

INTERNATIONAL LAW ASSOCIATION

VIENNA CONFERENCE (2026)

COMMITTEE ON INTERNATIONAL MIGRATION AND INTERNATIONAL LAW

2nd interim REPORT

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¹ The opinions expressed are those of this co-chair in her personal capacity and do not engage the European Court of Human Rights.

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Friends of the Committee

The Committee decided to invite experts, who are not members of the Committee, to contribute to the relevant research for the purposes of its work as the ‘Friends of the Committee’. Those who have contributed are:

Fekade Alemayhu Abebe (Ethiopia)	Trésor Maheshe Musole (Democratic Republic of the Congo)
Mayela Celis Aguilar (Netherlands)	Bongkot Napaumporn (Thailand)
Natalie Baird (New Zealand)	Huong Nguyen (Vietnam)
Leontine Bruijnen (Netherlands)	Mariam Odunayo Nurudeen-Arole (Ghana)
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Second Interim Report: The Right to Stay and Rights while Staying

I. Introduction

1. The ILA Committee on International Migration and International Law was created in 2021 with the aim of laying down the current normative standards in international law regulating international migration, identifying ongoing developments trends, absences, and points of concern, and advancing proposals for further normative development. To this end, the Committee decided to address these issues through three interim reports, which refer to stages of the migratory journey: (1) right to enter; (2) right to stay and rights while staying; and (3) right to exit or depart (including deportation). The final concluding report, expected in 2030, will focus on identification of established customary law and emerging customary law in the field of international migration; on what are the elements requiring further development: considering normative and institutional factors, aiming at further developing and improving the current legal framework; providing relevant considerations on legal mechanisms for addressing claims of migrants.
2. In its first interim report, presented at the ILA biennial conference in Greece in June 2024,¹ the Committee discussed migrants' right to enter a country. The present—second interim—report focuses on migrants' right to stay in a country other than their country of nationality and rights while staying therein. The Committee aims to report on the right to exit or depart in 2028.
3. Preceding the drafting of this report, the Committee undertook a questionnaire survey (see Annex 1) from November 2024 to September 2025 and has received contributions from its members and friends of the Committee.² As of 9 March 2026, the Committee has received 46 country reviews, including 13 reviews from Asia-Pacific,³ seven from Africa,⁴ six from the Americas,⁵ and 20 from Europe.⁶ It has also received a review on the practice of the European Union (EU), making it 47 reviews in total. Three country reviews cover only Part I of the questionnaire.⁷
4. The state practice mentioned in this report relies extensively on the country reviews received and on the accuracy of the information provided therein, which remains the sole responsibility of their authors. Accordingly, while the report aims to be as comprehensive as possible, it is limited to some extent by the information provided in the country reviews.

¹ ILA Committee on International Migration and International Law, 'Interim Report: The Right to Enter' (2024) <https://www.ila-hq.org/en_GB/documents/committee-migration-int-law-interim-report-athens-2024-1> accessed 23 Feb 2026.

² The country reviews are attached as an Annex to this Report (published online with a separate link). The Committee thanks all country reviewers for their invaluable contribution, especially our 31 Friends of Committee (see the list in the Report). Although the Rapporteurs read the country reviews and provided comments for the purpose of seeking clarification, this did not amount to a peer-review process, and the country reviews are not an edited work. Each reviewer is the sole author of their country review and, accordingly, all views and any errors expressed in the country reviews are the responsibility of their respective authors.

³ Namely: Australia, China, India, Indonesia Iran, Japan, Mongolia, New Zealand, Pakistan, Philippines, Thailand, South Korea, and Vietnam. It should be noted that the Committee received an additional report in June 2026 on Tuvalu.

⁴ Namely: the Democratic Republic of Congo (DRC); Ethiopia, Ghana, Nigeria, Libya, South Africa, and Uganda.

⁵ Namely: Argentina, Brazil, Canada, Colombia, Guatemala, and the United States (USA).

⁶ Namely: Austria, Croatia, Czechia, France, Finland, Germany, Greece, Hungary, Ireland, Italy, Kosovo, Netherlands, Poland, Portugal, Russia, Slovenia, Spain, Switzerland, Türkiye, and the United Kingdom.

⁷ Namely: South Africa, the Philippines, and Spain.

5. In terms of terminology, a few clarifications are due regarding how certain terms have been used throughout this report:
 - (1). The terms ‘nationals’ and ‘citizens’ are used interchangeably, depending on the formulation adopted by the specific domestic or international norm under analysis. It should be noted that international law usually employs the term ‘nationality’ more often, whereas domestic law tends to prefer the term ‘citizenship’; however, there is no uniformity either in international law or across state practice as to when each of these terms ought to be used.
 - (2). The terms ‘non-nationals’ and ‘migrants’ are also used interchangeably to denote persons residing in a state other than their state of nationality for a certain amount of time.⁸
 - (3). The term ‘asylum seeker’ is used in a broad sense to refer to persons who have left their country of nationality, or, if stateless, their country of habitual residence, and are seeking international protection abroad, including through refugee status. The term ‘refugee’, in turn, is used for persons who have already formally obtained such status according to the relevant legal framework under discussion. This distinction is made solely for purposes of conveying more clearly the factual situation of these groups of migrants, without prejudice to the declaratory nature of refugee status under international law.
 - (4). The terms ‘undocumented migrants’ and ‘migrants in an irregular situation’ are preferred over ‘irregular migrants’,⁹ and are used to refer to migrants who have entered or remained in the host state without the appropriate documentation authorising such entry and stay, regardless of whether these migrants have some sort of personal documentation in their possession.
 - (5). The terms ‘restriction’ and ‘limitation’ on the rights of individuals are used interchangeably, depending on the formulation adopted by the specific domestic or international norm under analysis.

II. The Right to Stay¹⁰

6. The right to stay, for the purposes of this report, is viewed from the perspective of the sojourn of migrants, understood as the final of the three migration stages: departure from a country, admission into a host country, and sojourn in that host country.¹¹
7. It is recognised that removal from a state’s territory is closely connected to the right to stay.¹² However, this report purposely excludes this topic, as it demands an individualised in-depth analysis, which will be the object of future Committee’s endeavours. The report

⁸ It is not possible to precise the amount of time as this depends on the purpose of the visit as well as upon domestic legislations of host states.

⁹ While acknowledging that the term ‘irregular migrants’ may be used by other actors.

¹⁰ The right to stay here does not mean a short stay or a tourist visit but is equivalent to a broader meaning of the right of residence in some document, including both short and longer stay, and both temporary and permanent residence.

¹¹ Vincent Chetail, *International Migration Law* (OUP 2019) 76.

¹² It should be noted that the terminology of ‘removal’ here is used broadly to cover all procedures under different names such as ‘return’, ‘deportation’, ‘repatriation’ and etc.

also does not address the situation of potential forced stay in a country as a consequence of non-issuance of an exit visa or permission to leave.

8. This section is divided as follows:

II.1 Right to Stay in One's Country of Nationality

II.2 Right to Stay in a Non-Nationality Country: Overview

II.3. Right to Stay and Family Reunification

II.4. Right to Stay and Human Trafficking

II.5. Right to Stay and Humanitarian and Refugee Protection

II.1 Right to Stay in One's Country of Nationality

9. Under international law, nationals have a right to stay in the state of their nationality and their "own country",¹³ whereas migrants' right to stay is subject to conditions established largely according to the host state's domestic law, only minimally regulated by the norms of international law, particularly international human rights law and international refugee law. However, determining who is a national and who is not is neither necessarily simple nor clear-cut in all circumstances.
10. International law recognises different possibilities of acquiring a nationality/obtaining a citizenship: citizenship by birth (under the rules of *jus sanguinis* and *jus soli*), citizenship by registration,¹⁴ naturalisation, and some special arrangements. The human right to acquire a nationality (e.g. Art 24 (3) ICCPR; Art 7 CRC; Art 15 UDHR) has not developed into a *general* (unconditional) right to a specific nationality by choice; accordingly, states still enjoy a broad discretion in this area.

II.1.1 Citizenship by Birth or by Registration

11. *Jus soli* (based on birthplace) and *jus sanguinis* (based on [parental] descent) are two basic principles used in determining citizenship by birth. States commonly adopt one principle primarily (historically depending on their self-reception as 'immigration countries') but complement it with the other. For example, within examined countries, *jus sanguinis* was mentioned as the key principle in the following countries: Australia, China, Japan, South Korea, Mongolia, Italy, and Iran.¹⁵ Most countries that adopt the principle of *jus soli*, on the other hand, do so in conjunction with *jus sanguinis*.¹⁶ There are also states that restrict *jus soli* as a ground for acquiring nationality to persons whose

¹³ As discussed in the first interim report of the ILA Committee on International Migration and International Law (n 1).

¹⁴ It should be noted that citizenship by registration here is not naturalisation in the common sense, but more closely related to citizenship by descent. For example, in Nigeria, there are three ways to obtain citizenship: citizenship by birth, citizenship by registration and citizenship by naturalisation; eligibility for citizenship by registration includes two scenarios: (1) any women who married to a Nigerian citizen; (2) any person 'of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria'. See the Constitution of Nigeria, section 26.

¹⁵ See the country reviews of Australia, China, Japan, South Korea, Mongolia, Italy, and Iran, Part I, Question 5.

¹⁶ See notably the country reviews of Canada, Guatemala, and the USA, Part I, Question 5.

parents were regular migrants in the host country at the time of birth, as is the case of Colombia.¹⁷

12. The question of citizenship of married women and of children in the context of migration requires some special attention. It used to be the practice in some countries that, when a woman married to a foreign spouse, she could lose her own nationality of origin and gain her husband's nationality. This is no longer a common practice, especially in light of the development of human rights norms focused on eliminating gender discrimination, particularly Article 9 of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁸ Within the examined countries, Ghana provides an interesting example of 'citizenship by registration' if a foreign woman marries a man who is a citizen of Ghana.¹⁹ This means that a woman married to a citizen of Ghana can receive that state's citizenship by registration rather than by naturalisation, resulting therefore in a facilitated avenue for citizenship. Another example is Iran, where a 2019 Amendment to the Law on Determining the Nationality of Children Born from a Marriage of Iranian Women and Foreign Men 2006 allows children below 18 years of age born of Iranian mothers and non-Iranian fathers to obtain Iranian citizenship.²⁰
13. In determining the citizenship of children born to parents who have different nationalities, outside the country of one parent, to a naturalised parent, or to a migrant parent who is not yet naturalised in the host country, careful reading of the relevant countries' citizenship law is required before categorising the child as a migrant.²¹ For example, the children of naturalised Guatemalan citizens can be naturalised by declaration.²² A child born to a permanent resident in Australia is an Australian citizen.²³ A child born in the United Kingdom (UK) to non-British parents may register as a British citizen once one parent becomes an Indefinite Leave to Remain resident or becomes a British citizen.²⁴ A child born in the USA to a temporary visa holder or even to undocumented migrants (at least before 30 January 2025) is an American citizen, even though the child may also have another citizenship based on *jus sanguinis*.²⁵
14. There is also the question of whether a migrant's birth citizenship can be lost due to naturalisation in another country and whether there is a human right not to lose the birth

¹⁷ See Colombia's country review, Part I, Question 5.

¹⁸ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

¹⁹ See Ghana's country review, Part I, Question 5.

²⁰ Iran, 'Amendment to the Law on Determining the Nationality of Children Born from a Marriage of Iranian Women and Foreign Men 2006' (2 October 2019).

²¹ To find relevant nationality laws or citizenship laws, see Maarten Peter Vink and others, 'GLOBALCIT citizenship law dataset' (EUI CADMUS, 2021) <<https://cadmus.eui.eu/entities/publication/311aa1c8-9b7c-5550-b77b-7ac9f78923bb>> accessed 19 Feb 2026. See also Maarten Vink and others, 'The Global State of Citizenship 2025: Gender equality, immigration inclusion, and security of status' (EUI Global Citizenship Observatory 2025) Report <<https://globalgovernanceprogramme.eui.eu/wp-content/uploads/2025/06/The-Global-State-of-Citizenship.pdf>> accessed 19 Feb 2026.

²² See Guatemala's country review, Part I, Question 5.

²³ See Australia's country review, Part I, Question 5.

²⁴ See the UK's country review, Part I, Question 5.

²⁵ See the USA's country review, Part I, Question 5. See also Gerald Neuman, 'Lessons for Birthright Citizenship from Suspension of Deportation' (SSRN, 31 December 2025)

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5991454> accessed 19 Feb 2026. It is also important to note that the United States Supreme Court is currently debating the question of limitations to *jus soli* citizenship: 'Donald J. Trump, President of the United States, et al., Petitioners v. Barbara, et al.' (United States Supreme Court) No. 25-365 <<https://www.supremecourt.gov/docket/docketfiles/html/public/25-365.html>> accessed 27 Feb 2026.

citizenship involuntarily. Some argue for a human right to dual citizenship in the sense that neither the home state nor host state of a migrant should force or require the migrant to renounce or lose their birth citizenship before being naturalised in the host state.²⁶ The South Africa Country Review provides a good example of this aspect (see below para. 27).

15. Another common practice in relation to the citizenship of migrants is that parents of a child may decide on behalf of their child whether to naturalise the latter or not, which may make children lose their birth citizenship or obtain a citizenship they may not want. The Committee is of the opinion that a more generous approach, *i.e.* not losing birth citizenship due to their parents' actions before children reach the legal age to make their own decisions, would be in line with states' obligations to take the best interests of the child as a primary consideration in all decisions affecting children, as per Article 3 of the Convention on the Rights of the Child (CRC).²⁷
16. Citizenship of children may lead to their parents' residence and the right to stay in the country, as addressed more in depth in Section II.3 below. One example of this is the Court of Justice of the European Union (CJEU) case, *Zhu & Chen*.²⁸ The applicant, a migrant, received his residence in the country because of his Ireland-born child, who was an Irish citizen based on *jus soli*.

II.1.2 Naturalisation

17. Naturalisation of migrants in the host state may be important for both individuals and the state. The decision of whether to naturalise involves many considerations, including the different rights a citizen and a migrant may enjoy, the rights migrants will enjoy, the rights they may lose (such as birth citizenship), or whether the naturalised migrants retain control over the matter in relation to their children.
18. Country practices on naturalisation vary in terms of pathways and requirements, but they often share the following common features.
19. First, the principle of non-discrimination should apply in the process of naturalisation even though states are free to decide on the criteria for naturalisation. Positive discrimination may be required in certain instances. For example, in the cases of *Q v Denmark*²⁹ and *JSKN v Denmark*,³⁰ the Human Rights Committee (HRC) found that no exemption from the language proficiency requirement for naturalisation in Denmark was discriminatory against persons with disabilities and violated Article 26 of the International Covenant on Civil and Political Rights (ICCPR).³¹ On the other hand, situations of indirect discrimination as a result of naturalisation criteria have not been assessed with the same care and consideration of the migrant's effective capability of fulfilling these criteria. This was the case in *Benon Pjetri v. Switzerland*, where the Committee on the Elimination of All Forms of Racial Discrimination (CERD) decided

²⁶ Peter J Spiro, 'Dual Citizenship as Human Right' (2020) 8 ICON 111, 118.

²⁷ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

²⁸ CJEU, *Zhu and Chen*, 19 October 2004, C-200/02. See also Darragh Coffey, 'Standards of Scrutiny in Judicial Review of Deportation Decisions Involving Article 3 ECHR: *X.X. v Minister for Justice and Equality*' (2017) 57 Irish Jurist 144.

²⁹ HRC, 'Q v Denmark' (1 April 2015) UN Doc CCPR/C/113/D/2001/2010 paras 7.2–7.5.

³⁰ HRC, 'JSKN v Denmark' (25 October 2022) UN Doc CCPR/C/136/D/2754/2016 paras 8.3–8.7.

³¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

that the requirement of integration into the host community for the purposes of naturalisation is neutral and non-discriminatory, without acknowledging that integration may be hindered by prejudices and discriminatory attitudes from the community itself.³²

20. Second, in terms of pathways to naturalisation, some countries, such as the UK and Ireland, provide a special (faster) naturalisation pathway based on marriage or civil partnership to a national, in addition to the general procedure. In the UK, a pathway based on marriage means a significantly shorter residence requirement (reduced from five to three years lawful residence, counted from the day before the Home Office receives the application, and such three-year residence requirement does not need to include one-year permanent residence). Similarly in Ireland, an application based on marriage or civil partnership requires three rather than five years of residence in the past five years before the application.³³ In Hungary, some categories of migrants, including family members of a citizen, children, recognised refugees, and stateless persons, may qualify for ‘facilitated conditions’, which means reduction of the residence requirement from eight to three years.³⁴
21. Third, in the general (or ordinary) pathway of naturalisation, some period of residence in the host country is always required. Such period can vary from two to 20 years. For example, Argentina requires two years of residence;³⁵ Canada requires three years in the past five years, but a period of stay under temporary residence can be counted;³⁶ Poland requires three years after holding a permanent residence permit;³⁷ in Australia, four years of residence, including at least one year as permanent resident, are required, but the migrant can be physically away from Australia for no more than 12 months in the past four years and no more than 90 days in the preceding year before the application;³⁸ Brazil requires four years of residence under its ordinary pathway, but the four years start from the time the migrant begins residing in Brazil for an indefinite term;³⁹ South Africa and Kosovo require five years of permanent residence before applying for naturalisation;⁴⁰ in Iran, the standard requirement is also of five years, but those born in Iran from a foreign father and who have resided in Iran for at least one year can apply for citizenship immediately after turning 18;⁴¹ in Japan and Thailand, five years of continuous domicile in the country is required;⁴² five years of residence are required for Colombia,⁴³ France, Ghana, Guatemala, Indonesia, Ireland, Mongolia, the Netherlands, New Zealand (1350 days in the last 5 years), Pakistan, Portugal, Russia, South Korea, Türkiye, and the USA;⁴⁴ seven years are generally required in Greece, but three years for EU citizens;⁴⁵ seven years of permanent residence are required in the Democratic Republic of Congo

³² CERD, ‘Benon Pjetri v Switzerland’ (5 December 2016) UN Doc CERD/C/91/D/53/2013 paras 7.2–7.7.

³³ See Ireland’s country review, Part I, Question 4.

³⁴ See Hungary’s country review, Part I, Question 5.

³⁵ See Argentina’s country review, Part I, Question 5.

³⁶ See Canada’s country review, Part I, Question 5.

³⁷ See Poland’s country review, Part I, Question 5.

³⁸ See Australia’s country review, Part I, Question 5.

³⁹ See Brazil’s country review, Part I, Question 5.

⁴⁰ See South Africa’s and Kosovo’s country reviews, Part I, Question 5.

⁴¹ See Iran’s country reviews, Part I, Question 5.

⁴² See Japan’s and Thailand’s country reviews, Part I, Question 5.

⁴³ Although exceptions reducing this period exist, notably for nationals of Latin American and Caribbean countries and for individuals with close family ties to Colombian nationals. See Colombia’s country review, Part I, Question 5.

⁴⁴ See Country Reviews of Colombia, Guatemala, Mongolia, France, Portugal, the Netherlands, and the USA, Part I, Question 5.

⁴⁵ See Greece Country Review, Part I, Question 5.

(DRC);⁴⁶ eight years are required for Hungary;⁴⁷ 10 years of residence are generally required in Austria, Czechia, Italy (4 years for EU citizens), Libya, Slovenia, and Switzerland;⁴⁸ in India, the applicant must have 11 years of residence in the country and 12 months of continuous residence, amounting to a total of 12 years;⁴⁹ Nigeria requires ‘a continuous period of 15 years’;⁵⁰ 20 years are required for Uganda.⁵¹ Based on the surveys for this report, either five or ten years are more common than other durations of residence.

22. Fourth, it is commonly required that migrants show good character (absence of criminal convictions, for instance),⁵² sufficient social and economic integration,⁵³ and prove sufficient economic conditions⁵⁴ for naturalisation. Offering facilitated or simplified naturalisation, if it is in the interests of the country, is also a common practice among some of the surveyed states – often excluding subjective rights and granting public authorities broad discretion.⁵⁵
23. Fifth, some countries may require knowledge of the history of and life in the country, as well as of national values.⁵⁶ This is commonly assessed through a citizenship test and/or interview, such as in Australia, Austria, Canada, Croatia, Czechia, France, Greece, Hungary, the Netherlands, Russia, Spain, the UK, and the USA. In addition, many countries require migrants seeking naturalisation to have knowledge of the official language, or one of the official languages.⁵⁷ The UK even asks for a language qualification, and South Africa requires a language proficiency test result.⁵⁸
24. Sixth, some countries, such as Australia, Ethiopia, Nigeria, Pakistan, Russia, Slovenia and the USA, require migrants to take an oath of allegiance or pledge of commitment before the naturalisation process is complete.⁵⁹

⁴⁶ See the DRC’s country review, Part II, Question 5.

⁴⁷ See Hungary’s country review, Part I, Question 5.

⁴⁸ See the country reviews of Austria, Czech, Libya, Italy, Slovenia and Switzerland, Part I, Question 5.

⁴⁹ See India’s country review, Part I, Question 5.

⁵⁰ See Nigeria’s country review, Part I, Question 5.

⁵¹ See Uganda’s country review, Part I, Question 5.

⁵² See the country reviews of Austria, Australia, Brazil, Croatia, Czechia, the DRC, Ethiopia, France, Indonesia, Italy, Japan, Ghana, Greece, Hungary, Kosovo, Libya, Malta, Mongolia, New Zealand, Nigeria, Russia, Slovenia, Spain, South Africa, Switzerland, Türkiye, Uganda, and the UK, Part I, Question 5.

⁵³ See the country reviews of France, Greece, Switzerland, and Spain, Part I, Question 5.

⁵⁴ See the country reviews of Austria (exceptions can be made for individuals with significant disabilities preventing them from securing their livelihood), Czechia, Ethiopia; Ghana, Hungary, Indonesia, Japan, Kosovo, Mongolia, Poland, Slovenia, Türkiye, Part I, Question 5.

⁵⁵ See the country reviews of Austria, Croatia, the Netherlands, Slovenia, Spain, and South Korea, Part I, Question 5.

⁵⁶ See the country reviews of Australia, Brazil, Canada, India, Indonesia, Mongolia, New Zealand, Pakistan, Russia, and South Korea, Part I, Question 5.

⁵⁷ See the country reviews of Austria, Brazil, Croatia, Czechia, the DRC, Ethiopia, France, Ghana, Greece, Hungary, India, Indonesia, Italy, Kosovo, Malta, Mongolia, the Netherlands, Poland, Russia, Slovenia, Spain, South Africa, South Korea, Switzerland, Türkiye, Uganda, the UK, and the USA, Part I, Question 5.

⁵⁸ See the UK’s and South Africa’s country reviews, Part I, Question 5.

⁵⁹ See the country reviews of Australia, Ethiopia, Nigeria, Pakistan, Russia, and the USA, Part I, Question 5. In Slovenia statutory prescribed oath to uphold the free democratic constitutional order, as enshrined in the Constitution of the Republic of Slovenia, reads as follows: “I pledge allegiance to my new homeland, the Republic of Slovenia, and hereby swear that I will respect the free democratic constitutional order of the Republic of Slovenia, the values and principles of freedom and democracy, and that, as a citizen of the Republic of Slovenia, I will fulfill my duties and obligations. I swear that I will not act or support actions against the free and democratic

25. Seventh, in some states in certain circumstances, there is no right to be granted the relevant nationality by naturalisation even if the applicable conditions are fulfilled.⁶⁰
26. Eighth, another interesting practice, though quite restrictive, was observed in Libya, namely, if the naturalised person resides outside the country for two consecutive years during the ten years following their naturalisation, naturalisation may be withdrawn.⁶¹ This also exists in other countries, such as Netherlands for example⁶².
27. Ninth, even though naturalisation falls within the state's core sovereign powers, it is possible that some naturalisation schemes may be declared illegal or unopposable to other States by a regional or international institution, when there are connections between domestic law on citizenship and regional and/or international law⁶³. For example, the CJEU ruled on 29 April 2025 that Malta's naturalisation by investment programme was unlawful under the EU principles of sincere cooperation and mutual trust.⁶⁴

II.1.3 Dual or Multiple Citizenship

28. Dual or multiple citizenship used to be regarded as an undesired occurrence, and the international community tried to reduce dual nationality by adopting the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Law⁶⁵ and the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality.⁶⁶
29. In connection with this historical background, some countries, while admitting dual or multiple citizenship in some cases, still require renunciation of previous citizenships upon naturalisation.⁶⁷ It is interesting to note that Nigeria does not recognise dual citizenship in relation to an acquired citizenship, but it is possible to have dual citizenship through birth citizenship.⁶⁸ In turn, Mongolia does not recognise dual citizenship, but it lacks legal frameworks to avoid the occurrence and therefore, in practice, dual citizenship exists in that country and is even increasingly common.⁶⁹ Russia makes a legal distinction between 'dual citizenship', which exists only through an international treaty on the

constitutional order or the existence of the Republic of Slovenia, and that I will not unlawfully endanger the authorities of the Republic of Slovenia or the representatives of those authorities. I swear that I will not support actions against the interests of the Republic of Slovenia through the use of violence or preparatory acts leading to the use of violence.”

⁶⁰ See country reviews of the UK, France, and Nigeria, Part I, Question 5.

⁶¹ See Libya's country review, Part I, Question 5.

⁶² See on this law from Netherlands the landmark case from the CJEU, *Tjebbes*, 12 March 2019, C-221/17, where the Court ruled that this law was in line with EU law.

⁶³ In this sense, the International Court of Justice's *Nottebohm* judgment had already signalled that a person's nationality may not be opposable to other states if that nationality is not 'effective' and if a genuine link is missing. See *Nottebohm (Liechtenstein v. Guatemala)* [1955] ICJ Rep 4, 22–24.

⁶⁴ Case C-181/23 *The European Commission v Republic of Malta* [2025] ECLI:EU:C:2025:283.

⁶⁵ Convention on Certain Questions Relating to the Conflict of Nationality Law (adopted 13 April 1930, entered into force 1 July 1937) 179 LNTS 89.

⁶⁶ Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (adopted 6 May 1963, entered into force 28 March 1968) ETS 43.

⁶⁷ See the country reviews of Austria, China, Croatia, Ethiopia, Japan, the Netherlands, Nigeria, Slovenia, South Africa, and Spain, Part I, Question 5.

⁶⁸ See Nigeria's country review, Part I, Question 5.

⁶⁹ See Mongolia's country review, Part I, Question 5.

subject,⁷⁰ and ‘second citizenship’, which refers to all other cases in which a Russian citizen holds a foreign nationality.⁷¹

30. International law does not require states to recognise dual or multiple nationality in general, but some argue that ‘neither the home state nor the host state of a migrant should force or require the migrant to renounce or lose their birth citizenship before being naturalised in the host state’.⁷² It should be noted that the CJEU requires states to apply proportionality test before depriving someone of citizenship if that leads to a loss of EU ‘citizenship’.⁷³ If naturalised persons lose their birth citizenship they may also lose their right to stay in their home country, which creates a particular dilemma for migrants. In relation to the automatic stripping of a citizenship, the Constitutional Court of South Africa held that the relevant section in the Citizenship Act which ‘automatically stripped South Africans of citizenship if they took citizenship of another country’ was unconstitutional, as there was no reason why people should lose their citizenship, and it amounted to discriminatory treatment for those with dual citizenship if they were born with such status.⁷⁴ Another example is China’s Nationality Law, which adopts a principle of ‘non-recognition of dual nationality’ and includes a provision on the automatic loss of Chinese nationality if the person chooses to be naturalised voluntarily.⁷⁵ Unlike South Africa, China does not have a judicial review system to decide on the constitutionality of its nationality legislation, and therefore the dilemma faced by Chinese nationals living abroad continues.⁷⁶
31. It should be noted that the dual or multiple nationals are also more exposed to potential stripping of one nationality, for example, due to national security measures, e.g., anti-terrorism measures.⁷⁷
32. It is also worth noting that, in situations of multiple nationality, many legal systems adopting the *lex patriae* principle give priority to the *lex fori* where the individual also holds that nationality. While this approach promotes legal certainty, it may raise concerns from the perspective of personal identity. This is illustrated by the CJEU’s judgment in *Garcia Avello*,⁷⁸ where the application of the forum’s naming rules to children with dual nationality was found to be capable of hindering the effective exercise of free movement rights.

II.1.4 Special Arrangements

33. Some countries have overseas territories or special territories where citizens may not have the full right to enter and stay. For example, in New Zealand, New Zealanders who

⁷⁰ Currently, such a treaty is in force only with Tajikistan.

⁷¹ In the latter situation, a person is regarded exclusively as a citizen of the Russian Federation while on its territory and is subject to specific obligations. See Russia’s country review, Part I, Question 5.

⁷² Regarding loss of birth citizenship, see para 13 above. See also: Peter J Spiro, ‘Dual Citizenship as Human Right’ (2020) 8 ICON 111, 118.

⁷³ See cases of C-221/17 and C-135/08; Hanneke van Eijken, ‘Tjebbes in Wonderland: On European Citizenship, Nationality and Fundamental Rights’ (2019) 15 European Constitutional Law Review 714.

⁷⁴ See South Africa’s country review, Part I, Question 5.

⁷⁵ See China’s country review, Part I, Question 5.

⁷⁶ See notably the factual scenario in: *Kong v Yan* [2021] SASC 82.

⁷⁷ See notably *Begum v Home Secretary* [2021] UKSC 7. See also Mercedes Masters and Salvador Santino F Regilme Jr, ‘Human Rights and British Citizenship: The Case of Shamima Begum as Citizen to Homo Sacer’ (2020) 12(2) Journal of Human Rights Practice 341. See further: UK’s country review, Part I, Question 5; *Alexander v Minister for Home Affairs* [2022] HCA 19; *Benbrika v Minister for Home Affairs* [2023] HCA 33.

⁷⁸ Case C-148/02, *Garcia Avello v Belgian State*, 2003, ECR I-11613.

are not Tokelauans may enter Tokelau but cannot stay there for more than 10 days.⁷⁹ Another example is China's special regions of Hong Kong and Macau. Chinese citizens from mainland China do not have the right to stay in these special regions unless they go through the relevant procedures, similar to those required in a foreign country. It is also noted that non-European territories of France or the Netherlands for example do not fall within the Schengen zone, despite being part of France. Nevertheless, EU citizens (but not third-country nationals) can enter and stay in those territories without a visa or permit.⁸⁰

34. In addition, states may also provide for some special arrangements, like the Compact of Free Association (CFA). The USA has entered into three CFAs, with the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia, respectively.⁸¹ Under CFAs, nationals of these three countries can enter and stay in the USA without a visa, even though they are not citizens nor lawful permanent residents.⁸²
35. New Zealand has similar free association arrangements with Niue and the Cook Islands. However, unlike CFAs entered into by the USA, under New Zealand's free association arrangements, nationals of Niue and the Cook Islands are regarded as citizens of New Zealand, and therefore they can freely enter and stay in the country without additional formalities.⁸³ It should be noted that this does not mean that citizens of New Zealand can enter and stay in Niue and the Cook Islands as citizens.⁸⁴

II.2 Right to Stay in a Non-Nationality Country

II.2.1 Overview

36. The right to stay in a country other than one's nationality country, or right to stay of non-nationals, is generally regulated through immigration law.
37. 'Stay' may mean permanent, temporary or transitory stay. In this context, a 'temporary stay' is not necessarily a 'short stay', as people may stay in a country for a long period of time but with a temporary visa or residence permit or status.
38. In cases concerning short stays of up to 90 days, many states allow migrants of some nationalities to remain in their territory without a visa or other sort of migratory documentation beyond a passport. This approach is usually applied based on the principle of reciprocity. This is the case, for instance, of United States nationals staying in EU member states and *vice versa*, as well as nationals of MERCOSUR member states while in the territory of another member state. On the other hand, in cases where a migrant is required to obtain some sort of documentation to stay in a foreign country, usually for long-term stays, three key approaches regulating the right to stay can generally be identified:

⁷⁹ See New Zealand's country review, Part I.

⁸⁰ See 'General Information on French Visa' (*france-visas.gouv.fr*) <<https://france-visas.gouv.fr/en/general-information>> accessed 10 Feb 2026; 'France in the Schengen area' (*france-visas.gouv.fr*) <<https://france-visas.gouv.fr/en/france-in-the-schengen-area>> accessed 10 Feb 2026.

⁸¹ 'The Compacts of Free Association' (*Congress.gov*) <<https://www.congress.gov/crs-product/IF12194>> accessed 20 Feb 2026.

⁸² *ibid.*

⁸³ See New Zealand Country Review, Part I.

⁸⁴ *ibid.*

- First, visa only. In some common law countries, such as Australia, Canada,⁸⁵ New Zealand, and the UK,⁸⁶ only a visa is required to have a right to stay.⁸⁷
 - Second, visa plus residence permit. Most countries, especially civil law countries such as Czechia, France, Germany, Italy, Portugal, China, and Brazil, adopt this approach, albeit with a wide range of practices.⁸⁸ A residence permit is a document or card (such as the National Migration Registration Card in Brazil) evidencing non-nationals' residence status—either temporary or permanent residence.
 - Third, visa plus legal status.⁸⁹ The USA's 'legal status' approach does not require a residence permit *per se*.⁹⁰ Other countries that adopt this approach include Guatemala and, partially, Japan.⁹¹
39. Regarding the first approach, Australia serves as a good example. In Australia, once a non-national obtains a visa, the conditions of the visa will determine their right to stay in Australia, either temporarily or permanently. The validity period of visas issued by Australia, range from 3 months to five years.⁹² There is no need for visa holders to report somewhere to obtain the right to stay once they enter Australia with a valid visa. The same applies in New Zealand since 2009.⁹³
40. In Europe, only the UK adopts a visa-only system,⁹⁴ while other European countries, including Ireland, adopt the second approach (discussed below). As the UK country review demonstrates, although there exist Biometric Residence Permits in the UK system, which are physical cards proving immigration status but not permits in themselves, both permission to enter and permission to stay are managed under a unitary visa process.⁹⁵
41. Interestingly, no African countries surveyed have adopted this approach, even though they generally follow common law traditions, such as Nigeria, Ghana, and South Africa.⁹⁶

⁸⁵ Though Canada's legal framework possesses some civil law attributes as well.

⁸⁶ In the UK, the right to stay is commonly called the 'right to reside', which can be obtained through a visa for a specific period of time and a specific purpose. Furthermore, documents authorising stay in the framework of the EU Settlement Scheme are called 'family permits', whereas documents authorising family reunification more broadly are referred to as 'family visas'. Arguably, the UK also includes some features of the second approach of 'visa plus residence permit', as the UK may issue an Indefinite Leave to Remain to grant the right to reside/stay in the country.

⁸⁷ See the country reviews of Australia, Canada, New Zealand, and the UK, Part I, Questions 1 and 2.

⁸⁸ See the country reviews of Czechia, France, Germany, Italy, Portugal, China, and Brazil, Part I, Questions 1 and 2.

⁸⁹ Rosalyn Higgins, 'The Right in International Law of an Individual to Enter, Stay in and Leave a Country' (1973) 49 *International Affairs* 341.

⁹⁰ See the USA's country review, Part I, Questions 1 and 2.

⁹¹ See Guatemala's and Japan's country reviews, Part I, Questions 1 and 2.

⁹² See Australia's country review, Part I, Questions 1 and 2.

⁹³ See New Zealand's country review, Part I, Question 1. See also Doug Tennent, Katy Armstrong and Peter Moses, *Immigration and Refugee Law* (3rd ed, LexisNexis 2017) 4.2.

⁹⁴ It should be noted that the UK, starting in February 2026, issues Electronic Travel Authorisations (ETA) for stays up to 6 months.

⁹⁵ See the UK's country review, Part I, Question 1.

⁹⁶ See the country reviews of Nigeria, Ghana, and South Africa, Part I, Question 1.

42. In Asia, Thailand, the Philippines, and Iran stand out by adopting a visa-only system.⁹⁷ It is noted that an ID card may be issued in the Philippines, but no residence permit is required, and the visa is the principal immigration management instrument.⁹⁸ In Iran, in addition to visas, two additional resident permits exist: one for displaced persons and refugees and another for a special group of people, including economic investors and those who ‘have collaborated with Iran’s military forces in the region’, such as Afghans.⁹⁹ The reviews for both India and Pakistan state that their respective countries adopt only or primarily visa-based systems and do not require residence permits, but they do require registration for long-term stays or persons with certain nationalities.¹⁰⁰
43. Under the second approach, countries use visas to manage entry (or admission) and short-term stays (commonly less than 90 days), while using residence permits to regulate longer-term stays of non-nationals. Such countries, among those reviewed, include: all seven African countries (Ethiopia, DRC, Ghana, Libya, Nigeria, South Africa, and Uganda); six Asian countries (China, Japan, South Korea, Indonesia, Mongolia, and Vietnam); three American countries (Argentina, Brazil, and Colombia); and 21 European countries (including e.g. Austria, Czech Republic, Croatia, France, Finland, Germany, Greece, Italy, Netherlands, Russia, and Slovenia). Country practices vary significantly in terms of the timeframe required to apply for a residence permit and the specific requirements for application, but the common practice for longer-term stays is a visa plus a residence permit.
44. In China’s practice, for example, non-nationals generally need to have one of 13 Ordinary Visas to enter and then need to apply for a residence permit to stay if their stay is longer than 90 days (for work purposes) or 6 months (for other purposes).¹⁰¹ A residence permit should be applied for within 30 days of their arrival, and there are five different categories of residence permits: work, study, journalism, family reunion and private matters.¹⁰²
45. Country practice in Africa is interesting, since common law countries such as Ethiopia, Ghana, Nigeria, and Uganda, adopt the second approach rather than the first one (visa-only). For example, in Ethiopia, an entry visa is required for migrants.¹⁰³ Following that, migrants are required to register and obtain a residence permit, unless they qualify for exemption, in which case they may be issued an identity card instead.¹⁰⁴ In Ghana, non-nationals must have a visa or a residence permit, and there are several types of residence permits, including for studies, work, and indefinite residence.¹⁰⁵
46. For countries which require a residence permit, the time to apply for such a permit varies. Most countries require non-nationals to apply within a set period of time after their

⁹⁷ See the country reviews of Thailand, the Philippines, and Iran, Part I, Question 1.

⁹⁸ See the Philippines’ country review, Part I, Question 1.

⁹⁹ See Iran’s country review, Part I, Question 1.

¹⁰⁰ See India’s country review, Part I, Question 1, stating that long-term visa holder must register with the authority within 14 days of arrival if their intended stay exceeds 180 days; Pakistan’s country review, Part I, Question 1, stating that registration is not universal for all non-nationals, but for those foreign nationals specifically directed by immigration authorities at the port of entry.

¹⁰¹ See China’s country review, Part I, Question 1.

¹⁰² *ibid.*

¹⁰³ See Ethiopia’s country review, Part I, Question 1.

¹⁰⁴ *ibid.*

¹⁰⁵ See Ghana’s country review, Part I, Question 1.

arrival, such as eight working days in Italy,¹⁰⁶ 30 days in China¹⁰⁷ and the DRC,¹⁰⁸ and 15 calendar days in Colombia.¹⁰⁹ Japan's practice is unique, as the residence card will be issued at the port of entry.¹¹⁰

47. It is a common practice that the visa type determines whether a residence permit is required or not. Within the examined African countries, Libya provides four types of visas: entry visa, transit visa, exit visa and residence visa, and residence visa holders are required to obtain a residence permit within one month of the visa issuance date.¹¹¹ In the DRC, there are five types of settlement visas: Special Establishment Visa, Ordinary Settlement Visa; Work Visa; Student Visa; Missionary Visa.¹¹²
48. In the Americas, residence in Brazil may be authorised for many purposes, including research, study, work, working holiday, religious reasons, refugees status, political asylum, statelessness, or victims of trafficking in persons;¹¹³ in Colombia, the residence permit is treated as an identity card for non-nationals.¹¹⁴ In Argentina, there are four types of residence permits: (1) precarious residence, allowing stay for up to 180 days, (2) transitional residence, which is for those who do not intend to reside in the country; (3) temporary residence, which can be for many purposes, such as migrant workers, pensioners, investors, students, asylum seekers, and refugees; and (4) permanent residence.¹¹⁵
49. In Europe, practice varies among countries. To mention a few examples, in France, there are three types of residence permits: temporary (one year and renewable), multi-year (two or four years), and long-term (10 years). Interestingly, some residence permits are considered as 'individual rights' and must be granted, while some permits are subject to the discretionary power of the administration, which means that, even if the conditions are not met, the government may still decide to grant a residence permit. Humanitarian permits fall within this discretionary power.¹¹⁶ In Poland, for third-country nationals, resident permits include: Temporary Residence Permit; Permanent Resident Permit; EU Long-term Residence Permit; Refugee Status; Subsidiary Protection; Asylum, Humanitarian Stay, Tolerated Stay and Temporary Protection.¹¹⁷ In Russia, there are six types of residence or status: (1) Temporary Residence Permit; (2) Temporary Residence Permit for Education; (3) Permanent Residence Permit; (4) Highly Qualified Specialist Status; (5) Refugee Status or Temporary Asylum; and (6) State Program on Assistance to Voluntary Resettlement of Compatriots Living Abroad.¹¹⁸
50. Regarding the third approach, based on migratory or legal status, the USA and Guatemala provide two examples. In the USA, a visa allows admission to the country while legal status is the key for the right to stay therein.¹¹⁹ Legal status is generally provided by the

¹⁰⁶ See Italy's country review, Part I, Question 1.

¹⁰⁷ See China's country review, Part I, Question 1.

¹⁰⁸ See the DRC's country review, Part I, Question 1.

¹⁰⁹ See Colombia's country review, Part I, Question 1.

¹¹⁰ See Japan's country review, Part I, Question 1.

¹¹¹ See Libya's country review, Part I, Question 1.

¹¹² See the DRC's country review, Part I, Question 1.

¹¹³ See Brazil's country review, Part I, Question 2.

¹¹⁴ See Colombia's country review, Part I, Question 1.

¹¹⁵ See Argentina's country review, Part I, Questions 1 and 2.

¹¹⁶ See France's country review, Part I, Question 2.

¹¹⁷ See Poland's country review, Part I, Question 2.

¹¹⁸ See Russia's country review, Part I, Question 2.

¹¹⁹ See the USA's country review, Part I, Questions 1 and 2.

relevant form or card, such as green card for immigrant status or Form DS-2019 for J1 visa holders. In Guatemala, there are four types of migratory status: ordinary status, extraordinary status, special status, and status of ‘irregular migrants’, and they are crucial for the immigration regulation of Guatemala.¹²⁰

51. Lastly, it is interesting to note that Japan adopts both the residence permit and migratory status approaches, where the migratory status comprises both activities-based status and position-based status.¹²¹

II.2.2 Categories of Migrants

52. To fully appreciate the nuance of non-nationals’ right to stay and rights while staying, it is critical to understand that migrants may fall within different categories. However, categorising migrants can be challenging in practice, as no clear-cut divisions, except concerning refugees, exist in international law and researchers may adopt different categorisations.
53. For the purposes of addressing the rights of different groups of migrants regarding their stay in the host state, this report adopts the following categorization, based on the most common legal statuses that migrants find themselves in.
54. First, *migrants with permanent residence*, which may include business migrants, skilled migrants, and those who have pursued family reunification or were granted international protection. Permanent residence may impart different legal rights in different countries, and migrants with permanent residence may be known by different names, such as resident return visa holders, permanent residents, or lawful permanent migrants in the USA. Not all countries recognise permanent residence. For example, Pakistan has long-term residence visas, which can grant migrants a right to stay of up to 10 years, but does not provide for a legal category of permanent residence.¹²² It should be noted that a visa time-limit does not make such a visa ‘not permanent’. For example, Australia’s permanent residence visas all have a five-year travel limitation, which means that permanent resident visa holders can stay in Australia indefinitely, but, if they travel outside Australia, the visa is valid only for five years.¹²³
55. Second, *migrants with temporary residence*, which may have the purpose of study, work, business, or investment. Many countries distinguish temporary residents from short-term visitors who do not reside in the host country, but some countries, such as Australia, do not. Temporary residence may last a very long period of time, even for decades. For example, in Australia, temporary work Subclass 482 visas can be granted for 1-5 years and then can be renewed many times if all conditions are met.¹²⁴
56. Third, *temporary non-resident migrants*. This group of migrants are particularly relevant in countries which adopt the residence permit approach. They do not need or are not eligible to obtain a residence permit if they are temporary non-resident migrants, such as tourists. For the countries adopting the visa-only approach, there is no difference between temporary non-resident migrants and temporary resident migrants. Temporary non-

¹²⁰ See Guatemala’s country review, Part I, Question 1.

¹²¹ See Japan’s country review, Part I, Questions 1 and 2.

¹²² See Pakistan’s country review, Part I, Questions 1 and 2.

¹²³ See Australia’s country review, Part I, Question 2.

¹²⁴ See Australia’s country review, Part I, Question 2.

resident migrants generally stay in the host country only for a short period of time, usually no more than 90 days.

57. Fourth, *undocumented migrants* (*'sans-papiers'*). Unlike the first three groups above, this group encompasses non-nationals without legal status in the host country. These migrants may have a claim to a status that entitles them to remain in the country but which has not yet been recognised, as may happen to asylum seekers before they present themselves to state authorities, as well as victims of smuggling and trafficking in persons. Moreover, undocumented status can be the result of a situation where the host state is unable to remove a non-national, due to the existence of a risk of *refoulement* but refuses to provide some kind of legal status while that person is in its territory.¹²⁵
58. In addition, it is worth mentioning the category of *preferred migrants*. States may grant preferred treatment for many reasons. A common practice is regional or subregional preferred treatment, such as EU citizens in the EU. This Committee's 2024 report on regional arrangements on the right to enter (which naturally leads to at least a short-term stay, if not permanent) provided a wide range of examples of these cases, including from the EU, Africa, and Latin America.¹²⁶ Further examples are as follows. Under the Common Travel Area (CTA) of Ireland and the UK, 'British and Irish citizens can move freely and reside in either jurisdiction and enjoy associated rights and privileges, including the right to work, study and vote in certain elections, as well as to access social welfare benefits and health services'.¹²⁷ In Africa, five countries, including Rwanda, Seychelles, The Gambia, Benin, and Ghana have adopted a policy of visa-free travel for African nationals.¹²⁸ There is a Trans-Tasman Travel Arrangement between Australia and New Zealand, allowing 'citizens of either country to freely visit, live, and work in the other without restrictions'.¹²⁹ In Latin America, under the Central American Free Mobility Agreement, nationals of Guatemala, El Salvador, Honduras and Nicaragua can travel freely across the region.¹³⁰ In addition, citizens of member countries of the Andean Community of Nations (Colombia, Peru, Bolivia, and Ecuador) may enjoy preferred treatment.¹³¹ Preferred treatment may also be linked to shared historical ties, including those imposed in processes of colonisation. In this regard, Spanish nationals often enjoy preferred treatment in Latin American countries,¹³² as do British nationals in Australia.¹³³ Another category of preferred migrants is based on ethnicity or previous nationality, such as the proposed Huayi Card in China for ethnic Chinese,¹³⁴ Pakistan Origin Card to non-

¹²⁵ As seen notably in the Netherlands: Maarten P Bolhuis, Hemme Battjes and Joris van Wijk, 'Undesirable but Unreturnable Migrants in the Netherlands' (2017) 36(1) Refugee Survey Quarterly 61.

¹²⁶ ILA Committee on International Migration and International Law (n 1) section 2.3.2.

¹²⁷ 'Common Travel Area Guidance' (Gov.UK) <<https://www.gov.uk/government/publications/common-travel-area-guidance/common-travel-area-guidance>> accessed 15 Feb 2026. See also Ireland's country review.

¹²⁸ 'Ghana opens up visa-free travel to all Africans' (BBC, 3 January 2025) <<https://www.bbc.com/news/articles/c80v4p1n81no>> accessed 20 Feb 2026.

¹²⁹ Under the arrangement, New Zealanders will be granted a special category of visa (Subclass 444) in Australia upon arrival while Australian citizens and permanent residents can visit, stay and work in New Zealand without obtaining a visa. See New Zealand's country review. See also the Trans-Tasman Travel Arrangement, <https://www.freemovehub.com/media/filer_public/98/75/9875b116-5d0e-4c95-8888-8a6166cb58f6/1973_australia-new_zealand_joint_communique> accessed 20 Feb 2026.

¹³⁰ See Guatemala's country review.

¹³¹ See Colombia's country review.

¹³² *ibid.*

¹³³ See Australia's country review.

¹³⁴ See China's country review.

nationals of Pakistani heritage or marital connection,¹³⁵ and family members of Overseas Citizen of India or Person of Indian Origin card in India.¹³⁶

59. A related but distinct practice is the right to stay for *border residents*. For example, China's local government in Guangxi adopts a policy of granting border residents from Vietnam a right to cross the border, to work and possibly temporarily live in China for up to six months.¹³⁷ Another example is the local border traffic arrangement between Russia and Norway, established to facilitate cross-border mobility for residents of adjoining border areas. Under this arrangement, a local border traffic permit allows an eligible border resident of one state to cross the Russian-Norwegian border and remain within the border area of the other state for up to 15 days per visit. The total duration of such stays throughout the permit's validity period is not limited. The permit does not grant the holder the right to engage in employment or entrepreneurial activities, which remain subject to the ordinary authorization procedures required under the domestic law of the host state.¹³⁸
60. It should be noted that EU countries distinguish between EU citizens and 'third-country nationals' due to the freedom of movement within the EU. In addition, nationals of the European Economic Area states (Iceland, Liechtenstein and Norway) and Swiss nationals enjoy 'almost entirely equivalent' or 'largely similar' status to the EU citizens.¹³⁹ Put simply, 'migrants' in the EU refers to 'third-country nationals' who are not EU citizens nor nationals of Iceland, Liechtenstein, Norway or Switzerland.

II.3 Family reunification

61. Family reunification is generally regulated under international law as flowing from the right to family life. This right is provided in several human rights treaties¹⁴⁰ as well as under customary international law.¹⁴¹ States have a positive obligation to promote family reunification in accordance with this right, whereas prohibiting reunification may amount to an arbitrary interference with family life.¹⁴² Relatedly, the question of whether the family already is in a country or whether access of family members is requested, is of utmost importance also informing the proportionality test states have to apply should they deny reunification. Because most international treaties do not expressly refer to family reunification, much of the content of this right has been developed from the practice of international human rights bodies and regional human rights courts. As a result, there

¹³⁵ See Pakistan's country review.

¹³⁶ See India's country review.

¹³⁷ 赴广西调研出入境管理法草案的有关情况 [Reports on Investigation in Guangxi on Relevant Circumstances of the Draft Exit-Entry Administration Law], in 信春鹰主编 Chunying Xin (ed), 《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), 341.

¹³⁸ See Russia's country review.

¹³⁹ See EU review.

¹⁴⁰ E.g. Article 17 of the ICCPR. See also: American Convention on Human Rights (adopted 22 November 1969, entered into force 17 July 1978) 1144 UNTS 123 art 17 (ACHR); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 18 (ACHPR); Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) art 8 (ECHR); Arab Charter on Human Rights (adopted 22 May 2004, entered into force 15 March 2008), art 21 (Arab Charter).

¹⁴¹ Chetail (n 11) 126–127; ILA Committee on International Migration and International Law (n 1) section 4.4.

¹⁴² HRC, 'General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses' (27 July 1990) UN Doc HRI/GEN/1/Rev.1, 28, para 5.

exist areas in which more development is needed to clarify the scope of family reunification and ensure that its protection is effective.

62. One such key area is the definition of ‘family’ for reunification purposes. In general, this concept has included at least what is termed the ‘nuclear family’—married couples and their unmarried minor children. State practice reflects this minimum threshold; the vast majority of states surveyed provide a legal framework allowing reunification between these family members. Some states that do not have specific norms on family reunification still provide for other migratory pathways that can be relied upon to make this process possible for nuclear family members, such as Ethiopia, Japan, Pakistan, and Russia.¹⁴³ In the DRC and Iran, however, these possibilities are restricted on a gender basis: in the DRC, a right to reunification can be deduced from domestic law for non-national women married to Congolese men established in Congolese territory, as well as non-national women who are divorced or widowed from Congolese men and whose adult children have opted for Congolese nationality and taken up residence in the DRC;¹⁴⁴ in Iran, marital visas allow only non-national men married to Iranian women, as well as their children, to reunite in that country.¹⁴⁵ These gender-based distinctions are regrettably incompatible with current international human rights law standards, particularly the prohibition of discrimination enshrined in Article 2(1) of the ICCPR, to which Iran and DRC are parties. In the case of the DRC, which is a party to the CEDAW, these norms also breach this Convention.
63. Indeed, an understanding of ‘family’ in conformity with the effective protection of human rights should encompass different kinds of families that may exist within a given society,¹⁴⁶ even if they do not conform to the traditions of host state’s community.¹⁴⁷ In this vein, the conceptualisation of ‘family’ in reunification proceedings should not be based exclusively on blood ties, for instance, between children and their caretakers—therefore admitting reunification with children that have been adopted or taken under other frameworks of custody under law or custom¹⁴⁸—nor on formal marriage bonds.¹⁴⁹ Despite that, only 17 of the states reviewed indicated that their family reunification

¹⁴³ See country reviews of Ethiopia, Japan, Pakistan, and Russia, Part I, Question 4.

¹⁴⁴ See the DRC’s country review, Part I, Question 4. A similar practice exists in Pakistan, with a few caveats. Since Pakistan does not have a legal framework on family reunification, one of the potential avenues for this reunification is through the acquisition of citizenship: women married to Pakistani men may be registered as Pakistani nationals without undergoing the more bureaucratic process of naturalisation, and thus are allowed to live with their spouses in Pakistan. Pakistani courts have held that this provision constitutes gender discrimination; nevertheless, to date the legal provisions remain unaltered. See Pakistan’s country review, Part I, Question 4.

¹⁴⁵ See Iran’s country review, Part I, Question 4.

¹⁴⁶ CRC, ‘Y.B. and N.S. v. Belgium’ (27 September 2018) UN Doc CRC/C/79/D/12/2017; CRC, ‘General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)’ (29 May 2013) UN Doc CRC/C/GC/14, para 60.

¹⁴⁷ See further: Mariana Ferolla Vallandro do Valle, ‘Family Reunification’ in Vincent Chetail (ed), *Elgar Concise Encyclopedia of International Migration Law* (Edward Elgar 2025).

¹⁴⁸ CRC, ‘Y.B. and N.S. v. Belgium’ (27 September 2018) UN Doc CRC/C/79/D/12/2017. It is noted that from a private international law perspective, this broader understanding finds some support in international instruments. For instance, the 1996 Hague Convention on the Protection of Children (*Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children*) explicitly covers ‘the placement of the child in a foster family or in institutional care, or the provision of care by *kafala* or an analogous institution’ (Article 3(e)), thereby acknowledging legally relevant child-care relationships beyond biological or formal parental ties.

¹⁴⁹ HRC, ‘Ngambi and Nébol v. France’ (9 July 2004) UN Doc CCPR/C/81/D/1179/2003, para 6.4.

framework covers unmarried couples.¹⁵⁰ Moreover, the reviews for Czechia,¹⁵¹ Greece, Italy, Mongolia, Pakistan, Poland, and Thailand expressly indicated that family reunification in these states is not available for unmarried couples.¹⁵² A particular feature of the Thai family reunification framework is that, for requesting reunification with a spouse, the couple must have been married for an established number of years at the time of the application.¹⁵³ In the case of marriage between a Thai national and a foreign national, this period of time is reduced if the couple has children together or if they are able to prove infertility through a medical certificate.

64. Any limitations on family reunification—for instance, regarding the persons entitled to this right or the means for exercising it—should observe the conditions applicable under human rights law, namely being provided by law, necessary to achieve a legitimate aim, and proportionate to said aim.¹⁵⁴ They should also abide by the principle of non-discrimination¹⁵⁵ and the best interests of the child.¹⁵⁶ In this vein, practices that automatically prohibit unaccompanied children from reuniting with their parents in the host state’s territory are contrary to international law because they do not allow for an individualised and serious assessment of both the measure’s proportionality and the child’s best interests. More favourable treatment towards refugees and other persons benefitting from international protection seeking family reunification in the host state is warranted, since they are unable to enjoy family life in their country of origin.¹⁵⁷ Additionally, assessments of family reunification requests must be individualised and allow decision-makers sufficient flexibility to take into consideration the particularities surrounding the persons involved, regardless of their formal migratory status.¹⁵⁸

¹⁵⁰ See the country reviews of Argentina, Australia, Brazil, Canada, Colombia, Croatia, France, Hungary, Ireland, Kosovo, New Zealand, Portugal, Slovenia, Spain, Switzerland, Uganda, and the UK, Part I, Question 4.

¹⁵¹ Though an exception is made for couples composed of EU citizens, which may benefit from family reunification even in the absence of formal marriage bonds.

¹⁵² See the country reviews of Czechia, Greece, Mongolia, Pakistan, Poland, and Thailand, Part I, Question 4, and Italy, Part I, Question 2.

¹⁵³ See Thailand’s country review, Part I, Question 4.

¹⁵⁴ ICCPR General Comment No 31, UN Doc CCPR/C/21/Rev.1/Add. 13 (2004), para 6; American Association of the International Commission of Jurists, ‘Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights’ (1984) para 10.

¹⁵⁵ *Abdulaziz, Cabales and Balkandali v UK* App nos 9214/80, 9473/81 and 9474/81 (ECtHR, 28 May 1985); CRPD, ‘Bendsten v. Denmark’ (31 August 2018) UN Doc CRPD/C/20/D/39/2017.

¹⁵⁶ *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Advisory Opinion OC-21/14 (IACtHR 19 August 2013) para 85; *Jeunesse v the Netherlands* App no 12738/10 (ECtHR, 3 October 2014) para 109. The CJEU has made clear that Member States, when implementing Directive 2003/86 (*infra* note 156) and examining applications for family reunification, must make a balanced and reasonable assessment of all the interests in play, taking particular account of the interests of the children concerned: Joined Cases C-356/11 and C-357/11 *O, S v Maahanmuuttovirasto and Maahanmuuttovirasto v L* [2012] ECLI:EU:C:2012:776, para 81. They have to do so with a view to promoting family life: Joined Cases C-133/19, C-136/19 and C-137/19 *Belgium* [2020] ECLI:EU:C:2020:577, para 35; Case C-279/20 *Germany v XC* ECLI:EU:C:2022:618, para 48; and that they cannot re-introduce distinctions based on the time at which the family is constituted, making clear that the Directive cannot be interpreted restrictively and cannot be deprived of its effectiveness: Case C-578/08 *Rhimou Chakroun v Minister van Buitenlandse Zaken* [2010] ECLI:EU:C:2010:117, para 64.

¹⁵⁷ *Tanda-Muzinga v France* App no 2260/10 (ECtHR, 10 July 2014); *B.F. and ors v Switzerland* App no 13258 and three others (ECtHR, 4 July 2023).

¹⁵⁸ *M.A. v Denmark* App No 6697/18 (ECtHR, 9 July 2021).

65. Among the states reviewed, the right to family reunification for same-sex couples is limited.¹⁵⁹ Despite that, important progress has been made by international courts in reaffirming the right to family reunification to these couples. The CJEU held in 2018 that the term ‘spouses’ in Directive 2004/38/EC,¹⁶⁰ which regulates reunification among family members of EU nationals, covers same-sex marriages formalised in an EU Member State according to its domestic laws, so that another Member State cannot bar reunification on the ground that it does not allow for same-sex marriage.¹⁶¹ For purposes of consistency, the same interpretation should be used towards Council Directive 2003/86/EC,¹⁶² which concerns the right to family reunification of third-country nationals—as of the writing of this report, however, no conclusion in this sense has been expressed by the CJEU. Furthermore, the European Court of Human Rights (ECtHR)¹⁶³ and the Inter-American Court of Human Rights (IACtHR)¹⁶⁴ have indicated that same-sex unions are also covered by the protection of family life and the prohibition from discrimination under human rights law. The ECtHR has also importantly clarified that, where a same-sex couple coming from a country that does not allow for their marriage seeks family reunification in another country, this host country cannot deny their request on the basis that it only allows the reunification of married couples.¹⁶⁵ Even if such a limitation applies to heterosexual couples, applying it to a homosexual couple who is not able to legally formalise their marriage would amount to discrimination.¹⁶⁶ These pronouncements reinforce the prohibition of discrimination under international human rights law, which encompasses discrimination on the basis of sexual orientation. Indeed, while states have a margin of discretion to limit family reunification on the basis of the formal status of the couple’s relationship or its duration, there exists no objective justification for denying this right to a couple only on the basis of their sexual orientation. In cases where a state allows family reunification only for couples that are formally married, in order to comply with the prohibition of indirect discrimination, such a state should consider allowing reunification for same-sex couples in a relationship capable of constituting a family but who were not legally authorised to marry in their countries of origin. The same reasoning applies to family reunification of couples who were not allowed to marry in their countries of origin due to prohibited grounds of discrimination under international law.
66. Another trend observed among states is to allow reunification with non-nuclear family members when there exists a proven relationship of dependency between these other

¹⁵⁹ The country reviews of Australia, Brazil, Canada, Croatia, Hungary, and Portugal, Part I, Question 4, and Italy, Part I, Question 2, explicitly mentioned that these countries allow for family reunification of same-sex couples. See also, Michael Lysander Fremuth, ‘Migration and Asylum’, in Andreas R. Ziegler et al (eds), *The Oxford Handbook of LGBTI Law* (Oxford University Press, 2024) 779.

¹⁶⁰ 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 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 [2004] OJ L 158.

¹⁶¹ Case C-673/16 *Relu Adrian Coman, Robert Clabourn Hamilton, and Asociația Accept v Inspectoratul General pentru Imigrări, Ministerul Afacerilor Interne* [2018] OJ C 268/7; see also Case C-490/20 *V.M.A.*, 2021, in relation to issuing a child’s birth certificate with two female parents, under which the Court extended the approach taken in *Coman* by requiring Member States to recognise parent-child relationships established in another Member State, at least for the purposes of ensuring the effective exercise of free movement rights.

¹⁶² Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [2003] OJ L 251.

¹⁶³ *Schalk and Kopf v Austria* App no 3014/04 (ECtHR, 24 June 2010).

¹⁶⁴ *Atala Riffo and Daughters v Chile* Ser C no 239 (IACtHR, 24 February 2012).

¹⁶⁵ *Taddeucci and McCall v Italy* App no 51362/09 (ECtHR, 30 June 2016).

¹⁶⁶ *ibid.*

relatives and the sponsor.¹⁶⁷ What constitutes dependency varies, but the most common form acknowledged by states is financial. Some states that do not apply a dependency requirement, such as Australia and China, still have strict conditions for allowing reunification with non-nuclear family members, so that this pathway remains restricted.¹⁶⁸ It would be desirable that states broaden this understanding and allow for reunification in cases of emotional dependency as well, in line with the broad understanding of ‘family’ under human rights law, or to replace the requirement of dependency with broader and more flexible conditions. A positive step in this sense is evinced in the practice of Canada, which includes in its definition of family, for purposes of reunification, the sponsor’s parents, regardless of dependency.¹⁶⁹ In the case of polygamous marriages, on the other hand, states that have regulated this issue tend to allow for reunification with only one spouse, regardless of the potential existence of dependency.¹⁷⁰

67. In addition to limitations as to what family members can seek reunification, states have also established conditions for reunification requests to be made and granted. These kinds of conditions are found especially in European states.¹⁷¹ Among the most common one is the requirement that sponsors prove they have sufficient financial means to provide for incoming family members, usually laying down income criteria.¹⁷² Another such practice is the imposition of a waiting period before a family reunification request can be made.¹⁷³ These measures are generally not prohibited under international law; however, they can be challenged if their effects are deemed disproportionate in light of a concrete case. This disproportionality is a growing concern, given that states have increasingly used family reunification as a tool of immigration control, putting in place criteria that seem neutral at first sight (such as financial ones) but that seek to indirectly exclude certain categories of persons that states deem undesirable. These policies contribute to patterns of marginalisation and stigma against certain groups, especially those who share common racial,¹⁷⁴ gender,¹⁷⁵ and religious¹⁷⁶ characteristics. The effectiveness of international

¹⁶⁷ See the country reviews of the EU, Argentina (regarding refugees), Australia, Croatia, Czechia, Colombia, Ethiopia, Finland, Greece, Hungary, India, Italy, Kosovo, the Netherlands, Poland, Portugal, Slovenia, South Africa (regarding refugees), Switzerland, Türkiye (only in relation to dependent adult children of the sponsor or their spouse), Uganda, and the UK, Part I, Question 4. See also *Senchishak v Finland* App no 5049/12 (ECtHR, 18 November 2014).

¹⁶⁸ See the Australia’s and China’s country reviews, Part I, Question 4.

¹⁶⁹ See Canada’s country review, Part I, Question 4.

¹⁷⁰ See the country reviews of France, Greece, Kosovo, Slovenia, and Türkiye, Part I, Question 4. It should be noted that polygamous marriages may come into conflict with the public policy of various states. Thus, generally speaking, monogamous states do not permit their own nationals to enter into a polygamous marriage. By contrast, with respect to polygamous marriages validly concluded abroad between foreign nationals under their personal law, such marriages are, in the absence of a close domestic connection, not regarded as contrary to public policy and are, in principle, recognized.

¹⁷¹ See the review of the EU. See also EU Agency for Fundamental Rights (FRA) and Council of Europe/ECtHR, *Handbook on European law relating to asylum, borders and immigration* (Publications Office of EU, 4th edition, 2026) 206–207.

¹⁷² See the country reviews of Canada, Czechia, Finland (applicable to some categories of asylum seekers and to other migrants who are not seeking asylum), France, Greece, Kosovo, the Netherlands, Nigeria, Poland, Portugal, Spain, Thailand, Türkiye, and the UK, Part I, Question 4.

¹⁷³ See *M.A. v Denmark* (n 158).

¹⁷⁴ E Tendayi Achiume, ‘Migration as Decolonization’ (2019) 71 *Stanford Law Review* 1509; Thomas Spijkerboer, ‘The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control’ (2018) 20 *European Journal of Migration and Law* 452, 467–468.

¹⁷⁵ Catherine Briddick, *Violence Against Women and Regimes of Exception: Undoing Discrimination in Migration Law* (OUP 2025).

¹⁷⁶ Antje Ellerman, ‘Discrimination in migration and citizenship’ (2020) 46(12) *Journal of Ethnic and Migration Studies* 2463, 2467–2468.

human rights law in combatting these pernicious impacts in practice has so far been limited, given that states have traditionally been accorded broad discretion in defining their immigration control policies.

68. The right to family reunification is also expressly regulated in international instruments at the regional level. In particular, family reunification is regulated under EU law¹⁷⁷ regarding EU citizens (Directive 2004/38/EC), third country nationals (Directive 2003/86/EC), third-country nationals who are long-term residents in EU Member States (Directive 2003/109/EC, art. 16),¹⁷⁸ third-country nationals residing in EU Member States for purposes of highly qualified employment (Directive 2021/1883, art. 17),¹⁷⁹ and beneficiaries of temporary protection (Directive 2001/55/EC, art. 15).¹⁸⁰ The Mercosur Residence Agreement (art. 9(2))¹⁸¹ provides a right to reunification between migrants who are nationals of a Mercosur member state and family members who are not. The European Convention on the Legal Status of Migrant Workers (arts. 9, 12)¹⁸² further ensures that the reunification of certain family members with regular migrant workers shall be allowed through the same procedure these workers were admitted into the host country, provided the worker is capable of providing the family with minimum housing conditions. An obligation of family tracing and reunification is found in the African Charter of the Rights and Welfare of the Child (art. 25(2)(b))¹⁸³ towards children and their parents or relatives, if the separation stemmed from displacement arising from armed conflicts or natural disasters.
69. Finally, some instruments contain an obligation to facilitate family reunification. Unlike the provisions mentioned in the previous paragraph, under which states are required to achieve a certain result (reunification) if the conditions are met, the instruments listed here contain an obligation of means: states are required to make efforts to make reunification easier. These duties are present in the CRC (art. 10), the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (art. 44),¹⁸⁴ the IV Geneva Convention relative to the

¹⁷⁷ See the review of the EU.

¹⁷⁸ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents [2004] OJ L 16.

¹⁷⁹ 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 qualified employment, and repealing Council Directive 2009/50/EC [2021] OJ L 382.

¹⁸⁰ 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.

¹⁸¹ MERCOSUR Residence Agreement (adopted 6 December 2002, entered into force 28 July 2009).

¹⁸² European Convention on the Legal Status of Migrant Workers (adopted 24 November 1977, entered into force 1 May 1983) ETS 93.

¹⁸³ African Charter of the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49 (1990).

¹⁸⁴ International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3. Unfortunately, not many states have ratified this convention so far.

Protection of Civilian Persons in Time of War (art. 26),¹⁸⁵ and Additional Protocols I (art. 74)¹⁸⁶ and II (art. 4(3)(b))¹⁸⁷ to the Geneva Conventions.

II.4 Right to Stay and Human Trafficking

70. International law does not provide specific obligations for states to allow victims of trafficking in persons (TIP) to remain on their territories. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (art. 7)¹⁸⁸ only requires states to ‘consider adopting legislative other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases’. This provision is reproduced in Article 14(4) of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children.¹⁸⁹ The Council of Europe Convention on Action against Trafficking in Human Beings (art. 13),¹⁹⁰ in turn, provides for a period of 30 days during which victims of TIP may remain in the host state in order to recover and decide on whether to cooperate with domestic authorities in taking action against their traffickers. Beyond that, however, states retain much discretion in deciding whether the victim will be allowed to stay for longer. Within EU law, Directives 2011/36/EU (art. 11(a))¹⁹¹ and 2004/81/EC (recital 15 and art. 4)¹⁹² encourage states to grant protective status to TIP victims but do not contain legal obligations in this regard.
71. Even in the absence of further international regulation, many of the states surveyed provide for specific pathways for regularising the stay of victims of TIP.¹⁹³ Nevertheless, some of these states,¹⁹⁴ mostly from Europe, allow for longer regular stay only if the victims cooperate with domestic authorities in proceedings against TIP.¹⁹⁵

¹⁸⁵ Geneva Convention relative to the protection of civilian persons in time of war (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287.

¹⁸⁶ Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3.

¹⁸⁷ Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609.

¹⁸⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

¹⁸⁹ ASEAN Convention Against Trafficking in Persons, Especially Women and Children (adopted 21 November 2015, entered into force 8 March 2017).

¹⁹⁰ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 16 May 2005, entered into force 1 February 2008) ETS 197.

¹⁹¹ 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 [2011] OJ L 101.

¹⁹² 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 [2004] OJ L 261.

¹⁹³ Expressly mentioned in the country reviews of Argentina, Australia, Brazil, Canada, Croatia, Czechia, France, Greece, Hungary, Italy, Kosovo, the Netherlands, New Zealand, Poland, Slovenia, South Africa, Spain, Türkiye, Uganda, and the UK, Part I, Question 3.

¹⁹⁴ As mentioned in the country reviews of Australia, Czechia, France, Hungary, Kosovo, Slovenia, and Poland, Part I, Question 3.

¹⁹⁵ In a similar vein, Nigerian law provides that a trafficked person may not be denied temporary residence visas during the pendency of any criminal, civil or other legal actions. See Nigeria’s country review, Part I, Question 3.

72. Regardless of whether a regular migratory status is available to victims of TIP, states have a duty not to remove these persons – as any other person – to territories where they face a real risk of being subjected to irreparable harm to their rights¹⁹⁶ or to torture as per Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹⁹⁷ If such a risk is identified, the TIP victim has a *de facto* right to stay in the host country for as long as that risk exists and no possibilities of resettlement are achieved. In these cases, host states should regularise the victim's presence through other statuses available under domestic law, avoiding that they be left in a precarious situation and have their effective access to other rights compromised.

II.5 Right to Stay and Humanitarian and Refugee Protection

73. A person's right not to be removed from a country in which they seek international protection is regulated internationally mainly by the 1951 Convention relating to the Status of Refugees (Refugee Convention)¹⁹⁸ and the 1967 Protocol relating to the Status of Refugees (1967 Protocol).¹⁹⁹ At the regional level, instruments ensuring a right not to be removed from the host country for reasons of protection include the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention),²⁰⁰ the EU Qualification Regulation (Regulation (EU) 2024/1347),²⁰¹ and the Temporary Protection Directive (Directive 2001/55/EC).²⁰²
74. The majority of the states surveyed are parties to the Refugee Convention and its 1967 Protocol²⁰³ and, accordingly, recognise refugee status for persons meeting the criteria laid down in Article 1(A)(2) of the Convention:
- (1). having a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion;

¹⁹⁶ This *non-refoulement* obligation under human rights law has been acknowledged, although with differences in its formulation, by virtually all international human rights bodies. See examples in: *John K. Modise v Botswana* Comm no 97/93_14AR (ACommHPR, 6 November 2000); *MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011); *Andrea Mortlock v United States* Report No 63/08 (IACommHR, 25 July 2008); *Pacheco Tineo Family v Bolivia* Ser C no 272 (IACtHR, 25 November 2013); HRC, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13; CEDAW, 'General recommendation No 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women' (14 November 2014) UN Doc CEDAW/C/GC/32; CRC, 'AM v Switzerland' (22 September 2021) UN Doc CRC/C/88/D/95/2019; CRPD, 'ZH v Sweden' (6 September 2021) UN Doc CRPD/C/25/D/58/2019; CERD, 'UI and GI v Switzerland' (26 April 2024) UN Doc CERD/C/112/D/74/2021.

¹⁹⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

¹⁹⁸ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

¹⁹⁹ Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

²⁰⁰ OAU Convention governing the specific aspects of refugee problems in Africa (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45.

²⁰¹ 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 [2024] OJ L, 2024/1347.

²⁰² (n 180).

²⁰³ Among the surveyed states, those that have not ratified either of these treaties are India, Indonesia, Kosovo, Libya, Mongolia, Pakistan, Thailand, and Viet Nam. Moreover, the USA ratified the 1967 Protocol but not the Refugee Convention.

- (2). being outside one's country of nationality of habitual residence, if stateless; and
 - (3). being unable or unwilling to avail themselves of the protection of that country.
75. A few of the states surveyed have further expanded the refugee definition in their domestic laws. In Latin America, these expanded formulations have been inspired by Conclusion 3 of the 1984 Cartagena Declaration on Refugees.²⁰⁴ The Cartagena refugee definition cannot be deemed part of regional customary law, however, given both the limited number of states that have adopted this definition and the variations in how these states have incorporated it in their domestic laws. In this sense, Argentina has extended refugee status to persons whose life, safety, or freedom have been threatened by 'generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order'.²⁰⁵ Guatemala's coverage of refugee status is even more expansive: in addition to the aforementioned grounds, it expressly encompasses persons fleeing sexual violence and gender-based or sexual orientation.²⁰⁶ Brazil, in turn, has acknowledged as refugees beyond the Refugee Convention definition only those persons fleeing serious and generalised human rights violations.²⁰⁷
76. For African states parties to the OAU Convention (art. I(2)), refugee status also extends to those fleeing their country due to 'external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of [their] country'. In the case of Libya, this is the only applicable refugee definition, since this country is not a party to the Refugee Convention and has not adopted domestic norms regulating refugee status.²⁰⁸ In Uganda, the refugee definition under domestic law was expanded not only to include the OAU Convention's definition but also where a person, 'owing to a well-founded fear of persecution for failing to conform to gender discriminating practices... is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside the country of origin or nationality'.²⁰⁹ The addition of a specific ground of gender discrimination is a progressive and welcome addition for the refugee framework in the country.
77. Asian and European countries do not have a regional framework in place expanding the traditional refugee definition—although the EU has adopted legal frameworks on other kinds of international protection, as explored below. Even so, two welcome developments were reported in European countries. First, Czechia's inclusion of gender as a specific ground of persecution in its domestic refugee definition.²¹⁰ Second, Portugal's expansion of the refugee definition to cover persons who are persecuted because of their support for 'democracy, national and social liberation, peace between peoples, freedom, and fundamental human rights'.²¹¹

²⁰⁴ 'Cartagena Declaration on Refugees', Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (22 November 1984).

²⁰⁵ See Argentina's country review, Part I, Question 3.

²⁰⁶ See Guatemala's country review, Part I, Question 3.

²⁰⁷ See Brazil's country review, Part I, Question 3.

²⁰⁸ See Libya's country review, Part I, Question 3.

²⁰⁹ See Uganda's country review, Part I, Question 3.

²¹⁰ See Czechia's country review, Part I, Question 3. See also developments in the EU's approach to gender-based persecution: Regulation (EU) 2024/1347 (n 201) art 10(1); *AH, FN, v Bundesamt für Fremdenwesen und Asyl* [2024] CJEU Cases C-608/22 and C-609/22.

²¹¹ See Portugal's country review, Part I, Question 3.

78. Conversely, in Türkiye, the scope of refugee status is more limited. Türkiye is a party to both the Refugee Convention and the 1967 Protocol, but it has kept a reservation to the Protocol's expansion of the territorial scope of the refugee definition. Accordingly, protection under the Refugee Convention in Türkiye only extends to those who are nationals of European states or who are stateless and habitually resided in European states. For persons who meet the other criteria for refugee status but do not come from Europe, Türkiye has created the status of conditional refugee under its domestic law.²¹² This status allows for a limited right to stay, valid only until the conditional refugee is able to be resettled in a third country, a process conducted in cooperation with the United Nations High Commissioner for Refugees (UNHCR). Moreover, conditional refugees may face restrictions regarding which areas in Türkiye they are allowed to reside in and are subjected to a waiting period of six months from the submission of the application for conditional refugee status before they can apply for a work permit.
79. Domestic norms on refugee status have also been passed by Indonesia, despite the country's non-ratification of the Refugee Convention. These norms are subject to a considerable degree of governmental discretion, however, establishing essentially that the country's President shall establish a refugee policy taking into account the views of the Minister of Foreign Affairs.²¹³
80. Another noteworthy situation is that of India, Mongolia, Pakistan, and Thailand, which are not parties to any international treaty on refugee protection and do not have domestic laws in place regulating refugee status. Despite that, India and Thailand have historically provided refuge to non-nationals fleeing persecution in their countries of origin.²¹⁴ In India, this has been done 'primarily through ad hoc administrative practices and governmental decisions'.²¹⁵ India has also cooperated with UNHCR in providing documentation and basic services to persons under the Agency's mandate. Mongolia and Pakistan have similarly relied on UNHCR for the management and assistance of refugee populations.²¹⁶
81. In Thailand, in turn, domestic law allows for the government, at its discretion, to regularise the stay of foreign nationals. This provision has been used to grant *de facto* asylum to refugees from other countries in the region.²¹⁷ In 2019, Thailand created the migratory category of 'protected persons', under which individuals unable to return to their country of origin due to risk of persecution 'are allowed to stay in Thailand and granted legal status and necessary protection and assistance awaiting determined solutions'.²¹⁸
82. All of the states surveyed that are parties to the Refugee Convention and its Protocol have put in place frameworks for determining whether an individual satisfies the conditions for refugee status, with the exception of China.²¹⁹ The lack of clear procedures for

²¹² See Türkiye's country review, Part I, Question 3.

²¹³ See Indonesia's country review, Part I, Question 3.

²¹⁴ See India's and Thailand's country reviews, Part I, Question 3.

²¹⁵ See India's country review, Part I, Question 3. More recently, India's Immigration and Foreigners (Exemption) Order (2025) formally codified exemptions for certain groups including Tibetan refugees and Sri Lankan Tamils. However, India still lacks a comprehensive refugee statute. We thank Dr. Malavika Rao for this update.

²¹⁶ See Mongolia's and Pakistan's country reviews, Part I, Question 3.

²¹⁷ See Thailand's country review, Part I, Question 3.

²¹⁸ *ibid.*

²¹⁹ See China's country review, Part I, Question 3.

determination of refugee status severely hinders access to this kind of protection, and leaves refugees and asylum seekers in a legal limbo.

83. Moreover, the situation in Europe, as highlighted, for example, in the country reviews on Greece, Hungary, and Poland,²²⁰ points to a growing number of practices that restrict asylum seekers' access to their territory for purposes of applying for international protection. As described in the reviews, these states have engaged in systematic pushbacks of individuals seeking asylum therein, citing concerns about the instrumentalisation of refugee movements as a justification for these measures. Similar practices have been documented throughout the last decade across some other European states.²²¹ While not ignoring the dangers that instrumentalisation poses to the lives of migrants and that they may themselves be contrary to international law,²²² pushbacks preventing a person from seeking asylum are likely contrary to the Refugee Convention, especially the guarantee of non-penalisation for unlawful entry (art. 32), as well as the prohibition of *refoulement* and collective expulsions particularly under Article 3 of the ECHR and Article 4 of Protocol No. 4 to the ECHR.²²³ It is important to bear in mind that the principle of *non-refoulement* is implicit in other human rights treaties,²²⁴ as well as customary international law,²²⁵ as the obligation not to expose a person to risk of irreparable harm to their human rights by sending that person to another state's territory. In 2020, the CJEU ruled that Hungary's conduct was in breach of EU law obligations, particularly those concerning effective access to asylum procedures and procedural safeguards for asylum seekers;²²⁶ despite that, Hungary has persisted in these practices to date.²²⁷ The ECtHR has also found violations of the duty of *non-refoulement* and the prohibition of collective expulsions in relation to many of these practices.²²⁸
84. Worryingly, Uganda also suspended the recognition of refugee status to new arrivals from Ethiopia, Somalia, and Eritrea in December 2025, 'citing security concerns'.²²⁹ This suspension seems similarly incompatible with the country's international obligations

²²⁰ See the country reviews of Greece, Hungary, and Poland, Part I, Question 3.

²²¹ Protecting Rights at Borders, 'The Pushback – Disconnect: Current and Anticipated Practice' (PRAB 2025).

²²² As is currently under discussion before the International Court of Justice in the case concerning *Alleged Smuggling of Migrants (Lithuania v. Belarus)*.

²²³ 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 (adopted 16 September 1963, entered into force 2 May 1968) ETS 46.

²²⁴ See notably: *John K. Modise v Botswana* Comm no 97/93_14AR (ACommHPR, 6 November 2000); *MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011); *Andrea Mortlock v United States* Report No 63/08 (IACommHR, 25 July 2008); *Pacheco Tineo Family v Bolivia* Ser C no 272 (IACtHR, 25 November 2013); HRC, 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13; CEDAW, 'General recommendation No 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women' (14 November 2014) UN Doc CEDAW/C/GC/32; CRC, 'AM v Switzerland' (22 September 2021) UN Doc CRC/C/88/D/95/2019; CRPD, 'ZH v Sweden' (6 September 2021) UN Doc CRPD/C/25/D/58/2019; CERD, 'UI and GI v Switzerland' (26 April 2024) UN Doc CERD/C/112/D/74/2021.

²²⁵ *Wong Ho Wing v Peru* Ser C no 297 (IACtHR, 30 June 2015) para 127

²²⁶ Case C-808/18 *European Commission v Hungary* [2020] ECLI:EU:C:2020:1029.

²²⁷ Another CJEU ruling was issued in 2024 applying financial penalties upon Hungary for not complying with the 2020 judgment: *European Commission v Hungary* [2024] CJEU Case C-123/22.

²²⁸ See notably: *A.R.E. v Greece* App no 15783/21 (ECtHR, 7 January 2025); *M.A. and Z.R. v Cyprus* App no 39090/20 (ECtHR, 9 October 2024); *S.S. and ors v Hungary* App nos 56417/19 and 44245/20 (ECtHR, 12 October 2023); *O.M. and D.S. v Ukraine* App no 18603/12 (ECtHR, 15 September 2022); *D. v Bulgaria* App no 29447/17 (ECtHR, 20 July 2021); *M.K. and ors v Poland* App no 40503/17, 42902/17 and 43643/17 (ECtHR, 23 July 2020); *Ilias and Ahmed v Hungary* App no 47287/15 (ECtHR, 21 November 2019); *M.A. and ors v Lithuania* App no 59793/17 (ECtHR, 11 December 2018).

²²⁹ See Uganda's country review, Part I, Question 3.

under the Refugee Convention and the OAU Convention, as well as the principle of *non-refoulement* deriving from the ACHPR, the ICCPR, the CAT, and customary international law. However, to date no international human rights bodies have issued a decision on this scenario.

85. Australia has an older practice of not allowing asylum seekers arriving irregularly in its territory to stay therein. Since 2013, persons arriving in these conditions are sent to a regional processing centre, currently in Nauru, and their applications for refugee status are analysed there, according to Nauru's domestic laws. In October 2024, the HRC found that the mandatory and prolonged detention to which asylum seekers forcibly removed to Nauru were submitted breached Australia's duties under Article 9 of the ICCPR.²³⁰
86. In addition to refugee status, EU Member States confer a right to stay for persons who are granted subsidiary or temporary protection, in accordance with the EU Qualification Regulation and the Temporary Protection Directive.²³¹ Subsidiary protection applies to third-country nationals who do not qualify for refugee status but face a risk of suffering serious harm if returned to their country of origin (Article 3(6) of the Qualification Regulation (EU), 2024/1347). Serious harm is described in Article 15 of this Regulation as including: death penalty or execution; torture or inhuman or degrading treatment or punishment; 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. Temporary protection, in turn, is granted to a group of displaced persons in case of a mass influx into the EU, without the need for an individual assessment of their cases. This latter framework has been activated only once to date, concerning Ukrainians displaced after Russia's invasion of their country in 2022. It is worth mentioning that Hungary's domestic law establishes a status of 'interim protection' for persons arriving in a mass influx of displaced persons and who are not necessarily covered by the Temporary Protection Directive. However, to date, this framework of protection has never been activated and can only be so at the governmental authorities' discretion.
87. Kosovo and Türkiye, while not EU Member States, also contain provisions in their domestic laws that largely reflect these subsidiary and temporary protection statuses.²³² Switzerland also has a similar concept under its provisional admission status.²³³ However, the scope of provisional admission is broader than the protection under EU law and encompasses cases of risk of harm as well as unenforceable deportation.
88. Outside of Europe, complementary protection is provided by the domestic laws of Australia, Canada, and New Zealand²³⁴ on the basis of their broader human rights obligations. Non-nationals may be recognised as protected persons if they face a risk of suffering torture, a violation of their right to life, or inhuman or degrading treatment if removed to their country of origin. The USA, in turn, adopts complementary protection only covering risk of torture as defined under Article 3 of the CAT.²³⁵

²³⁰ HRC, 'Nabhari v Australia' (25 October 2024) UN Doc CCPR/C/142/D/3663/2019; HRC, 'M.I. et al v Australia' (31 October 2024) UN Doc CCPR/C/142/D/2749/2016.

²³¹ See the review of the EU, Part I, Question 3.

²³² See Kosovo's and Türkiye's country reviews, Part I, Question 3.

²³³ See Switzerland's country review, Part I, Question 3.

²³⁴ See the country reviews of Australia, Canada, and New Zealand, Part I, Question 3.

²³⁵ See the USA's country review, Part I, Question 3.

89. Japan also adopted a version of a complementary framework in December 2023.²³⁶ However, it is not clear which persons may effectively benefit from this framework, since Japanese law establishes essentially the same conditions for complementary protection as for refugee status: persecution on account of the grounds laid down in the Refugee Convention.²³⁷
90. The country reviews have also indicated a trend towards the establishment of protection statuses on humanitarian grounds for persons who do not meet the criteria for refugee status or other forms of international protection, such as in the EU law. This kind of humanitarian protection has been identified in the reviews of 16 states, namely Argentina, Australia, Brazil, Canada, France, Greece, Guatemala, Kosovo, New Zealand, the Philippines, Poland, Portugal, Russia, South Africa, Spain, and the USA.²³⁸ A common characteristic among these countries is that humanitarian protection is granted at the governmental authorities' discretion, thus reflecting states' policy interests. Even so, some states provide a list of situations for which humanitarian protection is intended.²³⁹ Interestingly, domestic norms in Argentina, Guatemala, Kosovo, and Russia expressly mention the possibility of granting this protection to persons displaced by environmental disasters.²⁴⁰ In Argentina, this norm has been applied on various occasions, including measures adopted in 2022 'aimed at sponsoring the arrival of nationals and residents of Mexico, Central America, and the Caribbean affected by a "socio-environmental disaster"' and facilitating 'the large-scale arrival of nationals from neighbouring countries, specifically Mercosur residents, who were fleeing disasters'.²⁴¹ In the USA, though domestic provisions do not expressly mention humanitarian protection for natural disasters, it has been recognised that the president may issue orders temporarily staying the removal of non-nationals affected by such events.²⁴² Moreover, in Australia, the Pacific Engagement visa (subclass 192) - Treaty stream (Tuvalu) has offered a migration pathway for Tuvaluans seeking to escape the adverse impacts of climate change in their country.²⁴³
91. Moreover, in Colombia, a special migratory status (the *Estatuto Temporal de Protección para Migrantes Venezolanos* – ETPV) was created to accommodate Venezuelans fleeing the country's social, economic, and political crisis, a phenomenon which intensified from 2016 onwards.²⁴⁴ The ETPV does not amount to a humanitarian visa, however, as it covers only the specific situation of Venezuelans displaced in recent years.

²³⁶ See Japan's country review, Part I, Question 3. See also Yu Furukawa, 'New Complementary Protection in Japan: Legislative Journey and Ambiguities in Defining Beneficiaries' (3 January 2024) <<https://rli.blogs.sas.ac.uk/2024/01/03/new-complementary-protection-in-japan-legislative-journey-and-ambiguities-in-defining-beneficiaries/>>.

²³⁷ See Japan's country review, Part I, Question 3.

²³⁸ See the country reviews of Argentina, Australia, Brazil, Canada, France, Greece, Guatemala, Kosovo, New Zealand, the Philippines, Poland, Portugal, Russia, South Africa, Spain, and the USA, Part I, Question 3. The latter in the form of Temporary Protected Status (TPS), Deferred Enforced Departure (DED), humanitarian parole, and Deferred Action for Childhood Arrivals (DACA). See the country reviews

²³⁹ See the country reviews of Greece, Guatemala, Kosovo, Russia, and Poland, Part I, Question 3.

²⁴⁰ See the country reviews of Argentina, Guatemala, Kosovo, and Russia, Part I, Question 3.

²⁴¹ See Argentina's country review, Part I, Question 3.

²⁴² See the USA's country review, Part I, Question 3.

²⁴³ See Australia's country review, Part I, Questions 1 and 2. See also Jane McAdam, 'Fresh details emerge on Australia's new climate migration visa for Tuvalu residents. An expert explains' (*The Conversation*, 9 April 2025) <<https://theconversation.com/fresh-details-emerge-on-australias-new-climate-migration-visa-for-tuvalu-residents-an-expert-explains-254195>> accessed 20 Feb 2026.

²⁴⁴ See Colombia's country review, Part I, Question 3.

92. Another important pattern among surveyed states is that eight of them have a legal framework for granting territorial asylum to persons fleeing what is considered political persecution.²⁴⁵ In Brazil, Mongolia, and Russia, the granting of this form of protection is entirely at the government's discretion, and it is also the government that assesses whether a situation should be understood as political persecution or not.²⁴⁶ Poland has an institution similar to territorial asylum (termed only 'asylum' in its domestic law) through which the government may grant protection at its discretion; however, in Poland, the granting of this form of asylum is not linked to political persecution but rather to cases where it is deemed necessary to ensure the protection of a non-national and to uphold an 'important interest' of Poland.²⁴⁷ In Czechia, on the other hand, territorial asylum is granted through a formal legal procedure in which no administrative discretion is allowed.²⁴⁸
93. The multiplicity of forms of protection beyond refugee status suggests a perception among states that refugee status is insufficient to capture the evolving protection needs of persons outside of their countries of origin, especially those fleeing more generalised forms of harm. At the same time, some states adopt restrictive interpretations of the refugee definition and privilege the granting of protection through other domestic statuses within their larger control or even discretion.

III. Rights while Staying

94. International human rights law applies to migrants irrespective of their legal status, as these norms represent basic entitlements common to all human beings. This report reviews only selected key areas which are at issue for migrants while staying in a host country, bearing in mind that different countries encounter different issues and have different focuses.
95. This section is composed of eight parts and includes, in the view of the Committee, human rights, whose denial or restriction/limitation most affects migrants while in a host country. The topics and their order of presentation follow the order of questions listed in the Questionnaire Survey used for the purposes of this report (see Annex 1):
- (1). Non-discrimination;
 - (2). Political rights;
 - (3). Civil rights;
 - (4). Right to work and rights in work;
 - (5). Right to health;
 - (6). Right to education;
 - (7). Right to social security; and
 - (8). Right to an adequate standard of living.
96. The rights focused on in this report certainly do not cover all the rights relevant for migrants while in the host state. For example, cultural rights are not included. The rights

²⁴⁵ See the country reviews of Argentina, Brazil, China, Czechia, Indonesia, Libya, Mongolia, and Russia, Part I, Question 3.

²⁴⁶ See the country reviews of Brazil, Mongolia, and Russia, Part I, Question 3.

²⁴⁷ See Poland's country review, Part I, Question 3.

²⁴⁸ See Czechia's country review, Part I, Question 3.

of migrant indigenous people have not been included either due to the limits on the size of the report and specific attention required for the topic. In addition, the rights more relevant to the right to enter or stay such as the right to family reunification are not included herein as they have been discussed in the first interim report and also the earlier section in this report.

III.1 Non-discrimination

97. Protection from discrimination is one of the basic tenets of international human rights law. Provisions on non-discrimination and equal protection before the law are enshrined in the main international human rights treaties, including the ICCPR (art. 2(1)), the International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁴⁹ (art. 2(2)), the ICRMW (art. 7), the CRC (Article 2), the African Charter on Human and Peoples' Rights (ACHPR) (art. 3), the American Convention on Human Rights (ACHR) (arts. 1(1), 24), the Arab Charter on Human Rights (arts. 3, 11), and the European Convention on Human Rights (ECHR) (art. 14 and art. 1 of Protocol No. 12²⁵⁰). Moreover, the protection of specific groups from discrimination is the subject-matter of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the CEDAW, and the Convention on the Protection of the Rights of Persons with Disabilities (CRPD). These provisions reflect customary international law and apply fully to migrants, regardless of their legal status.²⁵¹
98. Among the treaties mentioned above, nationality is expressly listed as a prohibited ground of discrimination only in Article 7 of the ICRMW. Despite that, the grounds mentioned in general non-discrimination clauses in these instruments²⁵² are not exhaustive, as all contain open references to 'other status' on which discrimination may be based. Today it is well-established in international human rights law that both nationality²⁵³ and migratory status²⁵⁴ are prohibited grounds of discrimination, falling within the scope of the 'other status' mentioned in human rights treaties' non-discrimination clauses.

²⁴⁹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

²⁵⁰ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 2000, entered into force 1 April 2005) ETS 177.

²⁵¹ CMW, 'General comment No. 6 (2024) on the convergent protection of the rights of migrant workers and members of their families through the Convention and the Global Compact for Safe, Orderly and Regular Migration' (15 November 2024) UN Doc CMW/C/GC/6 para 39.

²⁵² With the exception of the ICERD, the CEDAW, and the CRPD, which cover non-discrimination only against specific social groups.

²⁵³ See: *Gaygusuz v Austria* App no 17371/90 (ECtHR, 16 September 1996) para 42; *Margarita Cecilia Barbería Miranda v Chile* Report No 56/10 (IACCommHR, 18 March 2010); IACCommHR, 'Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking' (OAS 2019) Resolution 04/19 principle 12; *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03 (IACtHR, 17 September 2003) para 118; HRC, 'Ibrahima Gueye et al v France' (3 April 1989) UN Doc CCPR/C/35/D/196/1985; CESCR, 'General Comment No 20: Non-discrimination in economic, social and cultural rights' (2 July 2009) UN Doc E/C.12/GC/20 para 30.

²⁵⁴ See *Bah v UK* App no 56328/07 (ECtHR, 27 September 2011) para 47; IACCommHR, 'Inter-American Principles' (n 253) principle 12; *Juridical Condition and Rights of Undocumented Migrants* (n 253) para 118; CRC, 'General Comment No 6: Treatment of Unaccompanied and Separated Children outside Their Country of Origin' (1 September 2005) UN Doc CRC/GC/2005/6 para 18; CESCR, 'Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights' (13 March 2017) UN Doc E/C.12/2017/1 para 5.

99. Nevertheless, it is important to acknowledge that the prohibition of discrimination has played a rather modest role to date in the protection of migrants' rights.²⁵⁵ Under human rights law, differential treatment grounded on a reasonable and objective distinction does not amount to unlawful discrimination.²⁵⁶ In fact, distinctions between migrants and nationals, or between migrants holding different migratory statuses, tend to be more tolerated as constituting lawful distinctions. The presumption that it is legally acceptable for migrants to be treated differently from nationals, to a certain degree, is partly reflected in the ICCPR,²⁵⁷ Article 1(2) of the ICERD, which excludes from the scope of the Convention 'distinctions, exclusions, restrictions or preferences made by a State Party... between citizens and non-citizens', as well as Article 2(3) of the ICESCR, which allows developing countries to determine the extent to which they may ensure economic rights to non-nationals. Moreover, the IACtHR and the ECtHR have generally accepted that states may accord differential treatment between categories of migrants or between migrants and nationals.²⁵⁸ Among the states surveyed, only nine were reported to expressly prohibit nationality-based discrimination under domestic law.²⁵⁹ As for migratory status, only the USA was reported to have federal laws prohibiting discrimination based on migratory status.²⁶⁰ Again, these provisions, practices, and statements do not limit migrants' protection from discrimination under international human rights law. However, they signal that states and international bodies may be more deferential towards immigration policy choices when assessing whether differential treatment in a concrete scenario has amounted to prohibited discrimination. Greater care should be taken that any exercise of deference does not compromise the effective protection of the human rights of migrants, especially by acknowledging that distinctions based on nationality or migratory status may disproportionately impact individuals based on characteristics such as race, gender, religion, or disability status, and thus constitute proxies for discrimination on these grounds.
100. An area that needs further development concerns states positive obligations to eliminate substantive disadvantages to the enjoyment of migrants' rights. States are not required to immediately revert all the ways through which substantive discrimination against migrants can manifest. They are, however, required to take measures to address these issues according to what can be deemed reasonable in the face of each state's realities.

²⁵⁵ See notably the analyses of: Cathryn Costello and Michelle Foster, '(Some) Refugees Welcome: When Is Differentiating between Refugees Unlawful Discrimination?' (2022) 22 *International Journal of Discrimination and the Law* 244; Luisa Feline Freier, Valeria Aron Said and Diego Quesada Nicoli, 'Non-Discrimination and Special Protection for Migrants and Refugees' (2022) 22 *International Journal of Discrimination and the Law* 281; Bjarney Friðriksdóttir, 'What Happened to Equality? The Construction of the Right to Equal Treatment of Third-Country Nationals in European Union Law on Labour Migration' (Radboud Universiteit Nijmegen 2016); Gregor Noll, 'Why Human Rights Fail to Protect Undocumented Migrants' (2010) 12 *European Journal of Migration and Law* 241.

²⁵⁶ See notably HRC, 'General comment No. 18: Non-discrimination' (1989) UN Doc HRI/GEN/1/Rev.6 at 146, para 13; CESCR, 'General Comment No 20' (n 253) para 13.

²⁵⁷ See III.2 and III.3 herein.

²⁵⁸ *Juridical Condition and Rights of Undocumented Migrants* (n 253) para 119; *Abdulaziz, Cabales and Balkandali v UK* (n 155) para 67.

²⁵⁹ See the country reviews of Argentina, Czechia, Ethiopia, Finland, France (regarding access to public services), Greece, Russia, Slovenia, and the USA, Part II, Question 1.

²⁶⁰ See the USA's country review, Part II, Question 1.

III.2 Political rights²⁶¹

101. Political rights in a narrower sense encompass three kinds of rights: to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and be elected for public office; and to access public service positions.²⁶² Linked to these rights are others that are necessary to make political participation effective and can thus be considered to form part of one's political rights in a broader sense. These include the rights to freedom of expression,²⁶³ freedom of assembly,²⁶⁴ and freedom of association.²⁶⁵
102. Treaty provisions on political rights in a narrower sense expressly limit the exercise of these rights to citizens, that is, to nationals of the relevant state in accordance with its domestic law.²⁶⁶ Accordingly, states are not required under international law to ensure that migrants in their territory are able to participate in public affairs, vote and be elected, or access public service positions.
103. Very few of the analysed countries have granted non-nationals a right to vote at the national level.²⁶⁷ Even in EU Member States, which generally accord more favourable treatment to EU citizens, it is rare for these citizens to be entitled to vote in national elections.²⁶⁸ Among the surveyed countries, those that allow this kind of more direct political participation tend to limit it to specific nationalities. This is the case regarding: British subjects in Australia;²⁶⁹ Portuguese citizens with permanent residence in Brazil, if there exists reciprocity in relation to Brazilian citizens in Portugal;²⁷⁰ Brazilian citizens with permanent residence in Portugal who have requested a statute of equality of political rights;²⁷¹ and Irish and some Commonwealth nationals in the UK.²⁷² New Zealand is the only examined country which grants non-nationals the right to vote at the national level

²⁶¹ The report does not include the political rights of 'non-resident' citizens in their home countries, as it focuses on the right of non-nationals in host countries.

²⁶² See: Article 25 of the ICCPR; Article 23 of the ACHR; Article 13 of the ACHPR. Article 3 of Protocol No. 1 to the ECHR covers only the right to free elections by secret ballot, thereby encompassing the right to vote and be elected. General Comment No. 25 of the HRC further confirms that public service in this context is to be understood as *work in* the public service, and not access to public services such as health care and education. See HRC, 'General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)' (12 July 1996) UN Doc CCPR/C/21/Rev.1/Add.7 para 23.

²⁶³ Article 19 of the ICCPR; Article 13 of the ACHR; Article 9 of the ACHPR; Article of the ECHR.

²⁶⁴ Article 21 of the ICCPR; Article 15 of the ACHR; Article 11 of the ACHPR; Article 11 of the ECHR.

²⁶⁵ Article 22 of the ICCPR; Article 16 of the ACHR; Article 10 of the ACHPR; Article 11 of the ECHR.

²⁶⁶ In this sense, the HRC implies that citizenship and nationality are to be understood as synonymous for the purposes of art. 25 of the ICCPR, as it refers to 'citizenship by birth' and 'by naturalization', terms which are associated with the obtention of nationality. HRC, 'General Comment No. 25' (n 262) para 3.

²⁶⁷ See Australia's and New Zealand's country reviews of Australia and New Zealand, Part II, Question 2. See also Uruguay, Constitución de la República (6 February 1967) art 78.

²⁶⁸ See the EU review, Part II, Question 2.

²⁶⁹ See Australia's country review, Part II, Question 2, stating that 'Non-nationals are not eligible to vote in federal elections and referendum except for those British subjects who were on the electoral roll on 25 January 1984'.

²⁷⁰ See Brazil's country review, Part II, Question 2.

²⁷¹ See Portugal's country review, Part II, Question 3.

²⁷² See the UK's Country Review, Part II, Question 2, stating 'Irish citizens and qualifying Commonwealth citizens lawfully resident in the UK' are entitled to vote in general, local and developed elections. Regarding 'qualifying Commonwealth citizens', see: The Electoral Commission, 'Can a Commonwealth Citizen Register to Vote?' <<https://www.electoralcommission.org.uk/running-electoral-registration-wales/eligibility-register-vote/what-are-nationality-requirements-register-vote/can-a-commonwealth-citizen-register-vote>> accessed 6 Feb 2026.

without requiring any preferred nationality; however, it does require permanent residence and three years of residence in the country.²⁷³

104. Scholars have indicated that at least 50 countries provide some non-citizens the right to vote at the local level to some extent.²⁷⁴ Under EU law, EU citizens residing in another Member State are entitled to vote at the European Parliament elections and at municipal elections.²⁷⁵ In addition to this specific framework, within the 46 countries examined, 12 countries, mostly from Western Europe, permit non-nationals in general to vote at the local level.²⁷⁶ In addition, some states limit this right to those legally residing in their territory for a specified period.²⁷⁷ Within a country, local and regional authorities may adopt different practices from one another. For example, the Province of Buenos Aires in Argentina stands out in the country for permitting non-nationals to vote and to be elected.²⁷⁸ In Switzerland and the USA, not all local governments allow non-nationals to vote, and the conditions for exercising this right also vary.²⁷⁹
105. Some states entitle only migrants with specific nationalities to vote at the local level, as is the case, for example, in: Finland in relation to Norwegian and Icelandic nationals;²⁸⁰ Portugal in relation to nationals from Brazil, Cape Verde, Argentina, Chile, Colombia, Iceland, Norway, New Zealand, Peru, Uruguay, United Kingdom, and Venezuela;²⁸¹ and Russia in relation to Belarussian nationals.²⁸² These are narrow exceptions, however, and do not alter the broader trend: most countries do not grant non-nationals in general (that is, beyond those non-nationals benefitting from preferred treatment) the right to vote or to be voted for at any level. Such a trend is identified in 24 of the surveyed states.²⁸³
106. Even though countries tend to be cautious in granting the right to vote to migrants, they may permit non-nationals to participate in political activities through other channels, such as political consultative procedures in China, especially for ethnic Chinese or former nationals.²⁸⁴ Colombia has an interesting constitutionally protected ‘right to petition’ that can be used for migrants, regardless of legal status, to ‘request information, services, or actions from the authorities and to receive a clear and timely response.’²⁸⁵ In Poland, some municipalities may directly engage non-nationals in the policy-making ‘by creating consultative bodies consisting solely of third-country nationals (e.g. Gdańsk)’.²⁸⁶ However, it has been noted that ‘[s]ince 2019, political opportunities for migrants in EU

²⁷³ See New Zealand’s country review, Part II, Question 2.

²⁷⁴ Cristina Escobar, ‘Immigrant Enfranchisement in Latin America: From Strongmen to Universal Citizenship’, (2015) 22 (5) *Democratization* 927, 927. See also Klaudia Wegschaider, Sebastián Umpierrez de Reguero and Rainer Bauböck, ‘Migrant Franchise Constellations’ (American Political Science Association, 4 September 2025) Working Paper.

²⁷⁵ See the EU review, Part II, Question 2.

²⁷⁶ See the country reviews of Argentina, Australia, Austria, Colombia, Finland, Hungary, the Netherlands, New Zealand, Russia, South Korea, Switzerland, and the USA, Part II, Question 2.

²⁷⁷ See the country reviews of Finland (2 years), the Netherlands (5 years), New Zealand (1 year), South Korea (3 years), and Switzerland (8-10 years), Part II, Question 2.

²⁷⁸ See Argentina’s country review, Part II, Question 2.

²⁷⁹ See Switzerland’s and the USA’s country reviews, Part II, Question 2.

²⁸⁰ See Finland’s country review, Part II, Question 2.

²⁸¹ See Portugal’s country review, Part II, Question 2.

²⁸² See Russia’s country review, Part II, Question 2.

²⁸³ See the country reviews of Brazil, Canada, China, Croatia, Czechia, Ethiopia, France, Ghana, Greece, Guatemala, India, Indonesia, Iran, Italy, Japan, Kosovo, Libya, Mongolia, Nigeria, Pakistan, Poland, Thailand, Türkiye, and Uganda, Part II, Question 2.

²⁸⁴ See China’s country review, Part II, Question 2.

²⁸⁵ See Colombia’s country review, Part II, Question 2.

²⁸⁶ See Poland’s country review, Part II, Question 2. Similarly, see Italy’s country review, Part II, Question 2.

countries have slightly declined’ in the sense that ‘many 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 Luxembourg, Denmark, Finland, and Ireland’.²⁸⁷

107. Freedom of expression, association, and assembly are crucial to political participation in a broader sense, even though they are generally classified as civil rights.²⁸⁸ International human rights law ensures these rights to all persons, regardless of nationality or migratory status. Similarly, most of the reviewed states do not apply differential treatment to migrants’ enjoyment of these rights (see section III.3 below). However, some of them establish limitations towards non-nationals when the exercise of these rights is directly linked to political participation. India, for instance, does not recognise freedom of speech and association for non-nationals.²⁸⁹ Similarly, Pakistan and Russia do not guarantee non-nationals’ freedom to form or join political parties,²⁹⁰ whereas in Thailand migrants can participate in trade union activities but cannot form their own trade unions.²⁹¹ Austria, Germany, and France, upon ratification of the ICCPR, reserved their right to restrict non-nationals’ right to peaceful assembly,²⁹² but no such limitations are in force currently. In Mongolia, non-nationals may not ‘organize assemblies or demonstrations but are allowed to participate in them’.²⁹³
108. It is also worth noting that, even where the rights to freedom of assembly, association, and expression are fully applicable to migrants, the latter may be in a precarious position regarding the exercise of these rights, as states may seek to impose migratory sanctions as retaliation. This has been noted in the USA, where migrants engaging in political protests may be subject to removal procedures and, because deportation is not regarded as a criminal punishment, due process protection can be limited.²⁹⁴

III.3 Civil rights

109. Overall, international human rights law establishes no distinction between migrants’ and nationals’ enjoyment of civil rights.²⁹⁵ These encompass rights such as the right to life (Article 6 of the ICCPR), the prohibition of torture and inhuman and degrading treatment (Article 7 of the ICCPR), the prohibition of slavery (Article 8 of the ICCPR), the right to liberty and security (Articles 9, 10 and 11 of the ICCPR), procedural rights in civil and criminal proceedings (Articles 14 and 15 of the ICCPR), freedom of religion (Article 19

²⁸⁷ Başak Yavçan and Marianna Gorgerino, ‘Unlocking Integration – Enabling Participation: MIPEX 2025 – A Roadmap for Inclusive Policy in the EU’ (MPG, September 2025) Policy Brief 36. See also Finland’s country review, Part II, Question 3.

²⁸⁸ This shows how human rights may not be easily categorised.

²⁸⁹ See India’s country review, Part II, Question 3.

²⁹⁰ See Pakistan’s and Russia’s country review, Part II, Question 2.

²⁹¹ See Thailand’s country review, Part II, Question 3.

²⁹² ‘International Covenant on Civil and Political Rights’ (*United Nations Treaty Collection*) <https://treaties.un.org/pages/viewdetails.aspx?chapter=4&clang=_en&mtdsg_no=iv-4&src=ind> accessed 21 Feb 2026.

²⁹³ See Mongolia’s country review, Part II, Question 2.

²⁹⁴ See the USA’s country review, Part II, Question 3.

²⁹⁵ HRC, ‘CCPR General Comment No. 15: The Position of Aliens Under the Covenant’ (11 April 1986) UN Doc UN Doc HRI/GEN/1/Rev.1, 18, paras 1-2; HRC, ‘General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13 para 10.

of the ICCPR), the prohibition of hate speech (Article 20), and the right to marry (Article 23).²⁹⁶

110. Distinctions between nationals and non-nationals in the enjoyment of these rights may still be imposed by states in exceptional justified cases. In the context of migration, these distinctions are most common in relation to the rights to liberty and security of the person (art. 9 of the ICCPR) and freedom of movement (art. 12 of the ICCPR). Detention of migrants will not be addressed in this report, since it is more closely connected to issues of admission and expulsion of migrants, which are outside of the scope of this report.²⁹⁷ In this vein, freedom of movement will be discussed only in relation to ‘the right to move freely within the host state’.²⁹⁸
111. Almost all countries examined in this report have set up limitations on the free movement of non-nationals. Such limitations may include the following:
- (1). the situation of migrants subjected to removal, return, or deportation proceedings.²⁹⁹
 - (2). visa condition or residence requirement. States may require non-nationals to reside in a certain place. For example, in Canada, work and study permits are generally attached to a province or territory, and therefore the movement of temporary residents in Canada can be limited.³⁰⁰ For countries adopting a visa-only approach, residing in a certain state for a certain period of time can be a condition for obtaining a visa, such as under regional sponsored visas in Australia (i.e. Subclass 190 and 491 visas).³⁰¹
 - (3). in association with certain categories of migrants, such as asylum seekers, stateless persons, and undocumented migrants. Free movement of asylum seekers is commonly restricted, even where detention is not a practice. For example, in Iran, Afghan nationals are prohibited from residing in 16 of the country’s 31 provinces.³⁰² In Türkiye, ‘persons who applied for international protection may be put under the obligations of residing in a center, certain place or city’.³⁰³ In Thailand, stateless persons need to apply for re-entry permits before they can travel outside the country, otherwise their re-entry might be refused.³⁰⁴ Free movement of undocumented migrants is greatly restricted in practice due to the irregularity of their migratory situation, as most likely they will be subject to detention if found out by domestic authorities.³⁰⁵

²⁹⁶ It worth noting that a bill is currently under discussion in France regarding the prohibition of ‘marriage to foreigners in an irregular situation’. See France’s country review, Part II, Question 3.

²⁹⁷ The Committee has worked on expulsion of aliens through one workshop in Adelaide in February 2024 and published a two-volume special issue on deportation with Griffith Law Review (2025), vol 34(2) and 34(3).

²⁹⁸ Regarding the conceptualisation of free movement of migrants, see Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd ed, NP Engel 2005) 261–266.

²⁹⁹ Country reviews do not include details on this limitation, but such limitation exists clearly in each country’s applicable laws, for example, s 501 of Australian Migration Law 1958 (Cth).

³⁰⁰ See Canada’s country review, Part II, Question 3.

³⁰¹ See Australia’s country review, Part II, Question 3.

³⁰² See Iran’s country review, Part II, Question 3.

³⁰³ See Türkiye’s country review, Part II, Question 3.

³⁰⁴ See Thailand’s country review, Part II, Question 3.

³⁰⁵ See the country reviews of Slovenia, Part II, Question 2, and France and Australia, Part II, Question 3.

- (4). carrying passport and permits/documents at all times. This requirement may be often ignored in practice but can lead to serious consequences, such as detention. The country reviews of Mongolia, Russia, and the USA refer to this specific requirement.³⁰⁶
 - (5). restriction of place of residence or travel due to public order or national interest. Such restrictions should be examined carefully in accordance with Article 12(3) of the ICCPR, based on a proportionality test. The limitation of travel and residence during the COVID-19 pandemic is one such example.³⁰⁷ In addition, some countries have laws prohibiting non-nationals from accessing certain areas. For example, China prohibits non-nationals from travelling to certain areas without prior approval, especially those areas with essential military facilities.³⁰⁸ In South Korea, the Minister of Justice may restrict migrants' place of residence based on public order and national interest.³⁰⁹
112. Another important civil right is the right to property. While the Universal Declaration of Human Rights (UDHR) includes a specific provision on this right (Article 17), neither the ICCPR nor the ICESCR do. The right to property is however specifically included in the European Convention on Human Rights (ECHR) system (Article 1 of Protocol No 1),³¹⁰ the American Convention on Human Rights (ACHR) (Article 21), and the African Charter on Human and Peoples' Rights (ACHPR) (Article 14).
113. No examined countries prohibit or limit non-nationals from owning moveable personal property. However, most countries have some limitations on the right of non-nationals to own immovable property, such as land and/or real estate, although permanent residents may be exempted.³¹¹ Ownership of land by non-nationals can be a sensitive issue. Several examined countries prohibit non-nationals, including permanent residents and subject to limited exceptions, from owning land, including Uganda,³¹² Ethiopia,³¹³ and Indonesia.³¹⁴ In Russia, non-nationals cannot own agricultural land, land in border areas, or 'land plots within seaports and some strategic territories (for national security reasons)'.³¹⁵ Some countries require instead an approval for foreign investment rather

³⁰⁶ See country reviews of Mongolia, Part II, Question 2, and Russia, and the USA, Part II, Question 3.

³⁰⁷ Jaya Ramji-Nogales and Iris Goldner Lang, 'Freedom of movement, migration, and borders' in Shareen Hertel and Catherine Buerger (eds), *Rights at Stake and the COVID-19 Pandemic: Two Special Issues of the Journal of Human Rights* (Routledge 2023); Aziz Tuffi Saliba and Mariana Ferolla V. do Valle, 'Stranded at the Border: An analysis of the legality of international travel restrictions adopted by States in the COVID-19 pandemic in light of the right to return to one's country' (2021) 38(1) *Wisconsin International Law Journal* 40.

³⁰⁸ China, 《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] (Ministry of Public Security, Central Department of Staff, Ministry of Foreign Affairs and State Bureau of Tourism, 9 October 1982) <<https://xzfg.moj.gov.cn/front/law/detail?LawID=60>> accessed 21 Feb 2026. See also China's country review, Part II, Question 3.

³⁰⁹ See South Korea's country review, Part II, Question 3.

³¹⁰ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952, entered into force 18 May 1954) ETS 9.

³¹¹ Some countries do not have limitations in general, such as Portugal and Greece (with some limitation on national security). See Greece's and Portugal's country reviews, Part II, Question 4.

³¹² See Uganda's country review, Part II, Question 4, stating that '[n]on-nationals in Uganda are prohibited from owning land under freehold, mailo, or customary tenure systems'.

³¹³ See Ethiopia's country review, Part II, Question 4.

³¹⁴ See Indonesia's country review, Part II, Question 4.

³¹⁵ See Russia's country review, Part II, Question 4.

than a imposing blanket prohibition, such as Australia, Finland, and New Zealand.³¹⁶ Some states, such as Argentina, Brazil, France, and Greece, are more open regarding non-nationals' property ownership and apply no restrictions in this sense, with limited exceptions (such as property in a security or restricted zone, or a ceiling limit in relation to the extension of rural land owned).³¹⁷

114. Regarding the right of refugees to own property, country practice varies from Ethiopia's 'most favourable treatment' principle, where non-nationals with Ethiopian origin can own immovable property (and therefore refugees can own property under the same standards as non-nationals with Ethiopian origin)³¹⁸ to Korea's reciprocal principle, where, if a non-national's home state prohibits Koreans from owning property, the same restriction will apply to the non-national in Korea, including if they are refugees.³¹⁹

III.4 Right to Work and Rights at Work

III.4.1 General overview of the right to work and limitations to migrants' access to the labour market

115. Broadly speaking, the right to work is ensured under Article 6 of the ICESCR and, at the regional level, Article 26 of the ACHR,³²⁰ Article 6 of the Protocol of San Salvador,³²¹ Article 15 of the ACHPR, and Article 1 of the Revised European Social Charter (ESC).³²² Moreover, issues surrounding access to the labour market, such as personal development, participating in community life, and establishing relationships with others, pertain to one's private life, so that some situations involving this access may fall under Article 8 of the ECHR.³²³ Nevertheless, as any right, the right to work may be subject to limitations that are provided by law, pursue a legitimate aim, and are proportionate to this aim.
116. The clearest way through which states limit this right in relation to migrants is the requirement of work permits or authorisations for non-nationals to work in the state's territory. This was the case in all surveyed countries: as a general rule, migrants who do not possess these specific authorisations are not allowed to work and, if found out, are subject to penalties under immigration law, including detention and deportation. France has a distinctively laxer practice on this front: 'having a job in France, even if it's not legal, can lead to a regularization of residence', especially if the work is listed by the French government as a work in high demand.³²⁴
117. It is also common for states to exempt migrants who are permanent residents from obtaining these authorisations as well as those who hold specific nationalities, as part of bilateral or multilateral agreements. This is seen for instance across East African

³¹⁶ See the country reviews of Australia, Finland, and New Zealand, Part II, Question 4. For example, in Finland, under a recent amendment in 2025, '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'.

³¹⁷ See the country reviews of Argentina, Brazil, France, and Greece, Part II, Question 4.

³¹⁸ See Ethiopia's country review, Part II, Question 4.

³¹⁹ See South Korea's country review, Part II, Question 4.

³²⁰ The IACtHR has ruled that Article 26 of the ACHR encompasses the right to just and favourable conditions of work in *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and Their Families v Brazil* Ser C no 407 (IACtHR, 15 July 2020) para 155.

³²¹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (adopted 17 November 1988, entered into force 16 November 1999) OASTS 69.

³²² Revised European Social Charter of 1996 (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

³²³ See notably *İhsan Ay v Turkey* App no 34288/04 (ECtHR, 21 January 2014) para 31.

³²⁴ See France's country review, Part II, Question 5.

Community,³²⁵ European Union,³²⁶ and CARICOM³²⁷ member states, as well as states parties to the Mercosur Residence Agreement.³²⁸ Other kinds of exemptions may be established under domestic law. Notably, Brazil does not require work permits from non-nationals who are border workers, as long as their work is restricted to the municipality that shares the border with their country of nationality.³²⁹ Both practices (requiring work authorisation for non-nationals and exempting some non-nationals from this requirement) are widespread and regarded as proportionate ways of responding to states' legitimate objectives concerning immigration control, strengthening cooperation with certain states, or satisfying the needs of the national labour market.

118. Another widespread trend among surveyed states, which also limits migrants' access to work, is labour market testing, which requires employers to prove that they have tried to recruit national workers before turning to non-national ones. This measure was mentioned in relation to 21 of the surveyed countries, across all continents.³³⁰ Mongolia's domestic framework is particularly careful in ensuring the effectiveness of labour market testing: it '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'.³³¹
119. Among EU Member States, labour market testing is often broadened to also encompass EU and EAA national workers as priorities for recruitment.³³² The same practice has been adopted in Uganda for nationals of East African Community Partner States.³³³ There are interesting particularities as to how testing is done in some countries. In the Netherlands, labour market testing is applied only to positions that do not reach a certain salary threshold.³³⁴ This means that positions that are deemed to require workers with higher qualifications can be filled directly by non-nationals, thus facilitating the immigration of highly skilled workers. Ethiopia, on the other hand, applies labour market testing in a very restrictive way. Investors who have hired non-national workers after conducting this testing are required to replace them by Ethiopian workers after a certain period of time and to provide the latter with the necessary training.³³⁵ Libya adopts a similar, though more flexible, practice: employers are required to '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'.³³⁶ In Uganda, specific economic sectors, such as oil and gas, require employers to prioritise Ugandan nationals and prepare 'succession plans to transfer skills to locals'.³³⁷

³²⁵ Protocol on the Establishment of the East African Community Common Market (adopted 20 November 2009, entered into force 1 July 2010) art 7.

³²⁶ See the review for the European Union, Part II, Question 5.

³²⁷ Revised Treaty of Chaguaramas (adopted 5 July 2001, entered into force 4 February 2002) arts 45–46.

³²⁸ MERCOSUR Residence Agreement (n 181) art 9.

³²⁹ See Brazil's country review, Part II, Question 5.

³³⁰ See the reviews of Australia, Austria, Brazil, Croatia, Czechia, Ethiopia, Finland, Greece, Hungary, India, Indonesia, Ireland, Libya, Mongolia, the Netherlands, Nigeria, Pakistan, Slovenia, South Korea, Switzerland, and Uganda, Part II, Questions 5 and 6.

³³¹ See Mongolia's country review, Part II, Question 6.

³³² See e.g. the country reviews of Austria, Croatia, Finland, and Ireland, Part II, Question 6.

³³³ See Uganda's country review, Part II, Question 6.

³³⁴ See the Netherlands' country review, Part II, Question 6.

³³⁵ See Ethiopia's country review, Part II, Question 6.

³³⁶ See Libya's country review, Part II, Question 6.

³³⁷ See Uganda's country review, Part II, Question 6.

120. The reviews of Kosovo and Poland mentioned that these countries do not apply labour market testing at all.³³⁸ In Poland, testing was repealed in June 2025 and replaced under domestic law by more restrictive conditions for migrants' access to employment. These conditions include obligations on the part of employers to obtain more information than previously required about migrant workers' personal data and migratory regularity in Poland.
121. To date, there have been no cases before international courts or human rights bodies questioning the lawfulness of labour market testing practices. Since testing does not directly prohibit the employment of non-nationals, but only seeks to ensure that national workers' applications for recruitment are prioritised, it would seem difficult to contest the legitimacy and proportionality of this measure unless it can be concretely demonstrated, in a given scenario, that the application of labour market testing is effectively barring non-nationals' access to work.
122. The imposition of quotas limiting the employment of non-nationals is a further way through which states have sought to regulate entry to the labour market. Quotas have been applied less frequently than the other measures discussed above, but they are still seen in a variety of states, from different continents and with different economic models and needs.³³⁹ These quotas can be applied in relation to the state's entire territory and all economic sectors, as is done notably in Panama, where non-nationals cannot represent more than 10% of the total workforce in the country.³⁴⁰ They can also refer to specific economic sectors, as is done for instance in Austria, Canada, and Greece,³⁴¹ certain regions of professions, as is allowed in Slovenia and Türkiye,³⁴² or be applied per company, as done in Guatemala, Libya, and Thailand.³⁴³ Furthermore, in Guatemala the government may authorise a business to hire foreign workers beyond the quota if there are no specialised national workers available. In that case, however, employers 'are obligated to train Guatemalan workers to acquire the necessary skills and gradually replace foreign personnel'.³⁴⁴ Croatia has an interesting framework on this issue, since it does not establish quotas directly but instead requires employers to have a minimum percentage of national (or EEA/Swiss) employees for the Croatian Employment Service to issue a positive opinion about the employer's request to hire a non-national. As a rule, employers may 'hire up to 12 foreign workers per local worker in shortage occupations, or 6 per local worker in non-shortage occupations'.³⁴⁵
123. Like the other practices outlined above, labour market quotas are rarely ever contested as contrary to states' human rights obligations. Even so, their proportionality may be disputable in specific circumstances. If migrants have lawfully resided in the country for a long period of time and need to work in order to sustain themselves and their family, it

³³⁸ See Kosovo's and Poland's country reviews, Part II, Question 6.

³³⁹ See the country reviews of Austria, Canada, Greece, Hungary, Libya, Nigeria, Poland (can be imposed, but none in force as of September 2025), Russia, Slovenia, South Korea, Türkiye, and the USA (regarding some temporary and seasonal workers), Part II, Question 6. See also the examples of Chile (Chile, Código del Trabajo, DFL n. 1 (31 July 2002) arts 19–20) and Panama (Código de Trabajo, Decreto N° 252/1971, Series Legislativa 1971-Pan. 1 (30 December 1971) art 17).

³⁴⁰ Panama (n 339) art 17.

³⁴¹ See the country reviews of Austria, Canada, and Greece, Part II, Question 6.

³⁴² See Slovenia's and Türkiye's country reviews, Part II, Question 6.

³⁴³ See the country reviews of Guatemala, Libya, and Thailand, Part II, Question 6.

³⁴⁴ See Guatemala's country review, Part II, Question 6.

³⁴⁵ See Croatia's country review, Part II, Question 6.

may be disproportionate to ban them from any and all employment based on a system of quotas.

124. An argument in this sense was advanced in the case of *Coorplan-Jenni GmbH and Elvir Hascic v. Austria*, brought before the ECtHR, concerning domestic authorities' refusal to grant an employment permit to a lawfully residing migrant because the quota for the employment of foreigners in the region he lived in had been exceeded for that year.³⁴⁶ The ECtHR acknowledged that 'the refusal of a corresponding permit to a foreigner legally residing in his host state and willing to work may affect the concerned foreigner's possibility to pursue a professional activity to such a significant degree that there are consequential effects on the enjoyment of his right to respect for his "private life" within the meaning of Article 8 of the Convention' but considered that that was not the case, since the applicant had the possibility of applying for and being granted a work permit in subsequent years or of doing so in another region of the country.³⁴⁷ The Court thus held this part of the application inadmissible as falling outside the scope of Article 8 of the ECHR. It is regrettable that the ECtHR did not expressly engage with the fact that the applicant had been previously working in Austria for around seven years and had obtained a residence permit two years prior to this limitation or consider his immediate socio-economic situation and actual possibility of moving to another region, so that the proper weight to be given to these factors could have been developed on. Even so, the judgment is helpful in clarifying that labour market quotas are not permanent, and therefore migrants who have been denied work authorisation on this basis may still be able to engage in other forms of work, work in other localities, or work in a future period. If, on the other hand, it would be impossible or unreasonable for a migrant lawfully in the country to seek other forms of work, work elsewhere, or wait until the expiration of the quotas (for instance, if the migrant is in a dire socio-economic situation and unable to benefit from social assistance programmes), then the application of the quota towards them is likely to be disproportionate. It is therefore imperative that the rejection of work authorisations based on quota limitations duly considers the specific situation of the migrant and waives these limitations where necessary to ensure the migrant and their family are able to secure an adequate standard of living and enjoy their other human rights.
125. The final kind of limitation of the right to work identified as common among states refers to nationality-based restrictions to practicing specific professions. This is more often seen regarding work in the public sector: in 18 of the surveyed countries, it was reported that non-nationals are not able to work as certain categories of civil servants.³⁴⁸ These tend to include professions linked to the political affairs, security, and administration of justice of the state, which are closely related to the state's own sovereign powers. Accordingly, non-nationals are usually excluded from access to professions such as congresspersons, diplomats, members of the armed forces, judges, prosecutors, and notaries. In Slovenia, language requirements may apply to migrants seeking work in the public sector, as is the case with medical doctors, which indirectly constitutes a further restriction to non-nationals' access to these posts.³⁴⁹ It is worth mentioning that, in Croatia, France, and Poland, non-nationals may be authorised to work in positions in the public sector that do

³⁴⁶ *Coorplan-Jenni GmbH and Elvir Hascic v Austria* App No 10523/02 (ECtHR, 24 February 2005).

³⁴⁷ *ibid* 13.

³⁴⁸ See the country reviews of Argentina, Australia, Austria, Canada, Croatia, Czechia, Finland, France, Greece, Italy, Japan, the Netherlands, New Zealand, Nigeria, Portugal, Russia, South Korea, Switzerland, and the USA, Part II, Question 7.

³⁴⁹ See Slovenia's country review, Part II, Question 7.

not involve the exercise of public authority, such as doctors and teachers, as these positions are not classified as civil servants under their respective domestic laws.³⁵⁰

126. Furthermore, 12 of the surveyed countries³⁵¹ do not allow non-nationals to work in any kind of position as civil servants, with very punctual exceptions for certain nationalities.³⁵² For instance, both Brazil and Uganda allow non-nationals to work as professors, technicians, and scientists in public universities.³⁵³ Libya adopts the strictest practice concerning employment in the public sector, as it bars from civil service even Libyan nationals that marry a non-national, unless special authorisation is given by the competent authority.³⁵⁴ This means that migrants are excluded from positions that are not connected to sensitive or sovereign matters, such as teachers in public schools, doctors and nurses in public hospitals, librarians in public libraries, and any kind of administrative job in these or other public institutions. Brazil has a telling example about the extent of this limitation, in which a domestic court confirmed that a Haitian refugee could not take up a position in the public sector as a garbage collector.³⁵⁵ While rarely ever challenged, these blanket restrictions to work in the public sector may, in certain cases, raise issues with states' obligations under international law, since they do not provide justification for limiting access to each kind of professions covered by it. In fact, there are many positions in the public sector for which there is no clear need of a more solid bond or allegiance to the host country and that do not necessarily pertain to strategic economic sectors. Determining which specific positions are so requires an analysis according to the realities of each country, but one could in principle think of librarians, schoolteachers, nurses, and cleaning personnel. Prohibiting non-nationals from working in these positions under any circumstances cannot be justified under a legitimate aim and constitutes a disproportionate interference with their right to work.
127. Beyond the public sector, many states provide for more specific restrictions to the exercise of certain professions by non-nationals, even in the private sector. The practice is widely varied, though some commonalities are visible. That of lawyers is a good example: in the Netherlands, practicing law is open only to nationals and EU citizens,³⁵⁶ whereas Greece allows the practice by non-nationals only under special conditions, such as concerning EU citizens, or bilateral agreements,³⁵⁷ and Czechia, Ethiopia, and Türkiye entirely prohibit non-nationals from working as lawyers.³⁵⁸ In Brazil, Greece, India, Iran, Russia, and South Korea, non-nationals' work in media outlets is restricted.³⁵⁹ It is also possible to see a common concern of some states about the protection of nationals working in jobs that are seen as requiring lower skills: in Nigeria, the activity of running

³⁵⁰ See the country reviews of Croatia, France, and Poland, Part II, Question 7.

³⁵¹ See the country reviews of Brazil, Ethiopia, Guatemala, Hungary, India, Indonesia, Kosovo, Libya, Mongolia, Pakistan, Uganda, and the UK, Part II, Question 7.

³⁵² Only Irish and certain commonwealth citizens are allowed to work in most positions of civil service in the UK. Security and diplomatic positions, in turn, are reserved exclusively for British nationals.

³⁵³ See Brazil's and Uganda's country reviews, Part II, Question 7.

³⁵⁴ See Libya's country review, Part II, Question 7.

³⁵⁵ See Brazil's country review, Part II, Question 7.

³⁵⁶ See the Netherlands' country review, Part II, Question 7.

³⁵⁷ See Greece's country review, Part II, Question 7.

³⁵⁸ See the country reviews of Czechia, Ethiopia, and Türkiye, Part II, Question 7.

³⁵⁹ See the country reviews of Brazil, Greece (only in state-owned media), India, Iran, Russia, and South Korea, Part II, Question 7.

small-scale businesses is reserved for nationals,³⁶⁰ a practice shared by Tanzania,³⁶¹ whereas in India ‘[l]ow-wage or semi-skilled employment of foreigners is effectively prohibited’,³⁶² as is in Thailand.³⁶³ Other states have sought to bar non-nationals from working in sectors that are deemed strategic for their national economies. For instance: the Greek state has the prerogative of restricting non-nationals’ work in ‘public utility companies and strategic sectors such as energy, water, and transport... especially for positions of authority or permanent contracts’;³⁶⁴ South Korea reserves licenses for domestic or international air transportation businesses, mining, finishing, and working as maritime pilots to nationals;³⁶⁵ and Iran prohibits non-nationals from working in the fields of public transportation, mining, and energy.³⁶⁶

128. It is also common, though slightly less frequent, for states to provide a list of professions, especially liberal ones, that may not be exercised by non-nationals. Examples of this practice include Iran (e.g. engineers, physicians),³⁶⁷ the Netherlands (e.g. dentists, architects),³⁶⁸ Panama (e.g. accountants, engineers, psychologists),³⁶⁹ Russia (e.g. public catering, construction workers, taxi drivers),³⁷⁰ Thailand (e.g. wood carving, driving motor vehicles, hairdressing, shoemaking),³⁷¹ and Türkiye (e.g. certified public accountants, dentists, pharmacists).³⁷² China has a rather unique set of limitations regarding the work of non-nationals, prohibiting them from being employed by private citizens and individual businesses and from engaging in cultural performances for business purposes.³⁷³
129. While restrictions of this kind are undoubtedly common, their conformity with international human rights law is not entirely clear. One could consider that states should have broad discretion to protect national workers from foreign competition and limit an overrepresentation of non-nationals in certain economic sectors, especially those that are strategic for the national economy or have the capacity to influence the opinions and behaviour of the population at large, such as the media. On the other hand, it could be argued that these are not vital interests of the state and that migrants, once they have been lawfully residing in the state, should be afforded the same opportunities and protection as the national population. This is an issue that needs further discussion and development, as the practice of international human rights bodies evinces.
130. To date, only two cases questioning nationality-based limitations to work in the private sector, both concerning working as a lawyer, have been decided on the merits by international human rights bodies. The first one, before the ECtHR, concerned a Russian

³⁶⁰ See Nigeria’s country review, Part II, Question 7.

³⁶¹ ‘La Tanzanie interdit aux étrangers de gérer des petites entreprises’ (*Africa News*, 31 July 2025) <<https://fr.africanews.com/2025/07/31/la-tanzanie-interdit-aux-etrangers-de-gerer-des-petites-entreprises/>> accessed 21 Feb 2026.

³⁶² See India’s country review, Part II, Question 7.

³⁶³ See Thailand’s country review, Part II, Question 7.

³⁶⁴ See Greece’s country review, Part II, Question 7.

³⁶⁵ See South Korea’s country review, Part II, Question 7.

³⁶⁶ See Iran’s country review, Part II, Question 7.

³⁶⁷ See Iran’s country review, Part II, Question 7.

³⁶⁸ See the Netherlands’ country review, Part II, Question 7.

³⁶⁹ Panama, Ley 57 de 1978 (1 September 1978) Gaceta Oficial 18673; Panama, Decreto Ejecutivo 257 de 1965 (3 September 1965) Gaceta Oficial 15499; Panama, Ley 56 de 1975

³⁷⁰ See Russia’s country review, Part II, Question 7.

³⁷¹ See Thailand’s country review, Part II, Question 7.

³⁷² See Türkiye’s country review, Part II, Question 7.

³⁷³ See China’s country review, Part II, Question 7.

national who had obtained a law degree from a Greek university but had been prevented from registering within the Greek bar since she was neither a Greek nor an EU national.³⁷⁴ The ECtHR held that the profession of lawyer related to the public interest, endowing states with a wide margin to decide the conditions for exercising it,³⁷⁵ and that the Greek authorities' decision to establish this limitation had not been arbitrary.³⁷⁶ The second case was submitted before the IACommHR, involving a Cuban woman who had obtained a law degree in Chile and was also prohibited from registering within the bar because she was not a Chilean national.³⁷⁷ The IACommHR considered that protecting national lawyers from competition did not respond to a pressing social need and thus could not justify the restriction.³⁷⁸ Chile's argument in the sense that this measure sought to suppress the illegal practice of law was also rejected because barring non-nationals from such practice was not the least restrictive means to achieve this aim.³⁷⁹ As can be seen, the ECtHR adopted a posture that is much more deferential to the judgment of domestic authorities, whereas the IACommHR inquired more critically into the need for and proportionality of the limitation. It should be born in mind that, while the profession of lawyer is one that indeed raises questions about public interest, order, and the rule of law, which are of particular importance for states, not all professions directly relate to these issues or to strategic economic sectors, as is usually the case of, for instance, architects and taxi drivers. Limitations on non-nationals' exercise of professions such as the latter are most likely grounded on the protection of national workers. The question of whether these limitations are a proportionate way of achieving this aim should be analysed with particular care and consider the impact of the prohibitions on the predicament of migrant populations, especially those in situations of vulnerability.

III.4.2 – The right to work for non-nationals in ‘developing countries’ within the meaning of Article 2(3) of the ICESCR

131. In discussing and applying the above considerations, it is important to consider what impact Article 2(3) of the ICESCR has on the lawfulness of limitations of non-nationals' right to work.
132. This provision establishes that '[d]eveloping countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the [ICESCR] to non-nationals.' Much has been discussed about the meaning of these terms, and at least some points of scholarly consensus have emerged. First, 'economic rights' refers to rights that 'enable a person to earn a living or that relate to that process',³⁸⁰ namely the right to work (Article 6 of the ICESCR) and those related to its exercise, including labour protections and the right to join trade unions. Secondly, 'developing countries' refers to states that were economically less powerful at the time of the adoption of the ICESCR, particularly those that had been

³⁷⁴ *Bigaeva c Grèce* App no 26713/05 (ECtHR, 28 May 2009) para 40.

³⁷⁵ *ibid* para 39.

³⁷⁶ *ibid* para 40.

³⁷⁷ *Margarita Cecilia Barbería Miranda v. Chile* (n 253).

³⁷⁸ *ibid* paras 42–43.

³⁷⁹ *ibid* 42.

³⁸⁰ EVO Dankwa, 'Working Paper on Article 2(3) of the International Covenant on Economic, Social and Cultural Rights' (1987) 9 Human Rights Quarterly 230; Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (OUP 2014) 217.

colonised.³⁸¹ While there remains some obscurity as to which states could be classified as developing today, it seems clear, at a minimum, that former colonial powers cannot benefit from Article 2(3). Third, this provision sought to reduce and eventually eliminate the economic domination that former colonial powers and its nationals exercised over these countries.³⁸² This is confirmed by the ICESCR's *travaux préparatoires*.³⁸³

133. The role of Article 2(3) is therefore to provide a greater margin of discretion for 'developing' countries in determining the extent to which non-nationals may enjoy the right to work and connected rights in these states' territories. Identifying how wide this margin of discretion should be is therefore key to assessing the lawfulness of limitations in this field. While the CESCR has indicated that this provision does not allow developing states to entirely deny economic rights to non-nationals, further delimitation is warranted. In view of the abstract and unclear meaning of the terms of Article 2(3), reliance on the *travaux préparatoires* is justified and necessary to address this question.
134. The Committee considers that, since the aim of Article 2(3) is to revert economic domination by nationals of former colonial and economic powers, justifications of restrictions on economic rights grounded on this provision should be interpreted narrowly. Restrictions that affect economic sectors that are not under the economic domination of non-nationals nor under a risk of being so may be justified under provisions of the ICESCR and of human rights law more broadly, but not under Article 2(3).³⁸⁴ In turn, once such domination or risk thereof has been identified, developing countries may adopt limitations of economic rights to revert it, even if the economic sector at stake is not strategic or particularly important to the national economy. Furthermore, any limitations grounded on Article 2(3) must be suitable to achieve the purpose of curbing economic domination. The restriction of labour rights, such as minimum wage and maternity, leave is not conducive to this objective and therefore cannot be justified under Article 2(3). This is in line with the CESCR's understanding that, once labour relations are established, non-nationals should be treated as favourably as nationals.³⁸⁵

³⁸¹ 'The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (1987) 9 Human Rights Quarterly 122, principles 43-44; Dankwa (n 380) 238; Alice Edwards, 'Gainful Employment, Article 17' in Andreas Zimmermann (ed), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary* (OUP 2011) 960; Penelope Mathew, *Reworking the Relationship between Asylum and Employment* (Routledge 2012) 111-112; Saul, Kinley and Mowbray (n 380) 215-216; Claire Lougarre, 'The Protection of Non-Nationals' Economic, Social and Cultural Rights in UN Human Rights Treaties' (2020) 9 International Human Rights Law Review 252, 260.

³⁸² 'The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights' (n 381) principles 43-44; Dankwa (n 380) 238; Edwards (n 381) 960; Mathew (n 381) 111-112; Saul, Kinley and Mowbray (n 380) 215-216; Lougarre (n 381) 260.

³⁸³ See UNGA, 'Draft International Covenants on Human Rights' (15 November 1962) UN Doc A/C.3/SR.1184 paras 41, 53; UNGA, 'Draft International Covenants on Human Rights' (16 November 1962) UN Doc A/C.3/SR.1185 para 37; UNGA, 'Draft International Covenants on Human Rights' (5 December 1962) UN Doc A/C.3/SR.1202 paras 12, 23, 43; UNGA, 'Draft International Covenants on Human Rights' (5 December 1962) UN Doc A/C.3/SR.1203 paras 3, 9; UNGA, 'Draft International Covenants on Human Rights' (6 December 1962) UN Doc A/C.3/SR.1204 paras 6, 53; UNGA, 'Draft International Covenants on Human Rights' (7 December 1962) UN Doc A/C.3/SR.1205 para 19; UNGA, 'Draft International Covenants on Human Rights' (10 December 1962) UN Doc A/C.3/SR.1206 para 9; UNGA, 'Draft International Covenants on Human Rights' (11 December 1962) UN Doc A/C.3/SR.1207 para 3.

³⁸⁴ Mariana Ferolla Vallandro do Valle, 'States' Human Rights Obligations for the Social Inclusion of Migrants' (PhD Thesis, Graduate Institute of International and Development Studies 2026) (forthcoming).

³⁸⁵ CESCR, 'Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights' (13 March 2017) UN Doc E/C.12/2017/1, para 13.

135. It should be noted that, to date, no state has ever invoked Article 2(3) of the ICESCR to justify limitations upon non-nationals' right to work or any other rights. Despite that, Article 2(3) provides developing states with an additional ground to adopt measures seeking to revert foreign economic domination in any given economic sector.

III.4.3 – Refugees' and asylum seekers' right to work

136. The Refugee Convention establishes some minimum standards of treatment for refugees regarding access to the labour market. These standards vary according to the refugee's degree of attachment to the host country. The framework is systematised as follows:

- (1). Access to wage-earning employment is open to refugees lawfully staying in the host country according to the most favourable standards of treatment accorded to aliens (Article 17 of the Refugee Convention);
- (2). Access to self-employment is open to refugees lawfully in the host country according to the same conditions accorded to aliens generally (Article 18 of the Refugee Convention); and
- (3). Access to liberal professions is open to refugees lawfully staying in the host country according to the same conditions accorded to aliens generally (Article 19 of the Refugee Convention).

137. Two degrees of attachment are thus applicable: lawful stay, with respect to wage-earning employment and liberal professions; and lawful presence, with respect to self-employment. There is not much question that individuals who have been formally recognised as refugees fulfil both degrees of attachment. This is corroborated by the practice of the states surveyed that parties to the Refugee Convention: among the surveyed countries almost all allow recognised refugees full access to the labour market, subject to restrictions only regarding those professions that may not be exercised by non-nationals. The exception to this trend is China, which, although a party to the Refugee Convention and its Protocol, has not enacted a domestic framework on refugee protection and refugees' rights. As a result, refugees in China do not have an independent right to work and must apply for a work permit through other applicable migratory statuses, if any.³⁸⁶

138. The same treatment is usually granted to other recognised beneficiaries of international protection. Türkiye has a more restrictive practice, however: recognised refugees and beneficiaries of international protection can apply for a work permit only six months after registration under these migratory statuses.³⁸⁷

139. Regarding asylum seekers, the discussion is more complex. Refugee status under international law has a declaratory nature, meaning that a person is a refugee as soon as they meet the criteria under Article 1(A)(2) of the Refugee Convention and the 1967 Protocol (as well as any other international instruments applicable), regardless of any express recognition by states.³⁸⁸ This means that, if an asylum seeker is treated less

³⁸⁶ See China's country review, Part II, Question 5.

³⁸⁷ See Türkiye's country review, Part II, Question 5.

³⁸⁸ This interpretation has been supported by UNHCR, states, and commentators alike. See: UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection' (UNHCR 2019) 17; Atle Grahl-Madsen, *The Status of Refugees in International Law: Refugee*

favourably than the Refugee Convention requires and the state later recognises that they are a refugee, that state will have breached the Convention. Strictly speaking, the surest way for states to ensure compliance with international law is to treat asylum seekers according to the same standards owed to refugees from the moment they come within the state's jurisdiction. However, to be entitled to the standards of access to the labour market under the Refugee Convention, asylum seekers still must satisfy the applicable degrees of attachment.

140. 'Lawful stay' in the country of asylum, which is needed for access to wage earning-employment and liberal professions, is more clearly understood by reference to the equally authoritative text of the Refugee Convention, which uses the expression '*résidant régulièrement*' (regularly residing). This degree of attachment thus conveys the idea that the refugee should be living in the host state with a certain degree of continuity, and not simply be there for a short visit.³⁸⁹ It does not require permanent residence in that state, however.³⁹⁰ On the other hand, 'lawfully in' the country of asylum corresponds to '*se trouvant régulièrement*' (finding themselves lawfully in) in French, indicating that mere presence in the country of asylum is sufficient to meet this degree of asylum, as long as that presence is lawful.
141. The meaning of 'lawful' under the Refugee Convention has been subject to much debate and no consensus has been achieved to date. Neither the text of the Convention nor its *travaux préparatoires* indicate against what set of rules the lawful character of a refugee's stay or presence should be assessed. Three main positions have been advanced in scholarly analyses on how to interpret this term, as summarized elsewhere.³⁹¹ One such position, endorsed by different scholars, interprets 'lawful' as being authorised to remain in the host state at least until a final decision is made as to the asylum seeker's status as a refugee.³⁹² As soon as asylum seekers present their asylum claim and are authorised to await the conclusion of refugee status determination in the host state's territory, they are lawfully within that state, regardless of how they entered the territory or of whether they are entitled to a migratory status under domestic law.
142. The Committee understands that this interpretation best conciliates the Refugee Convention's text, its object and purpose, and states' other international obligations by making the notion of lawfulness independent from state's discretion and from the obtention of other migratory statuses under domestic law.³⁹³

Character, vol 1 (A W Sijthoff 1966) 340; Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (OUP 2021) 54; Vincent Chetail and Jittawadee Chotinukul, 'Refugee Status' in Vincent Chetail (ed), *Elgar Concise Encyclopedia of Migration and Asylum Law* (Edward Elgar Publishing 2025) 450.

³⁸⁹ As highlighted by the President of the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 'Summary Record of the 9th meeting' (21 November 1951) UN Doc A/CONF.2/SR.9, 14.

³⁹⁰ UNHCR, 'Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons' (2014) para 137.

³⁹¹ Mariana Ferolla Vallandro do Valle, 'States' human rights obligations for the social inclusion of migrants' (PhD Thesis, Graduate Institute of International and Development Studies 2026) (forthcoming).

³⁹² James C Hathaway, *The Rights of Refugees under International Law* (CUP 2021) 925; Penelope Mathew and others, 'The Michigan Guidelines on the Right to Work' (2010) 31 Michigan Journal of International Law 293, 298; Edwards (n 381) 964–965; Jean-Yves Carlier, *Droit d'asile et des réfugiés: de la protection aux droits* (2007) 92.

³⁹³ In this sense, see Mariana Ferolla Vallandro do Valle, 'States' human rights obligations for the social inclusion of migrants' (PhD Thesis, Graduate Institute of International and Development Studies 2026) (forthcoming).

143. Following this reasoning, an asylum seeker is lawfully present in the host state if they are authorised to remain there until their status as a refugee has been determined. Accordingly, all asylum seekers are entitled to self-employment under the same conditions accorded to aliens generally, as per Article 18 of the Refugee Convention.
144. As for other kinds of employment, they require lawful stay, which denotes a longer and more stable residence in the host country. In general, lawful stay has been interpreted as requiring either the formal recognition of refugee status or the granting of another, more secure, migratory status than simply that of asylum seeker.³⁹⁴ This interpretation finds support in Canada's reservation to Articles 23 and 24 of the Refugee Convention,³⁹⁵ as well as judicial decisions from Switzerland³⁹⁶ and New Zealand.³⁹⁷ Nevertheless, it is not uncommon for asylum seekers to wait years until there are granted a formal migratory status, either as a refugee or otherwise. If the asylum seeker continues to reside in the host state throughout this period, the requirement of continuity is met; conditioning the character of lawful stay entirely to states' recognition of refugee or other status would also allow states near-absolute discretion over the applicability of the Refugee Convention's provisions and risk giving rise to abuse.
145. In light of these situations, some scholars have further proposed that, if the refugee status determination procedure is unduly prolonged, an asylum seeker may be deemed as lawfully staying.³⁹⁸ The argument is that, in those cases, the host state is actively impairing the asylum seeker's residence, so that the burden of not securing a more stable status should not be imposed on the asylum seeker.³⁹⁹ This is the case in states where asylum seekers receive only short-term visas that, in practice, are renewed continuously, as is the case, for instance, Argentina, Peru, and Venezuela (90 days in Argentina and Venezuela and 60 days in Peru).⁴⁰⁰ The UNHCR has expressed support for this argument about unduly prolonged refugee status determination procedures and suggested that lawful stay should cover individuals whose authorisation to remain in the host state lasts for more than a few months.⁴⁰¹ Although this proposal has not been widely endorsed,⁴⁰² it is an appropriate interpretation of the Refugee Convention in light of its objective and purpose, allowing lawful stay to be assessed on factual grounds rather than risking that states accord asylum seekers, and even recognised refugees, only precarious, short-term statuses. Moreover, it brings the Refugee Convention in line with international human rights law, which requires any limitations on human rights, including the right to work, to observe the standard of proportionality.

³⁹⁴ Hathaway (n 392) 957–958; Mathew and others (n 392) 298; Edwards (n 381) 964–965; Carlier (n 392) 92.

³⁹⁵ 'Convention Relating to the Status of Refugees' (*United Nations Treaty Collection*)

<https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtmsg_no=V-2&chapter=5&Temp=mtmsg2&clang=_en> accessed 12 Nov 2025.

³⁹⁶ 8C_449/2008 [2008] Swiss Federal Court 8C_449/2008 para 3.

³⁹⁷ *C and S v The Chief Executive of the Ministry of Social Development* [2019] NZHC 2155 para 55.

³⁹⁸ Mathew and others (n 392) 298.

³⁹⁹ As suggested by Mathew (n 381) 87.

⁴⁰⁰ Venezuela, Decreto N° 2.491 (4 July 2003) art 9; Argentina, Ley General de Reconocimiento y Protección al Refugiado, Ley 26.165 (8 November 2006) art 31(d); Peru, Ley N° 27891, Ley del Refugiado (20 December 2002) art 14.3. As discussed by Mariana Ferolla Vallandro do Valle, 'Advancing the access of refugees and asylum seekers in Latin America to the labour market: building from the Inter-American case-law' (2024) 63 *Revista Direito, Estado e Sociedade* 364.

⁴⁰¹ UNHCR, 'Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons' (n 390) para 137.

⁴⁰² Notably, in 8C_449/2008 (n 396), the Swiss court gave no weight to the fact that the asylum seekers had been awaiting a decision on his asylum application for over three years.

146. Asylum seekers should therefore have access to wage-earning employment according to the most favourable standards of treatment accorded to aliens and to liberal professions according to the standards of treatment accorded to aliens generally (Articles 17 and 19 of the Refugee Convention) if they are formally recognised as refugees or if they reside in the host state continuously and the refugee status determination procedure has been unduly delayed. There remains, however, need for further discussion and development of standards about how this undue delay should be assessed.
147. The practice of states regarding asylum seekers' access to work is quite varied and, in most of the states surveyed, subject to restrictions. Among these states, only Argentina, Brazil, Canada, Ethiopia, and Portugal allow asylum seekers full access to the labour market, with Canada and Ethiopia making this access conditional to the asylum seeker's request of a work permit.⁴⁰³ In Uganda, asylum seekers may also work as soon as they register before public authorities, but access to formal employment is limited until the time when they have been formally recognised as refugees.⁴⁰⁴ At the other end of the spectrum, asylum seekers in Russia do not have access to the labour market, as domestic law provides no mechanism for work authorization while refugee status determination is pending.⁴⁰⁵ In the context of international protection, the right to work lawfully is granted to refugees and temporary asylum holders, where the former are generally exempt from work-permit requirements and the latter are subject to compliance with migration-registration rules.⁴⁰⁶
148. South Africa has a rather unclear framework on the extent of asylum seekers' right to work. In principle, this right is ensured only to recognised refugees.⁴⁰⁷ However, the Supreme Court of Appeal of South Africa has established that, since that state offers no material support to asylum seekers, and in light of the human rights protections in the South African legal framework, asylum seekers are entitled to work if they would otherwise be left in destitution.⁴⁰⁸ Deciding whether this condition is met falls upon a state body, the Standing Committee.
149. In several European countries, asylum seekers are required to wait a certain period of time after which, if no decision on their asylum application has been reached and this is not due to the asylum seeker's own behaviour, they are allowed access to the labour market. Greece and Italy have the shortest waiting period among surveyed states, of 60 days.⁴⁰⁹ The waiting period is of three months in Austria and Slovenia⁴¹⁰ and of six months in Czechia, the Netherlands, and Poland.⁴¹¹ In Hungary, asylum seekers may immediately 'seek employment within the open reception facility or in a public employment position'; however, for other work opportunities, asylum seekers are required to wait nine months and find an employer to sponsor a work permit for them.⁴¹² Finally, in the UK, asylum seekers must wait 12 months and may work only in

⁴⁰³ See the country reviews of Argentina, Brazil, Canada, and Ethiopia, Part II, Question 5.

⁴⁰⁴ See the Uganda's country review, Part II, Question 5.

⁴⁰⁵ See Russia's country review, Part II, Question 5.

⁴⁰⁶ *ibid.*

⁴⁰⁷ Compare sections 27(f) and 27^a of South Africa's Refugees Act 130 of 1998.

⁴⁰⁸ *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).

⁴⁰⁹ See Greece's and Italy's country review, Part II, Question 5.

⁴¹⁰ See Austria's (from the admission to the asylum procedure and subject to labour market testing and other conditions) and Slovenia's country reviews, Part II, Question 5.

⁴¹¹ See the country reviews of Czechia, the Netherlands, and Poland, Part II, Question 5.

⁴¹² See Hungary's country review, Part II, Question 5.

occupations that have been determined as shortage ones by the state.⁴¹³ Asylum seekers there may also apply for a work authorisation after 150 days from the presentation of their asylum claim and are entitled to receive this authorisation only after 180 days. Outside of Europe, South Korea has also been reported to impose a 6-month waiting period for asylum seekers to be permitted to work.⁴¹⁴

150. Restrictions are also imposed by New Zealand, where asylum seekers are only allowed to work if they obtain a special work visa. For that, '[t]hey 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.'⁴¹⁵
151. The question of whether restrictions on asylum seekers' access to the labour market is in conformity with international law depends much on how long these restrictions are imposed for and how severely they adversely impact the asylum seeker's quality of life, both in terms of the asylum seeker's material living conditions and their mental health. Short waiting periods before being granted permission to access wage-earning employment and liberal professions are in conformity with the Refugee Convention (since the degree of attachment of lawful stay has not yet been satisfied), but they may be disproportionate under human rights law (e.g. the ICESCR) if the asylum seeker is not provided with adequate living conditions until then. On the other hand, longer waiting periods, such as those of nine months and one year, may be excessive, as by then it can be argued that the asylum seeker has fulfilled the degree of attachment for lawful stay. With regards to self-employment, following the reasoning outlined above, all asylum seekers who have presented an asylum claim and been authorised to remain in the state's territory while its analysis is pending are immediately entitled to exercise this kind of work, subject only to limitations imposed on aliens generally.
152. Even where asylum seekers are not formally impeded from working, many practical obstacles remain. This has been noted especially in the review for Austria, according to which asylum seekers are confronted with labour 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'.⁴¹⁶ Furthermore, a 2018 study revealed that, in seven Latin American countries (Colombia, Dominican Republic, El Salvador, Mexico, Nicaragua, Panama, and Venezuela), asylum seekers tend not to receive documentation allowing them to access the formal labour market.⁴¹⁷ Whereas more recent regulatory developments in Colombia have improved asylum seekers' access to the labour market, allowing them to engage in employment under certain conditions,⁴¹⁸ practical barriers still exist. Such barriers are common across the world and also affect recognised refugees, such as difficulties in obtaining recognition of diplomas and skills, becoming acquainted with bureaucratic and cultural differences in how labour relations are conducted, building a support network in the host country, overcoming language barriers, and bypassing prejudiced attitudes of employers and the population at large, among others.

⁴¹³ See the UK's country review, Part II, Question 5.

⁴¹⁴ See South Korea's country review, Part II, Question 5.

⁴¹⁵ See New Zealand's country review, Part II, Question 5.

⁴¹⁶ See Austria's country review, Part II, Question 5.

⁴¹⁷ Grupo Articulador Regional del Plan de Acción Brasil 2017, 'El Derecho al Trabajo de las Personas Solicitantes de Asilo y Refugiadas en América Latina y el Caribe' (2018).

⁴¹⁸ See Colombia's country review, Part II, Question 5.

153. States' failure in making the enjoyment of the right to work by asylum seekers and refugees effective may qualify as a breach of their positive obligations under human rights law if states offer no reasonable justification for this omission. It should be noted that the fact that states may have other priorities and concerns with other populational groups cannot, as a rule, justify complete inertia in enhancing asylum seekers' and refugees' enjoyment of their right to work. This is because these groups are often subjected to patterns of structural discrimination and situations of vulnerability that significantly heighten the adverse impact of these omissions to their enjoyment of human rights as a whole, so that complete inaction by the state is often disproportionate.⁴¹⁹ States must at least discuss and seriously consider what reasonable measures can be taken to improve the predicament of these populations and in what timeframe they can be implemented.
154. This clarification of states' positive international obligations concerning the right to work without discrimination has been confirmed by the IACtHR in the *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil*. In that judgment, the IACtHR highlighted that, where the work opportunities of a given population are concretely restricted to informal and precarious options due a scenario of structural discrimination, states have an obligation to take positive action to revert this situation.⁴²⁰ Moreover, states have more specific obligations towards the elimination of racial discrimination and discrimination against women and persons with disabilities under the ICERD, the CEDAW, and the CRPD, which remain fully applicable in relation to migrants, regardless of their migratory status.
155. The Committee stresses that the scope and limits of states' positive obligations regarding the right to work of migrants should be further discussed and developed on by international bodies, states, and scholars alike.

III.4.4 – Rights at Work: Labour rights and migrant workers

156. Labour rights, which essentially encompass those rights necessary for just and favourable conditions of work, are enshrined in Articles 7 of the ICESCR, 26 of the ACHR, and 15 of the ACHPR, as well as a series of International Labour Organization (ILO) Conventions, such as those concerning the prohibition of child⁴²¹ and forced labour,⁴²²

⁴¹⁹ See Ferolla Vallandro do Valle (n 400).

⁴²⁰ *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and Their Families v Brazil* Ser C no 407 (IACtHR, 15 July 2020) paras 199–204. See also *Case of the Miskito Divers (Lemoth Morris et al) v Honduras* Ser C no 432 (IACtHR, 31 August 2021).

⁴²¹ Convention (No. 138) concerning Minimum Age for Admission to Employment (adopted 26 June 1973, entered into force 19 June 1976) 1015 UNTS 297; Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (adopted 17 June 1999, entered into force 19 November 2000) 2133 UNTS 161.

⁴²² Convention (No. 29) concerning forced or compulsory labour, as modified by the Final Articles Revision Convention, 1946 (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55; Convention (No. 105) concerning the Abolition of Forced Labour (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291; Protocol to the Convention (No. 29) concerning forced or compulsory labour, as modified by the Final Articles Revision Convention, 1946 (adopted 11 June 2014, entered into force 9 November 2016) 3175 UNTS.

non-discrimination in employment,⁴²³ freedom of association,⁴²⁴ the payment of wages,⁴²⁵ domestic workers,⁴²⁶ and freedom from violence and harassment.⁴²⁷ There is no treaty provision expressly prohibiting the limitation of these rights and, in principle, one could think of a few restricted situations where these limitations are warranted. For instance, if a person employed in the public sector is later found not to have met the conditions for exercising this position (through fault of their own or not), it seems proportionate to deprive them of certain benefits that civil servants may have been entitled to, such as protections against dismissal. On the other hand, the majority of labour rights is so fundamental to human dignity and the prevention of exploitation that it would be entirely disproportionate to deprive workers of them, such as remuneration for the work performed and enjoying safe working conditions. Similarly, it is very difficult to think of situations where it would be proportionate to apply a limitation to labour rights affecting only specific groups of the population – e.g. only non-nationals or certain categories of non-nationals. If the work performed is the same and there are no specific characteristics of a certain worker that need to be accommodated in order to prevent substantive discrimination, then the same kinds and levels of protection should apply to across all workers in that field. The IACtHR, in its Advisory Opinion on the *Juridical Conditions and Rights of Undocumented Migrants*, asserted this understanding and highlighted that the irregularity of a person’s migratory status, while allowing for the application of other sanctions against the migrant, cannot justify depriving them of labour rights.⁴²⁸ Article 25(3) of the ICRMW reinforces this understanding, providing that undocumented migrant workers shall enjoy treatment not less favourable than that which applied to nationals in respect of remuneration, other conditions of work, and other terms of employment. The EU Agency for Fundamental Rights (FRA) and Council of Europe/ECtHR, while not asserting that undocumented migrants are entitled to every single labour right provided under domestic law, considered that ‘core labour rights’, including ‘right to safe and fair working conditions, the prohibition of exploitation and forced labour and the right to remuneration for the work performed’, must be ensured regardless of one’s migratory status.⁴²⁹

157. The IACtHR’s conclusions also find support in the practice of 17 of the surveyed states, including those not parties to the ICRMW, whose domestic provisions entitle all migrant workers, even those in an irregular situation, to labour rights under the same conditions

⁴²³ Convention (No. 100) concerning equal remuneration for men and women workers for work of equal value (adopted 29 June 1951, entered into force 23 May 1953) 165 UNTS 303; Convention (No. 111) concerning discrimination in respect of employment and occupation (adopted 25 June 1958, entered into force 15 June 1960) 362 UNTS 31.

⁴²⁴ Convention (No. 87) concerning freedom of association and protection of the right to organise (adopted 9 July 1948, entered into force 4 July 1950) 68 UNTS 17; Convention (No. 98) concerning the application of the principles of the right to organise and to bargain collectively, as modified by the Final Articles Revision Convention, 1961 adopted 1 July 1949, entered into force 18 July 1951) 96 UNTS 257.

⁴²⁵ Convention (No. 26) concerning the creation of minimum wage-fixing machinery, as modified by the Final Articles Revision Convention, 1946 (adopted 16 June 1928, entered into force 14 June 1930) 39 UNTS 3; Convention (No. 95) concerning the protection of wages (adopted 1 July 1949, entered into force 24 September 1952) 138 UNTS 225; Convention (No. 131) concerning minimum wage fixing, with special reference to developing countries (adopted 22 June 1970, entered into force 29 April 1972) 825 UNTS 77.

⁴²⁶ Convention (No. 189) concerning Decent Work for Domestic Workers (adopted 16 June 2011, entered into force 5 September 2013) 2955 UNTS.

⁴²⁷ Convention (No. 190) concerning the elimination of violence and harassment in the world of work (adopted 21 June 2019, entered into force 25 June 2021) 3444 UNTS.

⁴²⁸ *Juridical Condition and Rights of Undocumented Migrants* (n 253) para 134.

⁴²⁹ FRA and Council of Europe/ECtHR (n 171),) 265.

as national workers.⁴³⁰ Argentina's Migration Law is particularly emphatic on this issue, stating that the state shall 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, [which] *shall not undermine migrant workers' rights vis-à-vis their employers in relation to their employment*'.⁴³¹ In Italy, '[u]ndocumented migrants enjoy core labour rights', such as the right to claim unpaid wages, overtime pay, and severance pay.⁴³²

158. Conversely, Hungary, Libya, Russia, and Nigeria do not offer any kind of protection of the labour rights of undocumented migrant workers,⁴³³ an omission leading to disproportionate and unjustifiable harm to these migrants' rights and that is contrary notably to these states' obligations under the ICESCR. Also troublingly, in Ethiopia, aside from refugees and asylum seekers, it is unclear whether labour protections apply equally to non-nationals, even those who are regularly authorised to work in that country,⁴³⁴ which also results in a disproportionate distinction in their enjoyment of labour rights.
159. Moreover, even in those states that do formally grant labour rights to migrants in an irregular situation, significant obstacles exist for claiming these rights. These include 'situations where the employer has control over the migrant worker's resident status or that tie migrant workers to a specific employer; the inability of the workers concerned to speak the national language(s); the fear of reprisals from employers; and the fear of eventual expulsion if they seek to complain about working conditions'.⁴³⁵ The CESCR has called attention to the heightened risk of exploitation undocumented migrant workers face and affirmed that 'specific measures of protection may have to be adopted for the benefit of undocumented workers, to ensure that any abuse of their situation of vulnerability is effectively addressed and that they do not fear filing complaints with the competent authorities'.⁴³⁶ These measures are still rare in the practice of states, however, and their effectiveness is often insufficient. Some states have also actively sought to make it more difficult for undocumented migrant workers to benefit from labour rights, as is the case of the USA. As detailed in its country review, the USA's 1986 Immigration Reform and Control Act 'outlawed knowingly hiring undocumented workers as well as seeking employment without authorization... [which] 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'.⁴³⁷ The review also notes that '[p]rotections 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'.⁴³⁸

⁴³⁰ See the country reviews of Argentina, Australia, Austria, Brazil, Canada, Colombia, Finland, France, Greece, Netherlands, Poland, Portugal, Slovenia, South Korea, Switzerland, Uganda, and the US, Part II, Question 8.

⁴³¹ See Argentina's country review, Part II, Question 8. Emphasis added.

⁴³² See Italy's country review, Part II, Question 8.

⁴³³ See the country reviews of Hungary, Libya, Russia, and Nigeria, Part II, Question 8.

⁴³⁴ See Ethiopia's country review, Part II, Question 8.

⁴³⁵ CESCR, 'Duties of States towards refugees and migrants' (n 254) para 13.

⁴³⁶ *ibid.*

⁴³⁷ See the USA's country review, Part II, Question 8.

⁴³⁸ *ibid.*

160. Despite this unsatisfactory scenario, some positive developments towards ensuring that undocumented migrant workers effectively benefit from labour rights have been noted. Brazilian, Greek, and Portuguese courts have recognised that these workers may bring claims against employers for violations of labour rights,⁴³⁹ and Austrian courts have also upheld claims in this sense, though the latter's practice is not uniform.⁴⁴⁰ In South Korea, the Supreme Court has expressed 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'.⁴⁴¹ Moreover, in 2015 this court held that 'even a foreign worker without authorisation to work is entitled to establish or join a trade union',⁴⁴² an especially welcome development in ensuring the protection of undocumented migrant workers' human rights. In New Zealand, even though domestic law does not expressly address the issue of undocumented migrants' labour rights, the country's Employment Relations Authority '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"'.⁴⁴³ It is important that practices in this sense be strengthened domestically in order to ensure the effectiveness of undocumented migrant workers' human rights.

III.5 Right to health

161. The right to health is protected under international and regional human rights instruments, including Articles 12 of the ICESCR, Article 5(e)(iv) of ICERD, Articles 11(1)(f) and 12 of the CEDAW, Article 24 of the CRC, Article 25 of the CRPD, Article 28 of ICRMW, Articles 11 and 13 of the ESC, Article 16 of the ACHPR, Article 26 of the ACHR,⁴⁴⁴ and Article 10 of the Protocol of San Salvador. Additionally, the World Health Organization Constitution is important to better delineate States' obligations in this area. Regarding migrants and the right to health, Article 8(c) of the UN Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in which They Live is particularly relevant, as it reiterates the right to 'health protection' and 'medical care' of migrants lawfully residing in the state, as long as 'undue strain is not placed on the resources of the State'.
162. The scope of this right extends 'not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health'.⁴⁴⁵ The right to health is clearly interconnected with other rights, such as the right to an adequate standard of living (including right to adequate food, clothing and housing),⁴⁴⁶ the right to life, and the right

⁴³⁹ See the country reviews of Brazil, Greece, and Portugal, Part II, Question 8.

⁴⁴⁰ See Austria's country review, Part II, Question 8.

⁴⁴¹ See South Korea's country review, Part II, Question 8.

⁴⁴² *ibid.*

⁴⁴³ See New Zealand's country review, Part II, Question 8.

⁴⁴⁴ The right to health is encompassed by Article 26 of the ACHR, as established in *Poblete Vilches et al. v Chile* Ser C no 349 (IACtHR, 8 March 2018) para 110.

⁴⁴⁵ CESCR, 'General Comment No 14: The Right to the Highest Attainable Standard of Health' (11 August 2000) UN Doc E/C.12/2000/4.

⁴⁴⁶ See Section III.8.

to a healthy environment. In addition, the right to safe and healthy working conditions is covered under the rights in work.⁴⁴⁷

163. The right to health encompasses availability, accessibility (including non-discrimination, physical accessibility, economic accessibility and information accessibility), acceptability, and quality of health services.⁴⁴⁸ Accessibility and acceptability are particularly relevant to migrants' right health, while availability and quality of functioning health programs, goods, and services depend more on countries' resources. The principle of non-discrimination is essential in guiding the implementation of this right, and the CESCR has expressly called on states to ensure that all migrants, regardless of their legal status, can access, under equal conditions as nationals, preventive, curative, and palliative health services.⁴⁴⁹
164. The extent to which migrants are allowed to access public health services in a state is usually tied to their legal status. In general, migrants regularly and permanently residing in the host state are subject to the same conditions as nationals when seeking to benefit from health services.⁴⁵⁰ Some exceptions exist, however: as reported in the country review for Uganda, health services may not be available for free for migrant permanent residents and may not encompass the same benefits nationals are entitled to.⁴⁵¹ Moreover, in Ethiopia, the Constitution 'reserves the right to equal access to publicly funded social services exclusively for nationals', so that migrants, even those residing regularly in the country (except refugees and asylum seekers) do not have a clear entitlement to public health services under domestic law.⁴⁵² Libya has a similar practice, allowing non-nationals to access only private and non-governmental health services, save for 'health services for those contracting with public bodies directly funded by the general budget, if their employment agreement includes such services.'⁴⁵³ Thailand, on the other hand, provides free healthcare to some groups of non-nationals including permanent residents and the long-term stateless people registered in the Thai civil registry.⁴⁵⁴
165. In the case of refugees, Article 23 of the Refugee Convention requires states to accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in relation to public relief and assistance. Accordingly, based on the interpretation developed in Section III.3 above, both refugees formally recognised as such and asylum seekers undergoing refugee status determination proceedings should be allowed to benefit from public assistance, which encompasses public health care, in conditions equal to nationals. Some of the reviewed states that are parties to the Refugee Convention were reported to follow this practice, namely Argentina, Brazil, Ethiopia, Greece, Italy, New Zealand, Russia, Uganda, and the UK.⁴⁵⁵ Nevertheless, many of the reviewed states were reported to place additional limitations to asylum seekers' access to public health services

⁴⁴⁷ See Section III.4.4.

⁴⁴⁸ CESCR, 'General Comment No 14' (n 445) para 12.

⁴⁴⁹ *ibid* para 24; CESCR, 'Duties of States towards refugees and migrants' (n 254) para 12.

⁴⁵⁰ See the country reviews of Argentina (although some local laws restrict full access to health care to migrants with permanent residence status), Australia, Austria, Brazil, Canada, China, Colombia, Croatia, Czechia, France, Ghana, Greece, Guatemala, Indonesia, Ireland, Kosovo, the Netherlands, Poland, Portugal, Russia, Slovenia, Switzerland, Türkiye, and the UK, Part II, Question 9.

⁴⁵¹ See Uganda's country review, Part II, Question 9.

⁴⁵² See Ethiopia's country review, Part II, Question 9.

⁴⁵³ See Libya's country review, Part II, Question 9.

⁴⁵⁴ See Thailand's country review, Part II, Question 9.

⁴⁵⁵ See the country reviews of Argentina, Brazil, Ethiopia, Greece, Italy, New Zealand, Russia, Uganda, and the UK, Part II, Question 9.

in comparison to refugees.⁴⁵⁶ Croatia and Kosovo, for instance, only allow asylum seekers' to emergency and essential medical care.⁴⁵⁷ Austria does the same in relation to asylum seekers 'who have lost their entitlement to basic support',⁴⁵⁸ as does France during the first three months of asylum seekers' stay in the country. Portugal grants asylum seekers access to both emergency and primary medical care.⁴⁵⁹ Hungary and Slovenia, in turn, restrict this access to specific medical services.⁴⁶⁰ These restrictive practices may not be in conformity with the exigencies of Article 23 of the Refugee Convention.

166. Undocumented migrants are the group that faces the greatest restrictions in their entitlement to health care in host countries. Among the reviewed countries, only three reports (on Argentina, Brazil, and France)⁴⁶¹ expressly mentioned undocumented migrants to enjoy full access to free public health services. Japan used to provide such access until the 1990s, but since then its practice has become more restrictive, to the point of ensuring no access at all to migrants in an irregular situation.⁴⁶² The most common practice, reported in 13 of the surveyed countries (mostly from Europe and North America),⁴⁶³ is to allow undocumented migrants access only to emergency health treatment. A slightly more favourable practice was mentioned in Iran, where undocumented migrants are entitled to both emergency and primary health treatment,⁴⁶⁴ and Hungary, where these migrants may be further entitled to free primary healthcare if they are socially disadvantaged and not covered by a social security system.⁴⁶⁵
167. These levels of restrictions upon undocumented migrants' right to health is gravely concerning, since access to emergency health care may not be sufficient to provide a person with minimum conditions of life with dignity. This was highlighted in *Toussaint v. Canada*, where the HRC found that denying non-emergency treatment to the author's severe and chronic illnesses on the basis of her irregular migratory status resulted in such a grave level of harm as to breach her rights to life (Article 6 of the ICCPR) and to equal protection of the law (Article 26 of the ICCPR).⁴⁶⁶ In this case, distinguishing between the kinds of free public health care available on the basis of migratory status was found not to be based on 'a reasonable and objective criterion'.⁴⁶⁷ The CESCR has also expressed the view that undocumented migrants' right to health should encompass access to preventive, curative, and palliative care.⁴⁶⁸ It is also interesting to note that the European Committee on Social Rights considered that allowing undocumented migrant

⁴⁵⁶ See country reviews of Austria, Croatia, France, Hungary, Kosovo, the Netherlands, Portugal, Slovenia, and Switzerland, Part II, Question 9.

⁴⁵⁷ See Croatia's and Kosovo's country reviews, Part II, Question 9.

⁴⁵⁸ See Austria's country review, Part II, Question 9.

⁴⁵⁹ See France's country review, Part II, Question 9.

⁴⁶⁰ See Hungary's and Slovenia's country reviews, Part II, Question 9.

⁴⁶¹ After three months of residence for adult undocumented migrants and immediately for child undocumented migrants. See France's review, Part II, Question 9.

⁴⁶² See Japan's country review, Part II, Question 9.

⁴⁶³ See the country reviews of Austria, Canada, Colombia, Croatia, Finland, Greece, Hungary, Italy, Portugal, Russia, Slovenia, the UK, and the United States (although some federal states provide access to health benefits for all residents regardless of immigration status), Part II, Question 9.

⁴⁶⁴ See Iran's country review, Part II, Question 9.

⁴⁶⁵ See Hungary's country review, Part II, Question 9.

⁴⁶⁶ HRC, 'Toussaint v. Canada' (24 July 2018) UN Doc CCPR/C/123/D/2348/2014.

⁴⁶⁷ *ibid* paras 11.1–11.8.

⁴⁶⁸ CESCR, 'Duties of States towards refugees and migrants' (n 254) para 12.

children to access only emergency health care was incompatible with Article 17 of the ESC, on the special protection of children and young persons.⁴⁶⁹

168. In addition to these formal restrictions, migrants with different legal statuses also face a variety of barriers in accessing health care. Requiring evidence of legal status or identity card to access these services may negatively impact their accessibility, especially in the case of asylum seekers and undocumented migrants. This is seen notably in Argentina, where provincial authorities often require additional documents or impose other restrictions on migrants' access to health services, even though this is not allowed under domestic law.⁴⁷⁰ In addition, it is often noted that cultural sensitivities and language barriers often make it difficult for non-nationals to get access to public health services.⁴⁷¹ States' omissions in addressing these factual inequalities may amount to indirect discrimination and therefore a breach of human rights law.

III.6. Right to education

169. The right to education is broadly asserted under Articles 13 of the ICESCR, 28 of the CRC, 30 of the ICRMW, 24 of the Convention on the Rights of Persons with Disabilities (CRPD), 26 of the ACHR,⁴⁷² 13 of the Protocol of San Salvador, 17 of the ACHPR, 11 of the African Charter on the Rights and Welfare of the Child, 2 of the Protocol 1 to the ECHR, and 17 of the ESC.
170. The scope of this right varies according to the level of education at hand. As a rule, the higher the educational level, the less stringent states' obligations are in ensuring the accessibility of this right to all persons. This is seen more clearly in Article 13 of the ICESCR, which specifies that '[p]rimary education shall be compulsory and available free to all', whereas secondary education 'shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education', and tertiary or higher education 'shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education'. In a similar vein, Article 28 of the CRC also requires primary education to be 'compulsory and available free to all', while secondary education should be 'available and accessible to every child' (but not necessarily free), and tertiary education should be 'accessible to all on the basis of capacity by every appropriate means'. Article 30 of the ICRMW further establishes that children of migrant workers 'shall have the basic right of access to education' on the same footing as nationals, and that '[a]ccess to public pre-school educational institutions or schools shall not be refused or limited' due to the child's or their parent's irregular migratory status.
171. In the case of refugees, Article 22 of the Refugee Convention requires states to accord to this group the 'same treatment as is accorded to nationals with respect to elementary education'. Regarding other levels of education, states parties to the Refugee Convention must accord to refugees a treatment not less favourable than the one accorded to aliens

⁴⁶⁹ ECSR, *International Federation of Human Rights Leagues (FIDH) v. France* (8 September 2004) Collective Complaint No 14/2003 paras 36-37. See also FRA and Council of Europe/ECtHR (n 171) 265.

⁴⁷⁰ See Argentina's country review, Part II, Question 9.

⁴⁷¹ See Australia's country review, Part II, Question 9.

⁴⁷² The right to education is encompassed by Article 26 of the ACHR, as established in *Caso Adolescentes Recluidos en Centros de Detención e Internación Provisoria del Servicio Nacional de Menores (SENAME) vs Chile* Ser C no 547 (IACtHR, 20 November 2024) para 160.

generally. It should be noted that no degree of attachment on the part of the refugee is necessary for their entitlement to education in the host state.

172. Given the importance of quality education for a person's personal development and enjoyment of other human rights,⁴⁷³ limitations on access to education, particularly at the primary and secondary levels, should be interpreted very narrowly and thoroughly justified by the state. In exceptional cases of lack of resources, it may be acceptable that a state's public education system is not able to immediately enrol all children in a given region or within a given age group. That state is still under an obligation to mobilise available resources to improve this situation as quickly and effectively as possible. Nevertheless, there exists no legitimate and proportionate justification for prohibiting the access of children to primary and secondary education under the same conditions as nationals on the basis of their nationality, migratory status, or other personal characteristics. International human rights bodies have increasingly endorsed this understanding, as seen in the practice of the CESCR,⁴⁷⁴ the CRC Committee,⁴⁷⁵ the CMW,⁴⁷⁶ the IACCommHR,⁴⁷⁷ and the European Committee of Social Rights.⁴⁷⁸ Moreover, although not expressly mentioning the situation of those with an irregular migratory status, the ACommHPR⁴⁷⁹ and the IACtHR⁴⁸⁰ have broadly affirmed the right to education of migrant children. Although the ECtHR has been more careful in avoiding such broad statements, it too has shown less tolerance for differential treatment affecting migrant children's access to education: in *Ponomariyovi v. Bulgaria*, the ECtHR stated that it would be unlawful to charge school fees to two Russian nationals who had regularly resided in Bulgaria from a young age but had lost their legal status due to bureaucratic requirements when they reached the age of majority.
173. In line with this framework, some states have been more willing to allow, at least in formal terms, access to public education to all migrant children, irrespective of their migratory status, under the same conditions as nationals. This was mentioned in relation to 16 of the reviewed states.⁴⁸¹ Additionally, looking at states' voluntary review reports on the implementation of the GCM ahead of the 2022 International Migration Review Forum, it was possible to identify 13 other states that affirmed that educational services

⁴⁷³ *Ponomariyovi v Bulgaria* App no 5335/05 (ECtHR, 21 June 2011) para 55; CESCR, 'Duties of States towards refugees and migrants' (n 254) para 6.

⁴⁷⁴ CESCR, 'Duties of States towards refugees and migrants' (n 254) para 8; CESCR, 'General Comment No 20 (n 253) para 30.

⁴⁷⁵ CMW and CRC, 'Joint general comment No 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No 23 of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return' (16 November 2017) UN Doc CMW/C/GC/4 & CRC/C/GC/23 para 59; CRC, General Comment No 6' (n 254) para 41.

⁴⁷⁶ CMW and CRC (n 475) para 59.

⁴⁷⁷ IACCommHR, 'Inter-American Principles' (n 253) principle 37.

⁴⁷⁸ ECSR, 'Statement of interpretation on Article 17§2' (2011) available at <[https://hudoc.esc.coe.int/eng#{%22sort%22:\[%22escpublicationdate%20descending%22\],%22escdcidentifier%22:\[%222011_163_04/Ob/EN%22\]}>](https://hudoc.esc.coe.int/eng#{%22sort%22:[%22escpublicationdate%20descending%22],%22escdcidentifier%22:[%222011_163_04/Ob/EN%22]}>) accessed 10 June 2026.

⁴⁷⁹ ACommHPR, 'African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers' (2023) principle 29.

⁴⁸⁰ *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection* Advisory Opinion OC-21/14 (IACtHR, 19 August 2014) paras 164, 182–183, 256.

⁴⁸¹ See the country reviews of Argentina, Austria, Brazil, France, Greece, Hungary, Italy, Japan, Kosovo, the Netherlands, Poland, Portugal, Switzerland, Thailand, the UK, and the USA, Part II, Question 10.

were open to migrant children regardless of migratory status.⁴⁸² Argentina stands out among these states, allowing migrants irrespective of status to access education at any level, including tertiary studies.⁴⁸³ Another positive development has been witnessed in the USA, where the Supreme Court has 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’.⁴⁸⁴

174. At the same time, failure to expressly provide for the right to education of all migrant children, including those in an irregular situation, in domestic law has led to practical restrictions in their enjoyment of this right. This is the case in China, Indonesia, Mongolia, Nigeria, Russia and South Korea.⁴⁸⁵ Some states require proof of regular migratory status for the enrolment of a child in school,⁴⁸⁶ which effectively makes it impossible for those in an irregular situation to access education. In Australia, ‘states typically allow enrolment regardless of migration status; however, cost and uncertainty can affect the continuity of schooling for non-national children’.⁴⁸⁷ An important obstacle

⁴⁸² Bolivia, ‘Actualización Voluntaria Del Informe de Aplicación Del Pacto Mundial Para La Migración Segura, Ordena y Regular’ (Ministerio de Relaciones Exteriores 2022) <<https://www.un.org/sites/un2.un.org/files/imrf-bolivia.pdf>> accessed 4 Jun 2022; Belgium, ‘Regional Review of the Global Compact for Safe, Orderly and Regular Migration (GCM) ECE Region: Voluntary Contribution Belgium’ (SPF Foreign Affairs 2020) <https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/29.09.30_gcm_regional_review_ece_belgian_voluntary_contribution_31102020.pdf> accessed 4 Jun 2022; Croatia, ‘Regional Review for the Global Compact for Safe, Orderly and Regular Migration (GCM)’ (2020) <<https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/croatia.pdf>> accessed 4 Jun 2022; Ireland, ‘Regional Review for the Global Compact for Safe, Orderly and Regular Migration (UNECE Region): Voluntary Contribution’ (2020) <https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/ireland_submission.pdf> accessed 4 Jun 2022; Ivory Coast, ‘Examen et La Mise En Œuvre Du Pacte Mondial Pour Des Migrations (PMM) Sûres, Ordonnées et Régulières En Côte d’Ivoire’ (Office National de la Population & Ministère du plan et du développement 2021) <<https://migrationnetwork.un.org/resources/cote-divoire-gcm-voluntary-national-report-regional-review-africa>> accessed 4 Jun 2022; Kyrgyzstan, ‘The Kyrgyz Republic National Voluntary Review on the Implementation of the Global Compact for Safe, Orderly and Regular Migration’ (2022) <<https://www.un.org/sites/un2.un.org/files/imrf-kyrgyzstan.pdf>> accessed 4 Jun 2022; Malta, ‘Voluntary Input to Contribute to the Regional Review for the Global Compact for Safe, Orderly and Regular Migration (GCM)’ (2020) <https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/malta_contribution-gcm_regional_review.pdf> accessed 4 Jun 2022; Mauritania, ‘Rapport National Volontaire Sur l’état de Mise En Œuvre Du Pacte Mondial Pour Des Migrations Sûres, Ordonnées et Régulières En Mauritanie’ (2022) <https://www.un.org/sites/un2.un.org/files/imrf_mauritanie_fr.pdf> accessed 4 Jun 2022; Serbia, ‘Addendum to the Voluntary Contribution of the Republic of Serbia to the Status of Implementation of the Global Compact for Safe, Orderly and Regular Migration Submitted in 2022’ (2022) <<https://www.un.org/sites/un2.un.org/files/imrf-serbia.pdf>> accessed 4 Jun 2022; Spain, ‘Implementation of the Global Compact for Safe, Orderly and Regular Migration’ (2020) <https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/spain_submission.pdf> accessed 4 Jun 2022; South Korea, ‘Voluntary GCM Review’ (2022) <https://www.un.org/sites/un2.un.org/files/imrf_republic_of_korea.pdf> accessed 4 Jun 2022; Uruguay, ‘Informe Nacional de Revisión Voluntaria de Implementación Del Pacto Mundial Para Una Migración Segura, Ordenada y Regular - República Oriental Del Uruguay’ (Ministerio de Relaciones Exteriores 2022) <<https://www.un.org/sites/un2.un.org/files/imrf-uruguay.pdf>> accessed 4 Jun 2022; Venezuela, ‘Revisión Regional Sobre La Implementación Del Pacto Mundial Para La Migración Segura, Ordenada y Regular En América Latina y El Caribe’ (Ministerio del Poder Popular para Relaciones Exteriores 2020) <https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/republica_bolivariana_de_venezuela.pdf> accessed 4 Jun 2022.

⁴⁸³ See Argentina’s country review, Part II, Question 10.

⁴⁸⁴ See the USA’s country review, Part II, Question 10.

⁴⁸⁵ See the country reviews of China, Indonesia, Mongolia, Nigeria, Russia, and South Korea, Part II, Question 10.

⁴⁸⁶ See the country reviews of Canada (regarding some provinces), Czechia (for secondary education), New Zealand, and Russia, Part II, Question 10.

⁴⁸⁷ See Australia’s country review, Part II, Question 10.

to the enjoyment of education is also seen in the Netherlands with regard to asylum-seeking children: these children and their families are often confined to temporary reception centres and not all of them are equipped with sufficient and adequate educational facilities.⁴⁸⁸

175. In some states, even migrants with regular status are not ensured access to education on an equal footing with nationals. This is seen particularly across the African countries surveyed: in Ethiopia, access to publicly-funded services, including education, is restricted to nationals.⁴⁸⁹ An exception is made for refugees and asylum seekers regarding primary education, but their access to other forms and levels of education ‘depends on the available resources and educational policies of Ethiopia’.⁴⁹⁰ Libya adopts a similar framework, where, as a rule, non-nationals cannot study in publicly-funded schools, except in cases where there are no private institutions available in the region.⁴⁹¹ Even in this latter scenario, migrants are subject to fees to access education.⁴⁹² Fees of this sort are also commonly charged from non-nationals in Uganda and Nigeria. In Uganda, more favourable treatment is accorded only to refugees and asylum seekers at the primary level, at which they are treated under the same conditions as nationals.⁴⁹³ Outside of Africa, unequal treatment in access to primary and secondary education has also been reported by Australia: only permanent residents are entitled to free public schooling, whereas migrants with other migratory statuses, including children of refugee and asylum seekers, may be required to pay tuition fees.⁴⁹⁴
176. There are also circumstances in which the application of the same criteria between nationals and non-nationals causes distortions that hinder migrants’ access to education. For instance, requiring identity documents for school enrolment, as it happens notably in Argentina, Croatia, and India,⁴⁹⁵ may constitute an insurmountable barrier for migrants who have experienced forced displacement or come from countries who have trouble ensuring comprehensive birth registration. The same risk exists when the presentation of previous academic records is required, as is done in Guatemala.⁴⁹⁶ In fact, the state has acknowledged this risk and exempted asylum seekers and refugees from this requirement.⁴⁹⁷ The imposition of language requirements, as is done in Russia,⁴⁹⁸ is another significant barrier, especially when the state does not provide free opportunities for language learning for migrants. Even the charging of fees for the second half of secondary education in Japan, which is also applicable to Japanese children, has been mentioned as an obstacle particularly for undocumented migrants.⁴⁹⁹
177. As stated, states’ international obligations require them to ensure, at a minimum, free primary education for all children. Practices restricting non-nationals’ access to this level of education, including through the charging of fees, contravene these obligations. Moreover, even in states and regions that may be confronted with resource constraints, restrictions on school enrolment should be adopted in a non-discriminatory way through

⁴⁸⁸ See the Netherlands’ country review, Part II, Question 10.

⁴⁸⁹ See Ethiopia’s country review, Part II, Question 10.

⁴⁹⁰ *ibid.*

⁴⁹¹ See Libya’s country review, Part II, Question 10.

⁴⁹² *ibid.*

⁴⁹³ See Uganda’s country review, Part II, Question 10.

⁴⁹⁴ See Australia’s country review, Part II, Question 10.

⁴⁹⁵ See the country reviews of Argentina, Croatia, and India, Part II, Question 10.

⁴⁹⁶ See Guatemala’s country review, Part II, Question 10.

⁴⁹⁷ *ibid.*

⁴⁹⁸ See Russia’s country review, Part II, Question 10.

⁴⁹⁹ See Japan’s country review, Part II, Question 10.

criteria that allow the greatest possible number of children to benefit from education. It should be noted that the imposition of fees for migrant children to access primary education tends to disproportionately and adversely affect migrant groups who are already in a situation of vulnerability and marginalisation.

178. Regarding tertiary education, the application of higher fees and more limited governmental support for non-nationals is more common across states.⁵⁰⁰ Furthermore, some states, like Croatia, Nigeria, and South Korea, may apply quotas limiting the number of non-nationals enrolled in institutions of tertiary education.⁵⁰¹ These greater restrictions may be justified in light of states' available resources and policy objectives, considering the greater margin of discretion states are afforded under the ICESCR and the CRC in implementing the right to tertiary education. However, distinctions between non-nationals and nationals, or between categories of non-nationals, must abide by the principle of non-discrimination. In this vein, special care should be taken so that these distinctions do not constitute indirect discrimination based on gender, racial, religious, or other characteristics. Neither should they deprive non-nationals, or certain groups thereof, of meaningful access to tertiary education.
179. States' positive obligations on the right to education, particularly in connection with the prohibition of discrimination, also require them to reasonably adopt measures of accommodation to ensure the effectiveness of migrant's enjoyment of education. These measures include not only the standards of inclusive education, as applicable to children with disabilities under Article 24 of the CRPD, but also measures tailored to prevent and reduce indirect discrimination on the basis of migrants' religious, cultural, and linguistic characteristics. Positive steps in this area include: Argentina's distribution of guides on how to promote inclusive education for migrants;⁵⁰² the adoption of domestic norms ensuring that migrant children who do not present identity documents shall not be denied enrolment in school in Brazil, Chile, and Peru;⁵⁰³ Portugal's practice of allowing migrant children to start classes while the procedure for the recognition of their previous academic qualifications is pending;⁵⁰⁴ Slovenia's adoption of a code of multicultural dialogue for educators and provision of Slovenian language courses for migrant students;⁵⁰⁵ and Thailand's creation of a subsidy to assist children in accessing basic education, which is available to nationals and non-nationals alike, regardless of migratory status.⁵⁰⁶
180. The establishment of firewalls between educational institutions and immigration control authorities is another essential measure to ensure that migrants' access to education is not compromised. This kind of measure has been endorsed by different human rights bodies,

⁵⁰⁰ See the country reviews of Australia, Austria, China, Croatia, France, Hungary, India, Kosovo, the Netherlands, New Zealand, Nigeria, Poland, Portugal, Slovenia, Uganda, and the UK, Part II, Question 10.

⁵⁰¹ See the country reviews of Croatia, Nigeria, and South Korea, Part II, Question 10. Moreover, in Italy, such quotas may be established for non-nationals who do not reside in Italy at the time they seek to access tertiary education there. See Italy's country review, Part II, Question 10.

⁵⁰² Argentina, 'Review Report' (2021) <<https://www.un.org/sites/un2.un.org/files/imrf-argentina.pdf>> accessed 4 Jun 2022.

⁵⁰³ See Brazil's country review, Part II, Question 10. See also: Chile, Oficio ordinario no. 07/1008 (1531); Peru, Resolución Ministerial No. 665-2018-MINEDU, Norma que Regula la Matrícula Escolar y Traslados en las Instituciones Educativas y Programas de Educación Básica, art. 5.4.3.

⁵⁰⁴ See Portugal's country review, Part II, Question 10.

⁵⁰⁵ See Slovenia's country review, Part II, Question 10.

⁵⁰⁶ See Thailand's country review, Part II, Question 10.

including the CESCR,⁵⁰⁷ the CMW,⁵⁰⁸ the CRC Committee,⁵⁰⁹ the IACommHR,⁵¹⁰ the UN Special Rapporteur on the human rights of migrants,⁵¹¹ and the EU Fundamental Rights Agency.⁵¹² In this sense, a positive development is seen in Austria, where schools are under no duty to report undocumented migrant children to these authorities.⁵¹³ However, effective firewalls require stricter measures, such as the concrete prohibition of sharing of students' data with immigration authorities and of having immigration enforcement operations carried out at or near school premises. A more effective and beneficial practice in this sense is seen in Portugal, where information gathered by providers of public educational services on undocumented migrants may not be transmitted to immigration authorities.⁵¹⁴

III.7 Right to social security

181. The right to social security is broadly asserted under Articles 9 of the ICESCR, 26 of the CRC, 11(1)(e) of the CEDAW, 27 and 43 of the ICRMW, 28 of the CRPD, 26 of the ACHR,⁵¹⁵ 9 of the Protocol of San Salvador to the ACHR, 12 of the ESC, and ILO Convention No. 102.⁵¹⁶ Moreover, the ECtHR has understood social security entitlements as falling within the scope of the right to property under Article 1 of Protocol 1 to the ECHR.⁵¹⁷
182. The CESCR's General Comment No 19 provides important understanding of the right to social security⁵¹⁸ and indicates that this right encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.⁵¹⁹
183. The measures states may undertake to protect and promote the right to social security generally include two categories: (1) contributory schemes, such as social insurance; and (2) non-contributory schemes, such as universal schemes.⁵²⁰ Some countries, such as Ethiopia, take a radical approach in that they do not permit non-nationals access to social security schemes, with limited exceptions for non-nationals of Ethiopian origin.⁵²¹ On the other hand, some countries, such as Argentina, Brazil, Japan, and the Netherlands,

⁵⁰⁷ CESCR, 'Duties of States towards refugees and migrants' (n 254) para 12

⁵⁰⁸ CMW, 'General comment No 2 on the rights of migrant workers in an irregular situation and members of their families' (28 August 2013) UN Doc CMW/C/GC/2 para 2

⁵⁰⁹ CMW and CRC (n 475) paras 52, 56

⁵¹⁰ IACommHR, 'Inter-American Principles' (n 253) principles 64, 66.

⁵¹¹ UNGA, 'Report of the Special Rapporteur on the human rights of migrants' (19 July 2017) UN Doc A/72/173 paras 67, 6.1

⁵¹² FRA, 'Apprehension of Migrants in an Irregular Situation – Fundamental Rights Considerations' (2013) 2.

⁵¹³ See Austria's country review, Part II, Question 10.

⁵¹⁴ See Portugal's country review, Part II, Question 10.

⁵¹⁵ The right to social security is encompassed by Article 26 of the IACtHR, as established in *Muelle Flores v Peru* Ser C no 375 (IACtHR, 6 March 2019) paras 172–173.

⁵¹⁶ Convention (No. 102) concerning Minimum Standards of Social Security (adopted 28 June 1952, entered into force 27 April 1955) 210 UNTS 31.

⁵¹⁷ See notably *Gaygusuz v Austria* App no 17371/90 (ECtHR, 16 September 1996).

⁵¹⁸ CESCR, 'General Comment No. 19: The right to social security (art. 9)' (4 February 2008) UN Doc UN Doc E/C.12/GC/19.

⁵¹⁹ *ibid* para 2.

⁵²⁰ *ibid* para 4.

⁵²¹ See Ethiopia's country review, Part II, Question 11.

grant migrants the same access as nationals.⁵²² Most countries adopt approaches in between those two extremes.

184. Regarding contributory schemes, migrant workers in the majority of the reviewed countries, such as Austria, China, Colombia, Croatia, Czech, Guatemala, India, Indonesia, Iran, Italy, Mongolia, Pakistan, Russia, South Korea, Thailand, Uganda, and the USA, have the same or similar right to participate in and contribute to such schemes as nationals.⁵²³ Not all countries adopt a contributory-based scheme to manage migrants' social security, such as Australia, Canada, the DRC, and New Zealand on the basis of residence status.⁵²⁴ The difficulty in relation to contributory schemes is that they generally apply only to non-national workers employed in the host country, not those who lack formal employment or the right to work in the country.
185. On the other hand, for non-contributory schemes, the general state practice is that non-nationals would not enjoy the same right to social security as citizens, although details can vary depending on how a country runs its social security system. Generally speaking, permanent non-national residents may enjoy most if not all of the same social security benefits as nationals, including child allowances, age pensions and disability benefits, such as in Australia, Mongolia and New Zealand.⁵²⁵ Australia and New Zealand adopted a waiting period requirement for permanent residents to enjoy these social benefits, which may vary from 2 to 10 years.⁵²⁶ Temporary non-national residents may not enjoy social security especially under non-contributory schemes. For example, in Australia, disabled non-national children do not enjoy funded support programs provided by the Federal and State governments.⁵²⁷ However, one exception is Argentina, which adopts friendlier policies towards non-nationals with temporary residence, even though some period of residence may be required for certain social benefits, such as 10 years continuous residence to enjoy disability benefits/pension.⁵²⁸ It is worth mentioning the landmark 2007 ruling in *Reyes Aguilera* in Argentina regarding non-contributory benefits, under which a long residence requirement (20 years) to enjoy disability benefits was held to be in violation of the non-discrimination principle.⁵²⁹ On the other hand, non-contributory welfare programs may not apply to non-nationals at all in some countries, even for refugees, such as in India, Indonesia, Pakistan, Thailand and Vietnam.⁵³⁰
186. Additionally, refugees may receive more favourable treatment in terms of social security benefits comparing with other non-nationals. For example, in South Korea, refugees enjoy the same social security benefits 'at the same level as Korean nationals'.⁵³¹ In Ghana, refugees are included in the social security through Ghana Card.⁵³² In New Zealand, the common two-year residence requirement for some payments is exempted

⁵²² See the country reviews of Argentina, Brazil, Japan, and the Netherlands, Part II, Question 11. It should be noted that, in the Netherlands and in Switzerland, enjoyment of general social security benefits may impact on migrants' residence rights.

⁵²³ See the country reviews of Austria, China, Colombia, Croatia, Czech, Guatemala, India, Indonesia, Iran, Italy, Mongolia, Pakistan, Russia, South Korea, Thailand, Uganda, and the USA, Part II, Question 11.

⁵²⁴ See the country reviews of Australia, Canada, the DRC, and New Zealand, Part II, Question 11.

⁵²⁵ See the country reviews of Australia, Mongolia, and New Zealand, Part II, Question 11.

⁵²⁶ See New Zealand's and Australia's country reviews, Part II, Question 11.

⁵²⁷ See Australia's country review, Part II, Question 11.

⁵²⁸ See Argentina's country review, Part II, Question 11.

⁵²⁹ *ibid.*

⁵³⁰ See the country reviews of India, Indonesia and Pakistan, Part II, Question 11.

⁵³¹ See South Korea's country review, Part II, Question 11.

⁵³² See Ghana's country review, Part II, Question 8.

for refugees and migrants with permanent residence.⁵³³ In Russia, refugees receive more favourable treatment with respect to social-security entitlements, including access to free public medical care through obligatory medical insurance and the right to work without a permit.⁵³⁴ In Croatia, ‘refugees, asylum seekers and those granted subsidiary or temporary protection are given special status’ and they have access to social welfare often under the same conditions as nationals.⁵³⁵

187. The challenge of ‘welfare migration’ or ‘social tourism’ was recognised in the EU, as the non-discrimination principle applies to EU citizens in the host country and they have freedom to move from one EU country to another.⁵³⁶ The question regarding this entitlement is not about migrant workers, as they would generally be subject to contributory schemes, but whether social benefits extend to all EU citizens. The answer is in principle, yes. However, there is a distinction between ‘economically active mobile EU citizens’ and ‘economically inactive mobile EU citizens’; their access to social security benefits is not exactly the same but subject to complicated case-by-case scenarios.⁵³⁷ In addition, EU citizens include EEA nationals, i.e. nationals of Iceland, Liechtenstein, and Norway, as well Swiss nationals.⁵³⁸ Third-country nationals with EU Blue Cards, long-term residents or those granted international protection also enjoy the same social security benefits as nationals of the host country.⁵³⁹
188. The practice of the ECtHR confirms the understanding that migrants regularly residing in the host country may not, except where very weighty reasons exist, be excluded from either contributory or non-contributory social security schemes based only on their nationality, as that would be discriminatory.⁵⁴⁰ The Court further affirmed that, even where weighty reasons have been advanced for excluding an individual from the scheme, such exclusion must not leave him in a situation in which he is denied any social insurance cover, whether under a general or a specific scheme, thus posing a threat to his livelihood.⁵⁴¹
189. An outlier in the ECtHR’s practice is *Savickis and others v Latvia*, where differential treatment in non-nationals’ access to social security was held to be justifiable, as the applicants, who were all ‘permanently resident non-citizens’ after the independence of Latvia, could have chosen to obtain Latvian citizenship but did not make any efforts to do so.⁵⁴² This reasoning risks voiding the very essence of the prohibition of

⁵³³ See New Zealand’s country review, Part II, Question 11.

⁵³⁴ See Russia’s country review, Part II, Question 11.

⁵³⁵ See Croatia’s country review, Part II, Question 12.

⁵³⁶ Michael Blauberger and Susanne K Schmidt, ‘Welfare Migration? Free Movement of EU Citizens and Access to Social Benefits’ (2014) 1(3) Research and Politics 1; Frans Pennings, ‘EU Citizenship: Access to Social Benefits in Other EU Member States’ (2012) 28(3) International Journal of Comparative Labour Law and Industrial Relations 307.

⁵³⁷ See Francesco Costamagna, Stefano Montaldo and Francesca Romanelli, *Access to Social Advantages for EU Citizens and Third Country Nationals under the Law of the European Union: Essential Text, Cases and Materials* (Università degli Studi di Torino 2022).

⁵³⁸ See EU review, Part II, Question 11.

⁵³⁹ *ibid.*

⁵⁴⁰ Notably: *Koua Poirrez v France* App no 40892/98 (ECtHR, 30 September 2003); *Niedzwieki v Germany* App no 58452/00 (ECtHR, 25 October 2005); *Okpiz v Germany* App no 59140/00 (ECtHR, 25 October 2005); *Andrejeva v Latvia* App no 55707/00 (ECtHR, 18 February 2009) paras 87–92; *Ribač v Slovenia* App no 57101/10 (ECtHR, 5 December 2017) paras 53, 63–67.

⁵⁴¹ *Luczak v Poland* App no 77782/01 (ECtHR, 27 November 2007) paras 48, 52, 59.

⁵⁴² *Savickis and others v Latvia* App no 49270/11 (ECtHR, 9 June 2022) para 215.

discrimination, namely ensuring that individuals are not disadvantaged for characteristics that are immutable or important to their identity.⁵⁴³

190. The ECtHR case *Kurić v Slovenia* provides a unique example of the loss of the rights of ‘erased’ people, that is, persons who lost their permanent resident status in Slovenia’s transition to independence in 1991.⁵⁴⁴ The case concerns persons who were citizens of the former Yugoslavia but not of Slovenia. Accordingly, they were permanent residents of Slovenia under the laws of the former Yugoslavia.⁵⁴⁵ In 1992, after Slovenia’s independence, the applicants lost their permanent resident status therein, as their names were deleted from the Register in accordance with the new citizenship and aliens law. As a result of this deletion, they encountered difficulties in accessing social security, such as pension entitlements,⁵⁴⁶ health insurance, and social assistance.⁵⁴⁷ The ECtHR found unanimously that Slovenia was in violation of both Articles 13 and 14 of the ECHR (right to an effective remedy and non-discrimination) in conjunction with Article 8 of the ECHR (right to private and family life). Even though this case is not directly about Article 1 of Protocol 1 to ECHR, different treatment of former Yugoslavian citizens in acquiring residence in and citizenship of Slovenia led to adverse impacts on almost all of their social rights, including the right to social security.
191. The case *British Gurkha Welfare Society and others v UK* provides another example in relation to military service of non-nationals and their pension benefits.⁵⁴⁸ The background is that an immigration law change in 2004 made it possible for former Gurkhas who had served in the British Army for at least four years to settle permanently in the UK after retirement on or after 1 July 1997. In March 2007, the UK Government adopted the Gurkha Offer to Transfer (GOT), allowing Gurkhas who retired after 1 July 1997 to transfer their pension to the allowance for the British Armed Forces.⁵⁴⁹ One of the applicants in the case was not eligible for such transfer as he retired before 1 July 1997 and another applicant was eligible for the transfer but not for the years before 1 July 1997. The ECtHR found that UK’s cut-off date (1 July 1997) was not in violation of Article 14 of the ECHR in conjunction with Article 1 of Protocol 1 as the justification was ‘reasonable and objective’ after considering estimated costs and financial burden and reasonable alternatives.⁵⁵⁰
192. Where differential treatment was based on migratory status, and not the fact that the person was not a national of the host state, human rights bodies’ scrutiny has tended to be more lenient. This is seen in the HRC’s decisions in *M.S.P.-B. v. the Netherlands*⁵⁵¹ and *Hashemi and Hashemi v. the Netherlands*,⁵⁵² where families without legal status in the country were denied access to general child benefits. The HRC held that there had

⁵⁴³ Cathérine Van de Graaf and Yannick Schoog, ‘Savickis v. Latvia: The role of immutability and choice in the discrimination analysis of the ECtHR’ (2025) 25(2) International Journal of Discrimination and the Law 160.

⁵⁴⁴ *Kurić and others v Slovenia*, App no. 26828/06 (ECtHR, 26 June 2012); see also: ‘Justice for Thousands of “Erased” People after 20 years without Rights’, available at <<https://www.coe.int/en/web/impact-convention-human-rights/-/justice-for-thousands-of-erased-people-after-20-years-without-rights>> (accessed 9 June 2026).

⁵⁴⁵ *Kurić and others v Slovenia*, App no. 26828/06 (ECtHR, 26 June 2012), [16]–[19].

⁵⁴⁶ *Kurić and others v Slovenia*, App no. 26828/06 (ECtHR, 26 June 2012), [96].

⁵⁴⁷ *Kurić and others v Slovenia*, App no. 26828/06 (ECtHR, 26 June 2012), [124].

⁵⁴⁸ *British Gurkha Welfare Society and others v UK* App no 44818/11 (ECtHR, 15 September 2016).

⁵⁴⁹ David Scott, ‘No Finding of Discrimination for British Gurkha Pension Scheme’ (*UK Human Rights Blog*, 29 September 2016) <<https://ukhumanrightsblog.com/2016/09/29/no-finding-of-discrimination-for-british-gurkha-pension-scheme/>> accessed 7 Feb 2026.

⁵⁵⁰ *British Gurkha Welfare Society and others v UK* (n 548) paras 76–86.

⁵⁵¹ HRC, ‘M.S.P.-B. v. the Netherlands’ (25 July 2018) UN Doc CCPR/C/123/D/2673/2015.

⁵⁵² HRC, ‘Hashemi and Hashemi v the Netherlands’ (26 March 2019) UN Doc CCPR/C/125/D/2489/2014.

been no discrimination, since the differentiation applied to all persons who did not have residence permits and there were alternative social security schemes available.⁵⁵³ Similarly, in the ECtHR's judgment in *X and others v. Ireland*, the applicant's access to child benefits was denied because, although she had been living in Ireland lawfully while she waited for the outcome of family reunification proceedings, she had not been granted a residence permit that would have allowed her to prove 'habitual residence' in Ireland for the benefits' purposes. The ECtHR upheld the distinction as lawful.⁵⁵⁴

193. Last but not least, it should also be noted that there are gaps between legal entitlement and implementation, often due to a lack of resources. For example, as mentioned in the Ugandan country review: '[m]ost 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.'⁵⁵⁵

III.8 Right to an adequate standard of living

194. The right to an adequate standard of living is broadly asserted under Articles 11 of the ICESCR, 27 of the CRC, 28 of the Convention on the Rights of Persons with Disabilities (CRPD), 70 of the ICRMW, 16 and 18 of the ACHPR, 14 and 20 of the African Charter on the Rights and Welfare of the Child, 12 of the Protocol of San Salvador to the ACHR, and 11, 13, 16, and 30 of the ESC.
195. Based on Article 11(1) of ICESCR, the scope of the right to an adequate standard of living includes the right to adequate food, clothing, and housing, and to the continuous improvement of living conditions.
196. The right to adequate standard of living is interconnected with the right to social security, but they have different scopes. For example, social security may provide income to achieve adequate living standards, but an adequate standard of living goes beyond income support, as exemplified by the fact that housing affordability is part of this right, but not of the right to social security.
197. The general practice in this area varies significantly and to some extent depends on how a country operates its social welfare system for nationals. For example, some countries may heavily rely upon non-profit social institutions like churches and NGOs in some areas such as food bank programs, while others may have a state-organised welfare system.
198. Within the 46 countries examined, it is more common that the welfare system, such as housing assistance, does not apply to non-nationals, although exceptions may exist for certain types of migrants, especially those with permanent residence. For example, in Czechia, Ethiopia India, Indonesia, Iran, Pakistan, Thailand, Uganda, and Vietnam,⁵⁵⁶ social welfare programmes are designed exclusively for nationals. China's social welfare system may be open to permanent residents, although there exist very few migrants in this category China.⁵⁵⁷ In Japan, non-nationals with a position-based status may have

⁵⁵³ *ibid* para 9.6; HRC, 'M.S.P.-B. v. the Netherlands' (n 551) para 7.5.

⁵⁵⁴ *X and ors v Ireland* App nos 23851/20 and 24360/20 (ECtHR, 22 June 2023) para 97.

⁵⁵⁵ See Uganda's country review, final observations.

⁵⁵⁶ See the country reviews of Czechia, Ethiopia India, Indonesia, Iran, Pakistan, Thailand, Uganda, and Vietnam, Part II, Question 12.

⁵⁵⁷ See China's country review, Part II, Question 12.

some access to public assistance, while those with an activities-based status have no such access.⁵⁵⁸ In New Zealand, housing support, including short-term emergency housing, public housing, and support for existing housing costs, is available for non-nationals with two years of residence in the country, refugees, and other beneficiaries of international protection.⁵⁵⁹ In Australia, permanent residence visa-holders, including humanitarian entrants, are generally eligible to apply for public or social housing, while temporary visa holders, including refugees and asylum seekers, are usually ineligible for public housing.⁵⁶⁰ Canada's practice is more generous, as refugees and asylum seekers are eligible for public housing in most provinces, although temporary residents tend to be ineligible.⁵⁶¹ In the USA, housing programs are available for 'qualified aliens', including lawful permanent residents, asylees, refugees, and parolees with a grant longer than a year.⁵⁶²

199. Four surveyed countries, all from Latin America,⁵⁶³ allow non-nationals generally to access social aid and welfare programmes under the same conditions as nationals. For example, in Argentina, domestic laws ensure non-nationals' equal access to services and basic social benefits.⁵⁶⁴ In Brazil, the only requirement for accessing social aid programmes is to present a social security number, which is available even for undocumented migrants.⁵⁶⁵
200. Commonly, refugees and undocumented migrants heavily rely on NGOs and the UNHCR for support rather than the state system. This is generally the case for many Asian and African countries, especially those which do not have a framework permitting non-nationals access to social welfare programs, such as India, Iran, Uganda and Thailand.⁵⁶⁶ South Korea is an exception in Asia, as refugees therein receive more favourable treatment in terms of social welfare, including basic livelihood security, living expense support, and medical assistance.⁵⁶⁷
201. In Europe, EU citizens, EEA nationals, and Swiss nationals enjoy equal treatment with regard to social assistance in relation to nationals of the host Member States, although there might be a three-month waiting period.⁵⁶⁸ Third-country long-term residents also enjoy equal treatment, although Member States may limit social assistance and social protection to core benefits.⁵⁶⁹ Similarly, beneficiaries of international protection enjoy equal treatment, but some social assistance may be subject to their effective participation in integration programmes.⁵⁷⁰
202. Five surveyed European countries should be specifically mentioned, as they are not part of the EU system: Kosovo, Russia, Switzerland, Türkiye, and the UK. In Kosovo, non-

⁵⁵⁸ See Japan's country review, Part II, Question 12.

⁵⁵⁹ See New Zealand's country review, Part II, Question 12.

⁵⁶⁰ See Australia's country review, Part II, Question 12.

⁵⁶¹ See Canada's Country Review, Part II, Question 12.

⁵⁶² See the USA Country Review, Part II, Question 12.

⁵⁶³ See the country reviews of Argentina, Brazil, Colombia, and Guatemala, Part II, Question 12.

⁵⁶⁴ See Argentina's country review, Part II, Question 12.

⁵⁶⁵ See Brazil's country review, Part II, Question 12.

⁵⁶⁶ See the country reviews of India, Iran, Uganda and Thailand, Part II, Questions 11 and 12.

⁵⁶⁷ See South Korea's country review, Part II, Question 12.

⁵⁶⁸ See the EU review.

⁵⁶⁹ Ibid. In addition, some countries may be more generous. For example, in Ireland, the Housing Assistance Payment provided by local council authorities is available to non-nationals, as it takes a needs-based approach rather than a nationality-based one. See Ireland's country review, Part II, Question 12.

⁵⁷⁰ See the EU's review.

nationals with permanent residence or international protection may enjoy social assistance programs on almost equal footing in relation to nationals, but those with temporary residence permits, such as workers and students, are generally not eligible for income-based social assistance schemes.⁵⁷¹ Asylum seekers, in turn, are eligible only for basic assistance and not for broader benefits. In Russia, non-nationals and stateless persons have access to social welfare programs depending on their legal or residence status, and they are generally not eligible to access residential premises under social rental agreements.⁵⁷² However, temporary accommodation centres may be available to asylum seekers, and a housing fund may be provided to refugees and their family members. In Switzerland, '[w]elfare 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'.⁵⁷³ In Türkiye, non-nationals without distinction regarding their legal status or their mode of arrival in the country can apply for welfare programs.⁵⁷⁴ In the UK, Irish citizens, EU citizens with settled status, and permanent residents may apply for financial aid, housing support, and other social welfare programmes on equal terms with British citizens; however, temporary and undocumented migrants are not eligible for such social assistance, with the exception of refugees, trafficking victims, and beneficiaries of international protection.⁵⁷⁵

203. Furthermore, greater discretion tends to be accorded to states when they use migratory status, instead of nationality, as criterion to define the degree to which they provide social assistance to non-nationals. This was seen in the ECtHR's judgment of *Bah v. United Kingdom*, where a social housing application was rejected due to the migratory status of the applicant's son,⁵⁷⁶ which was conditioned to his not having recourse to public funds. The ECtHR held that there had been no discrimination, since immigration status was subject to an 'element of choice' and states may legitimately limit the use of 'resource-hungry public services... by short-term and illegal immigrants, who, as a rule, do not contribute to their funding'.⁵⁷⁷ These assertions fail to consider, however, that immigration status is unilaterally attributed by a state upon an individual, and the latter has no choice as to how the state chooses to regulate the conditions for each migratory status. In fact, irregularity is often fabricated in accordance with states' interests, particularly when seeking to reduce flows of non-nationals seeking international protection in their territories. Neither is it correct to say that undocumented migrants do not contribute to the funding of public services; to the extent that they participate in the economy, even if informally, they purchase various goods and indirectly pay taxes that can be used to fund a series of social programmes. In this way, their situation is not much different from that of nationals living in poverty who also seek social assistance, who are

⁵⁷¹ See Kosovo's country review, Part II, Question 12.

⁵⁷² See Russia's country review, Part II, Question 12.

⁵⁷³ See Switzerland's country review, Part II, Question 12.

⁵⁷⁴ See Türkiye's country review, Part II, Question 12.

⁵⁷⁵ See the UK's country review, Part II, Question 12.

⁵⁷⁶ *Bah v UK* (n 254). The relevant facts include: the applicant was an asylum seeker from Sierra Leone and granted exceptional leave to remain, even though her refugee application was rejected. Later, she was granted indefinite leave to remain. When her son joined her in the UK, she became homeless, as her landlord did not want to accommodate her son. Her application for social housing was rejected due to the fact that her son was subject to immigration control, that is, his migratory status had been granted under the condition that he had no recourse to public funds while in the UK.

⁵⁷⁷ *ibid* para 47.

often exempted from direct taxation and are able to access non-contributory social benefits.

204. The ECtHR's reluctance in ensuring the right to an adequate standard of living to migrants in an irregular situation is further evinced by a comparison of the factual scenarios in *M.S.S. v. Belgium and Greece*⁵⁷⁸ and *Hunde v. the Netherlands*.⁵⁷⁹ Both cases involved migrants subject to extremely poor socio-economic conditions in European states, living on the streets without proper access to food, shelter, and sanitation. However, M.S.S. was an asylum seeker awaiting the outcome of his application, whereas Hunde's asylum claim had already been rejected. Accordingly, Hunde lost his legal status in the Netherlands. He resisted removal, however, and, claiming fear of returning to his country of origin, remained in the Netherlands as an undocumented migrant. Despite the similar living conditions, M.S.S. was treated more favourably, as the ECtHR understood that asylum seekers were in a particularly vulnerable situation and required a greater degree of protection. The ECtHR decided that he was subjected to ill-treatment contrary to Article 3 of the ECHR. Conversely, in *Hunde*, the ECtHR asserted that '[a]liens who are subject to expulsion cannot, in principle, claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State'.⁵⁸⁰ It rejected Hunde's claims and found that his living conditions did not give rise to a violation of the ECHR.

IV. Conclusion

205. In conclusion, further to the first interim report on the right to enter, this second interim report on the right to stay and rights while staying paves the way for the next report on the right to leave/exit/depart. The three reports will reflect a cycle of migration: enter, stay and leave. In the Committee's view, these three reports make significant contribution to the better understanding and stocktaking of, as well as development of international migration law through a human rights-based approach, and will importantly inform the findings in the final (fourth) report of the Committee, to be accompanied by a resolution.
206. In addition, the Committee's reports have a strong feature of combining both perspectives of public international law and private international law, particularly through special attention paid to the role of citizenship in international migration, as citizenship is often treated as the primary 'connecting factor' in private international law and the role of citizenship in public international law is well-recognised from how the terms "nationals/citizens" on the one and "migrants" on the other hand are defined. The selection of migrants' rights covers rights commonly seen in both private international law, such as property rights, and those more in public international law, such as political rights. This report reveals that, despite significant differences in domestic immigration systems and legal techniques, a number of converging practices may nevertheless be identified across regions and legal traditions. The widespread use of visas and residence permits (or equivalent legal statuses), the importance of family reunification, employment, study, and humanitarian protection as grounds for residence, and the growing influence of international human rights law and refugee law on the treatment of

⁵⁷⁸ *M.S.S. v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011).

⁵⁷⁹ *Hunde v the Netherlands* App no 17931/16 (ECtHR, 5 July 2016).

⁵⁸⁰ *ibid* para 50.

non-nationals all illustrate the existence of shared regulatory patterns. In particular, access to education, healthcare, labour protection, and certain social rights increasingly appears to be recognized, at least to some extent, independently of migration status. At the same time, the report demonstrates that important divergences remain regarding both the conditions attached to the right to stay and the scope of the rights enjoyed while staying. Such divergences concern access to nationality and dual or multiple citizenship, the structure of migration regimes, naturalisation requirements, the degree of administrative discretion retained by States, and the effective protection of social and economic rights, particularly for migrants in an irregular situation. While some States adopt relatively inclusive approaches grounded in integration and human rights considerations, others continue to favour restrictive and highly conditional frameworks centred on migration control and sovereign discretion. Finally, the report suggests that some emerging trends may point towards future developments of international law. Greater attention is increasingly paid to the rights of children, migrant workers, and, more broadly, to the adequate standard of living of all migrants. At the same time, practices once regarded as exceptional — such as temporary protection mechanisms or humanitarian forms of stay — now appear relatively widespread and well established. The coexistence of converging and diverging practices documented throughout this report therefore reflects both the progressive internationalisation of migration governance and the enduring centrality of State sovereignty in this field.

Annex 1: Questionnaire Survey

ILA Committee on International Migration and International Law

Second interim report – Rights to stay and while staying

Country review

November 2024 [please revise it to the date of submission]

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: _____

Author(s): _____

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

Additional Questions circulated on 5 May 2025

1. Does the reviewed country provide a specific permission to stay for victims of trafficking in persons? Is the obtention of this permission conditioned to the victim's cooperation with the authorities or the payment of any fees?
2. In what circumstances, if any, is reunification with non-nuclear family members (members other than spouses and minor children) allowed? Is reunification allowed for partners who are not formally married?
3. Are there integration or other kinds of tests a person has to pass to obtain naturalization in the reviewed country?

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?

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.

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.

Annex 2: List of Authors for Country Reviews

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