parent is Vietnamese. For example, children of Vietnamese mothers and foreign fathers (with foreign nationality) often attend local schools as citizens because they might also hold Vietnamese citizenship or at least are treated as such. Purely foreign kids seldom enroll and instead go to private/international schools.

International Schools: Vietnam has many international schools (teaching foreign curricula like British, American, IB, etc.). These schools largely cater to expats and wealthy Vietnamese. They are licensed under Decree 86/2018 on foreign cooperation in education²⁴⁶³. International schools can enroll Vietnamese students but must maintain certain ratios (not more than 50% Vietnamese in fully foreign curriculum schools, according to Decree 86, relaxed from earlier 10% cap). Conversely, these schools obviously enroll foreigners freely. Therefore, foreign children have ample access to education through private means – at a cost (international school fees in Vietnam can be quite high).

Bilingual and Local Private Schools: Some foreigners opt to send children to local private or “bilingual” schools where tuition is lower than fully international schools but the teaching is in

²⁴⁶² *Law on Education*, Law No. 43/2019/QH14, adopted 14 June 2019, effective 1 July 2020, article 6, 14, 61, 13, 99 & 11. Available at: <https://vanban.chinhphu.vn/?pageid=27160&docid=197310>

²⁴⁶³ Decree No. 86/2018/ND-CP dated 6 June 2018 on foreign cooperation and investment in education, issued by the Government of Viet Nam and effective 1 August 2018. Available at: Decree No. 86/2018/ND-CP dated 6 June 2018 on foreign cooperation and investment in education, issued by the Government of Viet Nam and effective 1 August 2018.

Vietnamese with some English. Admission of foreign kids in these depends on the school's policy. There's no legal barrier; the main challenge is the child's Vietnamese proficiency.

Public Secondary and Tertiary (special cases): Foreign students can attend Vietnamese universities and vocational colleges. Many universities have programs taught in English or have quotas for foreign students (for cultural exchange or as part of bilateral agreements)²⁴⁶⁴. For instance, medical schools in Vietnam have some Lao, Cambodian, and African students on scholarships from the government. There is an Interim measure for foreign students in primary/secondary schools, which allowed some designated schools to admit foreigners in separate classes. For example, some Hanoi and HCMC public high schools have “international divisions” for foreigners or overseas Vietnamese. This is not common nationwide, but in main cities a few elite public schools open fee-paying slots to foreign students or overseas Vietnamese, ensuring those who want to experience Vietnamese education can do so.

Tertiary Education: At the university level, Vietnam treats foreign applicants similarly to international applicants elsewhere. They must meet academic criteria and usually pay higher tuition (since public university tuition is highly subsidized for Vietnamese). Some public universities have a “*foreign student tuition*” set in US dollars. Others may have scholarship schemes under cultural exchange agreements (for example, Vietnam offers some scholarships to students from Laos, Cambodia, or French-speaking countries, often involving a year of Vietnamese language training followed by study in Vietnamese-medium programs). The Law on Higher Education and its regulations allow universities to create special programs for foreigners, and degrees awarded are recognized similarly (Vietnam will recognize a foreign student's degree as normal, just like a local's, if they graduate from an accredited institution)³¹.

Language and Curriculum: Access is one thing, integration is another. Foreign children face the obstacle of learning in Vietnamese. Young kids can pick up Vietnamese quickly and some foreign families (especially with one Vietnamese parent) do put kids in local schools to immerse them. For older kids are without language, local schooling is impractical. That's why the majority of expat children use international schools.

Compulsory Education and Irregular Migrant Children: Vietnam does not have a known population of irregular migrant families (except small numbers of regional migrant workers). So the issue of *undocumented foreign children* in Vietnam's school system is rare. If it did occur, such children would not have the personal identification (birth certificate, residency registration) required for school enrollment. Vietnamese kids need a household registration or temporary residency paper to enroll; a foreign child lacking legal status would have trouble providing equivalent documents. In principle, nothing in the law says “deny education to illegal migrant children,” but practically they might be excluded due to documentation issues. This could be a blind spot in policy. By contrast, Vietnamese law strongly protects the right of

²⁴⁶⁴ Law on Education, Law No. 43/2019/QH14, adopted 14 June 2019, effective 1 July 2020, article 44, 48, & Circular No. 30/2018/TT-BGDDT dated 24 December 2018 on management of foreign students studying in Vietnam.

Vietnamese children to education (the state tries to ensure all Vietnamese attend compulsory schooling, under the “universalization” policy). Foreign children fall outside that mandate.

Private Tutoring and Others: Foreigners can access education outside formal schools too – there are language centers, private tutors, etc. For example, a foreign teenager could study Vietnamese language at a center. Those are open and often encourage foreign enrollment.

Higher Education (University) Access: Vietnam’s universities open to foreigners in multiple ways: full degree enrollment, exchange programs, short courses. In 2023, for instance, the Vietnam National University had over 800 foreign students across programs. There is an established route for children of overseas Vietnamese to come to Vietnam for university, often with easier admission. Pure foreigners may need to show Vietnamese proficiency if enrolling in a Vietnamese-taught program (or do a preparatory year). Some universities (like Medical University) require foreigners to pass entrance exams, possibly in Vietnamese. Others have English-medium programs (e.g. some IT, business programs) where foreigners just need English and academic qualifications.

Tuition and Scholarships: Generally, foreigners pay full tuition (not subsidized by the state). In public primary/secondary, that means if a foreign child were allowed in, they might pay a monthly fee determined by the provincial authorities (some provinces set a fee for non-resident or foreign pupils). At tertiary level, a foreign student in a public university might pay, say, \$1500/year while locals pay \$500/year for the same program, depending on the policy of the school. There are **scholarships:** The Vietnamese government and Communist Party do occasionally fund scholarships for students from “friendly countries” as part of diplomatic ties (for example, a number of African and Latin American students studied in Vietnam on government stipends historically). Also, programs like the “Mekong 1000” offered subsidized education to ASEAN neighbors ²⁴⁶⁵.

International Agreements: Vietnam participates in some international education networks (ASEAN University Network, etc.) that allow mobility. Within ASEAN, under the ASEAN University Network, students from ASEAN states can take exchange semesters in Vietnam and vice versa. Also, mutual recognition of degrees in some fields exists (engineering, medicine somewhat under ASEAN agreements).

Conclusion: Non-nationals in Vietnam have access to education, but mainly through private and international institutions or self-funded enrollment, rather than the free public education system. There is no legal right to free public schooling for foreign children, though no law forbids their enrollment if they meet conditions. The reality is that public schools are nearly 100% Vietnamese. The government’s responsibility to provide education is interpreted as toward its citizens (“all citizens within prescribed age have the obligation to study to complete compulsory education”^[110]). Foreign residents, typically being a transient population, rely on the robust network of international schools (in big cities) or home-schooling. Higher education is quite accessible to foreigners academically, but not financially subsidized; nonetheless,

²⁴⁶⁵ Government of Viet Nam, Decree No. 86/2021/ND-CP on management of foreign students receiving Vietnamese government scholarships.

Vietnam's university tuition even for foreigners is relatively low compared to Western countries, so some foreigners choose Vietnam for affordable medical or language degrees.

It's worth noting that Vietnamese education authorities have been friendly to **cultural exchange** – foreign children have joined Vietnamese schools for short exchanges (some embassies arrange for their kids to visit local schools as a cultural experience). The law was even amended to allow more Vietnamese students to attend foreign-run schools (to integrate education systems). Conversely, integrating foreigners into Vietnamese schools hasn't been a significant policy focus due to low demand. Should demand rise (for example, if Vietnam were to host more refugee families or long-term migrant workers with kids), policies might adapt to ensure those children can access at least basic education in Vietnamese.

As of 2025, however, for the typical expatriate or migrant family, educational access is available but at a cost and often outside the public system^{[115][116]}. No evidence suggests foreign children are denied schooling altogether – options exist, and international schools proliferating in Hanoi, HCMC, Danang, etc., have capacity. The main barrier for lower-income or irregular foreign families would be affordability and language, not formal legal exclusion.

Right to social security

11. To what extent, compared to nationals, can non-nationals access social security benefits? For example, social insurance, retirement pension, among others.

Social Security System: Vietnam's social security system comprises social insurances (pension, health, occupational injury, unemployment) and social assistance (welfare programs for the poor, elderly, disabled, etc.). For contributory social insurance, foreign workers now participate nearly fully except unemployment. For non-contributory social assistance, Vietnam's laws and policies largely restrict regular benefits to Vietnamese citizens.

Pensions: Under the **Law on Social Insurance**, foreign employees who contribute are technically eligible for a **pension** at retirement age (which is being gradually raised, currently ~62 for men, ~57 for women) if they have at least 20 years of contributions. However, practically, very few foreign workers will stay that long. Instead, they can take a lump-sum payout of their accumulated pension fund when leaving Vietnam permanently or when the insurance coverage ends without meeting the minimum period. For example, if a foreign worker contributed for 5 years then leaves, they can apply to Vietnam Social Security for a one-time payment equal to their contributions plus the employer's portion (noting that from 2022, foreign workers themselves contribute 8% to pension, employer 14%, so 22% of salary total. This withdrawal option is commonly used by foreigners upon departure. If a foreigner did qualify for monthly pension (say an expatriate who worked 25 years in Vietnam and stayed to retirement), they would receive a monthly pension just like a Vietnamese retiree, and they could even receive it abroad if treaty allows or via bank²⁴⁶⁶.

²⁴⁶⁶ Socialist Republic of Viet Nam, Law No. 58/2014/QH13, adopted by the National Assembly on 20 November 2014, effective 1 January 2016. Articles 54 & 60, and Decree No. 143/2018/ND-CP dated 15 October 2018 on compulsory social insurance for foreign employees working in Vietnam, effective 1 December 2018.

Unemployment Insurance: Foreigners do **not pay unemployment insurance (UI)** premiums[83], thus they cannot draw **unemployment benefits** if they lose jobs. Unemployment insurance in Vietnam is explicitly limited to Vietnamese citizens by the Employment Law. There's also a job-loss allowance in the Labor Code (severance pay from employer) that foreigners *do* get if they qualify (one-half month's wages per year of service if terminated by employer for economic reasons or other non-fault grounds).

Health Insurance: Covered above – foreign workers who pay in get the same health coverage as citizens. Foreign spouses or children who are not directly in the workforce cannot currently enroll in state health insurance voluntarily (only Vietnamese households do that). They rely on private insurance ²⁴⁶⁷.

Other Insurance: The Occupational Accident and Disease Insurance and Sickness/Maternity are part of social insurance and foreigners in the system get those benefits as noted. For instance, a foreign worker on sick leave is entitled to sick leave allowance from the Social Insurance Fund (75% of salary for a certain number of days per year). Maternity benefit (6 months at 100% of salary) is similarly provided to qualifying foreign women. Survivor benefit: if a foreign insured person dies, their dependents could receive a survivor grant or pension according to contributions, presumably even if they are overseas. S

Summation: Non-nationals' access to formal social security is primarily through contributory schemes tied to employment. Foreign workers enjoy equal social insurance benefits in areas they contribute (health care, sick leave, maternity, work injury, pension lumpsum). But non-contributory social support programs do not cover foreigners – e.g. no state pension for elderly foreigners, no social relief for foreign poor or disabled. This delineation is typical: social security is largely a citizenship-based domain in Vietnam, with the exception made for foreign workers to uphold labor equality and to accumulate funds (since many foreigners just take lump-sums, it hasn't heavily burdened the pension system).

Social Assistance (Welfare): Vietnam runs social assistance programs for vulnerable groups: e.g. monthly cash allowances for poor elderly (over 80 with no pension), for severely disabled persons, for orphaned children, etc. These benefits are governed by Decree 20/2021/ND-CP (replacing Decree 136/2013) and related regulations. They apply to Vietnamese citizens meeting the criteria. Foreigners are *not* listed among eligible groups. For example, a poor Vietnamese aged 85 gets about 540,000 VND/month from the state. A foreigner of the same age, even if poor, has no entitlement to that. The assumption is foreigners have their own support or are the responsibility of their embassies if destitute. In reality, cases of destitute foreigners are rare, but when they occur, authorities usually coordinate with the foreign embassy or charitable organizations to assist rather than enrolling them in the citizen welfare rolls.

Exceptions/Humanitarian: In extremely rare cases, a foreigner might receive ad hoc help from social funds – for instance, a foreign beggar found in HCMC might be taken to a social protection center temporarily; they'd get food/shelter until repatriation, not a formal monthly

²⁴⁶⁷ Law on Health Insurance, Law No. 25/2008/QH12, adopted 14 November 2008. Amended by Law No. 46/2014/QH13, Article 12 & 22

stipend. Vietnam's **Social Protection Centers** (state-run shelters) can accommodate anyone in transient difficulty (including foreigners awaiting deportation or who are homeless), but that's not framed as a "right" to social security; it's more of a police/charity measure.

Social Insurance Agreements: Vietnam has begun negotiating bilateral social insurance agreements with other countries to avoid double contributions and to allow portability of pensions. For example, Vietnam and Korea have discussed one (as many Vietnamese works in Korea and vice versa). If such agreements are signed, a foreigner from that country might be exempt from Vietnamese social insurance if they remain under home system, and vice versa. This can affect foreign workers' social security inclusion. As of 2025, no such agreement is fully in force yet, but talks with Japan and Germany and others are ongoing.

Community Services and Other Benefits: Non-nationals can use certain public services on equal footing if they pay fees. E.g. libraries, parks, museums – usually same fee for foreigners, except some tourist sites charge foreigners more (this is not legally mandated, but a practice e.g. some historical parks had dual pricing, though it's been reduced due to complaints). Public transportation: foreigners pay same bus fare as locals.

COVID-19 Relief Example: During the COVID-19 pandemic, Vietnam had relief packages for affected individuals (cash support to poor households, layoffs, etc.). Those were mostly for Vietnamese citizens and registered migrant workers from Vietnam. However, in some instances, foreign workers who lost jobs were not eligible for the VND 1.8 million unemployment support because they were not in the UI system. They had to rely on their employer or embassy. Some provincial authorities and charities did include stranded foreign students or tourists in food relief drives, showing humanitarian inclusion but not formal inclusion.

Retirement Age Differences: Vietnam is raising retirement ages for its workforce. Foreigners are bound by those ages for pension purposes if they were to claim in Vietnam. A foreigner can also claim the lump-sum at an earlier point if they choose (for instance, if a foreign worker decides not to stay till 62, they can get lump sum one year after leaving job). Many expatriate retirees in Vietnam simply rely on their home country pensions; Vietnam doesn't provide them any old-age pension or benefits. If a foreign retiree (say from Europe) living in Vietnam falls into poverty, Vietnam has no obligation to support them; they would likely be repatriated or assisted by their embassy's consular fund if destitute.

Stateless Persons: While Vietnam is not in statelessness conventions, it has naturalized many stateless former refugees in the past. Those individuals, once Vietnamese citizens, then get full social security. But if someone remains stateless in Vietnam without citizenship, their access to social services is very limited – typically they try to get them naturalized to solve that.

Right to an adequate standard of living

12. To what extent, compared to nationals, can non-nationals apply for welfare programmes? For example, financial aid, food aid, subsidized housing, among others.

Vietnamese law does not expressly guarantee a right to an adequate standard of living for non-nationals. The Constitution of the Socialist Republic of Vietnam 2013 recognizes social security and social welfare primarily in relation to citizens. For example, Article 34 provides that *citizens have the right to social security*, and Article 59 states that the State develops social welfare policies and assistance programs for citizens facing difficulties. These constitutional provisions frame social protection as a citizen-focused entitlement, which limits access for foreigners to most public welfare programs.

In practice, therefore, foreigners residing in Vietnam generally do not have access to poverty alleviation programs, social assistance allowances, subsidized housing schemes, or other income-support programs that are designed for Vietnamese citizens under the national social protection system. Such programs are primarily governed by Decree No. 20/2021/ND-CP on social assistance policies for social protection beneficiaries, which applies mainly to Vietnamese citizens in vulnerable groups, including the elderly without support, persons with disabilities, and children in difficult circumstances.

Public Housing: Vietnam operates several social housing programs aimed at low-income households and workers. However, these programs are limited to Vietnamese beneficiaries. Under the Law on Housing 2014 (Law No. 65/2014/QH13), Article 49 defines the groups eligible for social housing support, including low-income citizens, workers in industrial zones, and other disadvantaged Vietnamese groups. Article 51 further specifies the conditions for receiving social housing assistance, again focusing on eligible Vietnamese households. Foreign individuals are therefore not eligible to purchase or rent social housing units developed with state support, and must instead rely on the commercial housing market.

International Treaty Context: Vietnam is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognizes the right to social security (Article 9) and the right to an adequate standard of living (Article 11). These rights are subject to progressive realization, and international practice allows states some discretion in distinguishing between citizens and non-citizens in the allocation of certain social benefits. In its 2023 concluding observations, the Committee on the Elimination of Racial Discrimination (CERD) encouraged Vietnam to ensure that non-citizens can access essential social services without discrimination. While Vietnam provides non-nationals access to emergency healthcare, education, and employment-based insurance schemes, its broader social welfare system remains primarily citizenship-based.

Assessment: Overall, foreign nationals in Vietnam generally rely on employment income, employer-provided benefits, private insurance, or support from their home countries rather than state welfare programs. Vietnam's social protection policies focus primarily on citizens, although foreigners may access certain protections through contributory schemes such as health and social insurance when employed in Vietnam. Recent reforms to the social security system have concentrated mainly on expanding coverage for Vietnamese workers, including those in the informal sector, rather than extending social welfare benefits to non-nationals.

Are there any final observations you would like to make? Please write below.
