



Training Manual on Migration Governance for Albanian Government Officials

FOR IOM ALBANIA AND THE ALBANIAN
SCHOOL OF PUBLIC ADMINISTRATION

May 2021

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LIST OF ACRONYMS

BID	Best Interest Determination
CEDAW	Convention for the Elimination of Discrimination Against Women
CoE	Council of Europe
CSO	Civil Society Organizations
CRC	Convention on the Rights of the Child
CERD	Convention for the Elimination of Racism and Racial Discrimination
CAT	Convention Against Torture
DoMV	Determinants of Migrant Vulnerability
EU	European Union
EC	European Commission
GAMM	Global Approach to Migration and Mobility
GFMD	The Global Forum on Migration and Development
GATS	The General Agreement on Trade in Services
GCM	Global Compact for Migration
IOM	International Organization for Migration
IO	International Organizations
ILO	International Labor organization
ICCPR	International Covenant on Civil and Political Rights
ICRMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMF	International Monetary Fund
IDM	International Dialogue on Migration
MiGOF	Migration Governance Framework
NSM	National Migration Strategy
RoA	Republic of Albania
SOP	Standard Operational Procedures
SDG	Sustainable Development Goals
UNHCR	United Nations High Commissioner for Refugees
UN DESA	United Nations Department of Economic and Social Affairs
USA	United States of America
UNDH	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
PVoT	Potential Victims of Trafficking
VoTs	Victims of Trafficking
WTO	World Trade Organization

1. Introduction

Millions of people are part of the human mobility across all countries in the world today. The international community as a whole and countries are faced with complex challenges of ensuring that migration takes place in ways that are regular, safe and orderly to be mutually beneficial and respectful of human rights.

There is no shortage of laws and policies on national and international level on migration. Some measures recognize the positive contribution of migrants and migration to socio-economic and cultural growth; however, other measures react to migration and to migrants as threatening phenomena. These measures can have negative consequences, including violations of the human rights of migrants and their families.

The Manual offers responses to fundamental questions on migration, such as those concerned with its root causes and possible responses in terms of good governance, policies and practices, as well as the challenges, both for migrants and for countries, in relation to national security, development, integration and social cohesion. The Manual proposes a balanced approach between the state sovereignty and human rights of migrants to make effective laws and policies that address the human rights of migrants and the governance of migration as a whole process that should ensure cohesion between those two important concerns.

The Manual reflects the long experience of international organizations such as the UN and IOM working in the area of migration governance and it shows how to apply it to the country context of Albania. It contains examples of measures and practices relating to migration governance that proved to have worked successfully in different countries in the world.

The Manual is intended to be useful not only for professionals working directly with migrants, but also for policy makers and practitioners at government level, as well as for civil society.

The ultimate objective of this Manual is to inform and promote fair and rights-based migration governance reflected through policies and practices, aligned with international and regional standards and frameworks that are gender and child sensitive and are in the interest of all migrants, as well as the welfare of the state.

1.1. Scope of the Manual

The Manual encompasses a set of topics considered as the key components for migration governance training and draws from the IOM's course manual "Essentials of Migration Management A guide for Policy Makers and Practitioners," the Global Compact for Migration (GCM) and the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDG) and other relevant documents on migration governance.

The Manual strives to achieve a balance between approaching migration governance from managerial-governmental perspectives and the human rights one, thus giving equal attention to both by interlinking them.

The Manual is intended to be used as reference material by future trainers for the development and implementation of induction trainings for a variety of professionals responsible for implementation of the NSM and migration governance in line with international and regional standards.

1.2. What does this Manual contain?

The Manual was designed to take into account the international and national legislation and frameworks regarding migration governance. Hence, the Manual strives to bring an innovative approach to migration governance in Albania looking through the lenses of “rights” paying particular attention to vulnerable groups of migrants.

This Manual provides a step-by-step overview of the conditions, issues, tools and policy responses regarding international migration that policy makers, as well as practitioners, need to understand to effectively carry out their responsibilities at national level, for ensuring the protection of the rights of migrants and the governance of migration in line with international and regional standards on migration.

Module A “Basics of Migration Governance” provides an overview of the global migration trends. It analyses the root causes of migration for countries of destination and countries of origin and the types of migration; it explores the concept of migration governance; analyses the determinants of migrant vulnerability as an important element for consideration for the elaboration of migration policy; and discusses the key issues regarding migration governance and COVID-19 pandemic.

Module B “Rights of Migrants and State Obligations- International and regional standards on migration and migration governance” lays out the foundations for migration governance in international law. Particular attention is given to the principles and the state obligations deriving from core international and regional human rights instruments including labour standards, with special attention devoted to the specific international instruments on the protection of migrants. An overview is also provided of how international human rights treaties and labour standards are monitored; it highlights the issues of gender and migration with particular reference to migrant women and child friendly migration policies; and it explores international and regional cooperation and processes as well as bilateral agreements.

Module C “Migration Governance: National Legislation, Policy and Practices” provides a comprehensive overview of the national legal and institutional context addressing migration governance. A short overview of primary, secondary legislation and policy developments strives at introducing the legal guarantees that apply to foreigners such as entry, movement, stay and residence in Albania. This module also addresses detention of foreign nationals, expulsion and return of foreigners. Special attention is paid to the introduction of the protection mechanisms for particularly vulnerable categories of migrants such as victims of trafficking, asylum seekers, refugees, unaccompanied and separated children, migrant victims of violence, abuse and exploitation including SGBV. This module elaborates migrants’ status and rights effective enjoyment.

Module D “Social inclusion and (re) integration of migrants and best practices” introduces relevant measures as adopted in Albania. Analyses are focused on the guarantees and realization of the rights relating to employment, housing, education, social and health protection. Effective migration

governance requires fostering sustainable, inclusive and innovative partnerships. Therefore, special attention is given to the role of international organizations, NGOs, private sector, and diaspora that remain crucial for in boosting socio-economic and cultural development of Albania.

Module A
BASICS OF MIGRATION
GOVERNANCE

A.1. Migration today: Global, Regional Dimensions and Developments

"According to archaeologists, almost all the people on the Earth are migrants, as humanity originated in Africa about 200,000 years ago and then spread all over the world – to Europe, Asia, Australia and the Americas. ... Nowadays there are about 200 million migrants in the world, and politicians and ordinary people all over the globe fiercely debate the problems and opportunities related to migration. ... We could name the 21st century 'the age of migrants'."

Boris Altner, journalist¹

Even though the numbers cited in this quote have changed, latest figures put the date of origin of humanity to 300,000 thousand years ago and numbers show that there are about 281 million migrants currently², it still paints the reality of migration since the beginning of times in human existence, even if its character and the numbers of migrants vary with time and have been influenced by different circumstances.

People move constantly in today's globalized world. Migration erodes traditional boundaries between cultures, ethnic groups and languages, and adds to diversity, cultural and economic richness. Thus, it can be said that migration is a global phenomenon.

Migration is a process of moving, either across an international border or within a country, encompassing any kind of movement of people, regardless of the causes.³

To define "migrant" is more difficult. It is an umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers (persons whose particular types of movements are legally defined) and smuggled migrants for instance; as well as those whose status or means of movement are not specifically defined under international law, such as international students.

It is important to stress that since no universally accepted definition for "migrant" exists, IOM has developed an operating definition of a "migrant" as presented in Box. 1.

Box 1. The International Organization for Migration (IOM) defines migrant as a term
"a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons."⁴

Two approaches are generally adopted to define the term "migrant": the inclusivism approach, followed among others by IOM, considers the term "migrant" as an umbrella term covering all forms of movements; and the residualist approach, that excludes from the term "migrant" those who flee wars or persecution.⁵ For the purpose of collecting data on migration, the United Nations Department of Economic and Social Affairs (UN DESA) defines "international migrant" as "any person who changes his or her country of usual residence"⁶. The UN DESA definition excludes movements that are due to "recreation, holiday, visits to friends and relatives, business, medical treatment or religious pilgrimages."⁷

For the United Nations High Commissioner for Refugees (UNHCR), refugees and asylum seekers constitute a distinct group of people, because of the reasons they had to leave their country of origin or habitual residence. It defines a refugee as a person who, “owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”⁸

The UNHCR warns about the risks of blurring the line that separates refugees from other groups of migrants who have moved from one country to another for economic or social reasons in order to improve their lives, while refugees are forced to flee to save their lives or preserve their freedom.⁹

As a result, there is a residual understanding of “migrants”, as people living outside their countries of origin who are not refugees (figure 1):

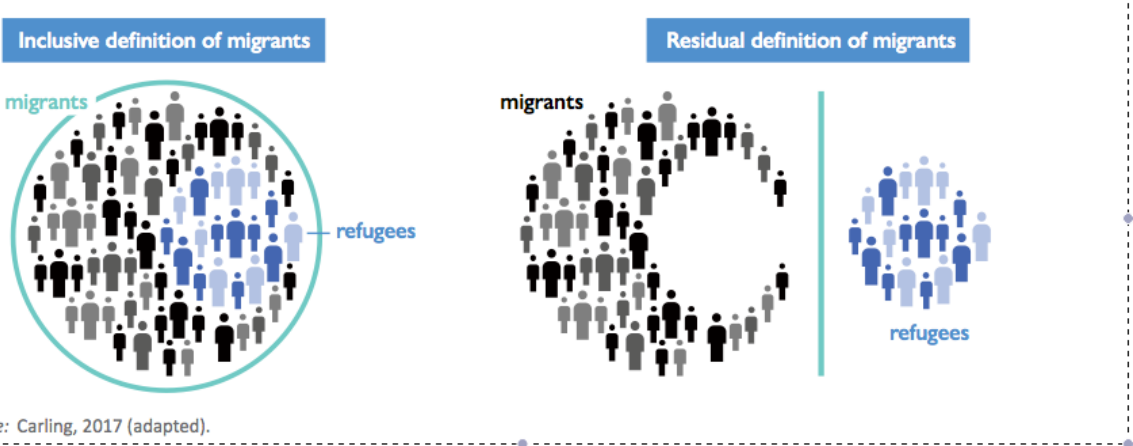
- “a diverse, residual category of people who are united by the feature of not being refugees”

By contrast, the United Nations Population Division, as said above, uses an inclusive definition whereby:

- “any person residing outside his or her country of origin is a migrant.”¹⁰

This Manual will use the broader definition of migrants that also includes refugees.

Figure 1: Defining a migrant distinction between UNHCR and UNPD



Source: Carling, 2017 (adapted).

According to the International migrant stocks data 2020:¹¹

1. In 2020, the number of international migrants worldwide reached nearly 281 million, up from 153 million in 1990

2. Share of international migrants in proportion to the world’s population

The share of international migrants in proportion to the world’s population has remained relatively stable between 1990 and 2020 at around 2.8 to 3.6 per cent. However, due to COVID-19, early estimates with an assumption of zero-growth between 1 March and 1 July 2020 suggest a decrease of nearly 2 million international migrants globally than initially expected between mid-2019 and mid-2020.

3. Forced displacements across international borders

At the end of 2019 at least 79.5 million people around the world have been forced to flee their homes. Among them are nearly 26 million refugees, around half of whom are under the age of 18.¹²

4. Most of the world's migrants live in a relatively small number of countries¹³

In 2019, two thirds of all international migrants were living in just 20 countries. The largest number of international migrants (51 million) resided in the United States of America, equal to about 19 per cent of the world's total. Germany and Saudi Arabia hosted the second and third largest numbers of international migrants worldwide (around 13 million each), followed by the Russian Federation (12 million) and the United Kingdom (10 million).

5. One-third of all international migrants originated in only ten countries¹⁴

In 2019, India was the leading country of origin of international migrants, with 17.5 million persons living abroad. Migrants from Mexico constituted the second largest "diaspora" (11.8 million), followed by China (10.7 million), the Russian Federation (10.5 million) and the Syrian Arab Republic (8.2 million).

6. Women and girls comprise slightly less than half (48 per cent) of all international migrants¹⁵

Globally, the share of women and girls in the total number of international migrants fell slightly, from 49.3% in 2000 to 47.9 % in 2019. The share of female migrants was highest in Northern America (51.8%) and Europe (51.4%), and lowest in sub-Saharan Africa (47.5%), and Northern Africa and Western Asia (35.5%).

Significantly more women are migrating today on their own or as heads of households. Migration can also contribute to the economic and social empowerment and emancipation of female migrant workers in addition to their socio-economic and cultural development. It is also important to point out that the steady flow of remittances generated by female migrant workers (sometimes surpassing those of their male counterparts) is a positive outcome of mobility, as those remittances provide assistance to families and communities.

7. Although migration in today's world is having a significant impact on population size in regions of destination, its impact is much less significant in regions of origin¹⁶

Projection scenarios show that the size of the population of Northern America would be almost 21 per cent smaller by 2070 with zero net migration, whereas Oceania would be 17 per cent smaller, and Europe about 9 per cent smaller. By contrast, the population in regions of origin would be only between 0.1 and just over 3 per cent larger by 2070 under the zero-net-migration scenario.

8. Few Governments are seeking to lower the number of immigrants arriving through regular channels¹⁷

In 2019, most of the 111 countries for which data were available reported either having policies to raise levels of immigration through regular channels (37%) or policies to maintain current levels (26%). Only three per cent of Governments had policies to lower the current level of regular immigration.

9. Promoting orderly, safe, regular and responsible migration is a priority for most Governments¹⁸

Globally, 84 per cent of Governments reported having provisions for the arrival of unaccompanied or separated children; 80 per cent reported having information and awareness-raising campaigns for prospective migrants; 76 per cent had pre-arrival authorization controls for those seeking to immigrate; and 75 per cent indicated having a system to monitor international migrants who overstayed their visas.

10. Legal instruments related to international migration have been ratified in varying degrees by Member States of the United Nations

By October 2019, instruments designed to protect refugees or to combat migrant smuggling and human trafficking had been ratified by more than three quarters of all Member States, whereas instruments protecting the rights of migrant workers had been ratified by fewer than 30 per cent. (See Module B Section 1 for details international legal standards)

11. In December 2018, two global compacts, one concerning international migration and one on refugees, were supported by a large majority of the United Nations Member States

Countries that voted in favor of the Global Compact for Safe, Orderly and Regular Migration (GCM) collectively hosted around 181 million international migrants in 2019, representing 67 per cent of the total worldwide. Meanwhile, countries that voted in favor of the Global Compact on Refugees hosted around 25 million refugees, or 89 per cent of the global refugee population.

Box 2. Interesting facts on migration (IOM World Migration Report 2020)

The number of international migrants globally in 2019: 281 million in 2000 it was 150 million

- **In 2000-2.8% whereas in 2019-3.6% of world population.**
- **52 % were male and 48 % female.**
- **74 % of all international migrants were of working age (20-64).**

India continued to be the largest country of origin for migrants in international migration, followed by China and Mexico.

The number of migrant workers declined slightly in high-income countries while increased elsewhere.

Between 2013-2017, high-income countries experienced a slight drop in migrant workers -from 112.3 million to 111.2 million.

Upper middle-income countries observed the biggest increase -from 17.6 million to 30.5 million.

The number of migrant workers in 2018 was 164 million.

International remittances increased to USD 689 billion in 2018.

The global refugee population in 2018 was 25.9 million.

- **52 % of the global refugee population was under 18 years of age.**

The number of internally displaced persons due to violence and conflict reached 41.3 million.

The number of stateless persons globally in 2020 was around 3.9 million.

In principle people migrate from less developed areas/countries to more developed ones.

Box 3. Definition of countries of origin destination and transit (IOM)

Transit country is the country through which migrants (regular or irregular) move. This means the country (or countries), different from the country of origin, through which a migrant passes in order to reach a country of destination.

Destination country is the country that is a destination for migrants (regular or irregular).

Country of origin is the country of nationality of the migrant or, for stateless persons, of former habitual residence.

Net migration from 1950 to 2020 saw a net positive movement of people from countries in less developed regions to countries in more developed regions, and it is expected to continue this way in the foreseeable future. However, today there are some changes in migration patterns, even though generally there are countries that are and remain predominately countries of origin or countries of destination they are also becoming countries of transit and destination or origin.¹⁹

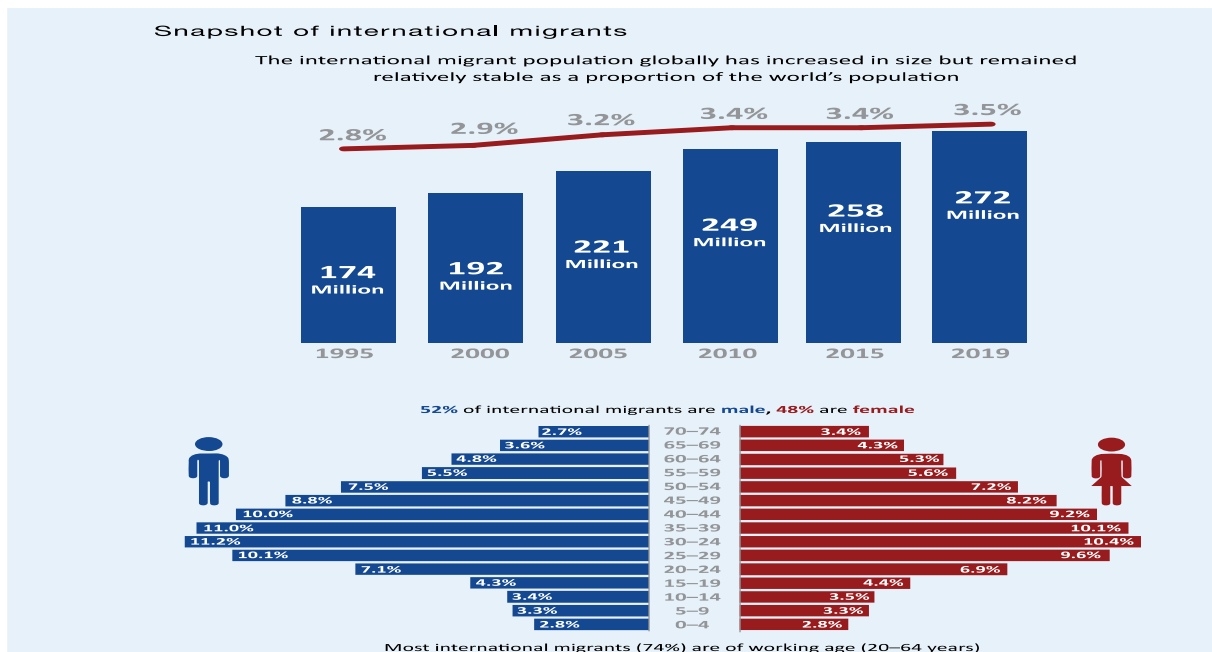
Thus, one can see that the traditional concepts of migration that made strict distinctions between countries of origin and destination are becoming blurred.

Today, all countries are countries of origin, transit and destination, just the intensity of the movements varies from country to country.

Migration has long contributed to economic development and social well being in both destination and origin countries. In this age of globalization and increasing labor mobility, migration brings important benefits to both origin and destination countries, and to migrants themselves – so long as it occurs under proper, regulated conditions.²⁰

Chronologically speaking human mobility registered an upward trend. This can be seen through the numbers of people that are migrating compared throughout the years, showing an increase every year.

Figure 2: Snapshot of international migration (IOM World Migration Report 2020)²¹



Observing regional trends in 2019, Europe and Asia each hosted around 82 million and 84 million international migrants, respectively – comprising 61 per cent of the total global international migrant stock combined (see figure 1). These regions were followed by North America, with almost 59 million international migrants in 2019 or 22 per cent of the global migrant stock, Africa at 10 per cent, Latin America and the Caribbean at 4 per cent, and Oceania at 3 per cent.

Figure 3: International migrants by major region of residence (IOM WMR 2020, source UN DESA 2019)²²

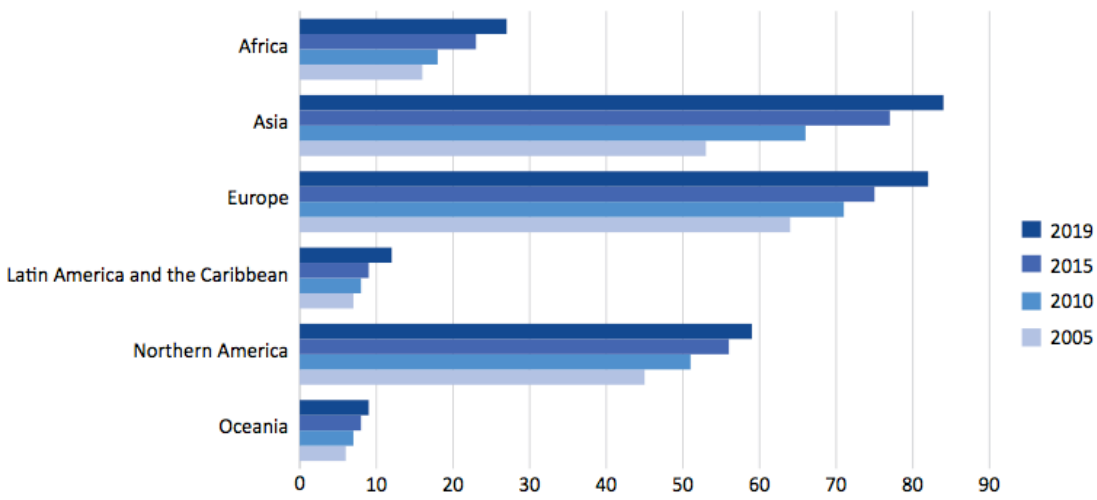
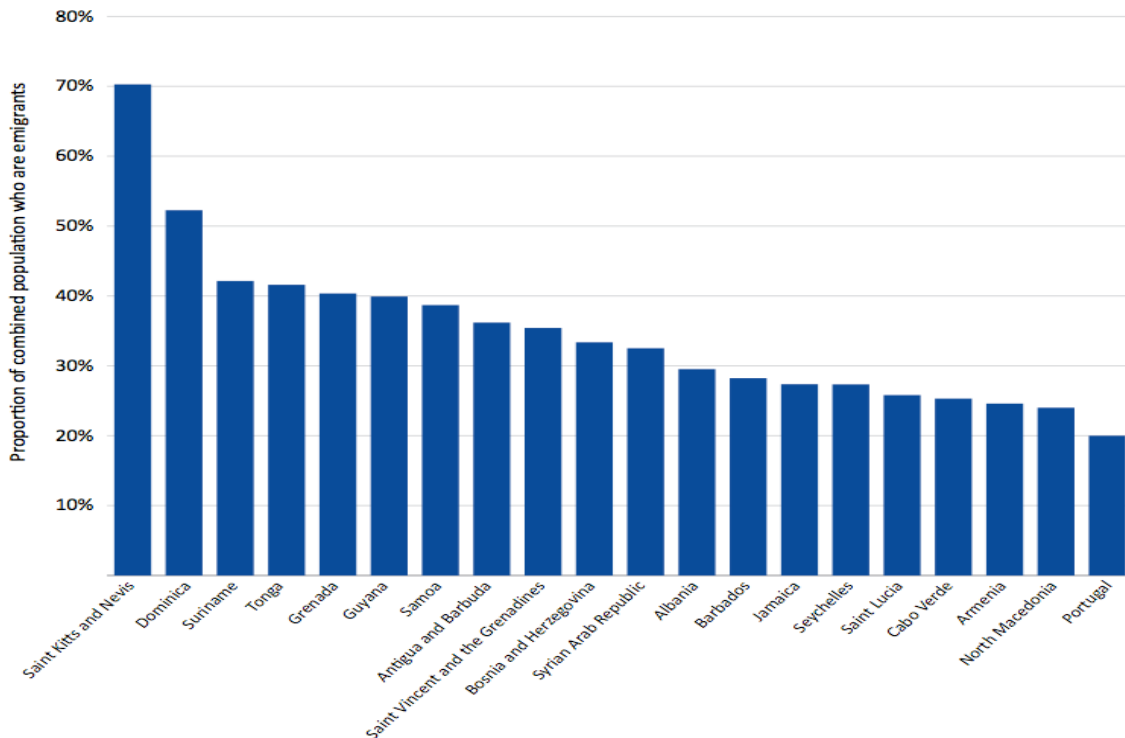


Figure 4: Countries of emigration 2019 (IOM-WMR 2020, source UN DESA 2019)²³



The number of people residing in EU Member States with citizenship of a non-member country on 1 January 2020 was 23 million, representing 5.1 % of the EU population. In addition, there were 13.5 million persons living in one of the EU Member States on 1 January 2020 with the citizenship of another EU Member State. ²⁴

For most South-Eastern and Eastern European countries, **emigration rather than immigration** has been the **key feature** over recent years and decades, with fairly low levels of immigration compared with other sub regions of Europe. Due to this and other factors, several countries in Europe are projected to experience very significant population decline by 2050 (including Bosnia and Herzegovina, Albania, Bulgaria, Romania, the Republic of Moldova and Ukraine).²⁵

Emigration from Eastern European countries to Western Europe has been a growing trend, particularly since the expansion of the EU in both 2004 and 2007 to encompass more Eastern European member States, while extending the external borders of the EU outward towards non-member countries in the East.²⁶

Emigration from Eastern and Southern Europe largely comprises labor migrants in high-skilled and low-skilled occupations. For example, recent years have, seen a sharp increase in the number of medical professionals moving to Western Europe. ²⁷

Finally, the growing scale of irregular immigration is one of the significant global migration trends. Still nowadays, despite the vigorous efforts of major receiving countries to stand against irregular immigration, the estimated numbers of irregular immigrants continue to increase there.

For example, there was a relative surge in irregular migration flows into the region in 2015, compared to previous years, with over 1 million people arriving to Europe by sea. In that year, the Eastern Mediterranean route (mainly from Turkey to Greece) became the predominant route for

migrants and asylum-seekers, as opposed to the Central Mediterranean route (from North Africa to Italy).²⁸

Irregular arrivals to Greece by land and sea surpassed 900,000 in 2015, eleven times higher than in 2014. In 2016, the total figure dropped significantly though it was still at higher levels than previous years; 387,895 irregular migrants reached Europe by land and sea. In 2017, 186,768 irregular migrants had arrived in Europe by land and sea, almost all of them travelling along the Central route, whereas the number of irregular migrants in Europe dropped even more in 2018 and amounted to 144,166.²⁹ As of 13 October 2019 there have been 88,698 irregular migrants arriving to Europe.³⁰

A.2. Types of migration and root causes

People have many reasons why they might want to move from one place to another. These reasons may be influenced by certain factors such as: economic, social, political or environmental. These factors have an impact on the conditions under which migration occurs, as well as on its results, for example: the reasons why someone decides to migrate, the nature (voluntary or involuntary) and the pattern of migration (permanent, temporary, circular); socioeconomic characteristics (such as age, gender, nationality, ethnicity, social status, migration status); migrants' access to social capital and their involvement in transnational transactions and networks; the opportunities and challenges that migrants face in the contexts of origin, transit and destination and the roles migrants play in such contexts.

For migration to occur there have to be push and pull factors to migration.

The factors to migration can be distinguished in two general groups as push and pull factors.

- **Push factors** are the reasons that make someone decide to move. This is their own experience of life in one place, which gives them good reasons to leave it. Often push factors are challenging or difficult situations such as unemployment, crop failure, droughts, flooding, war, poor education opportunities or poor services and amenities.
- **Pull factors**, on the other hand, are usually high expectations and more favorable conditions of stay and opportunities for migrants in country at destination that attract people to the destination, such as job opportunities, a better standard of living, better education or better healthcare.

Migration in its most general form can be distinguished in **immigration and emigration**, depending whether it comes to move in or out of a given country.

Immigration defines the perspective of the country of arrival - the act of moving into a country other than one's country of nationality or habitual residence, so that the country of destination effectively becomes his or her new country of habitual residence.³¹

Emigration defines the perspective of the country of departure, the movement from one's country of nationality or habitual residence to another country, so that the country of destination effectively becomes his or her new country of habitual residence.³²

Also, migration can be **international or internal, namely within the borders of the state.**

International migration is the movement of persons away from their place of habitual residence and across an international border to a country of which they are not nationals.³³

Internal migration is the movement of people within a state involving the establishment of a new temporary or permanent residence.³⁴

International migration can be divided into forced migration, circular migration, and irregular migration.³⁵

A.2.1. Forced migration

According to IOM (2019), forced **migration** is:

Box 4. IOM definition of forced migration

“...A migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion.”³⁶

This term has been used to describe the movements of refugees, displaced persons internally or across borders (including those displaced by disasters), and, in some instances, victims of trafficking. At the international level the use of this term is debated because of the widespread recognition that profiles and vulnerabilities of people on the move might overlap and one situation might evolve into the other one”, as explained in the following paragraph.³⁷

However, it should be taken into consideration that the distinction between forced and voluntary migration that is presented here relates to more theoretical approach in distinguishing between the push factors of human mobility. In reality people on the move may fall from one category to another even within the same migratory movement. For example people who initially have been forcibly displaced can later move voluntarily onwards or vice versa, or they can be caught up in a crisis after having migrated to a place (for example migrants in Libya, Yemen and other countries in crisis).

When it comes to forced migration, a useful approach in identifying root causes is to distinguish between:

- structural causes of displacement, which comprise a broad range of political, economic and social developments; and
- acute causes of displacement which can be armed conflicts, civil wars and other forms of generalized violence.

Both of these sets of factors have a role to play in relation to forced migration.³⁸ In general, factors that contribute to forced migration can also be divided as:

- **Safety Factors**

Safety factors can cause risks to personal and physical integrity of individuals, prompting them to migrate. **Persecution** and **discrimination** based on nationality, race, religion, political beliefs, or membership status to a particular social group force people to flee across the borders in search of international protection. Danger can be imposed upon individuals by something formal, like **war**, or informal, such as widespread **gang activity**.³⁹ **Poor governance**, political instability and the failure to protect human rights may often create the conditions for these situations leading to generalized violence, determining people to flee their livelihood and exposing them to vulnerability

Box 5. Examples of safety factors

According to UNHCR till 2020 nearly 6.7 million Syrians are internally displaced, and over 6.6 million Syrians are counted as refugees.

The Democratic Republic of Congo has the highest number of displaced people on the continent of Africa, with nearly 6 million people forced from their homes by various conflicts.

and other risks. Sometimes, the momentum created by these factors tends to generate slow-onset or episodic displacement rather than humanitarian crisis conditions of rapid mass exodus in civil war.⁴⁰

- **Environmental Factors**

Migration caused by environmental factors is increasingly not a choice for people living in affected areas. Environmental factors cause displacement, or the forced movement of people. **Crop failure** for example, often results in both food scarcity and a drop in agricultural jobs, leaving people no other choice than to move to a place with better job opportunities and stability. **Pollution** of water, air and soil in both urban and rural settings can also create a serious health risk to people leaving in the affected areas, forcing them to look for a better life for themselves and their family.

Devastating **natural disasters** such as tsunamis, hurricanes and earthquakes are environmental factors that also cause displacement of people. Even if it is not inherently a forced movement, in the terms described above, and not accompanied by violence, the conditions often oblige people to leave their homes: vulnerable people seek to escape these life-threatening and difficult situations.

Climate change, that manifests also through slow-onset sea level rise and desertification, and in the increasing incidence of rapid onset extreme weather conditions, is likely to be a major contributor to forced displacement as this century progresses.⁴¹

Box 6. Examples of environmental factors

In 2018 678 000 Haitians immigrants live in the United States. Many were driven from their homes due to the devastating effects of two major hurricanes and one earthquake in recent years. In 2010, a 7.0-magnitude earthquake hit the capital city, leaving 1.5 million Haitians homeless. No natural disaster had ever affected a capital city in such a way. The earthquake created a ripple effect that even paralyzed areas well outside the disaster zone.

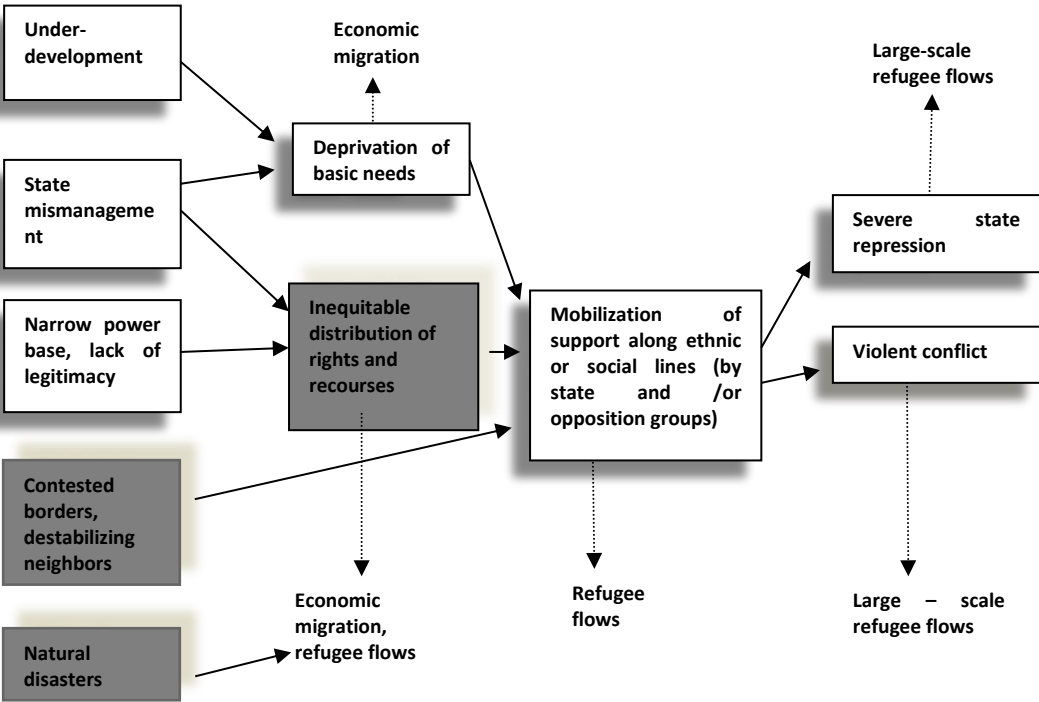
In 2015, a devastating series of earthquakes hit Afghanistan, Pakistan, and India (7.5-magnitude) and Nepal (7.8-magnitude and 7.3-magnitude, respectively). These drove hundreds of thousands of residents from their homes.

Table 1 Push and pull factors of forced displacement

Push factors	Pull factors
State mismanagement (corruption incompetence), narrow power base, lack of legitimacy Mobilization of support across ethnic lines, civil conflicts Violent conflict	Resources and knowledge in destination countries, human rights protection systems in place in countries of destination and equal and non-discriminatory access to services and security;
Deprivation of basic needs	Jobs, education, social security, health protection systems in place in destination countries
Natural devastating events	Security and stability, well-being, less risk of natural disaster

In the diagram below is presented the relationships between the factors of forced displacement and the effects they have on migration of these categories of people.

Figure 5: Relationships between the factors of forced displacement



A.2.2. Circular migration

Circular migration is the fluid movement of people between two or more countries, including temporary or long-term movement, which may be beneficial to all actors involved, and is linked to the labor needs of countries of origin and destination.⁴² There are several definitions of circular migration.

Agunias and Newland look at circular migration in a broader way and accordingly identify four broader types of circular migration:

- Permanent migration and permanent return: Migrants who spend lengthy period abroad and then return to stay in their country of origin;
- Permanent migration and temporary return: Migrants who have emigrated for good but who return for temporary stay;
- Temporary migration and permanent return: Migrants who only stay abroad for a short period of time and then return for good;
- Temporary migration and temporary return: Migrants who regularly move between two or more countries.

According to such typologies all migration movements that include two cross-border movements could be categorized as circular migration.⁴³

Box 7. The European Commission, in its 2007 Communication, defined circular migration

“as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries.”⁴⁴

This is a definition of well-managed migration, and only refers to ‘legal mobility’. The definition is vague and imprecise, because it refers to ‘some degree’ of mobility (implying obvious limits to mobility) and ‘managed in a way’ without specifying conditions.⁴⁵

The EC Communication identifies two types of circular migration in the European Union context:

- Circular migration of third country nationals settled in the EU (businesspersons and professionals) – outward migration to home countries.
- Circular migration of persons residing in a third country – inward migration to a EU country. It is important to say that the EC Communication considers students as part of the definition.⁴⁶

The most characteristic features of circular migration along the lines of these definitions are hence:⁴⁷

- ✓ Voluntary, cross-border migration;
- ✓ Long / short term temporary migration;
- ✓ Long / short term return migration of migrants who settled abroad;
- ✓ Repeated over time;
- ✓ Can refer to completion of the migration cycle by an individual or by cohorts with similar migration patterns;

- ✓ Usually legal, but may also refer to unauthorized migration;
- ✓ Mostly but not necessarily related to economic or qualification activities (studies, training, employment, start-up etc.);
- ✓ Can involve high skilled, low skilled, seasonal workers; ☐ can occur spontaneously or organized in (labor migration / educational) programmes (seasonal, non-seasonal, professionals, students/ academics/ trainees);
- ✓ De facto and voluntary circular migration is taking place in migration networks that allow for the free (or easy) movement between the country of destination and origin (e.g. EU, Nordic countries).

Also, it could be said that the anticipated completion of at least one migration cycle between at least two countries – country of origin, country of destination, country of origin, though with differing views on the respective time frame, is a criterion that all circular migration pathways have in common.

Box 8. Example of circular migration

IT experts returning to India to settle for business after a stay in US or Germany.

Albanian workers on orange fields in Greece returning to Albania after the peaking season is over.

The basic distinction among the various concepts is, in turn, their either normative or descriptive approach to the circular nature of migration.⁴⁸

Most circular migration pathways in policy and research context take a normative stance (are regulated by laws, by-laws and bi-lateral or multi-lateral agreements).

Considering many positive results that are linked to the circular migration, many of which relate to its positive development effects, circular migration is assessed as a desirable migration pattern that should be fostered (rather than promotion of permanent migration) and that has (re-) emerged as migration management tool in recent years.

The development benefits of circular migration have been highlighted for example by the European Commission in 2007 that have stated that the benefits of circular migration lie above all in the transfer of skills between the countries in question, recognizing circular migration as a key form of migration that if well managed can help supply the international demand for labor.⁴⁹

Thus circular migration in other words predominately relates to voluntary economic migration.

Table 2 Push and pull factors of voluntary circular migration

Push factors	Pull factors
Economic mismanagement/poverty, unemployment	Better economic opportunities and service provision
Environmental mismanagement/lack of resources	Labor demand in destination country and Migrant networks
Lack of basic social services	Culture of migration in place of origin
Underdeveloped educational system	Possibility for scholarships/ developed education systems
Underdeveloped health system	Better health services and access to them

A.2.3. Irregular/ - undocumented movement /migration

Irregular or undocumented migration is a movement that takes place outside the regulatory norms of the origin, transit and receiving countries. **There is no clear or universally accepted definition of irregular migration.**

- From the perspective of the destination countries: it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations, such as, for example, visa and / or work permits.
- From the perspective of the origin country: the migration is irregular if, for example, a person crosses an international border without holding a valid passport and travel document or does not fulfill the administrative requirements for leaving the country.⁵⁰

One of the causes of irregular migration is the lack of information of migrants about existing regulations imposed by the receiving country, and the difficulties of such States to create adequate migration regimes to meet labor market demand. Mismatches between conditions of entry rules and labor demand, bureaucratic complexities, and administrative delays contrast sharply with rapid transport and communication technologies that facilitate cross-border labor flows and take little account of the changing social dynamics of migration.⁵¹ Also, criteria imposed for family reunifications and difficulties to comply with conditions can contribute to irregular migration, as well as limited opportunities to have refugee status granted by the receiving state or mechanisms of protection for instance for unaccompanied migrant children and victims of trafficking.

There are several definitions on irregular migration:

One of the first international documents addressing the term ‘irregular immigration’ was Convention No. 143 on Migrant Workers adopted by the ILO Conference in 1975.

Box 9. Convention No. 143 on Migrant Workers definition of illegal immigration

“Movements as those where migrants find themselves ‘during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations.”⁵²

Box 10. The *Glossary on Migration*, of the International Organization for Migration definition of irregular migration

“Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination.”⁵³

There is no clear or universally accepted definition of irregular migration.

The international community has, on several occasions, encouraged the use of the terms “undocumented” or “irregular” as an alternative to the term illegal. The United Nations General Assembly Resolution 3449 (Measures to Ensure the Human Rights and Dignity of All Migrant Workers (9 December 1975)) recognized that the term “illegal” should not be used to define migrants in an irregular situation. The term “irregular” is preferable to “illegal” because the latter carries a criminal connotation, is against migrants’ dignity and undermines the respect of the human rights of

migrants. Migrants, as any human being, can never be illegal; they can be in an irregular situation, but it is inaccurate to refer to a person as “illegal.”⁵⁴

Irregular migration may appear within a country if it has restrictions for internal population movements without a special permission (*e.g.*, in Russia at the times of the USSR or in contemporary North Korea).⁵⁵

There are two main types of irregular migration: *irregular emigration* and *irregular immigration*. Besides, in the last years it was observed that new forms of irregular transit migration linked to with smuggling of migrants and trafficking migrants have emerged.

- *Irregular emigration* usually implies non-return and very often takes the form of forced migration. Irregular immigrants often apply for refugee status and in case of rejection they become irregular in country and sometimes may be deported to their countries of origin, potentially exposing them to risks of persecution.
- *Irregular migration entails usually return* - when migrants cross the state border regularly (as tourists, migrant, or by invitation from friends and relatives) and overstay, irregularly (through poorly controlled boundaries) or unduly (using fake documents and transit visas), but in all cases with further irregular job placement.
- *Irregular employment* of migrants is the employment without complying with local labor regulations applicable to migrant workers.

Three types of irregular immigration can be defined:⁵⁶

- *Undocumented/unauthorized entrance* – one of the main types of irregular migration (*e.g.*, in the USA this category accounts for about two-thirds of all irregular immigrants). These are people who enter another state without complying with immigration laws. Most of such border-crossing happen at land borders, but sea and air routes are also used. In all cases, migrants at the border manage to avoid detection and hence, inspection. At the same time dangerous pathways for irregular migrants are often used by organized crime organizations involved in smuggling of migrants.

One should distinguish between unassisted and assisted irregular border crossings. Unassisted irregular migrant is a person who plans and executes an irregular entry by him or herself, whereas an assisted irregular migrant turns to other people (or organized crime groups) for help. Nowadays increasing proportions of irregular immigrants are smuggled or trafficked. Irregular immigrants often rely – voluntarily or forcedly – on the assistance of ‘migration brokers’ that are often operating in affiliation with transnational criminal groups specialized in smuggling and trafficking migrants.⁵⁷ In fact, this type of informal migration infrastructure undermines safe, orderly and regular migration management.⁵⁸

- *Entry with false or fraudulent documents* - migrants who arrive to the destination country by using forged documents for entry such as fake passports or other persons' passports, fake or changed visas, fake invitations, *etc.*

- *Irregular (informal) employment.* This type includes people who enter another state regularly (e.g., with tourist visas or by private invitations), but later they do not comply with conditions of stay and residence according to domestic immigration regime and enter labour market irregularly.

A.2.4. Categories of migrants relating to the type of migration

In addition to the various types of movement / migration that were discussed in the text above there are some generally used migrant categories:⁵⁹

Box 11. (IOM, 2019) Migrant categories:

- **Temporary labor migrants (also known as guest workers), generally considered to be migrant workers recruited for a limited time of residence and employment.**
- **Highly skilled migrants: migrant workers who have earned, by higher level education or occupational experience, the level of skill or qualifications typically needed to practice a highly skilled occupation.**
- **Irregular (or undocumented, unauthorized) migrants: people who enter a country without the necessary documents and permits.**
- **Family members: who join their close relatives who have already migrated.**
- **Return migrants: persons returning to their country of origin after having moved away from their place of habitual residence and crossed an international border.**

Refugees, asylum seekers and internally displaced persons enjoy special protection under international law. The IOM defines these groups as follows:

A **refugee** is "a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Asylum-seekers are "individuals who are seeking international protection. In countries with individualized procedures, an asylum seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognized as a refugee, but every recognized refugee is initially an asylum seeker.

Internally displaced persons (IDPs) are "Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."

Stateless person is "A person who is not considered as a national by any State under the operation of its law." There are a variety of reasons why somebody can become stateless, including the break-up

of countries such as the Soviet Union or Yugoslavia, or the creation of new countries due to decolonization.

A.3. The need for Good Migration Governance and its building blocks

“Migration impacts on both the place left behind, and on the place where migrants settle.”

By their very nature, international migration and displacement are transnational issues concerning origin and destination States, as well as States through which migrants may travel (often referred to as “transit” States) or in which they are hosted following displacement across national borders.⁶⁰

Even though migration governance historically derives from each State’s sovereignty, States policies and regulations on migration are decided and adopted at national level,⁶¹ over the past two decades States practices on migration issues has been influenced and oriented by a range of norms, processes and frameworks developed and agreed through international cooperation.⁶²

In fact, migration governance has been closely associated with State sovereignty. States retain the power of deciding on the entry and stay of non-nationals because migration directly affects some of the defining elements of a State such as: internal safety, public order, public health etc.⁶³ Migration relates to the pillars of sovereignty (national borders), the core of democratic political systems (human rights), and atavistic social needs (national identity).

Consequently, migration might create relations between a number of parameters: State sovereignty, border security, economic logics of globalization, integration and the values relating to protection of migrants’ rights. As such, migration poses a twofold challenge: balancing security and freedom and harmonizing international obligations with domestic laws.

Firstly, the notion of “migration management” was initiated in the early 1990s with the aim of achieving a new international framework on global human mobility and migration.

According to the World Bank, ‘management concerns the day-to-day operation of the program within the context of the strategies, policies, processes, and procedures that have been established by the governing body’.⁶⁴

More recent developments have transformed migration management term into “migration governance” that could be understood in broader sense than migration management. According to IOM “migration management” is primarily carried out by States, whereas the term “governance” refers to all the frameworks, institutions and processes, in the development and establishment of which many more actors, than only States, are involved.⁶⁵

A.3.1. Definition of migration governance

IOM defines Migration Governance as:

‘The combined frameworks of legal norms, laws and regulations, policies and traditions as well as organizational structures (subnational, national, regional and international) and the relevant

processes that shape and regulate States' approaches with regard to migration in all its forms, addressing rights and responsibilities and promoting international cooperation.⁶⁶

Box 12. IOM on migration and governance

In the domain of international migration, governance assumes a variety of forms, including the migration policies and programmes of individual countries, interstate discussions and agreements, multilateral fora and consultative processes, the activities of international organizations, as well as the laws and norms.⁶⁷

Box 13. IOM's Migration Governance Framework (MiGOF) defines migration policy

"law and policy affecting the movement of people" and includes policy on "travel and temporary mobility, immigration, emigration, nationality, labor markets, economic and social development, industry, commerce, social cohesion, social services, health, education, law enforcement, foreign policy, trade and humanitarian" issues.⁶⁸

Accordingly, rather than focusing on the day-to-day operation of their national migration policies, States have opted for a more structural and strategic approach to migration with a view to addressing economic, social, demographic and other related issues, in coordination with other, and especially neighboring countries.

Among others, the possible aim of migration governance is to address the root causes and consequences of migration in order to change a traditionally spontaneous and unregulated movement of people into a more orderly and predictable process. Making migration beneficial for all stakeholders and especially the receiving and origin States, as well as the migrants themselves, implies both a 'regulated openness' towards economically needed and beneficial migration laws, and the continuation of regulation regarding unsafe migration.⁶⁹ However, it is important to note that it is up to governments to define what is the exact aim of their policies with respect to managing migration.

Therefore, governance assumes a variety of forms, including the migration policies and programmes of each country, inter-State discussions and agreements, multilateral forums and consultative processes, and the activities of international organizations, as well as relevant international standards and norms. It also strives for providing a number of functions for the benefit of countries of origin, transit and destination, and for migrants themselves, such as normative development, service provision and forum for dialogue.

Some forms of migration, such as large and mixed movements of people, can be managed only with a global governance framework. Regional approaches to migration flows alone are no longer sufficient.

"Global inaction on migration exacerbates mass humanitarian catastrophes, modern slavery, and human trafficking."⁷⁰

It is evident that in the absence of a unified international regime on migration, unexpected large-scale migration events, as well as seismic geopolitical events, can have dramatic impacts on the

wellbeing of migrants and the fulfillment of their rights, as well as on the security of each state as well as regions that are affected. Such events have also brought into view the gaps that exist within a fragmented global migration governance framework, and the need for more action to develop a much more coherent international approach to migration for the betterment of States, societies and migrants.⁷¹

A.3.2. Approaches to global migration governance

There have been efforts to create a comprehensive global framework for migration. However, in many countries of destination, the efforts to build a comprehensive framework for migration governance has been impacted by the increase of anti-immigration sentiments and nationalist populist movements.

Thus, three approaches to global migration governance have dominated the global scene:⁷²

- **National/sovereign migration governance**

National/sovereign migration governance rests upon the premise that migration constitutes a security threat and that the control of migration is therefore of key strategic importance. While this is a longstanding issue, particularly in times of war and conflict, the securitization of migration has gained prominence since the end of the Cold War, that gave rise to new security concerns, and even more so in the wake of the terrorist attacks of September 11 in the United States.

- **Global anti-migrant governance**

According to this interpretation, in the absence of a regime, migration remains formally under the realm of state sovereignty. Global anti-migrant governance' is geared towards either the forced immobility of people and/or the exploitation of migrant labor.

- **Rights-based migration governance**

A third approach to global migration governance, that is the predominantly accepted as the leading approach today, focuses on human and labor rights standards. At first sight, global rights-based migration governance rests upon firm ground. By definition, human rights are designed to protect everybody – and hence also apply to migrants, whether in a regular or irregular situation. It follows that human rights law – and especially its codification in international law – should provide a sound basis for migration governance

Box 14. Action for global migration governance

In 2015 and 2016, for example, the mass movement of more than 1 million people to and through Europe (including Syrian and other refugees) provided some of the impetus for the New York Declaration for Refugees and Migrants (New York Declaration), adopted at the United Nations General Assembly in September 2016. Subsequently two Compacts were developed:

The Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees.

Global rights-based migration governance is grounded in international standards and based on multilateral cooperation and on IOs' involvement, thereby corresponding to a standard pattern of global governance. It also relies on cooperation with civil-society organizations (CSOs), that have the role of ensuring that human rights protection is well established. As far as key principles are concerned, global rights-based migration governance rests upon the normative role of human rights

in global migration governance. That said, the major rights abuses in the context of migration show the challenges that global rights-based migration governance is confronted with.

A.3.3. The Building blocks of good migration governance:⁷³

In line with the rights-based approach that has slowly started to permeate in the global and national processes of development of migration governance there are the following principles:

- ✓ The responsibility of every administrative branch of government must be engaged according to a coordinated whole-of-government approach with an understanding that the concerns of migrant populations are those of the whole society, therefore a whole society approach is needed.
- ✓ The universal concern across government requires putting in place targeted legislation and involving all stakeholders in the elaboration of a coherent national “migration policy framework” also at regional and local levels.
- ✓ Effective and coherent policy demands organized consultation coordination and cooperation among all concerned stakeholders across government, as well as social partners (economic actors) civil society and migrant and refugee communities in forms of partnerships.
- ✓ Social cohesion derives from ensuring universal and equitable access for all non-nationals to human and social services, notably health care and education. Labor market integration is facilitated by recognition of qualifications, education and training and experience as well as effective job matching between demand and offer of labor.

In sum, migration can yield socio- economic and cultural benefits with governance that:

- Provides recognition and protection for all migrants ensured by adequate legislation, policy and practice.
- Shifts from the negative narrative associated to migrants (misperception, xenophobia and manifestation of racism and / or intolerance) in law and discourse.
- Facilitates labor mobility in response to local labor market and employers’ needs.
- Applies international labor standards for decent work for all workers-national and foreign.
- Assures full protection for migrant and refugee women and girls with gender sensitive law and policy.
- Guarantees social cohesion by preventing xenophobia and facilitating integration
- Extends social and health protection as well as social security access and its portability for migrants.
- Enhances education, training and recognition of qualifications for the professional technical and vocational skills needed.
- Upholds family unit and ensures family support.
- Consults with and takes into account of all concerned stakeholders across government social partners, civil society and refugee communities.
- Adopts legislation policy and practice on international standards, best practices and comparable data.

Additionally, in 2015, the International Organization for Migration (IOM) developed a Migration Governance Framework (MiGOF) to help member states define what “well-managed migration policy” might look like at the national level. IOM’s Member States welcomed the MiGOF in the same year. The Migration Governance Indicators (MGI) were developed to assist countries operationalize the MiGOF by using a standard set of approximately 90 indicators that could be applied across six key policy domains. The MGI is a tool based on policy inputs, which offers insights on policy levers that countries can use to develop their migration governance. The MGI is not intended to function as a measurement of outcomes related to migration policies and institutions. Instead, it operates as an input-based benchmarking framework that offers insights on policy measures that country can use to strengthen migration governance.⁷⁴ In addition, IOM has adopted Strategic vision 2019-2022 which does not supersede the IOM Migration Governance Framework (MiGOF), based on a set of objectives and principles. However, MiGOF does not give a focused orientation and guidance which is instead the objective of the Strategic Vision. The three pillars of the Strategic Vision set out a series of strategic priorities based on an assessment of what the next decade will bring in terms of migration dynamics and migrant needs:

- **Resilience:** IOM will need to prepare for higher numbers of people moving in and out of situations of vulnerability, stemming from a range of complex drivers, including climate change, instability, poverty and exploitation. IOM will endeavor to take a long-term and holistic approach to emergency response, integrating development objectives and acknowledging changing drivers and vulnerabilities.
- **Mobility:** The ways in which people move are constantly changing. As migration dynamics evolve, so must the tools that manage movement, whether relating to selection, identification, entry, stay or return. In this regard, IOM will pursue innovative approaches to the design and implementation of systems to manage migration, based on its existing knowledge of what works, where, and for whom, and specific regional and political contexts.
- **Governance:** IOM is already an important partner for Member States in terms of delivering services to migrants that governments cannot deliver themselves. However, with the adoption of the Global Compact, there is a new opportunity for IOM to support participating governments to build capacity for the governance of migration and the provision of assistance to migrants, and to build stronger cooperation with other United Nations agencies. This requires more strategic partnerships with a broad range of stakeholders and partners, and the development of robust research, analysis and data collection capacities, to support decision- making and evidence-based policy in an often-difficult space.⁷⁵
 - **The MiGOF that is the first internationally agreed framework for well governed migration puts forward the following principles and objectives that are the base of the building block of migration governance:⁷⁶**

Principle 1: Adherence to international standards and the fulfillment of migrants’ rights

Humane and orderly migration requires compliance with international law. The obligation to respect, protect and fulfill the rights of individuals is paramount and applies to all individuals within a State’s territory, regardless of nationality or migration status and without discrimination, in order to preserve their safety, physical integrity, well-being and dignity. Protecting the rights of individuals

includes combating xenophobia, racism and discrimination, ensuring adherence with the principles of equality and non-discrimination, and ensuring access to protection.

Principle 2: Migration and related policies are best-formulated using evidence and whole-of-government approaches

Migration policy is often the subject of intense political debate and can be based on populist sentiments. Migration policy must be based on facts and a well-founded analysis of the benefits and risks the movement of people poses to the State. It is also important that law and policy include issues regarding travel and temporary mobility, immigration, emigration, nationality, labor markets, economic and social development, industry, commerce, social cohesion, social services, health, education, law enforcement, foreign policy, trade and humanitarian policy. Good migration governance therefore relies on whole-of-government approaches, whereby all ministries with responsibilities touching on the movement of people are implicated. In this way, a State can ensure that migration and mobility policy advance its broader interests.

Principle 3: Good migration governance relies on strong partnerships

By their very nature, migration and mobility implicate multiple actors: States and their neighbors, subnational authorities, local communities, migrants and their families, Diasporas, employers and unions. In addition, there are dozens of intergovernmental and non-governmental organizations whose mandates touch on migration and humanitarian action. Governing migration well requires partnerships to broaden the understanding of migration, and to develop comprehensive and effective approaches.

Objective 1: Good migration governance and related policy should seek to advance the socioeconomic well-being of migrants and society

Poverty, instability, lack of access to education or other basic services are only some of the factors that can push individuals to migrate. Those who are pushed to migrate – unlike those who choose to migrate – may be more likely to do so under undesirable or dangerous conditions, including by accessing the services of unethical recruiters, smugglers or traffickers. Governing migration well would therefore mean promoting stability, education and employment opportunities and reducing the drivers of forced migration, including by promoting resilience, thereby enabling individuals to make the choice between staying or migrating. Even if the drivers of forced migration were eliminated, individuals would still choose to move, for example, to seek different or greater opportunities or to reunite with their families. Migration and related law and policy therefore need to be designed to also foster strong socioeconomic outcomes for migrants and communities of origin, transit and destination.

Objective 2: Good migration governance is based on effective responses to the mobility dimensions of crises

Crises have significant long-term effects on migrants and society. Therefore, concerted action by the international community is required to: prevent and prepare for crisis; support migrants, displaced persons and communities affected by crises in accordance with humanitarian principles; and promote durable solutions to end displacement. Addressing the root causes of crises and associated population movements needs to be part of longer-term approaches towards recovery, transition and sustainable development. In addition, the international community should respond to crises with the

understanding that migration is an inevitable consequence, and that recovery and transition efforts require consideration of the needs of migrants and their communities.

Objective 3: Migration should take place in a safe, orderly and dignified manner

Ensuring migration is safe and orderly would also mean mitigating the risks associated with the movement of people. This includes applying effective cross-border health measures and strengthening public health strategies to prevent the spread of disease and protect the health of migrants and society. Maintaining the integrity of migration and mobility schemes requires an ability to detect irregular migration and to prohibit illegal cross-border activity. Migration and border agencies would work with national and international justice and security agencies to collect analyze and use information intelligence, including addressing terrorism, as well as trafficking in persons, smuggling in migrants and other trans-border criminal activity.

A.4. Migrants in vulnerable situations and determinants of migrant vulnerability are important part in the creation of migration management policy

The concept of vulnerability means that some people are more susceptible to harm, than others, as a result of exposure to some form of risk. The type of harm to which they are more susceptible varies: it may be psychological, physical, environmental, etc. Risk factors depend on the type of harm being examined and may or may not overlap.⁷⁷

IOM defines vulnerability as: ***“within the migration context, vulnerability is defined as a limited capability to avoid, resist, cope with or recover from violence, exploitation, and abuse.”***⁷⁸

However, not all migrants are vulnerable. For many, migration is a positive and empowering experience, but for some, the combination of encountered risks and resulting situation high risk factors and low protective factors, render them particularly vulnerable and in need of protection.

A.4.1. The determinants of migrant vulnerability model

IOM has developed a model that strives to identify migrant vulnerabilities at all levels, irrespective of the situation. This model can serve inter alia to governments⁷⁹ as a framework for analyzing and responding to migrant vulnerabilities and can aid in creating migration policies and improve identification processes. The model has two main objectives.

- First, to close the gap between protection afforded to recognized categories of migrants (e.g. VoTs, refugees) and those who are experiencing violence, exploitation, abuse and/or rights violations but are not within protected categories of migrants.
- Second, the model aims to provide a whole-of-society approach to migrant protection and contribute to more sustainable interventions.

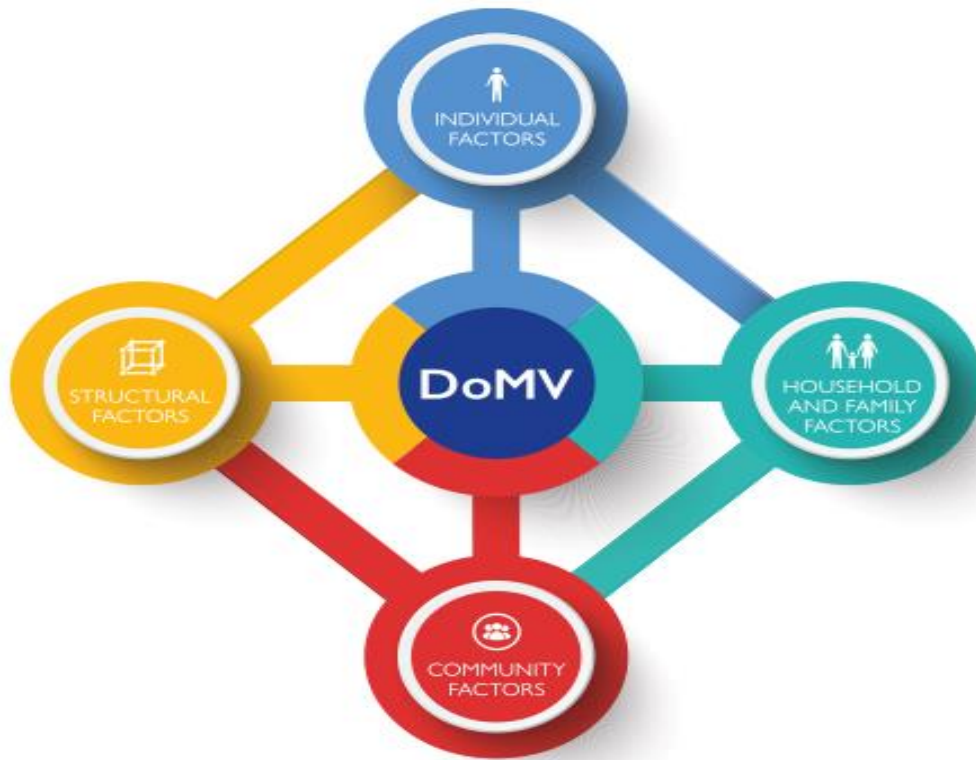
The Model defines Migrant(s) vulnerable to violence, exploitation or abuse as:

A migrant or group of migrants with limited capability to avoid, resist, cope with, or recover from risks or experiences of violence, exploitation, or abuse that they are exposed to or experience within a migration context. This limited capability is the result of the unique interaction of individual, household, community, and structural characteristics and conditions.

The model examines factors at four levels: individual, household, community and structural.

Each factor can create risks or protection. Vulnerability is seen as a scale, from very vulnerable to not vulnerable, based on the unique interactions of these risks and protective factors at the different levels.

Figure 6. The determinants of migrant vulnerability (DoMV) model⁸⁰



Individual factors refer to a migrant’s physical and biological characteristics; their status in society; their histories and experiences; their beliefs and attitudes; and their physical and mental health and well-being. Some examples of individual factors are age, sex, racial and/or ethnic identities, sexual orientation, gender identity, personal histories, mental and emotional health, and access to resources, such as money, goods, support. Risk factors include things such as history of substance abuse and irregular migration status. Protective factors can include literacy and being an adult.

Household factors are related to the role and position of individuals within the family, as well as family histories and experiences. Families are important in determining vulnerabilities, as they are typically the first option for individuals who require support, particularly for children and youth. Households can also inform migration decisions. Some examples of family factors are things like family size, family socio-economic status and family histories of violence and substance abuse. Risk factors can include inter-personal violence and a history of unsafe migration behaviors while protective factors include sufficient earnings to meet basic needs and equitable opportunities for boys and girls within the family. Individuals and their families are also affected by their community’s economic, cultural, and social structures and their positions within these structures. Examples of community factors include access to quality educational opportunities, health care and social services; livelihood and income generation opportunities; the natural environment; and social norms and behaviors. Some community risk factors include practices such as forced marriage, or the presence of natural hazards such as drought. Protective community factors would include a good education system accessible to all, sufficient access to quality health care, and a functioning social protection system.

Structural factors are the historical, geographic, political, economic, social, and cultural conditions and institutions at the national, regional, and international level that influence the overall environment in which individuals, families, communities, and groups are situated and which shape their beliefs, decisions, and behaviors. Examples of structural factors include histories of colonization and conflict, political systems, migration policies and governance, respect for human rights, and the rule of law. Example of risk factors includes conflict and instability and poor governance while protective factors include peace and security, strong migration management policies and respect for human rights. A migrant’s situation or that of his or her household, community and/or country can change rapidly or in an unforeseen way and this could increase or decrease exposure to violence, exploitation and abuse. These circumstantial factors are crosscutting across the four different factors mentioned above. An example of a circumstantial risk factor can be the outbreak of conflict as this exposes a community to abuse and exploitation, including trafficking in persons.

The Dov Model is useful for programming in migration management by governments:

Programming that aims to address structural factors can include improvements to national laws and policies to ensure that they recognize migrant rights and offer adequate protection for migrants; the development and implementation of policies for safe and regular migration, including labor mobility; the pursuit of pro-poor and equitable development policies; improvements to the rule of law and respect for human rights; and barriers to discrimination against specific groups.

At the structural level, programming tends to be longer term and is typically the domain of governments and regional or international institutions. Efforts towards structural change may require more time to achieve; but are also likely to have wide-ranging impact.

Table 3 Actors involved at structural level programming

Actors	Examples	Sectors
State authorities (including international and regional cooperation)	Policy and decision makers such as members of the executive branch, parliament and congress; as well as those who uphold and enforce policy and law, such as local government leaders, inspections officers and police officers.	All
Regional and multilateral organizations	United Nations agencies and coordination entities; regional development banks, political unions, human rights bodies, and trade organizations	Capacity development, advocacy, data and research, policy and issues areas within their specific areas of competence, promoting migrant integration and combating xenophobia and discrimination
Civil society	Local, national and international organizations and movements aimed at	Capacity development, advocacy, data and research, policy and issue areas within

	representing community interest, certain categories of people and promoting specific groups and / or rights.	their specific areas of interest, promoting migrant integration and combating xenophobia and discrimination
Private sector	Businesses, employers and business associations	Decent work and private-sector accountability, promoting migrant integration and combating xenophobia and discrimination
Service providers	Health-care workers, educators and employment counselors	Promoting migrant integration and combating xenophobia and discrimination
Members of the public	Advocates, thought leaders and influencers, members of social movements	All

On structural level governments in cohort with all other relevant actors, in line with whole society approach should create an enabling environment for vulnerable migrants through:

- ✓ Improving policy, legal and regulatory frameworks;
- ✓ Improving institutional arrangements and coordination (national action plans, national referral mechanisms);
- ✓ Capacity development;
- ✓ Advocacy;
- ✓ Data collection, analysis and research;
- ✓ Migration governance;
- ✓ Mainstreaming migration in social development policy;
- ✓ Addressing migration in time of crises;
- ✓ Combating Trafficking in persons and smuggling of migrants;
- ✓ Social protection;
- ✓ Promoting migrant integration and combating xenophobia and discrimination.

A.5. Migration Governance and COVID-19 challenges

In response to the spread of COVID-19, many countries have temporarily closed their borders to most international travelers. In some cases, such restrictions were stopgap measures while certain countries had lower infection rates than their neighbors. Over time, restrictions on international travel have come to complement widespread restrictions on travel within countries.

Fast-spreading contagion, high case fatality rates, inadequate medical facilities, and a lack of vaccine have prompted societies to lock down, reduced business hours and practice social distancing. A response to the coronavirus outbreak in China in December 2019 was the imposition of a ban on international travel and quarantines for international arrivals. Subsequently, most countries have imposed a ban on the arrival of not only foreigners but also of returning nationals.⁸¹

These measures have brought global economic activities to a near standstill. Such simultaneous suspension of activities in all parts of the world is unprecedented in history. Worldwide, many businesses, especially small and medium enterprises and informal businesses, have stopped. According to the International Monetary Fund (IMF), the world economy is expected to contract by 3 percent in 2020 in the baseline scenario, a change of nearly 6 percent compared with 2019.⁸²

In these realities the table below describes the possible impact of COVID-19 on migration and migrants.

Table 4 Key selected feature of migration and possible impact of COVID-19⁸³

Key features of migration	Impacts of COVID-19
<p>Remittances For many people in developing countries and regions, remittances are a lifeline and play a critical role in meeting basic needs such as food and shelter.</p>	<ul style="list-style-type: none"> • Millions of migrants are grappling with job losses, lockdowns and the closure of business, with many now unable to send money to their families. • For countries that are heavily dependent on remittances, reduction of inflows will have a devastating impact on their economies.
<p>Migrant workers Most of the migrant workers globally reside in high incomes countries (68%)</p>	<ul style="list-style-type: none"> • COVID-19 has had a devastating impact on migrant workers, leaving many without a job, stranded abroad and at greater risk of exposure to the disease. • In some countries, concerns have been raised over their safety, as many live in crowded unhygienic labor camps, leaving them vulnerable to the disease. • Labor migration has been temporarily suspended in some countries while, in others migration processing and assistance to asylum seekers are being slowed down. • Contracting economies and rising unemployment in host countries means that many migrants will have to return to home, adding to unemployment in origin countries.
<p>Displaced population</p>	<ul style="list-style-type: none"> • Many developing countries in which most displaced populations

<p>Most displaced populations including refugees and IDPs originate and are hosted in developing regions.</p>	<p>are hosted have health systems that are overburdened and under capacitated.</p> <ul style="list-style-type: none"> • Many refugees and IDPs live in crowded places and in unsanitary conditions where social distancing is impossible, raising fears that COVID -19 will spread quickly and will be difficult to contain. • COVID-19 travel restrictions pose difficulties and have impact on the delivery of humanitarian assistance. • Some countries have closed borders to asylum seekers, while refugee settlement programs have been suspended temporarily due to travel restrictions.
<p>Disaster and conflict events Environmental change and disaster</p>	<ul style="list-style-type: none"> • The focus on COVID-19 has preoccupied countries leaving them ill equipped to address possible disasters if they strike. • Prolonging displacement events such as conflicts especially in cases where peace processes have been interrupted or where assistance has been withdrawn.
<p>Irregular migrants</p>	<ul style="list-style-type: none"> • Irregular migrants are more vulnerable to the impact of COVID-19 due to inability to access health services, risk of detention, and poor working/housing conditions with greater risk to exposure. • COVID-19 related travel restrictions could increase irregular migration, as legal entry channels are closed. They could change irregular migration patterns, which would reduce the ability of states to screen all international arrivals for COVID-19 and avoid potentially further transition of the virus.

Box 15. Best practices in addressing COVID-19 challenges faced by migrants⁸⁴

- Ireland Health Services has translated resources into 23 languages to make sure that all members of society, including migrants, have the information they need to stay healthy and follow quarantine guidelines.
- **Kuwait has offered an amnesty period enabling migrant workers without documents to travel home and has announced a number of measures to protect migrant workers.**
- **In Thailand foreign nationals who had previously been required to apply for visa extensions through the Immigration Office have now been granted automatic visa extensions.**
- The government of Guatemala is ensuring that unaccompanied children returned during the COVID-19 crisis have access to safe, dignified and child-friendly quarantine upon return as well as reintegration support, including testing, individual rooms in shelters to avoid the spread of the virus, and psychosocial support.
- The Government of Portugal determined that all migrants with pending residence permit applications (as of 18th March 2020) would receive temporary residence and have access to the same rights as citizens, including social support. The measure also applies to asylum seekers. **The Government agreed to release persons in immigration detention after making individual assessments case by case.**

Module B

**RIGHTS OF MIGRANTS AND
STATE OBLIGATIONS-
INTERNATIONAL AND
REGIONAL STANDARDS ON
MIGRATION AND MIGRATION
GOVERNANCE**

B.1. International legislation on migration

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [...]”

Universal Declaration of Human Rights, United Nations General Assembly resolution 217A (III), 10 December 1948, Articles 1 and 2.⁸⁵

There is a plethora of detailed set of legal rules, multilateral conventions, and bilateral agreements that govern and channel state authority over migration.⁸⁶

These norms have been created through state-to-state negotiations, usually through international processes under auspices of the United Nations, the ILO and other institutions.

Several distinct branches of international law include norms granting rights to migrants (including refugees), as to any human being and some specific rights, as well as norms addressing international cooperation in regulating migration. These include:

- 1) International Human Rights law, notably the nine fundamental human rights instruments, comprising the two Covenants respectively on Political and Civil rights and on Economic, Social and Cultural Rights, along with the seven International Conventions addressing specific situations and groups: racial discrimination, torture, women, children, migrant workers, and disabilities.⁸⁷
- 2) International Labor Standards, in effect all of them, except where rarely foreign workers are excluded and notably the two ILO Conventions specifically on migration for employment.
- 3) Refugee and asylum law, particularly the 1951 Convention and the 1967 Protocol on the Status of Refugees.
- 4) International Criminal Law, particularly the Protocols on Trafficking in Persons and Smuggling of Migrants of the International Convention on Transnational Organized Crime.
- 5) International Consular Law, namely the Vienna Convention on the subject of protection of foreign nationals through access to representatives of their governments.
- 6) International Humanitarian Law.

This Manual focuses on the first 4 branches, as discussed in more detail in the subsequent sections. Particularly important among these branches are International Human Rights Instruments and International Labor Law, both of which can be considered human rights law.

International Human Rights Instruments provide a broad and ample normative framework for protection of migrants.

B.1.1. What are state obligations under international human rights law?

When states agree to international treaties (through a process called ratification), they assume the obligations to *respect*, *protect* and *fulfill* the human rights that are included in these treaties.⁸⁸

The **obligation to respect** means that States must refrain from interfering with or limiting the enjoyment of human rights. It is also described as a *negative* obligation, as the State has to abstain from violating human rights.⁸⁹

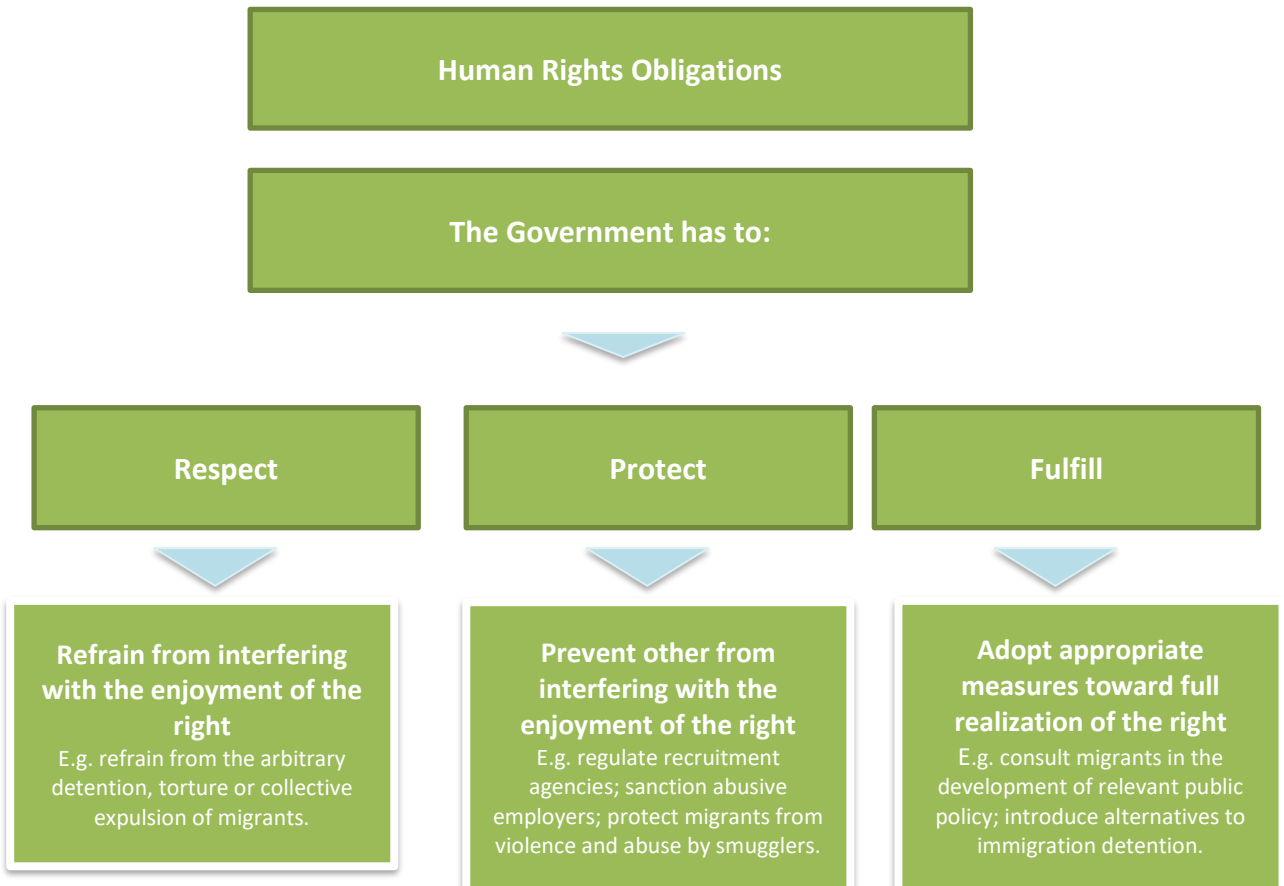
The other two obligations include *positive* duties, which means that the state has to take action to deliver rights.

The **obligation to protect** requires States to interfere in order to protect individuals and groups against human rights abuses by others, in particular private, actors.⁹⁰

Obligation to fulfill means that States must take positive measures to facilitate the enjoyment of human rights.⁹¹

Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual complaints or communications are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.⁹²

Figure 7. State obligations under international law regarding migrants and their human rights



Source: Migration and human rights. Improving human rights-based governance of international migration⁹³

B.1.2. International Instruments protecting human rights of migrants

B.1.2.a. General Human Rights Treaties

The Universal Declaration of Human Rights of 1948⁹⁴ laid out a comprehensive set of universal human rights principles. The two major International Covenants elaborated these principles into binding normative standards on political and civil rights, and economic, social and cultural rights in 1966. These Covenants, together with the UDHR, are often referred to as the "International Bill of Human Rights", and are applicable to all human beings. In legal terms, the Universal Declaration is non-binding; however, it is generally recognized today as customary international law, as norms that have received widespread support in state practice and are generally recognized by States as binding legal obligations. The provisions of other international treaties are binding for the States party and create obligations for States to the respective Conventions. These instruments generally provide for protection of the rights of all human beings regardless of their nationality and legal status.

The International Covenant on Civil and Political Rights (ICCPR)⁹⁵ defines civil rights of all persons as: the right to life, liberty and security; the right not to be held in slavery or servitude; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right not to be subjected to arbitrary arrest, detention or exile; the right to marry and to found a family. Article 2 specifies that such rights are provided without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)⁹⁶ guarantees the right to work, free choice of employment and just and favorable conditions of work.

State parties undertake to ensure the right to form and join trade unions and recognize the right to social security, including social insurance, an adequate standard of living, the highest attainable standard of physical and mental health, education (compulsory and free at the primary level), and to take part in cultural life and benefit from scientific progress. The ICESCR is aspirational in many respects, with State parties committing to "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." In a clause specifically referring to non-nationals, the ICESCR recognizes that "Developing 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 present Covenant to non-nationals."⁹⁷ All people under the jurisdiction of the State concerned should enjoy Covenant rights. That includes migrants – regardless of the legal status- including asylum seekers and refugees. Without prejudice to the possibility for the State to order that they leave the territory, the very presence of such [irregular] migrants under its jurisdiction imposes on the State certain obligations. The essential minimum content of each right must be preserved in all circumstances for all people without exception.

Core obligations include duties to secure freedom from hunger, to guarantee access to water to satisfy basic needs, access to essential drugs, and access to education complying with “minimum educational standards. “These are non-derogable rights. e.g. they continue to exist in situations of conflict, emergency or natural disaster.

B.1.2.b. Specific human rights treaties

Specific conventions subsequently explicitly set out additional obligations for States (duty-bearers) and corresponding rights for people (rights-holders) in certain areas. Thus, racial discrimination is specifically targeted in the Convention for the Elimination of Racism and Racial Discrimination (CERD), which thus provides additional legal protection to victims of discrimination based on race, ethnicity or national origin. The same goes for the Convention Against Torture (CAT), the Convention for the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the 1951 UN Convention Relating to the Status of Refugees and the Protocol, as well as the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).⁹⁸

The **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**⁹⁹ protecting all individuals within the jurisdiction of a State from discrimination and exploitation on grounds of race, color, descent, or national or ethnic origin is also particularly relevant.

The Convention on the Rights of the Persons with Disabilities (CRPD)¹⁰⁰ in Article 18, calls upon States Parties to recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others; Article 11 specifically addresses protection of persons with disabilities in situations of risk, including armed conflict, humanitarian emergencies and the occurrence of natural disasters.

Article 9 of the **Convention on the Elimination of All Forms of Discrimination against Women**¹⁰¹ specifies that State parties “shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to a foreigner nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.” It also says: “State parties shall grant women equal rights with men with respect to the nationality of their children”. (For more details see Section B.3.1. Gender and migration).

State parties to the 1984 **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**¹⁰² upholds the principle of “non-refoulement” of persons in danger of being tortured in the State to which they are to be expelled, returned or extradited. This principle is found in its Article 3.¹⁰³

The 1951 UN Convention Relating to the Status of Refugees and the Protocol¹⁰⁴ imposes the core legal obligation of States of *non-refoulement* in case of persecution—state must refrain from forcibly returning refugees to countries in which they would face persecution. States do not have the obligation to provide asylum or admit refugees for permanent settlement, and they may relocate refugees in safe third countries that are willing to accept them. The Convention has been interpreted

to require States to undertake status determinations, for asylum applicants at their border or inside their territories in order to determine if they have valid claims to refugee protection.¹⁰⁵ In practice, this means admission and asylum in the host country for an individual examination of the claim for asylum and refugee status. The Convention also ensures that states cannot impose penalties on refugees if they enter or stay illegally, as long as the refugees “present themselves without delay to the authorities and show good cause for their illegal entry or presence” (Article 31). The Convention specifies two durable solutions for refugees: to return to their own country voluntarily (“voluntary repatriation”) or to integrate in the country where they find themselves (“local integration”).¹⁰⁶

The Convention drafters recognized that among refugee populations would be found individuals whose actions made them undeserving of international protection. The so-called “exclusion” clauses of the Convention set forth two major kinds of such individuals—human rights violators and serious criminals (Article 33). Thus, those who have committed a crime against peace, a war crime, a crime against humanity, or a serious non-political crime are excluded from international protection under the Refugee Convention. That is, they are not to be granted refugee status and its attendant benefits.¹⁰⁷ However, non-refoulement under CAT still holds - as it is an absolute and non-derogable principle.

The Convention also sets out the rights of refugees who have been admitted into the territory of another country. Certain fundamental human rights such as freedom of religion (Article 4) and access to courts (Article 16) are guaranteed to be at least those accorded to the citizens of the state hosting the refugee. Thus if legal assistance is provided to citizens, the same must be accorded to refugees (Article 16(2)). Elementary education is also accorded to refugees as it is to citizens (Article 22(1)). Refugees lawfully residing in a host country are guaranteed public relief in this way as well (Article 23). In addition, the Convention cannot be applied in a discriminatory way regarding race, religion, and country of origin (Article 3).

Regarding the determination of the refugee status the Convention and the Protocol give no indication of procedures to be adopted for the determination of refugee status. It is left to each Contracting State to establish the procedure that it considers the most appropriate, in conformity with its particular constitutional and administrative structure.¹⁰⁸

The Convention on the Rights of the Child¹⁰⁹ forbids discrimination against any child on the basis of his/her or its parents’ status, including ‘irregular’ status (Art. 2(1)), with access to schooling and healthcare being areas of main concern.¹¹⁰ (See in more detail on Child-friendly migration section B.3.) . Based on this Convention and the best interest of the child cross-cutting principle, immigration detention of children (alone or with their parents) is deemed contrary to international law.

Each of these instruments has a mechanism through which State parties report on their progress in observing the convention standards. The Treaty Monitoring Bodies (TMB) to which State parties report are the Human Rights Committee (which monitors implementation of the ICCPR), the Committee on Economic Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Committee on Torture, as well as the Committee on the protection of the rights of all migrant workers and members of their families, and the Committee on the rights of people with disabilities.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both of which supplement the United Nations Convention against Transnational Organized Crime, went into force in December 2003 and January 2004, respectively. Since their adoption, the Trafficking Protocol has 117 signatories and 178 Parties and the Smuggling Protocol 112 signatories and 150 parties.¹¹¹

The Trafficking Protocol requires States to adopt measures to criminalize and prosecute trafficking (Article 5), to provide assistance and protection to victims of trafficking (Article 6), to provide repatriation assistance to victims of trafficking (Article 8), and to prevent and combat trafficking (Article 9).¹¹²

The Protocol in its Article 3 (a) defines trafficking as: “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;” furthermore it considers the consent of a victim of trafficking in persons to the intended exploitation as irrelevant where any of the means set forth in subparagraph have been used (Article 3 (b)). It also considers children as victims of trafficking Article 3 (c) when there is: “the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation”. It shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article,” for children.¹¹³

The Smuggling Protocol requires States to adopt measures to criminalize smuggling and to prevent and criminalize smuggling (Article 7, 8, 11, 15), requires States to preserve and protect the rights of migrants who have been smuggled (non criminalization art 5 and 6; Article 16) and requires States to facilitate the return of migrants (Article 18) in full respect of principle of non-refoulement.

These instruments require international cooperation in combating smuggling and trafficking, an issue that will be further discussed below.

The adoption of separate protocols on trafficking and smuggling reflects the need to clearly distinguish these two activities. Whilst undocumented migrants willingly accept to pay and take risks to be transported across borders for their safety and/or in search of better life prospects, trafficked persons are victims of a crime. However, there are several differences between the two crimes: the issue of consent- smuggling of people always involves consent from the smuggled person; the concept of smuggling presumes mutual interest on both sides, whilst, in trafficking proper consent is absent.; smuggling ends when the client is smuggled in to the desired country, whereas in the case of trafficking in persons, because of its exploitative element, it is difficult to determine its termination; even though both smuggling in all cases and trafficking in some cases involve the desire to migrate irregularly,¹¹⁴ trafficking can never become smuggling whereas smuggling can become trafficking. This can be explained as: trafficking per se is determined by exploitation as its intended purpose; in other words, the relationship between the trafficker and the trafficking victim does not end with the moment of completion of the irregular border crossing; it continues in exploitation that can last without any foreseeable time limitation. Given that the intent and consent to be smuggled and to smuggle from both parties can easily turn into intent without consent to exploit the smuggled

person, no longer qualifies as smuggling, but becomes trafficking in humans. Thus, there can be a cumulation of both these crimes. This calls for careful use of these terms and careful distinction in their prevention and prosecution.

B.1.2.c. Treaties further protecting Migrant workers

- **The ILO conventions**

From its very inception, ILO resolved that migrant workers deserve special attention and the protection of migrant workers is enshrined in the Preamble to the ILO Constitution (second recital) as one of the areas where an improvement in labor conditions is seen as urgent:

“Whereas conditions of labor exist involving such injustice, hardship and privation to large numbers of persons as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of these conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labor supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures; [...] [Emphasis added].”

As noted above, in principle, all international labor standards, unless otherwise stated, are applicable to all migrant workers. Those standards include those set out in the eight ILO conventions on fundamental rights identified in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. They apply to all migrant workers, irrespective of their migration status.

Two ILO Conventions particularly relevant on migration and also representing a consensus on labor migration are:

Forty-two countries have ratified the **Convention concerning Migration for Employment** (Revised) (No. 97), which obligates States to provide free and accurate information to migrants (Article 2), to prevent misleading propaganda (Article 3), to facilitate the departure, journey and reception of migrants (Article 4), to prevent discrimination against migrants (Article 6), and to permit remittances (Article 9).¹¹⁵

Eighteen countries have ratified the **Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers** (No. 143).¹¹⁶ This Convention requires States to respect the human rights of migrants (Article 1), to investigate, monitor and suppress trafficking (Article 2, 3, and 6), and to provide equality of opportunity and treatment for in the areas of employment, social security, unions, and cultural rights (Article 10).

Other relevant ILO conventions are the **Convention concerning Forced or Compulsory Labor** (No. 29),¹¹⁷ the **Convention Concerning Abolition of Forced Labor** (No. 105),¹¹⁸ the **Equal Remuneration**

Convention (No. 100),¹¹⁹ and the **Discrimination (Employment and Occupation) Convention (No. 111).¹²⁰**

UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,¹²¹ has been ratified only by 56 states to date and signed by 12 (marking very low rate of ratification), because states fear to give the impressions to their nationals and electorate that they give more rights to migrants, while in reality this convention only reiterates and details existing human rights, already set out in other international instruments.¹²² The **Convention** builds on the International Labor Organization's conventions as well as the core human rights instruments referenced above.

It reaffirms basic human rights norms and embodies them in an instrument applicable to migrant workers and their families. The underlying goal of the Convention is to guarantee minimum rights for migrant workers and members of their families who are in legal or undocumented/ irregular situation.

The Convention is a fundamental element for the protection of the human rights of migrants since it applies to all aspects of the life of migrants including the migrant's family and the situation of women and children, and explicitly recognizes the rights of undocumented migrants. Another positive element of the Convention is its broad vision of rights; although it is intended to regulate the rights of workers, it is not limited to the employment context but regulates the entire spectrum of workers' rights.

The Convention articulates even more broadly the principle of equality of treatment between migrants and national before courts and tribunals, with respect to remuneration and other working conditions, as well as with regard to migrant workers access to (urgent, for irregular migrants) medical care and education for their children. In the Migrant Workers Convention (ICRMW), equality and non-discrimination is reiterated and is a cross-cutting principle for all migrants, regardless of their legal status - as in other human rights treaties and customary law.

The Convention explicitly spells out that fundamental rights articulated in the Universal Declaration of Human Rights and guaranteed under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and other core human rights treaties that all apply to all migrants, including migrant workers.

Part II of the Convention underscores the application of the non-discrimination principle to all migrant workers, who are entitled to the rights in the Convention "without distinction of any kind such as to sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status" (Article 7).

The rights applicable to all migrant workers and members of their families, including those in an irregular situation, are enumerated in Part III (Articles 8 to 35) and include the freedom to leave and enter any state, including the state of origin (Article 8); the right to liberty and security of person, and to protection against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions (Article 16); the right to equality with nationals of the

state concerned before courts and tribunals (Article 18); the prohibition of collective expulsion and safeguards in the expulsion process (Article 22); the right to recognition everywhere as a person before the law (Article 24); and the right to information (Article 33). Fundamental social rights as regards equal treatment with nationals in respect of remuneration and other conditions of work and terms of employment (Article 25), social security (Article 27), access to medical care (Article 28) and education (Article 30) are also protected.

Part IV of the Convention enumerates the more specific rights of migrant workers and family members who are in a documented or regular situation, such as those addressing family reunification (Article 44) and access to the labor market (Articles 52 and 53). Part V contains a number of provisions dealing with particular categories of migrant workers, such as frontier workers, seasonal workers, project-tied workers and the self-employed.

Part VI promotes sound, equitable, humane and lawful conditions in connection with the international migration of migrant workers and members of their families, and sets out principles for intergovernmental consultation and cooperation on the regulation of labor migration.

As of 12 August 2015, 87 countries and territories – two-thirds of the some 130 countries and territories for which international migration is an important feature – are bound by at least one of these three complementary conventions. While any single high-income country has not yet ratified ICRMW, 11 EU Member States (among them most of the larger migrant destination countries), Israel, Norway and New Zealand have ratified one or both of the ILO conventions on migrant workers.

Box 16. Rights of migrants protected by the Convention

Article 10 prohibits torture or cruel, inhuman or degrading treatment or punishment.

Article 11 prohibits slavery or servitude and forced or compulsory labor.

Article 12 provides for freedom of thought, religion and conscience.

Article 13 provides for the right of expression.

Article 14 prohibits arbitrary or unlawful interference with privacy or attacks on honor and reputation.

Article 15 prohibits arbitrary denial of property.

Article 16 entitles migrants “to effective protection by the State against violence, physical injury, threats, and intimidation, whether by public officials or by private individuals, groups or institutions”.

Articles 17 to 21 pertain to the rights of migrants who have been detained by State authorities for immigration and criminal offences.

Article 22 prohibits collective expulsion and sets out the rights of migrants in expulsion proceedings.

Article 23 provides the right of all migrants to seek the protection and assistance of the consular or diplomatic officials of their countries of origin.

Article 25 entitles all migrant workers to “enjoy treatment not less favorable than that which applies to nationals of the State of employment in respect of remuneration” and other conditions of work.

Article 26 pertains to the right to join trade unions.

Article 27 regarding social security, recognizes that States may limit benefits to migrant workers but encourages States “to examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances”.

Article 28 sets out the right of migrants and their families to health care “that is urgently required for

the preservation of their life or the avoidance of irreparable harm to their health,” as well as curative health care, also specifying that emergency medical care should not be refused to those in irregular status.

Article 29 discusses the rights of the children of migrants to a name, birth registration, and nationality.

Article 30 provides a right to basic education on equal footing with nationals for regular migrants, and also provides for right to basic education which cannot be denied because of the child’s or his or her parents’ irregular status.

Article 31 protects the cultural identity of migrants and members of their family.

B.2. Regional legislation and policy on migration

B.2.1. European legislation and policy on migration

The European Convention on Human Rights¹²³ even though not specifically dealing with migrants provides a general set of human rights of people that also apply to migrants. The protection awarded to migrants through this convention has been further developed through the case law of the European Court of Human Rights. Case law relates to several areas of protection of rights of migrants such as: Access to territory and procedures (*Rantsev v. Cyprus and Russia*),¹²⁴ entry into territory of the respondent state (*Thimothawes v. Belgium*, and *Abdi Mahamud v. Malta*),¹²⁵ cases concerning illegal expulsion (*Soering v. the United Kingdom*),¹²⁶ cases concerning collective expulsion (*Hirsi Jamaa and Others v. Italy*),¹²⁷ cases concerning the principle of non-refoulement (*N.D. and N.T v. Spain*)¹²⁸ cases relating to situations prior to removal and the removal of migrants (*A. and Others v. the United Kingdom*),¹²⁹ cases considering citizenship (*Hoti v. Croatia*), and many more.¹³⁰

Three other specific instruments relating to the protection of migrants have been adopted under the auspices of the Council of Europe, which comprises 47 Member States.

The European Social Charter,¹³¹ adopted in 1961 and revised in 1996, contains Article 18 on “the right to engage in a gainful occupation in the territory of other Contracting Parties” and Article 19 on “The right of migrant workers and their families to protection and assistance”, which applies to migrant workers lawfully within the countries concerned. A number of other provisions in the Charter, concerning the provision of health care, social security and the protection of young persons, are also of particular relevance to migrants.

The CoE European Convention on the Legal Status of Migrant Workers,¹³² adopted in 1977, is based on the premise that “the legal status of migrant workers who are nationals of Council of Europe Member States should be regulated so as to ensure that as far as possible they are treated no less favorably than workers who are nationals of the receiving State in all aspects of living and working conditions” (Preamble).

The CoE Convention on the Participation of Foreigners in Public Life at Local Level¹³³ aims to improve integration of foreign residents into the life of the community. It applies to all persons who are not nationals of the Party and who are lawfully resident on its territory.

The Convention provides that the Parties undertake to guarantee to foreign residents, on the same terms as to its own nationals, the “classical rights” of freedom of expression, assembly and association, including the right to form trade unions. Moreover, the Parties will make efforts to involve foreign residents in processes of consultation on local matters. Under some conditions provided by law, the rights of freedom of expression and of assembly may be restricted.

The Council of Europe Convention on Action against Trafficking in Human Beings¹³⁴ was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims. The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not

linked to organized crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude and the removal of organs. The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

A number of non-binding measures have also been adopted under the auspices of the Council of Europe, including by the Parliamentary Assembly, which is an organ comprising parliamentarians from Member States that has a Committee on Migration, Refugees and Displaced Persons. The Parliamentary Assembly has adopted a number of measures on the human rights of migrants, most notably **Resolution 1509 (2006) on the human rights of irregular migrants, which enumerates a minimum set of human rights applicable to this group of migrants.**¹³⁵ This resolution recognizes that there is the ever-growing number of irregular migrants in Europe, that it is the right of each Council of Europe member state to regulate the entry of foreign nationals and to return irregular migrants to their country of origin in accordance with international human rights law and in view of protection of rights of irregular migrants.

Box 17. Civil and Political rights under the Resolution 1509 (selected)

The following minimum rights merit highlighting:

- ✓ The right to life should be enjoyed and respected. Unreasonable force should not be used to prevent the entry of non-nationals into a country. A duty exists on the authorities to endeavor to save those whose life may be in danger in seeking to enter a country;
- ✓ Irregular migrants should be protected from torture and inhuman or degrading treatment or punishment. The return process of irregular migrants should be carried out respecting fully the right to dignity of returnees, taking into account, inter alia, their age, sex, state of health and eventual disabilities. Coercive measures during expulsion should be kept to an absolute minimum;
- ✓ Irregular migrants should be protected from slavery and forced labor, and victims of trafficking should be granted specific rights in line with the Council of Europe Convention on Action against detention of irregular migrants should be used only as a last resort and not for an excessive period of time.
- ✓ Where necessary, irregular migrants should be held in special detention facilities and separately from convicted prisoners. Children should only be detained as a measure of last resort and then for the shortest possible period of time.¹³⁶ Detention or holding of other vulnerable persons (pregnant women, mothers with young children, the elderly, people with disabilities) should be avoided whenever possible. Suitable accommodation should be available to lodge families, but otherwise men and women should be housed separately. Detainees should have the right to contact anyone of their choice (lawyers, family members, NGOs, UNHCR, etc.), have access to adequate medical care and access to an interpreter and free legal aid where appropriate;
- ✓ The right to asylum and non-refoulement must be respected;
- ✓ An irregular migrant being removed from the country has the right to effective access to the European Court of Human Rights by lodging an individual application with the Court under

Article 34 of the European Convention on Human Rights;

- ✓ The right to respect for private and family life should be observed. Removal should not take place when the irregular person concerned has particularly strong family or social ties with the country seeking to remove him or her and when the removal is likely to lead to the conclusion that expulsion would violate the right to private and/or family life of the person concerned.

B.2.2. EU legislation and policy on migration

The EU migration policy and legislation on migration has been developed around several key areas among which:

- Asylum Policy and Legislation
- Immigration Policy and Legislation
- Management of External Borders

- **Asylum Policy and legislation**
 - Articles 67 (2), 78 and 80 of the Treaty of the Functioning of the EU¹³⁷
 - Article 18 of the charter of Fundamental Rights
 - The Treaty of Lisbon 2009, which entered into force in December 2009,¹³⁸ changed the situation by transforming the measures on asylum from establishing minimum standards into creating a common system comprising a uniform status and uniform procedures.

This common system must include:

- A uniform status of asylum;
- A uniform status of subsidiary protection;
- A common system of temporary protection;
- Common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- Criteria and mechanisms for determining which Member State is responsible for considering an application;
- Standards concerning reception conditions;
- Partnership and cooperation with third countries.

- **Directives regarding Asylum**

The Asylum Procedures Directive (recast)¹³⁹ aims at creating a coherent system to ensure that decisions on applications for international protection are taken efficiently and fairly, by:

- setting clear rules for registering and lodging applications, making sure that everyone who wishes to request international protection can do so quickly and effectively.
- setting a time-limit for the examination of applications (in principle six months at the administrative stage), while providing for the possibility to accelerate for applications that are likely to be unfounded or were made in bad faith.
- allowing for border procedures and safe country concepts (provides for clear rules for admissibility checks and for the application of safe third country and first country of asylum concepts, national designation of third countries as safe countries of origin, concept of safe third country, and concept of European safe third country).
- training decision makers and ensuring access to legal assistance.

- providing adequate support to those in need of special protection– for example because of their age, disability, illness – including by ensuring that they are granted sufficient time to participate effectively in the procedure.
- providing rules on the right to stay and appeals in front of courts or tribunals.

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 promotes a balance of efforts between Member States in receiving such persons and bearing the consequences thereof and was developed as a framework for managing an unexpected mass influx of displaced persons and providing them with immediate protection.¹⁴⁰

Box 18. European Union Dublin Regulation¹⁴¹

The Dublin III Regulation entered into force in July 2013. The Dublin Regulation determines which EU member state is responsible for processing an asylum seeker's asylum application. The Regulation establishes a fingerprinting database of asylum seekers, called the EURODAC. Asylum seekers must apply for asylum in the first EU country in which they arrive and where their fingerprints are taken. Asylum seekers may be returned to another EU member state if it can be proven that they have either entered the EU (by air, sea or land) or made an application for asylum in that other state. The Dublin Regulation territory was extended to some non-EU countries such as Norway, Iceland and Switzerland.^[1] This system puts a huge strain on several EU countries that are geographically more likely to be a country of first entrance for asylum seekers (such as Greece, Italy, Spain, etc).

Main elements of the current Dublin Regulation:

- an early warning, preparedness and crisis management mechanism, geared to addressing the root dysfunctional causes of national asylum systems or problems stemming from particular pressures,
- a series of provisions on protection of applicants, such as compulsory personal interview, guarantees for migrant child (including a detailed description of the factors that should lay at the basis of assessing a child's best interests) and extended possibilities of reunifying them with their relatives,
- the possibility for appeals to suspend the execution of the transfer for the period when the appeal is pending, together with the guarantee of the right for a person to remain on the territory pending the decision of a court on the suspension of the transfer pending the appeal,
- an obligation to ensure legal assistance free of charge upon request,
- a single ground for detention in case of risk of absconding; strict limitation of the duration of detention,
- the possibility for asylum seekers that could in some cases be considered irregular migrants and returned under the Return Directive, to be treated under the Dublin procedure - thus giving these persons more protection than the Return Directive,
- an obligation to guarantee the right to appeal a transfer decision before a court or tribunal and greater legal clarity of procedures between Member States - e.g. exhaustive and clearer deadlines.

The entire Dublin procedure cannot last longer than 11 months to take charge of a person, or 9 months to take him/her back (except for absconding, or where the person is detained). **Recital 20 of the Dublin III Regulation refers to the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection.**

It will only be appropriate to detain an individual in order to secure transfer to another Dublin State when they present a ‘significant risk of absconding’. On 15 March 2017 the Court of Justice of the European Union (CJEU) stated in the case C-528/15 *Al Chodor*¹⁴² that the existence of case law confirming consistent administrative practice by national authorities regarding criteria on a ‘significant risk of absconding’ was not sufficient to meet Article 28. The Court ruled that the objective criteria to define a ‘risk of absconding’ must be established in a binding provision of national law. When considering whether or not to detain an individual in order to secure transfer under Dublin, the provisions in the Transfer for Determination of an Application for International Protection (Detention) (Significant Risk of Absconding Criteria) Regulations 2017 must be applied.

On 23 September 2020, the European Commission presented **the New Pact on Migration and Asylum**¹⁴³ following consultations with the European Parliament, Member States and various stakeholders. The New Pact covers all the different elements needed for a comprehensive approach to migration. In particular, the New Pact recognizes that no Member State should shoulder a disproportionate responsibility and that all Member States should contribute to solidarity on a constant basis.

- **Immigration policy and legislation**
 - Articles 78 and 80 from the Treaty on Functioning of the EU
 - Directives regarding immigration

Since 2008, a number of significant directives on immigration have been adopted and several have already been revised.

1. Regular immigration

Following the difficulties encountered in adopting a general provision covering all labor immigration into the EU, the current approach consists of adopting sectorial legislation, by category of migrants, in order to establish a regular immigration policy at EU level.

Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment created the ‘EU blue card’, a fast-track procedure for issuing a special residence and work permit, on more attractive terms, to enable third-country workers to take up highly qualified employment in the Member States.¹⁴⁴

Box 19. Blue Card Directive¹⁴⁵

This Directive is intended to contribute to achieving these goals and addressing labor shortages by fostering the admission and mobility — for the purposes of highly qualified employment — of third-country nationals for stays of more than three months, in order to make the Community more attractive to such workers from around the world and sustain its competitiveness and economic growth. To reach these goals, it is necessary to facilitate the admission of highly qualified workers and their families by establishing a fast-track admission procedure and by granting them equal social and economic rights as nationals of the host Member State in a number of areas. It is also necessary to take into account the priorities, labor market needs and reception capacities of the Member States. This Directive should be without prejudice to the competence of the Member States to maintain or to introduce new national residence permits for any purpose of employment. The third-

country nationals concerned should have the possibility to apply for an EU Blue Card or for a national residence permit. Moreover, this Directive should not affect the possibility for an EU Blue Card holder to enjoy additional rights and benefits which may be provided by national law, and which are compatible with this Directive.

The Single Permit Directive (2011/98/EU) sets out a common, simplified procedure for third-country nationals applying for a residence and work permit in a Member State, as well as a common set of rights to be granted to regular immigrants. It contains provisions for a single application procedure leading to a combined title encompassing both residence and work permits within a single administrative act will contribute to simplifying and harmonizing the rules currently applicable in Member States. Such procedural simplification has already been introduced by several Member States and has made for a more efficient procedure both for the migrants and for their employers and has allowed easier controls of the legality of their residence and employment. Thus, in order to allow initial entry into their territory, Member States should be able to issue a single permit or, if they issue single permits only after entry, a visa. Member States should issue such single permits or visas in a timely manner.¹⁴⁶

Directive 2014/36/EU, adopted in February 2014, regulates the conditions of entry and residence of third-country nationals for the purpose of employment as seasonal workers. Migrant seasonal workers are allowed to stay legally and temporarily in the EU for a maximum period of between five and nine months (depending on the Member State) to carry out an activity dependent on the passing of seasons, while retaining their principal place of residence in a third country. The directive also clarifies the set of rights to which such migrant workers are entitled.¹⁴⁷ The Seasonal Workers Directive is applicable to third- country nationals residing outside the EU at the time of application for a visa, who wish to temporarily reside in an EU Member State to take up seasonal employment in that Member State – with seasonal work being defined in the Directive as an activity that is tied to a certain time of the year by a recurring event or pattern of events linked to seasonal conditions.¹⁴⁸

Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing was adopted on 11 May 2016.¹⁴⁹

Lastly, the **status of third-country nationals who are long-term residents in the European Union is still regulated by Council Directive 2003/109/EC, as amended in 2011 to extend its scope to refugees and other beneficiaries of international protection.** The March 2019 implementation report found that, rather than actively promote the European long-term residence status, Member States issue mainly national long-term resident permits instead.¹⁵⁰

2. Integration

Council Directive 2003/86/EC sets out provisions on the right to family reunification¹⁵¹ and recognizes the existence of a right to family reunification. It imposes a precise positive obligation on Member States, requiring them in cases determined by the Directive to authorize family reunification of certain members of the sponsor's family and leaving them no leeway in this.

Box 20. Family reunification and integration in EU¹⁵²

In many Member States, family reunification accounts for a large share of legal migration. In 2008, the Commission published its first Report on the application of the Directive highlighting the different policy choices taken by Member States on how to manage effectively the large inflow of migrants on the grounds of family reunification. In the recent years, many Member States have introduced or revised in particular the family reunification rules for refugees (and also for beneficiaries of subsidiary protection, who are excluded from the scope of the Directive). In spite of the recent migratory challenges and high numbers of applicants for international protection, beneficiaries of international protection have continued to benefit from more favorable family reunification rules as compared to other categories of third-country nationals, and beneficiaries of subsidiary protection overall benefit from a similar level of legally-ensured protection as refugees.¹⁵³

The EU's competence in the field of integration is limited. In July 2011, the Commission adopted the European Agenda for the Integration of Third-Country Nationals.¹⁵⁴ More recently, in June 2016, the Commission put forward an action plan, setting out a policy framework and practical steps to help Member States integrate the 20-million non-EU nationals who are legally resident in the EU. Existing instruments include the European Migration Forum; the European Website on Integration; and the European Integration Network.

3. Irregular immigration

The EU has adopted some major pieces of legislation to combat irregular immigration:

The Council Directive 2002/90/EC, sets out a common definition of the crime of facilitating unauthorized entry, transit and residence, and **Framework Decision 2002/946/JHA, establishing criminal sanctions for this conduct.**¹⁵⁵

Trafficking is addressed by Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. The package is complemented by Council Directive 2004/81/EC, providing for the granting of a residence permit to trafficked or smuggled persons who cooperate with the competent authorities.¹⁵⁶ The Directive takes a victim centered approach, including a gender perspective, to cover actions in different areas such as criminal law provisions, prosecution of offenders, victims' support and victims' rights in criminal proceedings, prevention and monitoring of the implementation.

The 'Returns Directive' (2008/115/EC) sets out common EU standards and procedures for returning irregularly resident third-country nationals.¹⁵⁷ In September 2018, the Commission proposed a targeted review of the Returns Directive, including a new border procedure for asylum applicants, clearer procedures and rules to prevent abuses, efficient voluntary return programmes to be set up in Member States, and clearer rules on detention. In other words the recast Directive which is in process of negotiation is a 'targeted review' intended to speed up return procedures, make more links between asylum and return procedures, and reduce the risk of absconding, whilst protecting individuals' fundamental rights.

Box 21. The Return Directive¹⁵⁸

The following issues are some critical aspects of the Return Directive:

The Directive establishes that detention for the purpose of removal shall only be used if other sufficient but less coercive measures cannot be applied effectively in a specific case, particularly when there is a risk of absconding, or the person concerned avoids or hampers the preparation of return or the removal process. One of the most debated aspects of the Return Directive concerns the detention of third-country nationals under return order. It is to be noted that, with the provisions introduced by the Return Directive, in particular the measure imposing a time limit to detention of 6 months, which may be extended exceptionally to maximum 18 months, the detention of migrants has largely become a systematic part of migration management across EU Member States – although it must only be used as a last resort as per international and regional/European law. As part of the implementation of the Directive, 11 Member States have applied the maximum time limit of detention of 18 months and ten Member States have extended the maximum legal time limits of detention.¹⁵⁹

Directive 2009/52/EC specifies sanctions and measures to be applied in Member States against employers of illegally resident third-country nationals.¹⁶⁰

Since 2001, Member States have mutually recognized their respective **expulsion decisions (Directive 2001/40)**, whereby a decision by one Member State to expel a non-EU national present in another Member State is respected and complied with.¹⁶¹

- **Management of External Borders policy and legislation**

- Article 3.2 of the Treaty on EU;
- Article 67 and 77 of the treaty on the functioning of the EU;
- The Schengen external border aquis;

The Schengen agreements (1985, 1990) provide for free movement and unrestricted travel to citizens of Schengen states (currently including 22 European Union member states, as well as Iceland, Norway, Liechtenstein and Switzerland), who can live, study, or work anywhere they wish in those States.¹⁶²

Being part of the area without internal border controls means that these countries:

- do not carry out border checks at their internal borders (i.e. borders between two Schengen states);
- carry out harmonized controls, based on clearly defined criteria, at their external borders (i.e. borders between a Schengen state and a non-Schengen state).

As a result, EU nationals and nationals from those countries that are part of the Schengen area, and their family members, have the right to enter the territory of EU Member States without prior authorization if they fulfill the conditions of the Schengen Borders Code (Article 6). They can only be excluded on grounds of public policy, public security or public health. Under EU law, nationals from countries listed in Annex 1 to the Visa List Regulation (Regulation (EU) 2018/1806, note also amendments) can access the territory of the EU with a visa issued prior to entry.

B.3. The way forward in migration governance: Global Compact for Safe and Orderly Migration and Implementing SDG's

B.3.1. Global Compact to Safe, Orderly and Regular Migration

The global movements of refugees and migrants poses challenges, opportunities and obligations for countries around the world.

Adopting the New York Declaration for Refugees and Migrants, the 193 UN Member States recognized the need for a comprehensive approach to human mobility and enhanced cooperation at the global level in 2016.¹⁶³ This declaration was widely endorsed, including by the European Union (EU).

Annex II of the New York Declaration set in motion a process of intergovernmental consultations and negotiations towards the development of a Global Compact for Safe, Orderly and Regular Migration (GCM, or the Compact). This process concluded on 10 December 2018 with the adoption of the Global Compact by the majority of UN Member States at an Intergovernmental Conference in Marrakesh, Morocco, followed closely by formal endorsement by the UN General Assembly on 19 December.¹⁶⁴

The Compact is a long-sought milestone in the history of the global dialogue and international cooperation on migration. It expresses the collective commitment by more than 170 governments to improve the governance of migration; to strengthen the contribution of migrants and migration to sustainable development; and to overcome the associated challenges while reaping the benefits of international migration.¹⁶⁵

In addition to the adoption of the GCM, a Global Compact on Refugees was adopted also in 2018; this section will however focus on the GCM that was adopted by 164 countries.

According to IOM, the UN migration Organization in charge of the secretariat of the global compact for safe, orderly and regular migration, these compacts 'provide the opportunity to move ahead in strengthening the norms, principles, rules and decision-making processes that will allow for more effective international cooperation in responding to what is a defining issue.' Providing continued institutional support to address these issues and implement the outcomes of the global compacts would be a challenge.¹⁶⁶

The global compact offers a significant opportunity to improve governance on migration, to address the challenges associated with modern migration movements, and to strengthen the contribution of migrants and migration to sustainable development.¹⁶⁷ These observations can be made about the GCM:

- It seeks to overcome the fragmentation of migration governance by addressing all the different issues raised by migration. It builds upon international standards in human rights,

development, climate change, labor protection, or smuggling/trafficking and addresses the multiple ways in which migration relates to these.

- The GCM is about cooperation, both between states and between states and non-state actors. Because ‘no State can address migration alone’, the GCM proposes a ‘cooperative framework’ and calls for ‘international cooperation among all relevant actors on migration’ (para. 7).
- The GCM calls this a ‘whole-of-society approach’ and recommends ‘multi-stakeholder partnerships’ that bring together ‘migrants, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, National Human Rights Institutions, the media and other relevant stakeholders in migration governance’.¹⁶⁸
- The GCM recognizes and fully conforms to the existing international human rights framework as the authoritative protection framework for all migrants. In order to ensure safe, orderly and regular migration and to be true to the purposes and commitments of the New York Declaration, the Global Compact reaffirms, respects, and operationalizes existing State commitments and obligations to uphold the human rights, safety and dignity of all people on the move, regardless of their migration status. States must therefore ensure that all migrants, regardless of their status, can exercise their fundamental civil, political, economic, social and cultural rights.

Box 22. Objectives for Safe, Orderly and Regular Migration

- (1) Collect and utilize accurate and disaggregated data as a basis for evidence-based policies
- (2) Minimize the adverse drivers and structural factors that compel people to leave their country of origin
- (3) Provide accurate and timely information at all stages of migration
- (4) Ensure that all migrants have proof of legal identity and adequate documentation
- (5) Enhance availability and flexibility of pathways for regular migration
- (6) Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work
- (7) Address and reduce vulnerabilities in migration
- (8) Save lives and establish coordinated international efforts on missing migrants
- (9) Strengthen the transnational response to smuggling of migrants
- (10) Prevent, combat and eradicate trafficking in persons in the context of international migration
- (11) Manage borders in an integrated, secure and coordinated manner
- (12) Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral
- (13) Use migration detention only as a measure of last resort and work towards alternatives
- (14) Enhance consular protection, assistance and cooperation throughout the migration cycle
- (15) Provide access to basic services for migrants
- (16) Empower migrants and societies to realize full inclusion and social cohesion
- (17) Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration
- (18) Invest in skills development and facilitate mutual recognition of skills, qualifications and competences
- (19) Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries
- (20) Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants
- (21) Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration

- (22) Establish mechanisms for the portability of social security entitlements and earned benefits
- (23) Strengthen international cooperation and global partnerships for safe, orderly and regular migration

Even though it is not legally binding, the Global Compact for Migration represents an innovation in global governance of migration, as it builds up on existing legally binding instruments and States obligations.

The GCM marks a new phase in international cooperation to manage and respond to the movement of people. It represents a near-universal consensus on the issues that require cooperation, and on actions to move toward achieving the objectives laid out in the compact.

United Nations Member States crafted the Global Compact for Migration with an eye to the long term, but it already has one accomplishment to its credit: it has brought one of the last outstanding global issues into the United Nations in a formal, negotiated manner. For decades, the international system has had standards and institutions to facilitate cooperation and the maintenance of order on issues of finance and trade, arms control and refugees, and many other issues. More recently, it has developed a framework for dealing with climate change. But international migration remained a patchwork of bilateral and regional policies, long considered too divisive for general debate within the United Nations as a stand-alone issue beyond its interrelationship with development.¹⁶⁹

With the Global Compact for Migration, a framework of common expectations and commitments has at long last emerged.

The very first draft of the GCM identified a “coherent UN system” as necessary for effective implementation. **As mentioned, the Compact welcomed the Secretary-General’s decision to replace the Global Migration Group of United Nations agencies, with a United Nations Migration Network with clearer and consistent leadership from IOM and a small group of United Nations entities that have movement of people as an important part of their mandate or capacities.** The agreement that brought IOM into the United Nations system as a related organization in 2016 gives the United Nations system unprecedented capacity to help its members address migration issues. **The United Nations has also strengthened its capacity by establishing the Network on Migration.** With this structure in place as of December 2018, the United Nations system should be positioned to offer coherent and comprehensive support to States as they set about implementing their commitments to safe, orderly and regular migration.¹⁷⁰

While the Global Compact for Migration it can be construed as a “political commitment” creating an expectation of implementation.

The Compact is the first agreement on migration that has been negotiated inter-governmentally at the global level and heralds a significant step forward in international cooperation.

B.3.2. Sustainable Development Goals

The United Nations General Assembly adopted the 2030 Agenda for Sustainable Development (2030 Agenda) in September 2015. The Agenda consists of 17 Sustainable Development Goals (SDGs) and

169 accompanying targets. These goals and targets were formulated through a participatory and multi-stakeholder process that involved states, global civil society and many other actors.¹⁷¹

The 2030 Agenda recognizes migration as a core development consideration, which marks the first time migration is integrated explicitly into the global development agenda. The Agenda is relevant to all mobile populations regardless of whether internal or cross border, displaced or not: “goals and targets will be met for all nations and peoples and all segments of society.” It recognizes migrant women, men and children as a vulnerable group to be protected, and as agents of development. All types of migration should also be considered, including displacement.¹⁷²

The central reference to migration is made in target 10.7 under the goal “Reduce inequality in and among countries”, calling to “facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.” Many other targets also directly reference migration, and for others migration is a cross-cutting issue that should be considered. Implementation of the SDGs provides an opportunity to protect and empower mobile populations to fulfill their development potential and benefit individuals, communities and countries around the world.¹⁷³

The inclusion of migration in the SDGs also paves the way towards greater collaboration between the migration and development sectors and, through this, towards greater policy coherence. The 2030 Agenda has been named a “declaration of interdependence” (United Nations, 2016). It encourages going beyond governance as usual and under target 17.14 calls to “pursue policy coherence and an enabling environment for sustainable development at all levels and by all actors”.¹⁷⁴ The Agenda requires stakeholders to move to a whole-of-government approach to achieve policy coherence on migration governance. The migration-SDG connections reach far beyond implementing migration policies, and entail integrating migration across governance sectors. By strengthening coherence between migration and development agendas, migration policies can improve development outcomes, and development policies can improve migration outcomes.¹⁷⁵

The relevance of migration in the context of development is firmly rooted in the introduction of the 2030 Agenda:

“We recognize the positive contribution of migrants for inclusive growth and sustainable development. We also recognize that international migration is a multi-dimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses. We will cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons. Such cooperation should also strengthen the resilience of communities hosting refugees, particularly in developing countries. We underline the right of migrants to return to their country of citizenship, and recall that States must ensure that their returning nationals are duly received.”¹⁷⁶

(United Nations, 2015)






This shows how “migration is not a development ‘problem’ to be solved, but a mechanism that can contribute to the achievement of many of the Goals.^{177”}


Similarly, the IOM’s Director General has stated:



“The vast share of...migration is safe, legal, orderly – and is not only inevitable but beneficial; the lives of countless migrants, their families and home and host communities are the better for it. IOM strongly believes that we should embrace this reality, and together seek ways to positively leverage the benefits of migration. That is, we should not focus efforts on trying to stop migration, but rather on creating conditions in which migration is a choice and not a necessity, takes place along legal channels and acts a catalyst for development.”¹⁷⁸

The Sustainable Development Goals (SDGs) contain several targets that directly reference migration, as listed below:¹⁷⁹

Table 5 Sustainable Development Goals (SDGs) and migration¹⁸⁰

<p>Student Mobility</p>	<p>⇒ Increasing international student mobility <i>calls for expanding the number of cross-border scholarships available. The promotion of student mobility provides an opportunity to increase the number of education migrants, thus increasing higher education opportunities for people from least developed countries and other under- served areas.</i></p>	<p>4.B </p>
<p>Human Trafficking and Exploitation</p>	<p>⇒ Combating all types of trafficking and exploitation ⇒ Addressing trafficking and exploitation of women and children <i>Target 8.7 can help States work towards strengthening the protection of exploited and trafficked individuals, the prevention of trafficking and exploitation, and the prosecution and redress related to these crimes. Achievement of this target could involve countries developing policies and partnerships at local, national, regional and international levels, strengthening legal frameworks and policies, promoting dialogue and cooperation on counter trafficking, developing victim identification and assistance mechanisms, and facilitating the collection and analysis of human trafficking data.</i> <i>The SDGs address trafficking in women and children through targets 5.2 and 16.2, encouraging actors to use a gender and age-sensitive lens when addressing human trafficking. This would allow actors to focus on certain types of trafficking to which women, girls and boys may be particularly vulnerable, such as trafficking for sexual exploitation, forced marriage or trafficking of children for forced begging.</i></p>	<p>5.2, 8.7, 16.2   </p>
<p>Labor Migration and Employment</p>	<p>⇒ Promoting decent work ⇒ Combating child labor and the worst forms of child labor ⇒ Combating trafficking for forced labor ⇒ Addressing the feminization of migration ⇒ Improving labor migration governance <i>Promoting decent work (Target 8.5 entails many direct links with labor migration. Some SDG targets directly highlight ongoing, emerging and overarching issues of labor mobility, and many others address factors that shape labor migration dynamics</i> <i>Target 8.7 addresses forced labor, trafficking for forced labor, child</i></p>	<p>8.5, 8.7, 8.8 </p>

	<p><i>labor and all other types of labor exploitation.</i></p> <p><i>Target 8.8 seeks to uphold the rights of all types of migrant workers. Taking a rights-based approach that promotes international rights frameworks, including labor standards, would help improve the situation of many migrant workers facing vulnerabilities by helping address common challenges, including those relating to working conditions, wages, social protection, occupational safety, migration status and access to health care (including access to sexual and reproductive health). By strengthening ethical recruitment practices and helping eliminate recruitment fees, the achievement of this target would also help address human trafficking, debt bondage and forced labor.</i></p> <p><i>The SDGs recognize that increasing numbers of migrant workers are female (the “feminization of migration”) by highlighting the need to protect migrant domestic workers (target 5.4). Working in a largely informal and unregulated sector, women migrant workers are commonly subject to labor exploitation and abuse.</i></p> <p><i>By recognizing a plurality of labor migration issues, encouraging a multi-stakeholder approach and calling for improved migration governance under target 10.7, the SDGs also indirectly call for improved labor migration governance. This entails effective, human-rights based and gender-responsive systems of labor migration, which include institutions, actors and processes to protect the rights of all migrant workers, at the same time considering employment, labor market, skills and demand-side factors. Improved governance could also entail greater international cooperation, for example through regional initiatives and partnerships between countries through, for instance, bilateral labor agreements and cooperation on ethical recruitment labor rights, skills recognition, and/or portability of social benefits.</i></p>	
<p>Migration Governance</p>	<p>⇒ Facilitating orderly, safe, regular and responsible</p> <p>⇒ Implementing planned and well-managed migration and mobility</p> <p><i>Facilitating orderly, safe, regular and responsible migration and mobility</i></p> <p><i>Target 10.7, under Goal 10 Reduce inequality within and among countries, acknowledges that effective migration governance is key for safer, more orderly and more regular migration. It also acknowledges the need for global, regional and national migration regimes and comprehensive policy frameworks to manage migration for the benefit of all. This includes promoting regular migration that respects the rights of all migrants and leveraging the positive development impact of migration for migrants themselves, as well as for all communities and countries.</i></p> <p><i>In practice, comprehensive and effective migration management involves a wide range of action areas. This includes but is not limited to migration mainstreaming and capacity-building, protecting migrant rights and promoting all migrants’ well-being, improving migrant integration in host communities.</i></p>	<p>10.7</p> 
<p>Remittances</p>	<p>⇒ Lowering remittance transaction costs</p>	<p>10.C</p>

	<p><i>Remittance transaction costs can be high, which lessens the impact of remittances, burdens migrants and can discourage their sending through formal channels. This can affect migrant women in particular, as they often send smaller amounts of money than migrant men, though more regularly. Target 10.C aims to reduce these costs by capping transaction fees.</i></p>	
<p>Migration Data</p>	<p>⇒ Improving data across migration topics</p> <p><i>There are significant gaps in the quantity, accuracy, timeliness, comparability (over time and across countries) and accessibility of migration data. The SDGs create an immediate need for a greater quantity and quality of migration data. This is the case across migration issue areas, such as migration governance, labor migration, human trafficking, and many more. It is a challenge to measure the migration-related SDG targets, especially as the existing global-level indicators for these targets are difficult to operationalize and most do not have well-established methodologies</i></p> <p>⇒ Increasing disaggregation of data by migratory status and other variables</p> <p><i>A key focus of the SDG implementation process is to promote greater disaggregation in monitoring data so as to better serve certain vulnerable groups. This includes disaggregating data by migratory status and other variable such as age, sex, gender at least.</i></p>	<p>17.18</p> 

B.4. Gender sensitive and child-friendly migration

B.4.1. Genders sensitive migration

Women make up approximately half of all international migrants worldwide. Gender roles, relations and inequalities affect who migrates and why, how the decision is made, the impacts on migrants themselves, on sending areas and on receiving areas. Experience shows that migration can provide new opportunities to improve women's lives and change oppressive gender relations – even displacement as a result of conflict can lead to shifts in gendered roles and responsibilities to women's benefit.¹⁸¹ However, migration can also entrench traditional roles and inequalities and expose women to new vulnerabilities as the result of dangerous journey, precarious legal status, exclusion and isolation.¹⁸²

B.4.1.1. Current International and Regional Legal Framework regarding Gender and Migration

“The risk of sexual and gender-based violence is high...” with women and girls also facing other challenges, particularly in transit, of psychosocial stress and trauma, health complications, physical harm, injury and all forms of exploitation, including trafficking in human beings. Migrant women and girls are commonly subject to multiple and intersecting forms of discrimination, based on their sex and on additional grounds such as race, religion or ethnicity.”¹⁸³

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, which was adopted by the UN General Assembly almost 35 years ago, is an international bill of rights for women.¹⁸⁴ Specifically, the Convention defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. Although the convention is not specific to women who are refugees or migrant, it applies to them as it does to any women, by their mere humanity. It is furthermore a dynamic legal document that follows international developments and trends in the arena of human rights and has addressed the rights of women migrants through the CEDAW Committee's General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women in 2014, and the General recommendation No. 26 on women migrant workers in 2008.¹⁸⁵

CEDAW comprehensively defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women...of human rights and fundamental freedoms...”¹⁸⁶

Article 3 of CEDAW requires that States Parties take all appropriate measures, including legislation, to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 11 attends specifically to the elimination of discrimination in the field of employment; Article 12 to equal access to health care services, including those related to family planning and Article 15 accords to men and women the same rights with regards to the movement of persons and freedom to choose their residence and domicile.

The General Recommendation 26 on Women Migrant Workers provides a strong framework to legally support the formulation of gender-responsive, rights-based migration policies.

Specifically, the General recommendation 26, paragraph 23 provides that the CEDAW and the General recommendation 26 should be used to develop policy, based on equality and non-discrimination, that regulates and administers all aspects and stages of migration in a manner that facilitates access to opportunities for women migrant workers to work abroad, promoting safe migration and ensuring the protection of their rights.¹⁸⁷

The Recommendation provides more specific guidance to States Parties on how to respect, protect and fulfill the human rights of women migrant workers, providing recommendations specific to countries of origin, transit and destination. The scope of the General recommendation 26 extends to women migrant workers who migrate independently, those who join their spouses or other members of their families who are also workers, as well as undocumented women migrant workers.

In addition, The General Recommendation 26's paragraph 23 sets out the following common responsibilities of countries of origin and destination:

- ✓ the formulation of gender-responsive migration policy;
- ✓ active involvement of women migrant workers in policy formulation; and
- ✓ the undertaking of quantitative and qualitative research, data collection and analysis to ensure that policies are gender-responsive.¹⁸⁸

On European level the Istanbul Convention provides ***SPECIFIC MEASURES WITH REGARD TO THE PROTECTION OF MIGRANT WOMEN:***¹⁸⁹

- ✓ It introduces the possibility of granting migrant women an autonomous residence permit if they are trapped in an abusive relationship because their residence status depends on that of their abusive spouse or partner.
- ✓ It requires states parties to ensure that gender-based violence against women may be recognized as a form of persecution within the meaning of the 1951 Refugee Convention (Article 60, paragraph 1).
- ✓ It also requires states parties to ensure that the grounds for asylum listed in the 1951 Refugee Convention are interpreted in a gender-sensitive manner (Article 60, paragraph 2).
- ✓ It establishes the obligation to introduce gender-sensitive procedures, guidelines and support services in the asylum process (Article 60, paragraph 3).

NON-REFOULEMENT

- ✓ It establishes the obligation to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, are not returned to any country where their life would be at risk or where they may be subjected to torture or inhuman or degrading treatment or punishment.

The Beijing Platform of Action of the Fourth World Conference on Women in 1995¹⁹⁰ outlines the three-dimensional rights-based approach that refers to taking three rights dimensions into consideration when developing qualitative indicators with regard to safe and just processes of female labor migration. These are:

- ✓ **Women's rights related to legal migration opportunities:** Ensure women's access to, and participation in, safe and legal employment opportunities and their protection from

exploitation and violence;

- ✓ **Rights within the migration process:** Ensure safe and secure recruitment, journey, remuneration, control over earnings, decent working conditions, decent housing and living conditions, a right to family life, access to legal services, decision-making, health care, and information; and
- ✓ **Rights realized through migration:** Facilitate and encourage the potentially positive outcomes of migration for women, e.g., through increased autonomy and power to negotiate their terms of work in the country of destination, having control over their earnings, and more decision-making at the household level in the country of origin.

B.4.1.3. Gender and migration in the development context

While migration is recognized as an integral feature of the world today, **the situation and contributions of migrant women should be adequately recognized as well.**

Female migrant workers are **active contributors to the socio-economic development** of both:

- ✓ their country of origin (mainly through sending remittances, but also through sharing the skills and knowledge obtained abroad with their communities in their countries of origin, and by supporting their children's education) and
- ✓ of countries of destination (by providing human and economic resources).

In that respect, the significance of remittances should not be underestimated, as they contribute to national development and the international economy. Remittances sent

home by migrant women are quite significant, although the amounts remitted each time tend to be smaller than the amount remitted by men, mainly because women often get paid less.¹⁹¹ Women however remit a higher proportion of their earnings and do so more frequently.

Box 23. For example, a study conducted in 2000 showed that Bangladeshi women working in the Middle East sent home 77 per cent of their income on average.¹

According to UN-Women, women are more likely to receive remittances regardless of the sex of the remitter. As an example, in a survey conducted in the Dominican Republic in 2004, 57 per cent of those receiving remittances were women, and 58 per cent of those sending remittances were women.¹⁹²

Women are more likely to invest remittances in children's education and health.¹⁹³

Box 24. In a study conducted in 2008, it was found that remittances had increased school enrolment in Ecuador on average by 2.6 per cent, with the impact being even higher among girls, in rural areas and among the poor.¹

Similarly, studies conducted in Guatemala, Mexico and Morocco showed that children had better health and lower mortality rates after their mothers returned because of the new and improved knowledge of health care and increased financial means available to the family.¹

Box 25. Important note regarding women's migration and brain drain

It is important to note that the migration of women, and that of men, also leaves gaps in their countries of origin. In 2011, the World Bank pointed out that physicians and nurses were the

professionals that migrated most often. It is therefore not surprising that according to one study, sub-Saharan countries are experiencing a shortage of 600,000 nurses. It was found in another study that from 1999 to 2001, 60 per cent of registered nurses left tertiary hospitals in Malawi, likely to migrate. As a result, 64 per cent of nursing positions (heavily dominated by women) remain unfilled, with medical centers operating with no nurses or with employees who have as little as 10 weeks of medical training. While the Government of Malawi has tried to increase resources and wages for health professionals to offset the brain drain, it has not been able to compete with the salaries offered in other countries.¹⁹⁴

Consequently, it is necessary that the laws that govern migration respond to the distinct needs and priorities of women and girls. Although migration is only now emerging as a development issue, migration may lead to development in receiving communities through the contribution of labor and skills. On the other hand, remittances and diaspora investment can provide much-needed economic support to sending communities.¹⁹⁵

B.4.1.4. The key elements of a gender sensitive approach to migration in legislation and policy¹⁹⁶

- **Before departure**, women can be faced with gender-biased procedures and corrupt agents. In fact, gender discrimination, poverty and violence, can provide the impetus for women to migrate or make women preys to traffickers in the first place. Women's lack of access to full and reliable information about legal channels and terms and conditions of work, makes them vulnerable to unscrupulous or even criminal recruitment agents and traffickers and puts them at risk of physical, emotional and sexual violence.¹⁹⁷ Exploitative fees may be charged, which cause women - who often have fewer assets than men - to suffer greater financial hardship.¹⁹⁸ Due to the high cost of regular migration, restrictions on their movement, or lack of opportunities to migrate through regular channels, women may resort to migrating irregularly using smuggling networks.¹⁹⁹ Women with irregular migration status, like men, are particularly vulnerable to exploitation, violence and abuse, owing to their invisibility and lack of labor protection.
- **During transit women** can be faced with verbal, physical and sexual abuse, poor housing and encampments. And upon return to the source country they may be faced with broken families, illness and poverty.²⁰⁰ A lack of regular entry channels may lead women to use smuggling networks. Women and girls are particularly vulnerable to abuse, violence and even death along irregular migratory routes.²⁰¹ In the hands of smugglers, women migrants are often raped and forced into sexual servitude to repay debts. When travelling with an agent or escort, women migrants may be abandoned if the agent encounters problems on arrival in the country of destination.²⁰²
- **At their destination** sex-segregated labor markets, low wages, long working hours, insecure contracts and precarious legal status. Migrant women often fill labor demands in destination countries. However, for migrant women this often means informal or low-skilled employment (including at a lower skill level than they worked back in their home countries, referred to as the de-skilling of labor) based on restrictions on women's employment in specific sectors of work, discrimination and gendered norms. Gendered occupations may be

excluded from legal definitions of work, thereby depriving women of a variety of legal protections.²⁰³ Irregular migration can also increase women’s vulnerability to labor market abuses and exploitation, characterized by forced labor, low wages, excessively long hours and insufficient rest, which is particularly pervasive for migrant domestic workers.²⁰⁴

Table 6 Vulnerabilities of women in labor migration at different stages of the migration process

Vulnerabilities of different stages of the migration process	
Migration stage	Female migrant workers’ experience
Recruitment and pre-departive	<ul style="list-style-type: none"> • Falling victim to illegal/criminal recruiters and traffickers • Fraud, deception, harassment and extortion by agencies and brokers • Restrictive migration policies affecting women • Exploitation in “training centres” • Gender based violence
Journey	<ul style="list-style-type: none"> • Risks attendant to clandestine entry or smuggling, including unsafe means of travel, harassment and sexual assault by criminal elements, being caught with false documents, etc.
Working and living aboard	<ul style="list-style-type: none"> • Contracts being substituted with ones providing for substandard wages and working conditions, accommodation, discriminating women based on gender, etc. • In some countries, rights denied to women • Withholding of passports and travel documents • Lack of adequate insurance to cover medical treatment/healthcare and access to reproductive health care • Physical, psychological or sexual abuse or violence • Lack or absence of access to services and redress mechanisms • Risk of un-safe not gender friendly detention if in irregular status or undocumented
Termination of contract	<ul style="list-style-type: none"> • Risk of pre-mature termination of employment • Lack of effective access to complaint and redress machinery
Return and reintegration	<ul style="list-style-type: none"> • No alternative source of income and difficulties in finding employment especially for women due to gender discrimination in labor market • Family problems and adjustment, divorce, gender-based violence • Social reintegration difficulties, particularly for survivors of gender-based violence abroad • Danger of being re-trafficked

Having in mind that, in 2015, United Nations (UN) member states adopted the 2030 Agenda for Sustainable Development and its 17 sustainable development goals (SDGs). (See section B.4. for detail on SDG and migration). There is a specific SDG (goal 5) dedicated to achieving gender equality and empowering all women and girls, and gender is mainstreamed throughout the remaining SDGs. Gender equality is considered not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world. Goal 5 is also interconnected to other goals that relate to migration.²⁰⁵

The Global Compact on Safe and Orderly Migration calls for establishment of *inter alia*, gender-responsive labor mobility policies and gender-responsive approach in addressing vulnerabilities.

Based on CEDAW, the Istanbul Convention, as well as on the SDG goals regarding women and migration it can be concluded that it is important and an obligation for states to make laws and policies relating to migration gender-responsive.²⁰⁶ Integrating the gender perspective in a policy means that equality between women and men, as the overarching principle, should be taken into consideration in all decisions, in each phase of the policymaking process, by all the actors involved.

In order to mainstream in migration policy, countries of destination should:²⁰⁷

- ✓ Ratify international instruments;
- ✓ Apply a rights-based and gender perspective in policies and programmes;

Immigration and emigration policies that enable women, as well as men to take up opportunities that safe and regular migration may offer, and which will foster the positive impacts of migration for the social and economic development of migrants, and the receiving and sending countries. This would include measures to ensure sufficient regular channels for women's entry, to avoid them being pushed into more risky irregular channels and bilateral agreements between sending and receiving parties which protect women migrants' rights.

- Take into account the needs, constraints and opportunities of women and men in the development of legislation and management of migration.
 - Carry out a gender analysis:
 - Collect and disaggregate migration data by sex to identify and assess the situation of women migrants; Identify differences in occupations available to male and female migrants in the destination countries, the level of protection in sending and receiving countries and access to information and services before and during migration; and
 - Review the capacities of existing institutions and mechanisms to promote gender equality and end all forms of discrimination in migration;
 - Action against discrimination and exploitation of women migrant workers;
 - Address gender inequalities in migration through gender planning;
 - Ensures that migrant women can get out of dangerous situations without losing their migratory status (e.g. domestic violence or abusive employer);
 - Extend labor and migrant legislation to sectors and occupations in which women migrants predominate;
 - Provide equal opportunities and treatment to men and women migrants by abolishing protective measures for women that restrict their entry into productive and safe migrant work;
 - Revise legislation in receiving countries that restricts rather than protects women migrants;
 - Make immigration officers and employers more aware of the fundamental human and workers' rights of women and ensure access to justice to migrant women;
 - Avoid victimization and criminalization of migrants who end up in illegal or forced labor situations.
- ✓ Support for the acknowledgement and realization of the rights of women migrants throughout the migration process:
 - including providing pre-departure information on legal issue and on their rights;
 - facilitating remittances;

- ensuring access to basic services linked to rights such as housing, education and health, and supporting migrant;
- organizing solidarity between different migrant groups to address issues of exclusion and isolation.

Box 26. Best Practices regarding night and overtime work of domestic service workers²⁰⁸

In Denmark, domestic workers are not to be employed for night work without a valid reason and, when employed on such work, shall be entitled to a corresponding rest period the following day. In Finland, night work (between 11 p.m. and 6 a.m.) may only be performed in the following cases: emergency work, standing by in readiness for work (subject to the worker’s consent) and occasional work that is necessary for special and important reasons and subject to the worker’s consent.

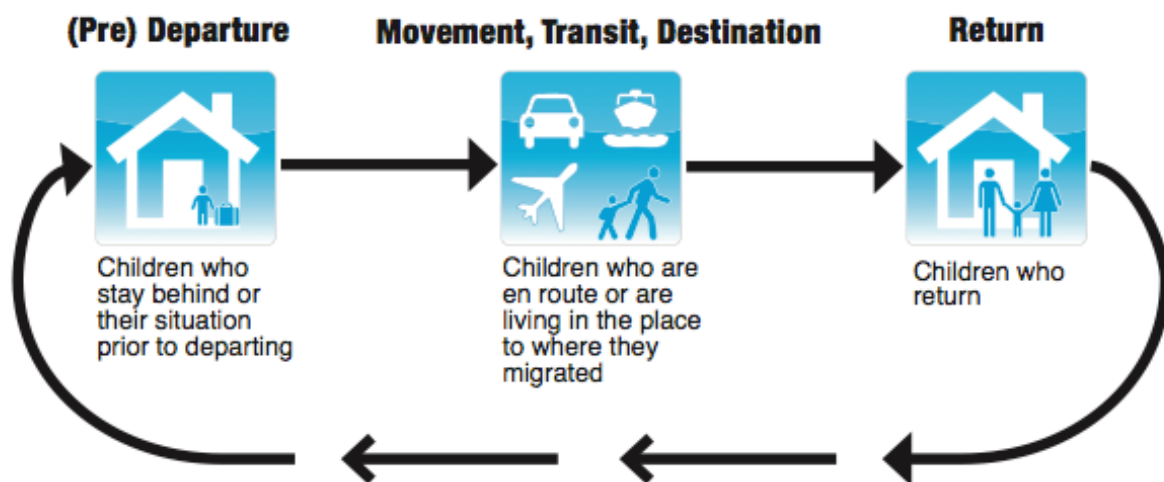
Under South African law, the “stand-by” period (meaning the period when a domestic worker is required to be at the workplace and is permitted to rest or sleep but must be available to work if “necessary”) is allowed, but this should not be more than five times per month or 50 times per year. In Austria, the parties may agree to hours of work outside normal hours, daily rest and breaks, and weekly rest but only “in cases where the employer’s household includes infants (i.e. children younger than 3) or where the employer or any member of the household is so disabled that he [she] needs constant attendance for which no other arrangements have been made”. Such a situation shall not exceed normal hours by more than 18 hours in two consecutive weeks. To be valid, the agreement must have been set down in writing in the contract of employment.

In France, domestic workers’ overtime cannot exceed, on average, eight hours per week in any consecutive 12-week period. In addition, overtime cannot exceed ten hours in any one week. Compensation for overtime work represents in South Africa a supplement of 50 per cent of the regular rate of payment and an additional increase of 100 per cent of the regular rate of payment. In Finland, the rate progressively increases as overtime hours worked increase.

B.4.2. Child-friendly migration

“Refugee and Migrant Children are first and foremost children.”²⁰⁹

Children can migrate alone, with their parent(s), or with family members or relatives, or can be left behind by one or both parents who are migrating. Children who are **left behind** live either with one of their parents, relatives, non-related caregivers or sometimes even alone with younger siblings. Children **who migrated** may be living with their parent(s) or ‘separated’ from their parents but living with members of their families or caregivers in the country of destination.²¹⁰ They can also be living alone (unaccompanied).²¹¹



Source: A Framework and Recommendations for Action on Children Affected by Migration in the Caribbean, IOM, 2010.

Many international organizations are engaged in protection of migrant children, to name a few: UNHCR, UNICEF, IOM, IRC, etc. Those organizations have helped create and shape specific principles in working with children migrants and their families. These principles are specific because they take into consideration the fact that:

UNHCR on Refugee Children: Guidelines on Protection and Care.²¹²

✓ **Children are vulnerable**

They are susceptible to disease, malnutrition and physical injury.

✓ **Children are developing**

They grow in developmental sequences, like a tower of bricks, each layer depending on the one below it. Serious delays interrupting these sequences can severely disrupt development.

✓ **Refugee and migrant children face far greater dangers to their safety and wellbeing than the average child.**

The sudden and violent onset of emergencies, the disruption of families and community structures as well as the acute shortage of resources with which most refugees and migrants are confronted, deeply affect the physical and psychological wellbeing of refugee and migrant children. It is a sad fact that infants and young children are often the earliest and most frequent victims of violence, disease and malnutrition, which accompany population displacement, and refugee outflows. In the aftermath of emergencies and in the search for solutions, the separation of families and familiar structures continue to affect adversely refugee and migrant children of all ages.

✓ **Children are dependent**

They need the support of adults, and best thrive when surrounded with love and care from their family: not only for physical survival, particularly in the early years of childhood, but also for their psychological and social well-being.

B.4.2.1. Current International and Regional Legal Framework regarding Child-friendly Migration

The Convention on the Rights of the Child is the most important document that sets universal standards for protection of children rights²¹³ it provides a comprehensive framework setting out the responsibilities of States Parties towards all children within their jurisdiction, including children migrants. The CRC Committee has specifically issued General Comment No. 6 that deals with treatment of unaccompanied and separated children outside their country of origin.²¹⁴

The CRC sets out a number of standards regarding the protection of children which apply throughout all stages of displacement confirmed by the CRC General comment No.6 including:

"Best interests" of the child provided in Art. 3 that has two main applications:

- ✓ Government policy-making and decisions made about children on an individual basis. **Policy decisions** require that, "In all actions concerning children" the State shall make "the best interests of the child a primary consideration."
- ✓ **Individual children** - When a decision is being made about an individual child, then the child's best interests must be, at a minimum, "a primary consideration." There are some situations where the child's welfare gets higher consideration. For example, in a case of abuse or neglect, a child can be separated from parents if it "is necessary for the best interests of the child" (Art. 7).

Box 27. Unaccompanied children

For example, making a long-term plan for an unaccompanied child requires a decision about a child's best interests. A child might be an orphan living in a refugee camp, with grandparents in the country of origin, an uncle in a second country of asylum, and with an unrelated family in another country that would like to adopt the child. In deciding what is best for the child many factors would have to be considered, including among the others, "the desirability of continuity" of culture and language (Art. 20), the preservation of family and nationality (Art. 8), and the child's own desires, which must be considered according to the child's "age and maturity" (Art. 12). The objective is to allow the child to "grow up in a family environment, in an atmosphere of happiness, love and understanding" (Preamble).

Non-discrimination - Art. 2, requires States to "respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's ... national, ethnic or social origin ... or other status". In other words, every child within a State's jurisdiction holds all CRC rights without regard to citizenship, immigration status or any other status. Refugee children, asylum seekers, and rejected asylum seekers are entitled to all the rights of the CRC.

Participation - Art. 12 provides that: "States Parties shall assure to the child who is capable of forming his or her views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

Relationships - the well-being of children and the enjoyment of their rights are dependent upon their families and their community thus the family is "the fundamental group of society" and places children's rights in the context of parental rights and duties (arts. 5, 14, 18, etc.). The importance of the community is constantly recognized through the Convention.

Children are entitled to the right to the highest attainable standard of **health and access to health care services and nutrition**, " ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding."

Article 28 stresses **the child right to education**.

Article 23 calls on states to recognize that a **mentally or physically disabled child** should enjoy a full and decent life, in conditions, which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Article 22 of the CRC directly speaks of **refugee children** stating that States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

Under Article 22 of the CRC, States also have a duty to cooperate with UNHCR, IOM and other UN agencies and non-governmental organizations in protecting and assisting children migrants and to trace the parents or other family members in order to obtain the information necessary for reunification with her/his family if necessary.

Article 20 of the CRC emphasizes the desirability of **continuity in a child's upbringing and of considering the child's ethnic, religious, cultural, and linguistic background** when considering solutions for children temporarily or permanently deprived of their family environment.

Finally, the Convention requires States to undertake **to protect the child from all forms of sexual exploitation and sexual abuse** and to take all appropriate national, bilateral and multilateral measures to prevent it.

Committee on the Rights of the Child General Comment N°6 deals specifically with treatment of Unaccompanied and Separated Children outside their country of origin - CRC/GC/2005/6.

Box 28. Rights of children in migration

- ✓ to have human dignity, which has to be respected;
- ✓ to be treated first and foremost as a child;
- ✓ to be protected from discrimination;
- ✓ to be protected from any kind of abuse (emotional, physical, sexual, psychological);
- ✓ to have their best interests taken into account as a primary consideration in all actions concerning children
- ✓ to have a family life with their parents (if in the best interest of the child);
- ✓ to give their opinion, and for adults to listen and take it seriously;
- ✓ to special care and help if the child cannot live with his/her parents;
- ✓ to special protection and help if the child is recognized as a refugee;
- ✓ to the best healthcare possible and nutritious food;
- ✓ to a good quality education;
- ✓ to practice his/her own culture, language and religion;
- ✓ to play and rest;
- ✓ to be protected from sexual abuse and all forms of gender-based violence, or any violence for that matter;
- ✓ to be protected from all forms of exploitation;
- ✓ to legal counselling and fair treatment in the justice system that respects children's rights.

In order to protect and promote the rights of children on the move, **the Council of Europe** has been guiding member states in taking a coordinated child rights-based approach to tackle this challenge. The Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019), coordinated by the Special Representative on Migration and Refugees, and implemented by 19 different bodies and divisions within the Council of Europe focused notably on ensuring access to rights and child-friendly procedures, providing effective protection and enhancing the integration of children who would remain in Europe. ²¹⁵

Box 29. Good practices on child friendly migration policies²¹⁶

Italian Law 47/2017 established a revised legal framework for the protection and care of UASC and included a model of voluntary guardianship services, that are integrated into the existing system of reception and protection for migrant children. Under the Law, volunteer guardians are citizens appointed in coordination with the Juvenile Courts where official registers of guardians should be created. They are selected and trained by the Regional Ombudspersons.

B.5. International and regional cooperation and frameworks regarding migration management and Albania's position

B.5.1. Global level instruments of cooperation on migration

Global processes on migration are international policy dialogue forums on migration at the global level, usually facilitated by an intergovernmental organization, and focusing either on overall migration governance at the global level, or specific themes, or inter-linkages between migration and other areas, such as development.²¹⁷ They aim to offer a non-binding yet comprehensive reference system for dialogue, instruments for defining cooperation and capacity building at global level.²¹⁸

- ✓ In 2018, the Secretary-General established the **UN Network on Migration**, comprising 38 UN system entities to ensure coordinated support to Member States. The Network consists of those members of the UN system who wish to be a part of it and for whom migration is of relevance to their mandates. The UN Network derives from the GCM. The objectives of the network are to:²¹⁹
 - Ensure effective, timely, coordinated UN system-wide support to Member States in their implementation, follow-up and review of the GCM, for the rights and wellbeing of all migrants and their communities of destination, origin, and transit;
 - Support coherent action by the UN system at country, regional and global levels in support of GCM implementation, where such action would add value, while ensuring well-defined linkages with UN structures at all levels;
 - Act as a source of ideas, tools, reliable data and information, analysis, and policy guidance on migration issues, including through the capacity-building mechanism established in the GCM;
 - Ensure Network actions promote the application of relevant international and regional norms and standards relating to migration and the protection of the human rights of migrants;
 - Provide leadership to mobilize coordinated and collaborative action on migration by the UN system, including by speaking with one voice as appropriate, in accordance with the UN Charter, international law, and the mandates and technical expertise of relevant UN system entities;
 - Ensure close collaboration with other existing UN system coordination mechanisms addressing migration-related issues, actively seeking out synergies and avoiding duplication;
 - Establish and provide support to the capacity building mechanism, as outlined in the GCM.
 - Engage with external partners, including migrants, civil society, migrant and diaspora organizations, faith-based organizations, local authorities and communities, the private sector, employers' and workers' organizations, trade unions, parliamentarians, National Human Rights Institutions, the International Red Cross and Red Crescent Movement, academia, the media and other relevant stakeholders at global, regional and national levels;
 - Report to the Secretary-General as required on the implementation of the GCM, the activities of the UN system in this regard, as well as the functioning of the institutional

arrangements, and support the Secretary-General's biennial reporting to the General Assembly, as called for in the GCM.

- ✓ **The Global Forum on Migration and Development (GFMD)** Initiated at the **UN General Assembly's High-Level Dialogue on Migration and Development**²²⁰ is a state-driven process that operates outside the UN system, but keeps links with it through the UN Secretary General's Special Representative for Migration.

For a more comprehensive presentation of the GFMD, refer to the textbox below.

Box 30. Global Forum on Migration and Development²²¹

Conceived as an informal, multilateral and state-led process, the Global Forum on Migration and Development (GFMD) is intended to add value to the current debate on international migration and development by fostering international cooperation, enhancing inter-state dialogue and discussing and promoting new policy ideas in the field of migration and its interrelation with development.

The goals of the GFMD are threefold:

- to bring together governments', international organizations', and other stakeholders' expertise from all regions to enhance dialogue, cooperation and partnership in the areas of migration and development;
- to address, in a transparent manner, the multi-dimensional aspects, opportunities and challenges related to international migration and its inter-linkages with development;
- to foster practical and action-oriented outcomes at the national, regional and global levels.

Through a participative and sustained dialogue between developing and developed countries the Forum seeks to arrive at common and evidence-based understandings on those areas where migration policies have the greatest potential to contribute to development, and where development policies take greater account of migration and its potential benefits for development. The Forum is also intended to make explicit the growing recognition that international migration is a normal and crucial element in the development process.

The Forum has held 13 summits over the years.

GFMD and the GCM: At the GCM Stocktaking Meeting in Mexico in December 2017, the Co-Chairs presented the GFMD Thematic Recollection (2007-2017) – the GFMD's final contribution to the GCM, consolidating 10 years of GFMD discussions and cooperation around migration and development. In this way, the GFMD served as one of the key venues in which professional expertise, as well as political goodwill, was developed in the process leading up to the Compact.

GFMD and the SDGs: The GFMD has led global reflections on the mutually reinforcing relationship between migration and sustainable development. As such, several initiatives focused on exploring the linkages between sustainable development and migration have been undertaken since 2013: from the inclusion of the 2030 Agenda as a focus in GFMD preparatory meetings, roundtable sessions, side events, thematic workshops and sessions at Summit Meetings; to the formation of a dedicated GFMD Ad hoc Working Group on 2030 Agenda. The Eighth GFMD Summit in Istanbul in 2015 endorsed the establishment of an ad hoc Working Group on 2030 Agenda (later to be renamed as Working Group on 2030 Agenda and the GCM) in order to consider the best ways for the GFMD to support the implementation of the 2030 Agenda, and to contribute to its follow-up and review process. The Working Group presented a report during the 2016 GFMD Summit in Dhaka which suggested that the GFMD could best support the follow-up and implementation of migration-related commitments in the 2030 Agenda by:

- **Providing a platform for voluntary sharing of experiences, progress, and evidence on migration aspects of the 2030 Agenda.**
- **Facilitating voluntary action by building partnerships on migration-related aspects of the 2030 Agenda.**
- **Informing Member States, Observers, and relevant organizations of migration-related aspects of the 2030 Agenda, and seeking their input.**

- ✓ **The IOM's International Dialogue on Migration (IDM) is an intergovernmental mechanism.²²²**

The IDM's activities are composed of annual sessions and two or three inter-sessional workshops organized each year.

Box 31. International Dialogue on Migration (IDM)²²³

The IDM is IOM's principal forum for migration policy dialogue. Founded in 2001 and rooted in IOM's Constitution and Strategy, the IDM is open to IOM Member and Observer States, as well as international and non-governmental organizations, migrants, and partners from media, academia or the private sector. The IDM provides a space to analyze current and emerging issues in migration governance and to exchange experiences, policy approaches and effective practices.

The IDM was launched at the 50th anniversary session of the IOM Council in 2001 and since then has provided a forum for migration dialogue, which takes place at the annual Council sessions and at the inter-sessional workshops. Every year, the IDM is guided by an overarching theme. The annual theme is elaborated during one or two sessions bringing together migration policymakers and practitioners from around the world.

- ✓ **The General Agreement on Trade in Services (GATS)** operates under the auspices of the World Trade Organization (WTO). All WTO members are at the same time members of the GATS and, to varying degrees, have assumed commitments in individual service sectors. Its objectives are to ensure that all signatories are treated equitably when accessing foreign markets; and second, to promote progressive liberalization of trade in services (over time, eliminating trade barriers to enable further participation in one another's markets). Mode IV of the Agreement contains rules concerning labor migration in the context of the trade in services. It encompasses the movement of natural persons who are either service suppliers (such as independent professionals) or who are employees of a service supplier and who are present in the territory of another member for the purpose of supplying a service. However, the GATS does not apply to measures affecting persons seeking access to the labor market of the host country, nor does it cover measures regarding citizenship, residence or employment on a permanent basis.²²⁴

B.5.2. Regional cooperation on migration

The EU is the most extensive regional integration system as far as migration is concerned. **Global Approach to Migration and Mobility (GAMM)**,²²⁵ being the overarching framework of the EU external migration and asylum policy. The Global Approach to Migration (GAM) was first defined by the European Council in December 2005 (COM (2007) 247) and further developed in 2007 and 2008.

It has constituted the framework for the cooperation of the EU with third countries in the area of migration and asylum. The approach comprises the whole migration agenda, including legal and irregular migration, combating trafficking in human beings and smuggling of migrants, strengthening protection for refugees, enhancing migrant rights and harnessing the positive links that exist between migration and development. In 2011, the global approach was evaluated. As a result of this, the Commission highlighted the need for further strengthening the external migration policy and published in November 2011 the Communication on the Global Approach to Migration and Mobility, COM (2011) 743 final, on a new impetus to the EU's external migration policy. The renewed GAMM focuses on four main priorities:

- improving the organization of legal migration and facilitated mobility,
- preventing and reducing irregular migration in an efficient, yet humane way,
- strengthening the synergies between migration and development, and
- strengthening international protection systems and the external dimension of asylum.

The Prague Process²²⁶ is a targeted migration dialogue and a policy process promoting migration partnerships among the countries of the European Union, Schengen Area, Eastern Partnership, Western Balkans, Central Asia, Russia and Turkey.

The Process originated from the EU financed project “Building Migration Partnerships” and was initiated during the Czech EU Presidency at the 1st Prague Process Ministerial Conference (back then “Building Migration Partnerships”) with the signature of the Prague Process Joint Declaration in April 2009. In the Joint Declaration, serving as a common political framework, the participating states agreed to strengthen co-operation in migration management, to explore and develop agreed principles and elements for close migration partnerships between their countries, following a comprehensive, balanced, pragmatic and operational approach, and respecting the rights and human dignity of migrants and their family members, as well as of refugees.

The main principles and cooperation areas, set by the Joint Declaration and by the adopted at the 2nd Ministerial Conference Prague Process Action Plan 2012-2016 include:

- Preventing and fighting illegal migration;
- Readmission, voluntary return and sustainable reintegration;
- Regular migration with a special emphasis on labor migration;
- Integration of legally residing migrants;
- Migration, mobility and development;
- Strengthening capacities in the area of asylum and international protection.

All six cooperation areas, to a certain extent, mirror objectives of **the Global Approach to Migration and Mobility (GAMM)**, being the overarching framework of the EU external migration and asylum policy. In the context of the GAMM, the Prague Process has been given a priority as a regional dialogue process towards the East. The importance of the Prague Process and its results were also recognized by the European Commission in its Communication on the GAMM of 18 November 2011 and confirmed by the Council of the European Union in its Conclusions of 29 May 2012.

The Budapest Process²²⁷ is a consultative forum with over 50 governments and 10 international organizations aiming at developing comprehensive and sustainable systems for orderly migration. During its more than 20 years of operation, the Budapest Process has developed from an information sharing tool between European countries in a pre-EU enlargement setting to a far-reaching European- Asian forum for improving migration management. It is chaired by Turkey and co-chaired by Hungary since 2006.

The Ministerial Declaration on a Silk Routes Partnership for Migration identified six priority areas:

1. Better organize and improve conditions for legal migration and mobility;
2. Support the integration of migrants and counteracting phenomena such as discrimination, racism and xenophobia;
3. Strengthen the positive impact of migration on development;
4. Prevent and counter act irregular migration facilitating return and readmission of irregular migrants;
5. Prevent and combat trafficking in persons;
6. Promote international protection.

The Budapest Process held its 6th Ministerial Conference in Istanbul on 19-20 February 2019, and close to 40 countries adopted the **“Istanbul Commitments on the Silk Routes Partnership for Migration”** and its action plan “A Call for Action – a five year plan.”²²⁸ This political declaration and action plan build upon the achievements of the 2013 Istanbul Ministerial Declaration on a Silk Routes Partnership for Migration while taking into account the migration developments of the past years. It introduces five commitments to be upheld in migration management:

- ✓ to partnership
- ✓ to comprehensive migration management
- ✓ to human rights
- ✓ to support and solidarity
- ✓ to knowledge.

Migration, Asylum Refugee Regional Initiative MARRI is an initiative forming part of the South-East European Cooperation Process, which aims to enhance regional cooperation in the field of migration by promoting a comprehensive, integrated, and coherent approach to the issues of migration, asylum, border management, visa policies and consular cooperation, refugee return and settlement in order to meet international and European standards.²²⁹

The South-East Europe Cooperation Process²³⁰ was initiated in 1996 with a view to transforming South-East Europe into a region of stability, security and cooperation in line with the European integration processes and through promotion of mutual dialogue and cooperation at all levels and in all areas of common interest. Twelve countries participate in SEECF work as full-fledged members: Albania, Bosnia and Herzegovina, Bulgaria, Montenegro, Greece, Croatia, Former Yugoslav Republic of Macedonia, Moldova, Romania, Serbia, Slovenia and Turkey.

B.5.3. Bilateral agreements²³¹

An effective collaboration mechanism between countries of origin and destination takes the form of bilateral agreements — formal agreements or memoranda of association to ensure that migration takes place in accordance with agreed principles and procedures. The bilateral agreements serve both parties, and in particular can protect the interests of migrant workers.²³²

The most common mechanisms for regulating interstate immigration are various types of bilateral agreement. A formal bilateral agreement sets out each side’s commitments and may provide for quotas. Less formal is a Memorandum of Understanding. Most countries of destination prefer Memorandum of Understanding, probably because as non-binding agreements they are easier to negotiate and implement — and to modify according to changing economic and labor market conditions. Countries may sign such agreements for political reasons, to reflect friendly relations or to reinforce cooperation in managing irregular migration.

For the destination countries, bilateral agreements help achieve for example a flow of labor that meets the needs of employers and industrial sectors, while providing for better management and promoting cultural ties and exchanges. For the countries of origin, these agreements ensure continued access to overseas labor markets and opportunities to promote the protection and welfare of their workers.

The rationale behind the conclusion of Bilateral Agreements:²³³

- Economic reasons: to organize the match between offer and demand for labor;
- Political reasons: to promote friendly relations among States by encouraging orderly movements of labor;
- Development reasons: to prevent the “brain drain” phenomenon.

Bilateral Labor Agreements are the most common agreements. There is a variety of Bilateral Labor agreements, for example and based on the **recruitment schemes the most common categories are:**

- Seasonal workers schemes;
- Contract workers and project-tied workers’ agreements;
- Trainee agreements;
- Working holidays agreements, to promote cultural ties and international exchanges by giving young adults access to work while on holiday.

Based on facilitating or addressing the consequences of mobility:

- Agreements designed to control/prevent irregular migration;
- Visa facilitation agreements;
- Mutual recognition agreements (recognition of diplomas, right to practice a profession, etc.);
- Social security and double taxation agreements.

Countries should also be aware of some challenges that could arise with the development, negotiation, implementation and oversight of BLAs, so that they can adequately address them. For example, BLAs are often time-consuming and long-term endeavors that can take time to negotiate. Moreover, such agreements require multiple stakeholders in both countries (e.g. Ministries of Labor, Foreign Affairs, Interior, Justice or Solicitor General and possibly labor unions and employer organizations). In addition, BLAs can be hard to monitor, particularly with regard to the protection of migrant workers abroad. For example, the living conditions of domestic workers can be particularly hard to monitor since these migrants often live with their employer and private homes are not inspected by labor inspectors. It is essential that employers in the country of destination be engaged in the implementation and oversight of BLAs and that mechanisms are put in place to hold them accountable for any wrongdoing. In spite of those challenges, BLAs are still instruments that can better protect migrant workers and members of their families, and should be concluded with a rights-based approach.

Box 32. Basic Elements of a Bilateral Labor Agreements²³⁴

General:

Human dignity, human rights of persons , including all migrants, non-discrimination and equality;

Admission

1. Listing the competent government authority;
2. Mechanisms for exchange of information;
3. Migrants in an irregular situation;

Recruitment and departure

4. Notification of job opportunities and information sharing;
5. Drawing up list of candidates;
6. Pre-selection of candidates;
7. Final selection of candidates;
8. Nomination of candidates by employers (possibility for the employer to directly provide the name of a person to be hired);
9. Medical examination;

10. Entry documents;

11. Residence and work permits;

12. Transportation to migrant workers' country of destination;

Employment contract and other provisions concerning the migrant's legal status in the destination country

13. Employment contract;

14. Employment conditions;

15. Labor rights

16. Labor inspections

17. Conflict-resolution mechanisms and access to justice:

18. The role of trade unions and collective bargaining;

19. Social security;

20. Remittances;

21. Provision of accommodation;

22. Family reunification;

Return to the country of origin

23. Return and reintegration;

Administration of the agreement and its implementation

24. Activities of social and religious organizations;

25. Establishment of a joint commission (to monitor the agreement's implementation); 24. Validity and renewal of the agreement;

26. Applicable jurisdiction.

If possible, BLAs should also include mechanisms to identify, refer and assist migrant workers who experience violence, exploitation and abuse.

B.5.4. Albania's position with respect to cooperation and participation in networks²³⁵

Albania is a party to the CCPR - International Covenant on Civil and Political Rights and the CESCR - International Covenant on Economic, Social and Cultural Rights 1991, International Labor Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97), United Nations Convention relating to the Status of Refugees, 1951, United Nations Convention relating to the Status of Stateless Persons, 1954, United Nations Convention on the Reduction of Statelessness, 1961, ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), United Nations Convention on the Rights of the Child, 1989, CEDAW, United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, European Convention on the Legal Status of Migrant Workers and the European Convention on the Participation of Foreigners in Public Life at Local Level. Albania has also participated in GFMD meetings.

Albania is also part of the Budapest Process and Prague Process (regional consultative processes). It is also part of various initiatives promoting labor mobility, more effective management of migration flows in the region, border security, free trade, and development and security. These include regional initiatives such as the Migration, Asylum, Refugees Regional Initiative (Albania held the presidency of this initiative from April 2010 to April 2011); the Regional Cooperation Council (Albania is a member of the board); the South-East European Cooperation Process (Albania held the presidency from June

2014 to June 2015); the South-East European Law Enforcement Centre; the South-East European Cooperation Initiative; the Central European Free Trade Agreement (Albania chaired this during 2012); the Central European Initiative; and the Adriatic Ionian Initiative (Albania held the chairmanship of this from June 2013 to May 2014).

Albania has various memorandums of understanding and agreements related to migration with other countries on, for example, irregular migration, counter-terrorism, organized crime, illicit trafficking of narcotic drugs, exchange of information on migration and control issues, and asylum issues. In addition, negotiations are currently under way with Germany and France for the exchange of information on asylum and migration. Cooperation with countries such as the United Kingdom, Italy and Greece is also ongoing with respect to data and information exchange, return procedures, border control and assistance of victims of trafficking.

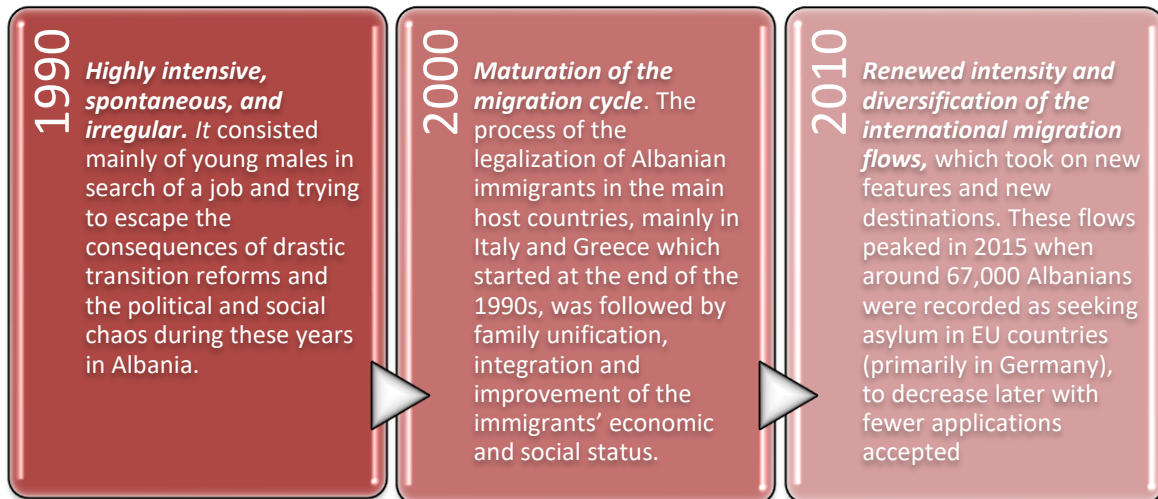
Albania established a good recruitment scheme for the Albanian labor force for employment in Italy and Germany, from the moment of arrival of the manpower requirements of the receiving party, the publication of the requirements, the registration, the selection, interviewing and training according to the required professional standards.²³⁶

Module C

**MIGRATION GOVERNANCE-
NATIONAL LEGISLATION
POLICY AND PRACTICE**

C.1. National context

Migration in Albania has existed since early times. Following its developments, it can be divided in four periods: (i) Middle Ages to the 19th Century; (ii) 19th Century to 1945; (iii) during Communist Regime; (iv) Post-communist migration. Especially the last phase has gone through **3 decades**, characterized by some very specific features and its flows in the following years up-to-date.²³⁷ Albania's migration flows can be characterized as intense, economically driven, irregular, and rapidly evolving, with a dominant tendency of the younger generation dreaming of building a future abroad.²³⁸ Specific and distinct characteristics are as follows:²³⁹



Albania remains predominantly a country of emigration. Emigration of Albanian citizens, in particular toward European Union (EU) countries continues despite the constant improvement of living conditions in the country, a net stable growth of the Albanian economy and constant improvement of public safety.

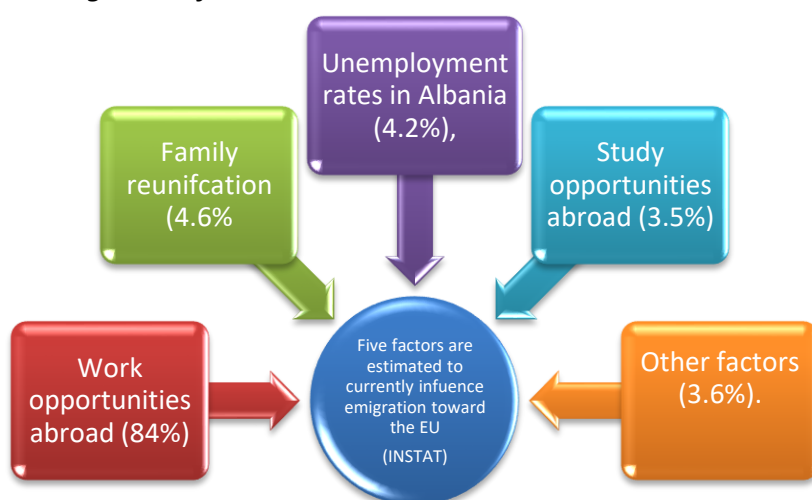
In 2018, Albania had about 1.5 million citizens outside its territory, or about half of the country's population. The majority of migrant communities are present not only in neighboring countries like Italy and Greece (respectively 46% and 45 %), but also in Germany (5%), followed by the United Kingdom, Belgium, France, Australia, Spain and Austria. While there is a growing trend of Albanians residing in other European Union Member States, as well as in North America and Canada.²⁴⁰

Albania's international migration can be examined by the core push and pull factors that characterize the phenomenon. *Unemployment*, especially among the youth, is identified as the main **push factor**. Albania still has a high migration potential favoured by cultural, linguistic and geographical vicinity, low emigration cost to neighbouring countries including Italy and Greece, as well as legal opportunities for family unification in the main host countries of emigrants. The high emigration rate of skilled people is another characteristic of Albanian migration, especially in the field of health.²⁴¹ Other push factors influencing decisions and migratory experiences are *poor living conditions, lack of individual safety and political safety*, as well as *hope for a better future and prospects* for the individual migrant and his or her family. The main drivers of Albanian emigration remain the improvement of living standards, unemployment, low wages and working conditions,

social security schemes and debts.²⁴²Remittances represent a central feature of Albanian international migration.

Additionally, shortcomings of public services have served as *push factors*, adversely affecting migrants' efforts and chances to return and settle in Albania. The "loss" of qualified and educated people, known as the "Brain Drain" phenomenon is considered to be a detriment to a country's socio-economic development as they are the driving force of any country.²⁴³ Two categories of persons – *youth and women* -- have found the situation on the local labor market particularly difficult.

Figure 8 Factors to emigration of Albanian citizens



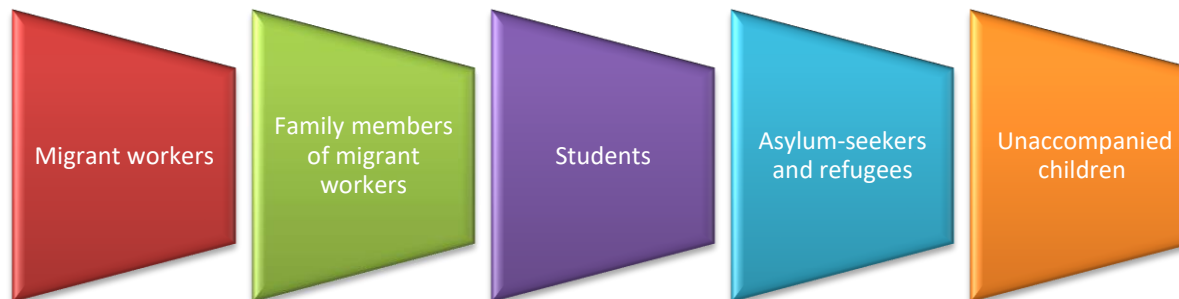
Return of Albanian migrants is another phenomena, which is due to: i) voluntary return; ii) forced return. Voluntary return involves several categories, such as migrants with regular status in the host countries, but even those who have been denied asylum, who choose to return voluntarily to Albania after final rejection of this request, as well as irregular migrants who have not sought asylum but still chosen to return voluntarily. All Albanian migrants with irregular residence status including failed asylum seekers refusing to return voluntarily in Albania are included in the forced return, which occurs mainly under readmission agreements that Albania has signed with the host countries. The return of unaccompanied children continues to remain at high levels, especially from France and Germany, which over the last decade have also been among the leading countries of asylum seekers from Albanian citizens for employment or livelihood opportunities. It is worth noting that Albania has signed one readmission agreement with the EU, in force since 2006 for Albanian citizens, and as of 2008 for third countries nationals.²⁴⁴

Migration in the Albanian context is characterised more by international emigration of the local population and less by immigration of foreigners in the country. Generally, Albania is still considered a country of origin for emigrant workers, transit and destination country for immigrant workers, asylum-seekers and refugees.²⁴⁵

Albania is also increasingly becoming a country of destination for a range of categories of foreigners, although the numbers are relatively small. Like other Western Balkan countries, **Albania has also been affected by mixed population flows**, which are not only socioeconomically driven but are driven by conflicts. During the last decade, the total number of foreigners residing in Albania has

remained approximately at 0.3% of the local population and the origin of legal immigrants does not indicate any significant changes.²⁴⁶

Figure 9 Type of migrants in Albania



Some of the foreigners – like refugees and asylum seekers, migrants, victims of trafficking, unaccompanied and separated children, and stateless persons - fall under more than one of the above-mentioned categories. They comprise diverse nationalities - majority coming from Syria and Afghanistan who often enter the country irregularly. In most cases, the migrants are in a vulnerable situation, whether it is as a result of the situation in the countries of origin, or due to harsh conditions or exploitation and abuse suffered along the routes. These individuals primarily seek to transit through in Albania before moving on and entering the EU countries.

In summary, Albanian international migration analyses and features, leads to several findings:

- The phenomenon predominantly affects the working-age young population and is more prevalent among males;
- Migratory experiences are influenced by factors such as unemployment, poverty, lack of individual and collective safety (push factors) as well as economic, educational, and aspirations for a better quality of life (pull factors);
- International migration can emerge as an individual undertaking and later become a family-based phenomenon, where family members join the individual migrant after an initial period of living abroad;
- Albanians continue to seek asylum in EU – member states for employment or livelihood opportunities, while migration of unaccompanied children remains problematic, due to a continuous increased number;
- Impacts the economy/ labor market, as well as Albanian population structure, its growth and demographic changes;
- Returned Albanians who are provided with services by the Migration Counters remains modest in number;
- Remittances are a key characteristic of Albanian migration, its resources influencing the immediate well-being of family members and indirectly the local economy.²⁴⁷

C.2. Stakeholders important for migration governance-central and local level-whole government approach

Figure 10 Migration governance-building blocs



Strengthening institutional capacities is essential to effective migration management. This process shall be comprehensive and ongoing to bring substantial achievements. A key factor conducive to ensuring institutional ownership is **clarity in terms of roles and responsibilities of and in institutions under migration governance-both at the central and the local level**. A clear division of competencies among Ministry of Interior, State Minister for Diaspora, Ministry of Finance and Economy, other line ministries and subordinate institutions is crucial to bringing forward the migration agenda. Another key

factor for enhancing institutional ownership is **the good institutional coordination at the central and local level for the implementation of migration-related policies**.

Table 7 Institutional framework managing migration is presented in the following table

Ministry of the Internal Affairs is the main authority overseeing national border control, the management of immigration, integration of foreigners as well as for coordinating efforts against trafficking in human beings at the national and local level along with other stakeholders. It does so through the Anti-trafficking and Migration Directorate, the State Police (Border and Migration Department), Directorate for Asylum, etc.

- *The Border and Migration Department* under the State Police, as the authority responsible for the treatment of foreigners who enter, transit or stay in the territory of the Republic of Albania, organized at national and local level, is responsible for the control of foreigners and taking of decisions in relation to the visa application procedures by the foreigners who intent to enter the Republic of Albania; border control by applying the conditions and criteria of entry, stay and transit in the Republic of Albania; provision of foreigners with residence permits or extended stay etc.
- *The Anti-trafficking Directorate* deals only with the monitoring, coordination, promotion and orientation of the activity of central/local structures in issues of prevention and fight against trafficking in persons, in the framework of implementation of the **National Strategy of Fight Against Trafficking in Persons**.

Ministry for Europe and Foreign Affairs is responsible for the drafting and implementation of visa policy and negotiation of necessary acts of international cooperation in the field of migration; supporting the Albanian emigrants abroad and protecting their rights, organizing the Albanian diaspora etc.

- *Directorate of Consular Affairs* is the structure responsible for the treatment of foreigners, drafting of policies of their entry and stay in Albania. This directorate drafts the policies of the consular service activity, monitors and directs this activity.

State Minister for Diaspora is responsible for designing and monitoring the implementation of the

Diaspora policy in coordination with other line ministries.

Ministry of Health and Social Protection through its Directorates and the National Employment Service, performs its activity in line with the respective legislation in the field of development and monitoring of state policies for emigration concerning employment, education and vocational training, social standards, pensions, family, children and youth policies etc. This institution is responsible for permitting foreigners to be employed at any time, including the professions.

- *Directorate of Employment policies and Professional Skills;*
- *National Agency for Employment and Skills;*
- *National Inspectorate for Employment.*

Ministry of Finance and Economy is the responsible ministry for governing labor migration in the country in cooperation with other ministries (setting up and implementing labor migration schemes, along negotiating and implementing bilateral and multilateral labor agreements). It also monitors the functioning of recruitment agencies to ensure the ethical recruitment of migrant workers and oversees the work of the National Employment Service including Migration Counters.

Ministry of Health and Social Protection supervises the work of the State Social Service, which provides crucial services to vulnerable categories, including migrants such as Victims of Trafficking and **unaccompanied children**.

- *Directorate of Policies and Strategies for the Development of Health and Social Protection.*

Ministry of Justice

- *Directorate of Free Legal Aid;²⁴⁸*
- *Directorate of Codification and Legislation Drafting.*

Ministry of Education, Sports and Youth

- *General Directorate of Policies and Development of Education, Youth and Sports*

INSTAT is responsible for the collection, the processing and sharing administrative data as well as providing statistics on migration.

- *Department of Social Statistics.*

Prime Minister Office

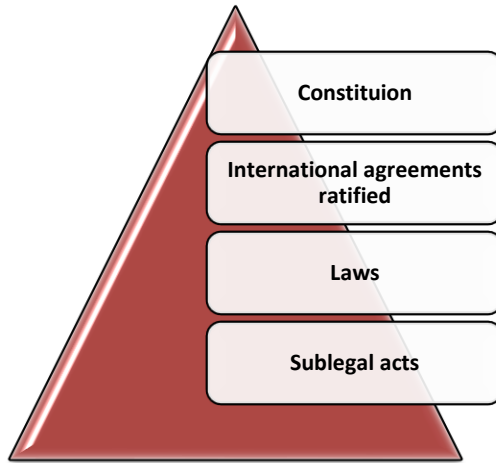
- *Directorate of Policies and Priorities for Development.*
- *Agency for Providing Integrated Public Services.*

Ombudsman, protects the rights, freedoms and legitimate interests not only of Albanian citizens, but also of both regular and irregular migrants, by giving recommendations, making requests for legislative improvements or proposals for the protection of the infringed rights.

Commissioner on Protection From Discrimination is an independent public institution, responsible for the effective protection from discrimination, as well as every kind of behavior that promotes discrimination. CPD conducts administrative investigations and takes decision imposing fines when decision are not implemented or there is lack of cooperation from other private or public subjects.

C.3. Overview of primary, secondary legislation and policy

Figure 11 Hierarchy of legal acts in Albania



A solid legal framework ensures the protection of Albanian citizens abroad, as well as immigrants in Albania. Migration legislation (primary and secondary) continues to align with the EU acquis and the international conventions Albania has adhered to. The hierarchy among normative acts ensures that constitutional fundamental guarantees and protection mechanisms are further shaped by a complex legal framework undergoing dynamic positive improvements.

Constitutional principles governing migration are:

- Freedom of movement (Arts. 16&38);
- Principle of nondiscrimination, equal and dignified treatment (Art.18);
- Protection of Albanian citizens abroad (Art.8);
- Prohibition of expulsion of citizens and collective expulsion of foreigners (Art.39);
- Right to appeal (Art.43);
- Right to privacy and personal data protection.²⁴⁹

The applicable legal framework includes:

- *Law no.9668/2006 "On the Emigration of Albanian Citizens for Employment Purposes," as amended*, including:
 - o Order no.1772/2007 on the format, content and procedure of obtaining the Emigrant Status;
 - o Order no.2086/2007 on the format and content of the Registry of Emigrants and registration procedures;
 - o Instruction No.44, date 21.08.2013 on determining the criteria and procedures for the recognition of pre-university certificates and diplomas of Albanian students returning to the country, changed by Instruction no.14, dated 10.05.2017;
 - o Instruction no.11/2010 of the Minister of Education on the criteria for the recognition of high schools and registration in the high school state examination in 2010.
- *Law no.108/2013 "On foreigners", as amended* and the normative acts in implementing the law has gone through several improvements as regards procedures for the travel documents, visas, employment, stay, family reunification etc.
 - o The Joint Instruction no.264 dated 11.01.2016 on cooperation of structures of the Ministry of Internal Affairs, Ministry of Foreign Affairs and State Intelligence Service on the visa issuing procedure for foreigners.

- *Law no.10/2021 "On Asylum in the Republic of Albania:*
 - o Instruction no.293/2015 of the Minister of Interior on the procedures for the treatment of foreigners with irregular stay in Albania;
 - o Order no.1146/2014 of the Minister of Interior on some additions and amendments to Order no.851/2009 on the Approval of Standard Operational Procedures for the Border and Migration.
- *Law no.15/2019 "On employment promotion;"*
- *Law no.16/2018 "On the Albanian Diaspora"*
- *Law no.18/2017 "On the rights of children and their protection;"*
- *Law no.14/2016 "On the identification and registration of addresses of Albanian citizens living outside the Republic of Albania;"*
- *Law no.23/2015 "On Consular Services;"*
- *Law no.9887, dated 10.03.2008 "On Personal Data Protection;"*
- *Law no.9861, dated 24.01.2008 "On Control and Supervision of State Borders", etc.*

Strategic documents aim at ensuring a cross-cutting approach to migration governance and strive to address challenges related to mixed movements (irregular migration, asylum seekers and refugees, UASC's, etc.) while enhancing the development impact of migration (investment, human development, innovation, etc.)

In Albania, since 2004, several strategic policy documents on migration have been, implemented and renewed, as follows:

National Strategy on Migration and its Action Plan (2015-2010)

Action Plans on Remittances (2007-2010)

Strategy on the Return and Reintegration of Albanian Citizens (2010-2015)

National Strategy on the Fight against Trafficking in Human Beings and Children (2014-2017)

National Strategy for Employment and Skills 2014-2020 and its action plan, with regard to migrants, aim specifically to:

- Build information and counseling capacities for regular emigration for employment;
- Improve infrastructure for provision of services to emigrants;
- Strengthen private employment agencies to better perform and ensure rights are enforced;
- Increase cooperation with other countries for the management of emigration for employment through bilateral employment agreements;
- Recognize professional qualification and training acquired abroad;
- Approximate on constant basis the legislation on labor immigration with that of the EU.

Strategy on Employment and Skills (2014-2020)

Undertaking measures and activities aimed at managing regular migration for employment of Albanian citizens abroad, return migration, as well as immigration for employment of foreign citizens in the Republic of Albania. (E.g. free vocational training according to the identification of their needs, by the Regional Directorates of Public Vocational Training)

Strategy on Agriculture and Rural Development (2014-2020)

Strategy on Business and Investments (2014-2020)

National Strategy on Social Protection and Social Inclusion (2019-2022)

- Advance the Social Protection Program of Economic Assistance, Bio-Psychosocial Assessment and Disability Payments, and Social Services,

- Strengthen the cooperation of central and local government.
- Intervention and reintegration of children in the family and community and the provision of integrated services.
- Priority for providing the necessary resources for the most vulnerable groups (including migrants).

Strategy on Integrated Border Management (2016-2020)

- Further harmonization with EU policies and practices.
- Strengthening bilateral cross-border operational cooperation (establishment of joint patrols) as well as participation in regional projects and initiatives.

National Strategy for Development and Integration (NSDI) 2016-2020

Creation of an effective system of migration governance in Albania, through the attainment of the following strategic objectives:

- Promoting safe and regular channels for migration in Albania to prevent irregular migration, towards channeling 70% of the out migration from Albania through official bilateral agreements (existing and new agreements with EU and EU- countries);
- Increase the impact of emigration development by creating favoring legal and institutional mechanisms;
- Increase sustainability of return migration by supporting reintegration of returned emigrants;
- Implement, at an advanced level, the migration policy, to ensure equal treatment of third-country nationals and their integration in Albania, in line with the international standards;
- Consolidate the migration policy, the legal framework, and the management and coordination structures, to ensure a better response to migration challenges.

Diaspora Strategy (2018-2024), aims at:

- Increasing the cooperation of state institutions with Albanian communities abroad;
- Establishing a database of migrants;
- Promoting policies with host countries for integration;
- Learning the Albanian language;
- Obtaining citizenship;
- Training in the field of migration on legislation, their rights, etc.

National Strategy against Trafficking of People and the Action Plan 2018-2020, aims at:

- Strengthen cooperation and coordination between relevant authorities and CSOs specialized in this field, as well as improve the harmonization of national policies;
- Particular attention is paid to the protection of irregular migrants, especially the protection of vulnerable groups and the improvement of the identification of victims of trafficking among migrants.

National Strategy on Migration and Action Plan 2019-2022, aims at:

- Strategic governance of migration by Albanian institutions;
- Safe and orderly migration from, through and to Albania;
- Effective labor migration policy and impact of migration on local development;
- Migrant's integration and protection of migrants' rights.

C.4 Entry, Visa, Movement and Residence of Foreigners

Safe, orderly and dignified migration is one of the main strategic objectives states want to achieve.

Albania continues to take the required measures to ensure, among others, effective entry and stay policies. Although national and international law recognize the principle of freedom of movement, its scope is relatively narrow.²⁵⁰ Moreover, legitimate grounds for **refusal of admission** are very broad and included in the notions of public order (e.g. grounds based on earlier criminal convictions, earlier violations of immigration legislation, risk of irregular immigration, economic grounds), national security and public health.²⁵¹ The entry of foreigners in the Albania is realized only at the crossing points recognized and defined by law and on the basis of complete documentation and acceptable to the Albanian authorities as follows:

Entry requirements, at in accordance with the specifics of the *Acquis Communautaire* are:

- Valid travel document;
- Entry visa or residence permit issued by the competent Albanian authorities;
- Financial means, according to the provisions of bylaws;
- The foreigner is not subject to any removal or refusal order.²⁵²

Entry and exit movements to and from Albania are subject to monitoring, as well as legal guarantees. The key components for a border management framework are data, technology, trained personnel, anti-fraud and audit capability, as well as strategic partnerships.

Technology can improve effective border management processes, but it is not a substitute for appropriate legislation, well-designed procedures, and trained and experienced staff who can perform the key functions. *Data* is used to describe, reflect, and draw a better understanding of migration trends and to make more informed policy decisions relating to all facets of migration. Raw data are collected, processed, and analysed in order to extract meaningful information that is useful for migration policy makers and practitioners. However, accurate and up-to-date migration data is largely inadequate today. Collection of reliable and useable operational data requires careful attention to consistency between data definitions and data collection methods. Data must be coherent in order to be usefully exchanged between different data systems. Operational data are needed to:

- allocate and manage resources applied to migration management;
- support migration intelligence analysis;
- determine the extent to which policies are doing what they are supposed to; and
- determine the extent to which unintended negative consequences are being avoided.

Operational data are not solely a national resource. Exchange and sharing of data between countries can add significantly to the capacity to manage migration.²⁵³

Data on migration are collected and published on a regular basis by the National Institute of Statistics, the Department of Border and Migration in the General Directorate of State Police through the Total Information Management System, the National Employment Service, the Ministry of Education and Sports, the Directorate of Legal Issues and Approximation, and the Asylum Directorate.

Monitoring for Border Control is ensured via Total Information Management System (TIMS) and the Foreign Electronic Registry (FER). The TIMS database system is connected with Interpol's system, enabling the border police to identify internationally wanted persons, stolen vehicles and lost/stolen travel documents. Albania is the first of the Western Balkan countries where the European Border and Coast Guard Status Agreement with the EU has entered into force in May 2019. Frontex joint operations - deploying teams together with Albanian border guards at the Greek-Albanian border, has proved successful in strengthening border controls, enhancing security at the EU's external borders and combating migrant smuggling.

Legal guarantees are provided by a comprehensive legal framework including **Law on Foreigners, the Law on Asylum** and related by-laws, as key legal acts that regulate the procedure for prescreening of foreigners which aims at differentiating among various categories of persons on the move, such as asylum seekers, unaccompanied children, victims or potential victims of trafficking and undocumented migrants, in order to provide them with the appropriate assistance. Among the general principles and guarantees can be mentioned the principle of Non-refoulement, protection from persecution, recognition of international protection or subsidiary protection status, legal aid, interpretation services, best interest of the child, Information and Advice at Border Crossing Points and Institutions for the Execution of Criminal Sentences in Relation to Applications for International Protection, etc.

In addition, two legal acts, namely **Law No. 18/2017 on the Rights and Protection of Children** and **Law No. 121/2016 on Social Services** provide for specific protective measures for children and persons in need of protection/vulnerable categories.

C.4.1. Visa Regime

Visa policy plays an important role in reducing the incidence of irregular migration to Albania. The **E-Visa system** in place registers all foreign nationals applying for a visa when entering the country. The system is operational within the TIMS system, and it allows for the whole application process to be completed online. Another instrument that helps keep irregular stay and transit to a minimum is the application of targeted checks and the effective use of measures for irregular stay.

Visas are issued by:

- **The Ministry of Foreign Affairs**, as the institution responsible for issuing visas to the foreigners which are required to have a visa for entry into, stay or transiting through the Republic of Albania.²⁵⁴
- **Representatives of third countries**, which based on bilateral or multilateral agreements shall issue visa to the foreigners for entry into, stay or transit through the Republic of Albania.
- **The authority responsible for border and migration**, which, in exceptional cases defined by law, shall issue at the border visas to the foreigners for entry into, stay and transit through the Albania according to the legal criteria foreseen by law on Foreigners.

Visa duration can be extended only due to force majeure or humanitarian reasons. It can also be annulled or refused.

Table 8 Types of visa in RoA

<p>Type “A” visa Represents the airport transit visa, which gives to the holder the right to enter and stay in the international area of an airport circulation until necessary for the next flight to the country of destination. The validity of this visa corresponds to the time period and flight ticket reservation the visa applicant foresees for the transiting.</p> <p>Duration: with one, two or multiple entries. The validity period shall not exceed 6 months.</p>	<p>Type “C” visa Gives to the holder the right to enter and stay in the Republic of Albania for 90 days within 180 days starting from the date of first entry.</p> <p>Duration: with one, two or multiple entries. The validity period shall not exceed 5 years.</p>	<p>Type “D” visa Is issued to a foreigner intending to reside in the RoA more than 90 days within 180 days and is required for foreigners in order for them to be provided with residence permit.</p> <p>Purpose of entry: visas for economic, professional, commercial, employment activity, study purposes, family reunification, humanitarian or religious activity, diplomatic or service visa, seasonal employment purposes and humanitarian grounds.</p>
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C.4.2 Residence of foreign nationals

The foreigner can stay in the Albania for a short period, a temporary period, as well as permanently.

The Law on Foreigners has undergone continuous improvements, affecting different aspects of Residence, Visa and Work Permit procedures for foreigner employees and self-employees in Albania.

Residence for a short period may not exceed 90 days within 180 days, based on the visa issued or entry without a visa, unless otherwise provided by the Law on Foreigners or in agreements recognized by Albania. Residence for a temporary and permanent period can be realized only through the provision of a residence permit to a foreigner.

Types of residence permits

The authority responsible for border and migration provides one of the following types of residence permits to foreigners who seek to stay in Albania for a period of more than 90 days within 180 days and who meet the conditions set out in the law on Foreigners:

- **Residence permit type "A"**, non-renewable, which entitles the holder to stay in Albania within the time limit for which it is issued;
- **Renewable residence permit type "B"**, which is issued for a specified period and entitles the holder to enter, stay and leave Albania within the deadlines specified therein;
- **Residence permit type "C"**, which is issued for a permanent term and gives the holder the right to enter, stay and leave in / from Albania;
- **Residence permit type "S"**, renewable after a 6-month break, which is issued to seasonal workers and entitles the holder to enter, stay and leave Albania within the deadlines specified in it;
- **Renewable residence permit "Blue Card AL"**, which is issued for a period determined only for highly qualified employees and entitles the holder to enter, stay and leave Albania within the deadlines of defined in it.

Residence permit "Blue Card AL-C", which is issued with a permanent term only for highly qualified employees and gives the holder the right to enter, stay and leave in / from Albania.

Table 9 Specific types of permits (arts. 47-60)

Seasonal employment	Not longer than 6 months within a calendar year, with the right of renewal for up to 5 consecutive years, one after the other, provided that the time from one permit to another exceeds the term of 6 months.
Trainee free of charge	Not longer than 1 year, when it is assessed that the submitted documentation meets the requirements for obtaining a residence permit and only when it turns out that the intended activity is closely related to skills development, foreigner qualification and limited in duration.
Youth exchanges	Not longer than 1 year, only when the intended activity is closely related to the youth exchange or youth mobility scheme, provided for in bilateral or multilateral agreements in force in the Republic of Albania and limited in duration.
For voluntary services	Not longer than 1 year, only when the intended activity is closely related to the voluntary service scheme, legally recognized in the Republic of Albania and limited in duration, as well as when it meets the requirements for obtaining a "residence permit for voluntary services".
Scientific research	Not longer than 1 year, a foreigner who has entered into an agreement with an Albanian institution for this purpose and who meets the general conditions for obtaining a residence permit.
Study purposes	At a public or private educational institution recognized by the Albanian state, has the right to apply for a residence permit, not longer than one year, when issued for the first time and can be extended each time by one year until the end of school, studies or internship.
Temporary residence permit type "A" for humanitarian reasons	Residence permit in these cases is limited and cannot exceed the time limit of 6 months and can not be renewed. The residence permit issued for this reason serves only for the stay of the foreigner and does not enable re-entry into the territory of the Republic of Albania, in case the foreigner leaves the territory.
Temporary residence permit type "A", a victim or potential victim of trafficking	For a period of 3 months, the foreigner, regardless of his/her willingness to cooperate with justice , when there are reasonable grounds to believe that the foreigner is a victim or potential victim of trafficking , identified as such by the structures responsible for the identification and referral of victims of trafficking. This residence permit is given to the victim or potential victim of trafficking in order to recover, as well as to be treated according to the physical and mental condition for making an informed decision to cooperate or not with the justice authorities.
Residence permit type "B" the foreigner victim of trafficking	Identified as such by the structures responsible for the identification and referral of victims of trafficking, in one or the other of the following two situations or in both these situations: a) assesses that his / her stay is necessary due to the social and personal situation; b) considers that his / her position is necessary for the purpose of cooperating with the judiciary during the investigation or criminal proceedings.
A foreigner, who is a member of the family of an Albanian citizen.	Provided with a residence permit for a period not exceeding one year for the first time, unless otherwise provided in the agreement or in the law. The residence permit is then renewed for a period of two years. This definition also applies to a child who is not married and for whom the foreigner is a legal guardian.

The foreigner is not provided with a residence permit or his residence permit is canceled, if it is proven that the marriage is fictitious.

Residence permit is issued after application submission by the foreigner in person, and its duration is as follows:

- 3 months, 6 months or 1 year, which can be renewed no more than 5 times in a row;
- 2 years, which can be renewed no more than once;
- 5 years, according to the provisions of this law;
- permanent, in case the foreigner has had a legal residence for 5 consecutive years in Albania and has stable connections or activities in the country. (Art.34)

Residence permit Issuance - Renewal - Refusal – Annulment reasons:

- The foreigner **has not managed to submit the request or complete the necessary documentation within the set deadline** and does not present credible reasons to justify not performing this action;
- The foreigner is **not able to prove that he meets or no longer meets the conditions** required for residence, according to the required criteria;
- The foreigner has become **subject to removal from the territory** of the Albania;
- The **marriage has been dissolved**, in case the foreigner has obtained the residence permit due to family reunification;
- The **reasons for which the residence permit was issued no longer exist**, except in exceptional circumstances, if the purpose of the stay no longer exists or has changed due to medical treatment, the termination of which threatens the loss of life, family reunification or for humanitarian reasons.

Refusal to issue, renew, or revoke a residence permit shall be **notified in writing** to the applicant/holder, and shall include, *inter alia*, **the reason** for the refusal, the obligations arising for the foreigner as a result of the refusal to issue, renew, or revocation of the residence permit. Also the foreigner has a right to appeal negative decision - administratively to the direct superior authority of the authority that issued the order, as well as - in Court. The duration of the administrative and judicial appeal **should not exceed 60 days** counting from the day that the foreigner was notified of the order of refusal to issue, renew or cancel the residence permit.

The deadline for the execution of coercive measures against a foreigner, subject to the order of refusal to issue, renew or revoke the residence permit, or other acts issued following this order may be extended by the border and migration authority for proven health or humanitarian reasons.

C.5. Irregular migration

Strengthening the response to irregular migration from, to and through Albania toward the European Union remains a strategic objective.

Irregular migration poses multiple challenges to countries of origin, transit and destination, as well as to migrants themselves. Reducing irregular migration requires developing policy on return, as well as on border control, with specific legislation also on establishing legal and safe pathways for migration, as well focusing on stay / work, as the only way to effectively balance and manage migration flows.²⁵⁵

Migration through irregular channels is an existing phenomenon in Albania, where continuous comprehensive efforts are taken to reduce irregular migration. **Responsible authorities** in the areas of irregular migration are **the Ministry of Internal Affairs** through the structures including **the State Police, Border and Migration Department, Department against Organized Crime and Serious Crimes, Asylum Directorate, Anti- trafficking Directorate.**

The Border and Migration Department through its central and local structures is responsible for:

- prevention and fight against irregular migration through integrated border management;
- control of regularity of stay of foreigners in the territory and taking of measures of voluntary removal, expulsion, detention of irregular foreigners in the territory and their return to the country of origin or transit country from where they come;
- implementation of Readmission Agreements with other countries; reception, interviewing of citizens returned in the border, and their information on the possibilities of reintegration in the country;
- regional and broader cooperation in the field of exchange of statistical data on irregular migration and early warning; screening of irregular foreigners in the border or inland and their referral to the respective mechanism;
- identification and treatment of victims/potential victims of trafficking in persons in implementing the National Referral Mechanism and Standard Operating Procedures for identification, referral and assistance to potential victims of trafficking; including the unaccompanied children as regards the fight against trafficking and smuggling of persons.

Effective control and irregular migration management is achieved through cooperation and interaction between the Border and Migration Department with **the Asylum and Citizenship Directorate**, the decision-making authority responsible for asylum and refugees, and responsible for the handling of applications, processing, examining of hearings and collecting other data necessary for the completion of documentation for each asylum application.

The Anti-trafficking Directorate deals only with the monitoring, coordination, promotion and orientation of the activity of central/local structures in issues of prevention and fight against trafficking in persons, in the framework of implementation of the National Strategy of Fight against Trafficking in Persons.

Applicable legal framework addressing irregular migration has been improved continuously. Initially it was regulated by the **law no.9668, dated 18.12.2006 “On Albanian citizens migration for employment purposes”**, as amended, which defined “irregular migrant” as any Albanian citizen who does not meet all the conditions and requirements set by the host country for entry, transit, stay and exercise of a temporary, non-commercial or public activity in the territory of the latter”.²⁵⁶

Law no.108/2013 “On foreigners”, amended in 2020 and the acts implementing it, has marked a lot of improvements even with regard to the procedures for the treatment of irregular foreigners including fight against irregular migration, as well as unaccompanied children, illegal entry, stay, employment, fictitious marriages, carriers’ responsibilities etc.

Law no.10/2021 “On asylum”, which is aligned with several Directives of the Council and the European Parliament, provides for the conditions and procedures for granting and cancelling asylum, supplementary protection and temporary protection in the Republic of Albania, rights and obligations of asylum-seekers, refugees and persons under temporary and supplementary protection, rights to family reunification and also definition of conditions for integration of refugees and persons under supplementary protection in Albania.

Law no.15/2019 “On promoting employment” aims at addressing irregular migration by creating employment opportunities in the country.

In order to punish and prevent irregular emigration, criminal offenses included in the **Criminal Code** are: *Trafficking in adult persons (Art.110/a)*, *Trafficking of women (Art.114/b)*, *Trafficking of children (Art.128/b)*, *Falsification of Identity Documents, Passports or Visas (Art.189)* *Illegal crossing of the state borders (Art.297)*, *Assistance for illegal crossing of borders (Art. 298)*.

Foreign citizens who are apprehended by the Albanian police on the border or in the country undergo special reception procedures, interviewing and then screening. One of the purposes of the process is the **assessment of the vulnerabilities and specific needs, or looking for indicators of trafficking in human beings.**

Return to home country can be either voluntary or forced. Voluntary return can be either spontaneous or assisted.

Assisted Voluntary Return and Reintegration (AVRR) is the administrative, logistical or financial support, including reintegration assistance, to migrants unable or unwilling to remain in the host country or country of transit and who decide to return to their country of origin.

Forced return is a migratory movement, which, although the drivers can be diverse, involves force, compulsion, or coercion.²⁵⁷

Individuals who are eligible for return assistance include migrants in an irregular situation apprehended by the Albanian authorities, irregular migrants stranded in Albania who voluntarily request to return to their country of origin, and asylum seekers whose application has been rejected and have no means to return on their own. A **standard package** is provided to the returnees including information, psychological assistance, reception prior to return, and transportation.²⁵⁸

C.5.1. Entry refusal

Law on Foreigners defines the “Prohibition of entry” as a restrictive administrative measure against a foreigner, stated in an administrative or judicial decision, which prohibits entry and stay in the Republic of Albania for a certain period of time (Art. 3, section 24).

The foreigner intending to enter into, stay and transit through and exit from the Republic of Albania, except for the asylum cases and where otherwise determined by the bilateral or multilateral agreements, must appear in person at the border crossing point following the fulfillment of the conditions, as stipulated by Art.6 of the Law on Foreigners:

- hold a valid travel document recognized by the Republic of Albania with a validity period of at least 3 months before its expiry date;
- be issued with a valid entry visa if required or valid residence permit issued by the competent Albanian authorities, or issued by other countries and recognized by the Republic of Albania;
- not be a threat to public order and security, national security and international relations of the Republic of Albania with other countries;
- not to have remarks in the national electronic register which prohibit the entry of the alien;
- not pose a threat to public health in the Republic of Albania;
- not to be a debtor because of administrative measures imposed on him/her, according to the provisions of this law;
- based on a case by case assessment, the alien may be required to present other additional documents, which type is approved by decision of the Council of Ministers.

Border the entrance of a foreigner in the territory of Albania also for reasons of declared “persona non grata” by a motivated order of the Minister of Interior (Art.9).

The order is issued when the foreigner:

- acts or propagates against sovereignty of the Republic of Albania, national security, constitutional order and public order and security;
- is a member of terrorist organizations or supports and undertakes anarchist actions against the rule of law;
- is a threat to the country or threatens relations of the Republic of Albania with other countries;
- is suspected of entering and staying in the territory of the Republic of Albania to commit a crime or actions which pose a threat to the Republic of Albania;
- is involved in organized crime, trafficking in human beings, drugs, and any other illicit trafficking, based on the information received by the responsible institutions of national security.

Before deciding to refuse entry to a foreign national, the Albanian border authorities through the pre-screening process consisting of documentation control and preliminary interview, determine the status of the migrant either as an asylum seeker, an unaccompanied child, a potential victim of trafficking, a irregular migrant, or as a subject to entry ban. The interview is conducted in the language of the foreigner or in language known by him/her. Interview with a child is conducted in the

presence of the adults accompanying him/her, as well in the presence of a psychologist or social worker. Women are interviewed by a female police officer.

This procedure is conducted at the border or within the territory of Albania and shall be completed within 10 hours from the moment of the foreigner/s escort. If for justified reasons, the selection procedure is not terminated within the set deadline, a notice is sent to the regional/local authorities responsible for treatment of foreigners, and a special note is made in the electronic register under “Irregular Foreigners” section. Notes are made in other sections of the register based on the national foreigner category.

Furthermore, when refusing entry, the responsible officer, among other procedures, should:

- fill in a standard form for refusing entry;
- give a copy of the form to the foreign national affected by the decision;
- affix an entry stamp on the passport, cancelled by a cross in indelible black ink;
- case details are entered in to border control system TIMS;
- takes measures for the return of the national foreigner, by coordinating with the transporter according to the procedures provided by the law on Foreigners, article 153 “Transporters obligations”.²⁵⁹

C.5.2. Readmission

Readmission agreements and implementing protocols of Albania are legal instruments that regulate admission procedures and help in the swift return of those staying irregularly in the territory of Albania. Readmission agreements is one of the mechanisms utilized **to return to the country of origin Albanian citizens with an irregular stay in destination countries, as well as immigrants with an irregular stay in Albania.** Existing readmission agreements, including the Agreement between the European Community and Albania on the readmission of persons residing without authorization is used by the authorities in order to return nationals of the contracting parties, as well as third-country nationals and stateless persons, who are refused entry to the territory of Albania. Where a readmission agreement is in place, the Albanian authorities should lodge an **application for readmission** under the terms of the relevant agreement, as soon as a foreign national, covered by the agreement, who is not entitled to enter the Republic of Albania, has been detected at the border.²⁶⁰

Box 33. Readmission Agreements of Albania

The Readmission Agreement with the European Community is a multilateral agreement concerning persons residing without authorization was signed on 14 April 2005 and entered into force on 1 May 2006 for Albanian citizens and on 1 May 2008 for third country nationals.

Readmission agreements in force: Switzerland (02.01.2003), Bulgaria (02.01.2003), Germany (01.03.2003), Belgium (01.11.2004), Romania (23.05.2005), Macedonia (15.07.2005), United Kingdom (16.08.2005), Austria (29.06.2007), Benelux States (06.03.2008), Demark (01.12.2008), Island (26.08.2008), Italy (31.10.2008), Croatia (10.2.2009), Norwegian (01.05.2009), Bosnia & Herzegovina (01.04.2010), Luxemburg (16.04.2010), Slovakia (21.01.2010), Kosovo*²⁶¹ (12.03.2010), Montenegro (17.03.2011), Slovenia (03.06.2011), Serbia (12.10.2011), Malta (31.10.2011), Czech Republic (01.09.2012), France (08.04.2013), Moldova (20.03.2014), Ireland (22.05.2014), Portugal (10.9.2015), Spain (05.04 2018).

C.5.3. Voluntary return

Irregular migrants who are found in Albania or at its borders and **who desire to return voluntarily to their country of origin** shall be referred to the pre-screening team, which is exclusively designed to facilitate the identification and referral of asylum seekers, VoTs and irregular migrants who express their will to return to their countries of origin.

Individuals who are temporarily detained at the border facilities (when apprehended at the borders) or at the police commissariat (when found within the territory of Albania) shall be informed, in particular regarding the maximum length of stay and services to be provided.

Transit reception facilities, available at certain border points, are designed for the short stay of irregular foreigners pending the pre-screening process and do not represent a feasible alternative for detained irregular foreigners.²⁶²

Box 34. Best practice establishment of a new center for Registration and temporary Accommodation in Albania²⁶³

IOM Albanian supported the establishment of a new center for Registration and Temporary Accommodation for irregular migrants was opened in 2017, in Gerhot, Albania, close to Kakavija Border Crossing Point with Greece. Registration capacities of the BMP in Kakavija Border Crossing Point were increased through the provision of computers, printers and passport readers. For the migrants, 4,000 leaflets about the migration process were printed in eight languages (English, Russian, French, Arabic, Pashtu, Dari, Farsi, Urdu) as well as 3,000 mini-dictionaries in six languages (English, Russian, French, Arabic, Farsi, Urdu). Trainings on Humanitarian Border Management and Migration Crisis Management were also provided for border officials and other interested groups.

The foreigner, to whom the extension of the period of execution of the voluntary departure order has been approved, has the right:

- to stay together with his family members who are in the territory;
- to use primary health care services, receive treatment for specific diseases as well as public health services;
- the child foreigner has guaranteed access to the school system, based on his period of stay;
- special services are provided for persons with disabilities. (Art.106/7)

Assisted voluntary return is supported by IOM and priority in **assisted voluntary return** shall be given especially for the following category of persons in accordance with the Law on Foreigners:

- foreigners, who have stayed illegally in the territory of the Republic of Albania, without leading to detrimental consequences on public order and security and who declare voluntary departure from the territory;
- unaccompanied and separated children;
- persons with disabilities and or health conditions;
- parents who have children;
- victims of trafficking in human beings who wish to return to their country of origin;
- asylum-seekers, whose application for asylum has been refused or who have withdrawn the application for asylum and have no sufficient funds for return;

- foreigner who has regular documents, but who have no funds necessary for stay.
- foreigner who are apprehended while working illegally in the territory of the Republic of Albania. (Art. 108/2)

C.5.4. Detention

Detention of irregular migrants should be always considered as last resort, and it should only be used if it is necessary to prevent the risk of absconding and if the application of less coercive measures has been duly considered and found inadequate. In accordance with the developing EU acquis, temporary custody should be limited and bound to the principle of proportionality. **Detention may be used to identify the migrant and to obtain the documents needed for his/her removal.** This measure is applied when the immediate return of a foreign national is not possible.

Albania cooperates closely with the European Border and Coast Guard Agency (Frontex). A migrant detention center operates in Karreç since 2010.²⁶⁴

The Law on Foreigners provides for the **detention in a closed center** as the last administrative measure, taken and executed by the state authority responsible at the regional level for the treatment of foreigners, against the foreigner, for whom an eviction order has been issued, based on the case-by-case assessment, when all possible alternative measures have been executed, or when the assessment considers that these measures cannot be applied to the foreigner, or to the readmitted foreigner, based on the readmission agreements in force in the Republic of Albania, for the sole purpose of securing of conditions for his return/ readmission.

The closed center is an administrative institution of a defined security level and restriction of freedom for the detention of aliens who are subject to forced removal or expulsion from the territory of the Republic of Albania. The closed center must meet all the requirements for human and decent treatment and it must provide medical services and guarantee fundamental rights of individuals. The local authority responsible for border and migration, in case of detention of a foreigner in the closed center, at the request of the latter, shall take immediate measures for the care to family members of the detained alien who have been left without supervision and support (Art.120).

The foreigner is detained in a closed center, specially set up for this purpose, **for the shortest possible time**, until the legal procedures are carried out, to enable his/hers departure from Albania, within the deadlines defined in this law. The state authority responsible at the regional level for the treatment of foreigners may order the detention in a closed center, for reasons of public safety, of the foreigner, whose identity or reasons for stay are not clear. The foreigner **is notified in writing**, in the language he understands or at least in English, of the detention order in a closed center, which contains the reason for detention, the terms of detention, **the right to provide legal** representation with a lawyer chosen by him or mainly, as well as to contact his relatives.

The Ministry of Foreign Affairs at the request of the foreigner, or if foreseen in a bilateral agreement, shall immediately notify the diplomatic or consular representative of the country of the foreigner detained in the center and also of the prolongation of the period of detention. Such information shall not be made known to the diplomatic or consular representative of the country of the alien if the

latter has applied for asylum or is recognized the refugee status or is under any other form of protection by the Republic of Albania. (Art. 126)

Vulnerabilities may arise in the process of handling irregular migrants during their detention. While the term “vulnerable person” does not feature in the Criminal Procedure Code, the law includes the right of a detained or arrested foreigner to contact their consular office. Detained irregular migrants should be considered vulnerable categories in relation to legal aid as a whole and, as such, they should be provided with free legal assistance while in detention. Adequate treatment and respect of human rights is fundamental, therefore national and local capacities shall be allocated adequate resources for the effective processing of migrants and asylum seekers, so as to guarantee non-refoulement and the fast and effective identification and referral of vulnerable cases.²⁶⁵

The foreigner detained in the closed center, according to the Law on Foreigners provisions has the following rights:

- shall be informed in a language of his or her understanding or at least in 66 English, of each action performed by the competent authorities concerning his or her detention in the closed center.
- shall have the right to human treatment, provision of adequate amount of food, legal aid at any time, medical care.
- shall be entitled to the right to inform the consular representative of his or her detention. The alien shall have the right to appeal with the Judicial District Court for the violation of his or her fundamental rights at the closed center.
- shall have the right to appeal with the Judicial District Court against any violation of his/her fundamental rights in the center.
- if readmitted, he/she shall be informed of the rights and obligations he/she has based on the national legislation, in a language of his or her understanding or at least in English. (Art.127)

The foreigner is kept in a closed center for a maximum period of up to 6 months (Art.123/1). The central authority responsible for the border and migration, upon the proposal of the closed center authority, **extends the period of detention in the center of the foreigner up to another 6 months**, if, the departure of the foreigner has been impossible because:

- the foreigner refuses to provide personal data or information, as well as travel documents necessary for his return or provides false information;
- the foreigner has prevented or blocked his return in various forms;
- the delay in issuing the travel document or any other document necessary for return, requested by the authority of another country, is justified. (Art.123/2)

The request for extension of the stay period by the closed center authority is made at least 15 days before the end of the 6-month detention period in the center. The Central Border and Migration Authority review the request and notify the closed center authority of the decision taken within 10 days (Art.123/3). During the period of detention in the closed center, the authority responsible for border and migration, in cooperation with the authority of the closed center, examines the existence of conditions for keeping the detained foreigner in the center closed. Depending on the assessment of the situation, the authority responsible for the border and migration may decide to replace the measure of detention at the center with appropriate temporary measures set out in this law (Art.123/4). In case the foreigner commits a criminal offense during the stay in the closed center,

criminal prosecution is initiated against him, according to the provisions of the criminal legislation in force, and the foreigner is immediately transferred to another institution set up for this purpose, according to applicable legislation (Art.123/5).

The detention of a foreigner in the center ends:

- with the departure of the foreigner from the territory;
- upon the expiration of the detention period, specified in the detention order;
- if the stay of the foreigner becomes illegal;
- by annulling the decision of detention in the center;
- by replacing the measure of detention in the center with another temporary measure, defined in this law. (Art.124)

The foreigner is released from the center if:

- ✓ it is clear from the circumstances that the removal of the foreigner cannot be done by force;
- ✓ the court orders his/her release from the center.

Box 35 Best practice in detention of foreigners²⁶⁶

In Slovenia, the law provides for a period of 6 months with eventual extension of other six months. Belgium provides that the initial detention decision is valid for a maximum of 60 days, subject to extension with other maximum of 60 days if the possibility of an effective removal still exists but cannot immediately be executed. The Minister for Home Affairs can only decide any further extension of the detention under certain conditions (only if the returnee constitutes a menace for public order or national security) and upon agreement of the District Court. Those additional extensions are valid for 30 days. There can be consecutive extensions of this type but the absolute limit is 240 days in total.

Box 36. Alternative measures to detention²⁶⁷

Introduction to case management as an alternative to detention - Since the late 1990s, case management models have been explored by a number of governments and NGO's as a means of overseeing and working with asylum seekers awaiting final decisions in the community. These models are emerging as an innovative and improved alternative to the detention of asylum seekers and migrants. Similar initiatives have been implemented in Australia, UK, Belgium, US, Canada, etc.

Key elements of the case management model include:

- Recruitment of staff from diverse human services backgrounds to manage complex and sensitive cases.
- Provision of a single, over-arching view of cases.
- A comprehensive assessment and development of a case plan for each client, prioritizing all cases in detention.
- A focus on the client journey towards the immigration outcome (either a visa or departure) rather than focusing solely on individual transactions or events
- Early intervention.
- Identification and elimination of barriers to case progression and highlight system inadequacies.
- An ability to question legislation, process delays and promote fair and reasonable outcomes.
- Model and facilitation of effective communication strategies.
- Break down communication barriers within the Department by promoting integrated practice

rather than linear processing.²⁶⁸

In Slovenia, foreigners who are caught for the first time in an irregular status, or for whom there is no risk of absconding, are usually treated in open community centers where they are free to leave during the day.

In Canada, the state-funded Failed Refugee Project provides counseling and practical assistance to asylum seekers whose claims have been refused. Clients of the project are given 30 days to plan their return. In 2001/2002, 60 per cent of the project's clients returned to their country of origin after this period, and a further 20 per cent did so after a follow up visit from staff members of the project. Thus, overall 80 per cent of the project's clients returned without having been subjected to punitive measures like detention and forced removal.

C.5.5. Removal of foreigners

The Law on Foreigners regulates the removal orders and enforcement deadlines (Arts. 106-108). The local authority responsible for border and migration **issues the removal order for the foreigner** when he/she:

- no longer meets the conditions of stay in Albania, according to provisions stated by the law on Asylum;
- has served a sentence given by the Albanian courts for a crime committed intentionally, for which the Criminal Code provides for a minimum sentence not less than 2 years in prison;
- even though he/she meets the conditions of stay, the foreigner works in contradiction with criteria set out in the legislation in force.

The **entry ban** duration of a foreigner into the territory is based on the case-by-case assessment and can vary **from 3 months to 5 years**. The **deadline for voluntary enforcement of the removal order** shall be no less than 7 days and not more than 30 days from the date of notification. (Art. 106)

Removal order enforcement for different categories of foreigners with irregular stay, is as follows:

- for a foreigner, who has entered and stays illegally in the territory Republic of Albania, or found working in illegally, or who has served a sentence handed down by Albanian courts for a criminal offense, for which the Criminal Code of the ROA provides a minimum sentence 2 years imprisonment, for a term not exceeding 10 days from the date of notification;
- for a foreigner whose visa has been revoked, or has been denied renewal of the residence permit, or the residence permit has been revoked or revoked for one term not more than 30 days from the date of notification.

The authority responsible for border and migration shall not enforce the removal order, if the foreigner declares voluntary removal from territory. Declaration of voluntary removal shall be considered by the authority responsible for border and migration when deciding whether to include the restrictive measure of entry ban in the removal order, except for the cases where such declaration may not be considered because of public order and security interests (Art. 108.1).

The voluntary enforcement of the removal order may be postponed for an appropriate (more than 30 days), taking into account the specific circumstances of each specific case, referring to the categories:

- children who attend school and the academic year ends within less than three months - until the completion of the academic year of the children;
- foreigner, who has a financial obligation and must liquidate an investment - 3 months from the date of notification.
- foreigner who has health issues - until recovery for travel or termination of stay in isolation or quarantine according to a decision of public health authorities.

At the time of execution of the removal order of the foreigner from the territory, is taken in consideration of *the best interests of the child, if a vulnerable person, family life, and the state of health of the foreigner, subject to the order of departure* from the territory.

The foreigner is **notified in writing** about the order of removal, according to the procedures of the Code of Administrative Procedure, in **the language he/she understands**, or at least in English, acquainting him with the **appeal procedures**. The removal order is not executed until the completion of the appeal process and the final decision, unless otherwise provided in this law.

Return travel costs:

- **The Albanian authorities** shall cover the costs of return to the country of destination if a foreigner deportation order, forced eviction or deportation order has been issued to the foreigner and he/she does not have the financial means.
- If the foreigner stays in the Republic of Albania as an irregular migrant and does not have sufficient financial means to return, **his inviter or the organizer of its transport** in Albania is obliged to cover return cost.

C.5.6. Deportation

Deportation of the foreigner is regulated by the Law on Foreigners, which defines it as **an administrative measure taken for the forced removal of the foreigner from the Albanian territory**, based on case by case assessment, and applied the authority responsible for border and migration when the foreigner:

- ✓ has entered illegally the territory of Albania and there is information that he / she will transit illegally to other countries;
- ✓ has failed to leave Albania within the time limits set in the removal order, based on no objective reason or after removal from the territory and within the time limits of prohibition of entry, the foreigner re-enters into the territory of Albania;
- ✓ has not left Albania for a period of up to 60 days after expiry of the period of stay indicated in the visa, residence permit or period of stay foreseen by this law for the citizens who enter visa-free and in case of information that the foreigner intends to abscond the police authority responsible for border and migration;
- ✓ has been readmitted to another country under Readmission Agreements in force in Albania;
- ✓ has been declared undesirable person and his /her presence in the territory is considered a threat to public order and security;
- ✓ has been convicted for a criminal offence which is sentenced to a minimum of three years of imprisonment according to the Albanian legislation. (Art. 109).

The foreigner who meets one of the following requirements shall not be subject to the deportation order:

- is issued with a permanent residence permit;
- is born in Albania;
- has entered Albania as an unaccompanied or separated child.
- is issued with temporary residence permit and is married to an foreigner who has permanent residence or who is an Albanian citizen;
- based on grounded reasons to suspect that the foreigner might be punished to death, subjected to torture, inhuman and degrading treatment or punishment for discriminatory reasons in the country of origin or another country;
- is an unaccompanied child, if the country of origin, another country or other institutions do not guarantee family reunification or proper health care;
- is a family member of the foreigner who is recognized the refugee status in the Republic of Albania. (Art.113)

Box 37. Principles to consider while dealing with irregular migration²⁶⁹

- ✓ Respect for human dignity;
- ✓ Access to basic education for children;
- ✓ Prohibition of discrimination in education on the ground of 'national origin'
- ✓ Right to be provided with emergency shelter and emergency social assistance;
- ✓ Prevent assault and gender-based violence in the accommodation offered;
- ✓ Right to respect for private and family life, including the right to marry, family regularization and unification;
- ✓ Right to health and right to medical assistance;
- ✓ Right to social assistance;
- ✓ The right to an effective remedy
- ✓ Victims of trafficking are entitled to special assistance and support measures that include 'at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation'

C.6. Migration governance through protection of migrants in vulnerable situations

Certain categories of migrants, both returning Albanian citizens, foreign nationals, as well as stateless persons residing in Albania, are recognized as vulnerable categories by Albanian policies, legal framework and programmes. Persons on the move, particularly those who enter a country irregularly, are often subject to abuse and violations of human rights, including violence (such as SGBV), labor and sexual exploitation, detention and denial of access to justice.²⁷⁰

In particular, the Law on Foreigners and Law on Asylum includes references **to vulnerable persons who are “unaccompanied and separated children, persons with limited abilities, elderly people, pregnant women, single parents with children, victims of trafficking in human beings, victims of genital mutilation, LGBTI, persons with significant illness, persons with mental health problem/disorders or persons who have been subjected to torture, rape, or other forms of psychological, physical and sexual violence”**.

Applicable legal framework aims at promoting a gender sensitive and victim-centered approach. Best interest assessment and determination are key principles with respect to their identification and protection, including provision of services, referral, return and reintegration.

The Law “On Social Care Services” includes foreigners with legal residence in Albania as one of the categories that can benefit from these services. The law addresses categories eligible for state aid, and includes among others, victims of trafficking, and children including UASC’s, children in need of special protection, i.e. children that have been abandoned, have been subjected to exploitation, violence or discrimination, etc.

Individual vulnerability can be assessed through individual level factors, which are context-specific, meaning that they might be a risk factor in one context but a protective factor in another. The individual-level factors discussed in this section can be assessed through use of the questionnaires.²⁷¹ Individual factors are:

- Country of origin/citizenship
- Age
- Communication abilities
- Migration status
- Migration history
- Human trafficking
- Reasons for migrating
- Clarity of migration plans
- Migration logistics
- Physical and psychological condition
- Networks
- Education
- Financial situation
- Health, education and financial services
- Shelter

- Race, ethnicity, religion
- Diverse Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (SOGIESC)

C.6.1. Victims of Trafficking in Human Beings

Human trafficking is prevented effectively through the social and economic empowerment of vulnerable persons and groups and the population at large, and through effective law enforcement and punishment of perpetrators. It is also effectively accomplished if every victim of human trafficking is identified and provided with the assistance, protection and support he or she needs not only to recover but also to restore their lives. Other elements include legal redress and compensation.²⁷²

Albania remains primarily a country of origin for victims of human trafficking. The vast majority of victims identified in the period 2015-2019 were Albanian women and girls trafficked abroad for the purpose of sexual exploitation. The number of victims of internal trafficking has been on the rise, in particular as regards children trafficked for the purpose of sexual exploitation and exploitation of begging. Children from the Roma and Egyptian communities are at a heightened risk of being trafficked.²⁷³

Human trafficking involves the recruitment, movement or harboring of people for the purpose of exploitation - such as sexual exploitation, forced labor, slavery or organ removal. Victims can be children or adults, boys, girls, men or women, and are trafficked by the use of improper means such as the threat or use of force, fraudulent schemes, deception, or abuse of power. It can occur within a country or across borders. Human trafficking is therefore characterized by an act (recruitment, transportation, transfer, harboring, or receipt of people), specific means (threats or use of force, deception, fraud, abuse of power, or abusing someone's vulnerable condition) for the purpose of exploitation (for example sexual exploitation, forced labor, slavery or organ removal).

In contrast to human trafficking, which can take place both domestically and internationally, migrant smuggling is a crime that takes place only across borders. It consists in assisting migrants to enter or stay in a country illegally, for a financial or material gain. Smugglers make a profitable business out of migrants' need and/or desire to enter a country and the lack of legal documents to do so. International law requires governments to criminalize migrant smuggling, but not those who are smuggled. Since migrants give their consent to the smuggling venture, mostly due to the lack of regular ways to migrate, they are not considered victims in absolute terms. However, smuggled migrants are often put in dangerous situations by smugglers (such as a hazardous sea crossings), and might therefore become victims of other crimes during the smuggling process, including severe human rights violations.²⁷⁴

Albanian Criminal Law and in general the legal framework to prevent and combat trafficking and protection of victims of trafficking is in the spirit of international legal principles, reflecting child and gender sensitive approach. Other law addressing trafficking in human beings includes:

- *Law no.97/2016 on the Organization and Functioning of the Prosecutor's Office;*
- *Law no.37/2017 on the Criminal Justice Code for Juveniles;*
- *Law no.18/2017 on the Rights and Protection of the Child;*

- *Law no.111/2017 on Granting State Guaranteed Legal Aid;*
- *Law no.70/2017 amending Law No. 10192 "On the prevention and fight against organized crime and trafficking through preventive measures against property",*
- *Law no.35/2017 amending the Criminal Procedure Code (CPC);*
- *Law no.13/2020 "On some changes and additions to Law no.108/2013 on Foreigners", etc.*

Law on Asylum provides for rules in granting temporary residence permits to the foreigner – a victims or a potential victim of trafficking - by local authority responsible for border and migration.

Type "A" residence permit with a 3-months duration is granted to a trafficking victim regardless of his/her willingness to cooperate with justice institutions. This residence permit is given to the victim or potential victim in order to recover, and be able to form an informed decision whether to cooperate with the justice authorities. During the recovery and reflection period, victims or potential victims of trafficking enjoy all the rights and services that victims of trafficking benefit, according to the Albanian legislation in force.

Revocation of permit & effective communication: Permit might be revoked If it is proven that the victim or potential victim of trafficking **has unjustly acquired or claimed this status, has actively restored, voluntarily and / or on her own initiative the relationship with persons suspected of trafficking in human beings or his/her stay in the territory is considered to pose a threat to national security.** Revocation of the residence permit for the recovery and reflection period shall be communicated to the victim or potential victim of trafficking in writing, in a language he / she understands, informing him/her of the reasons for the revocation, unless the residence permit terminated for reasons of national security.

Type "B" residence permit is provided by the local authority responsible for the border and migration when the foreign victim of trafficking in Albania is identified as such by the structures responsible for the identification and referral of victims of trafficking, and found in one or the other of the following two situations or in both of these situations:

- his/her stay is necessary due to the social and personal situation;
- his/her position is necessary for the purpose of cooperating with the judiciary during the investigation or criminal proceedings.

The issuance of a residence permit is not conditional on the existence of sufficient financial means of the victim to cover the costs of the stay or the lack of identification documents of the victim or potential victim of trafficking.

Box 38. SoP for Identification and Referral of Victims of Trafficking or Potential Victims

Identification and Referral of Victims of Trafficking or Potential Victims that cover all forms of exploitation and internal or international trafficking. SOPs were developed in 2011 by the Anti-Trafficking Unit - Office of the National Coordinator on Combating Trafficking in Persons. SOPs include indicators for initial identification, which is followed by formal identification through a 'Formal Interview Form'²⁷⁵

The Council of Ministers decision No. 499, dated 29.8.2018 "On Standard Operating Procedures (SOPs) for the Protection of Victim and Potential Victims of Trafficking" regulates:

- ✓ Initial identification and response;

- ✓ Formal identification;
- ✓ Reintegration Planning and Support;
- ✓ Planning and Support for Assisted Voluntary Returns;
- ✓ Reception of trafficked persons with Albanian citizenship;
- ✓ Assisted voluntary return for foreign nationals;
- ✓ Support the investigation and punishment of traffickers.

Box 39. Bilateral agreements in the area of counter-trafficking²⁷⁶

Albania has concluded bilateral agreements in the area of counter-trafficking with neighboring countries, including *Greece, North Macedonia, Kosovo* and Montenegro*, as well as with some of the main countries of destination for Albanian victims, including the *UK*. In accordance with the Additional Protocol "On Intensifying Co-operation in the Fight against Trafficking in Persons and on the Enhanced Identification, Notification, Referral and Voluntary Assisted Return of Victims and Potential Victims of Trafficking, especially Children" signed with *Kosovo* and Montenegro*, a Joint Declaration was signed in December 2016 between the National Coordinators of Albania, Kosovo* and Montenegro to unify their Standard Operating Procedures.

C.6.2. Asylum Seekers

The Albanian legislation contains a set of guarantees that ensure the right to seek and enjoy asylum to the foreigners or the stateless persons who owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership to a particular social group, or political opinion, are outside of their country of citizenship or outside of former habitual country residence and have no possibilities or desire to seek the protection of that country, as a consequence of these events.

Ministry of the Internal Affairs has the main responsibility in the area of migration and asylum. General Directorate for Border and Migration is responsible for the screening of irregular foreigners in the border and inland. The competent authorities cooperate with UNHCR during the procedure of the examination of the request for international protection up to the granting of the final decision from the Responsible Authority for Asylum and Refugees.

The Law no.10/2021 "On asylum" sets out the conditions and procedures for:

- granting refugee status;
- supplementary protection and temporary protection in the Republic of Albania;
- the loss, termination or abrogation of international protection;
- the rights and obligations of refugees, applicants for international protection, persons under temporary and supplementary protection;
- the content of refugee status and supplementary protection;
- the right to family reunification;
- determining the conditions for the integration of refugees and persons with additional protection in the Republic of Albania.

The principle of non-refoulement, as a fundamental principle of refugee and human rights law, is part of the legal guarantees provided by the Law on Asylum to prohibit the expulsion or return of a foreign national or a stateless person in any manner whatsoever to the frontiers of territories where

his life or freedom would be under threat on account of their race, religion, nationality, membership of a particular social group or political opinion. An applicant, refugee, or a person with subsidiary protection and temporary protection status shall not be expelled from the territory of Albania to:

- a country where their life or liberty is threatened on grounds of their race, religious belief, nationality, membership of a certain social group or political convictions.
- a country where there are grounds to believe that the applicant may be at risk of being subjected to torture, inhuman and degrading punishment or any other treatment set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court, or in international agreements/conventions in which Albania is a party.
- a country where there are grounds to believe that the applicant may be at risk of being subjected to forced disappearance;
- his or her country of origin if the foreigner has been granted one of the forms of protection in accordance with the provisions of this Law;
- a third country, which may return or send the person to one of the countries defined in these paragraphs herein. (Art. 11/1)

A foreigner whose application has been rejected by the authority responsible for asylum and refugees shall not be expelled or removed from the territory of Albania before exercising or being provided with legal opportunities to avail himself or herself of the procedural rights and guarantees laid down in this Law, except in cases where this Law provides otherwise. By way of derogation, the applicant may be returned when:

- there are reasonable grounds to consider that the applicant poses a risk to the national security of Albania;
- the applicant has been convicted by a final judgment, in particular for a crime which constitutes a danger to the security of the Republic of Albania.(Art. 11/3)

The asylum-seeker, after filing an asylum request, is placed in the open reception center for asylum-seekers. The center receives persons who have been refused asylum application, until the end of the appeal procedures or the time limit of appeal. The center provides the minimum living conditions, such as accommodation, food, health insurance and minimum hygiene conditions. (Art.44). The asylum-seeker has the right to stay in the reception center during the duration of the procedure granting the refugee status. If the asylum-seeker has the possibility to stay outside the reception center and afford minimum living conditions, the Asylum Directorate decides to remove the asylum-seeker from this center.

It shall be emphasized that the refugee status determination has a declaratory nature. He/she does not become a refugee because of recognition, but is recognized because he/she is a refugee.

Until the completion of the procedures for determining the status of international protection, the applicant has **the right to**:

- stay in the Republic of Albania;
- benefit from the minimum living conditions;
- have health care;
- benefit from social care services;
- receive legal aid guaranteed by the state;

- have education for child applicants;
- exercise freedom of thought and religion;
- be employed and obtain professional training.

Box 40. 2019 statistics on Asylum

Asylum seekers, referring to the Asylum and Citizenship Directorate of the Ministry of Internal Affairs, result 6, 557 (mainly women) with an increase of 49.5% compared to 2018. Most of the cases are from Syria (1,682), Pakistan (275), Iraq (2408), Palestine (292), Alger (499), and from Afghanistan (269).

24 positive asylum decisions granted, by giving the refugee and complementary protection status for asylum seekers, which mostly are from Palestine. The number of suspension and termination decisions for the asylum seeker was 78, which mostly are from Syria.

Right to administrative and judicial appeal - National Commission for Asylum and Refugees is the administrative body for review of the administrative appeal filed against the decision given by the Authority Responsible for Asylum and Refugees related to removal from the center when creating material damages, refusal of family reunification, etc.

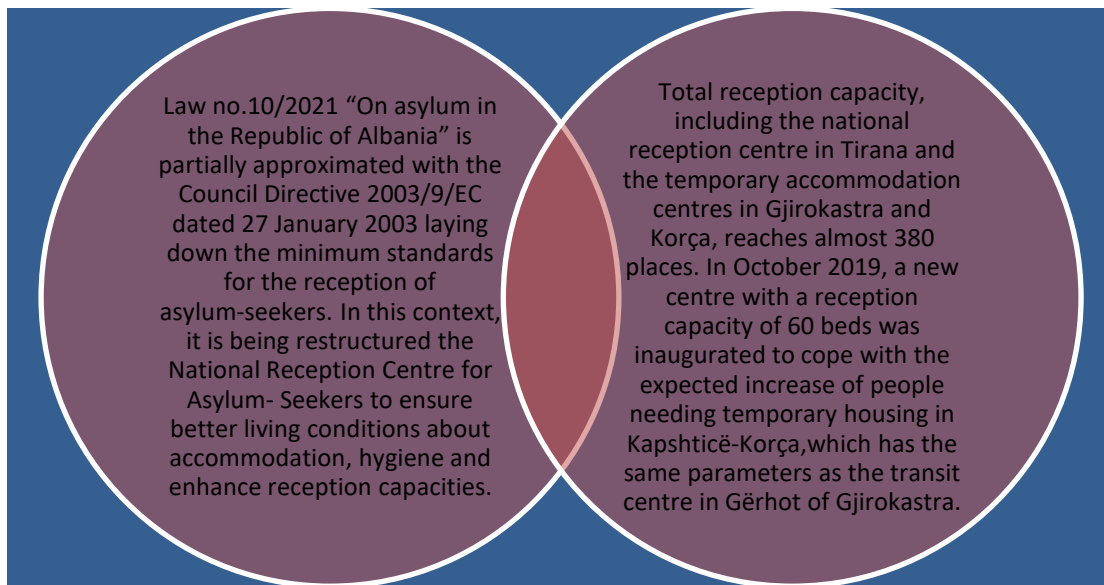
Deadline for submitting a complaint to the National Commission for Asylum and Refugees against the administrative decision of the authority responsible for asylum and refugees is **15 (fifteen) days** from the day of notification of the decision, except in specified cases otherwise in this law. For the filing of the complaint to the Commission, the provisions made in the Code of Administrative Procedures.

As a general rule, the Commission **decides on the appeal within 30 (thirty) days from the date of filing the complaint**, but **shorter deadline (15 days) apply** when the complaint is unfounded or manifestly unfounded. At the end of the administrative procedure, the Commission **decides**:

- **upholding** the decision of the authority responsible for asylum and refugees;
- **abrogation** of the decision of the authority responsible for asylum and refugees and the return of the issue for reconsideration of this responsible structure;
- **amending** the decision of the authority responsible for asylum and refugees and adjudicating the merits of the case.

Judicial appeal against the decision of the National Commission for Asylum and Refugees can **be appealed to the competent administrative court**, in accordance with the provisions of the legislation relevant in force. The appeal to the administrative court according to this point, **suspends** the execution of the decision of Commission.

Figure 12 Reception standards



C.6.3. Refugees

Albania has adhered to the Convention on Status of the Refugees through Decree no.200, dated 3.6.1992. Refugee status is granted based on the conditions, criteria and procedures regulated by **Asylum Law**. The authority responsible for asylum and refugees informs the person with refugee status or the person with supplementary protection status within 15 (fifteen) days from the day of recognition of refugee status or supplementary protection, in a language which he understands or in a manner reasonable is assumed to understand, regarding the rights and obligations arising from the recognition of the relevant status.

A person with refugee status or a person with subsidiary protection status enjoys the rights up the level of protection enjoyed by the Albanian citizen, such as:

- ✓ stay in Albania for as long as the refugee status or supplementary protection lasts;
- ✓ social care services, under the same conditions as Albanian citizens;
- ✓ health care under the same conditions as Albanian citizens;
- ✓ housing;
- ✓ pre-university education and higher education under the same conditions as Albanian citizens;
- ✓ assistance for integration into society;
- ✓ the exercise of religious thought and belief and freedom of religion according to their convictions, in accordance with the provisions of the relevant legislation in force;
- ✓ employment and professional training;
- ✓ family reunification;
- ✓ access to court and receive free legal aid;
- ✓ possess movable and immovable property.

A foreign citizen or a stateless person is **excluded from the right to recognition of the status of refugees** in Albania, if there are reasonable suspicions about:

- committing a crime against peace, war crimes or against humanity, committing an act terrorist, as defined in international conventions;

- the threat to public order and national security of the Republic of Albania, for due to committing a serious non-political crime outside the territory of the Republic of Albania, before entering the territory of the Republic of Albania;
- guilt for actions contrary to the purposes and principles of the United Nations.

C.6.4. Unaccompanied and Separated Children (UASC)

“Unaccompanied children”, as defined by the Law “On Foreigners,” as amended, are foreign or stateless citizens below 18 years of age, who enter the territory of the Republic of Albania unaccompanied by anyone of major age who is responsible for them, according to law or customs and for as long as they are not effectively under the care of a similar individual. Included herein are also those children who have been left unaccompanied upon entry in the territory of Albania.

Unaccompanied children face many challenges throughout their migration journey. Children on the move are easy prey for abusers, exploiters and traffickers and their vulnerability puts them at high risk of sexual and gender-based violence at every stage of their migratory path. When children are in transit alone, they are at very high risk of being assaulted, sexually abused, raped, trafficked into sexual exploitation or forced into “survival sex”. For many children, sexual and gender-based violence is a specter that haunts all stages of their migration journey.²⁷⁷

The treatment of children is based on the universally accepted principle that they, due their vulnerability, dependency and their ongoing physical and intellectual development require special protection. The most important principle contained in the acquis in this area is that the best interests of the child must guide the legislation and any decisions and matters of the competent authorities in each case.²⁷⁸

Albanian Border Police is the institution in charge of identifying migrants and refugees entering Albania. While the pre-screening procedures are in place, proper identification and registration of unaccompanied children remains a challenge for border authorities. In the absence of identification documents the border and migration police have to rely either on the statements provided by children or by their accompanying persons or families, even when there is no evidence confirming a relationship between them, the lack of qualified interpreters and multidisciplinary evaluation teams complicates the process, increasing the risks for children, who may fall prey to human traffickers. However, failure to identify at an early stage unaccompanied or separated children is also a failure to refer on time those groups, which are most in need of protection.²⁷⁹ The extreme vulnerability of a child should be recognized and migrant children should thus be treated first and foremost as children.²⁸⁰ A durable solution must give primary consideration to the child’s best interests. This requires determining the best interests on the basis of the child’s individual circumstances.

According to the **Law “On the rights of children and their protection”**, unaccompanied children who enter Albania are considered to be in need of protection. Furthermore, the Law on Foreigners, stipulates that UASC’s must be sheltered in open centers and not placed in a detention center. Furthermore, dedicated mechanisms are needed for the provision of social care and support to returnee Albanian UASC’s whose families have not been identified yet or have been considered abandoned by their parents:

- In all actions concerning children, the best interests of the child shall be a primary consideration.
- The principle of the best interests of the child applies to all children, without discrimination.
- The best interests' principle can only truly operate when children themselves are viewed as individual rights holders and their right to participation is respected.
- Best Interests Determination (BID) is a key child protection tool providing procedural safeguards and protection measures for children at risk in accordance with the UNCRC.
- BID includes case management, monitoring and follow-up of children at risk.
- BID is a key part of a child protection system and needs to be integrated into the overall protection strategy.²⁸¹

Building on law no. 18/2017 "On the rights and protection of children", the **Council of Ministers decision no.111, date 06.03.2019 "On procedures and rules for return and readmission of children"** has filled in the legislative gap on unaccompanied immigrant children. This decision aims to specify in detail the procedures and rules on the processes of: return of unaccompanied, foreign or stateless children that are in the Albanian territory; repatriation of unaccompanied Albanian children, that are in the territory of a foreign state; readmission in the territory of the Republic of Albania of UASCs coming from third countries or are stateless, as a result of the implementation of the readmission agreements between the Republic of Albania and other countries. The purpose of this document is to guarantee the rights of UACSs and to provide them with the highest possible protection, by the establishment of principles, procedures, and mechanisms responsible for UACSs, according to an integrated protection system and efficient coordination between all state institutions and non-profit organizations, taking into account the best interest of the child. With the entry into force of the new DCM, Border and Migration authorities should refer the cases of foreign unaccompanied children to Child Protection Officers, who are responsible for following court proceedings, preparing assessment reports and the individual protection plans for the unaccompanied children.²⁸²

The Law on Asylum primary consideration is child's best interest, when assessing cases on an individual basis (Art.24) The Law follows a child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns. Child victims are entitled to assistance and support taking account of their special circumstances. Following EU acquis standards, the Law stipulates for necessary measures to provide a durable solution based on an individual assessment of the best interest of the child. Specific detailed rules on unaccompanied children protection upon arrival at the border are:

- The unaccompanied child (applicant) is **taken into protection and assigned a guardian**, in accordance with the legislation in force, at the moment that expresses the purpose for international protection in the Republic of Albania;
- The local authority for border and migration immediately notifies the structure of **social services in the municipality**. The child protection employee, within 5 (five) days from the day of making the decision for the respective protection measure by the director of the social services structure in the municipality, submits to the competent court the request for the validity of the emergency protection measure or protection measure for placing the child in alternative care together with the request for custody;
- Under no circumstances may the unaccompanied child be questioned without being accompanied by the child protection officer as his /her representative. The child protection employee performs the duties by applying the principle of the **best interests of the child**. The

child protection worker, appointed as a representative of the unaccompanied child, can only be changed if necessary;

- The caregiver informs the unaccompanied child about the meaning and eventual consequences of the personal interview and, when necessary, how to prepare for the **personal interview**. The child protection officer in the municipality or administrative unit is allowed to participate in the interview and has the right to submit questions or comments within the framework set by the interviewing officer;
- In cases when the unaccompanied child is interviewed for the application submitted for international protection, the official who has the necessary knowledge for the special needs of the child conducts this interview. (Art.52, paragraphs 1-4)

The authority responsible for asylum and refugees:

- Shall make every effort, in cooperation with the responsible national authorities or international organizations, to take all measures to **trace/locate as soon as possible the parents or other close relatives** of the unaccompanied child;
- Coordinates the work with the responsible structures so that the unaccompanied child from the moment of entering the territory of the Republic of Albania is **settled**:
 - o with adult relatives;
 - o with a foster family;
 - o in specialized centers for accommodation of children; or
 - o in other accommodation suitable for children.
- Exceptionally, the unaccompanied child applicant who has reached the age of 16 may **be placed in accommodation centers** for adult seekers, if he/she has given his/her consent and is in his / her interest and placed in the care of an adult relative who stays with him in the Center;
- In cases where there may be a threat to the life or integrity of the unaccompanied child or of close family members, especially if they have remained in the country of origin, the responsible authorities shall ensure that the **collection, exchange and processing of relevant information** with those persons to be done on a **confidential basis**;
- As far as possible, **siblings should be kept together** taking into account the best interests of the children and in particular their age and degree of maturity. Changes in the residence of unaccompanied children should be limited as much as possible. (Art.52, paragraphs 5-9)

Box 41. Best Practice UASC Protection ²⁸³

French, Norway and UK authorities, inter alia, have cooperated with the Albanian Border Police and the Social Services for tracing the family origin in Albania and to assess the family and to determine whether it is in the best interest of the child to return²⁸⁴. EU countries, like Belgium, the Netherland, offer the possibility of assisted voluntary and re-integration of the UASCs.

Return in the country of origin should in principle be organized if the return is in the **best interest of the child** and in case such a decision, accounts for, inter alia:

- an assessment on the family, when appropriate, from social network organizations;
- availability of the safety and other conditions, including the socio-economic conditions the child will be faced with, including child care services for the child;
- the points of view of the child in implementation of his/her right and the points of view of the ones caring about him/her;

- level of integration for the child in the country of destination and duration of absence in the country of origin;
- the child right “to preserve his/her identity, including the nationality, name and family ties, possibility of continuity of education of the child according to ethnic, cultural and language dependency;
- In the absence of availability from foster carers or the wide family, the return to the country of origin, should in principle not happen without the preliminary and safe preparation of responsibilities of care and foster care upon the return to the country of origin.²⁸⁵

C.6.5. Women migrants ²⁸⁶

The migration of women has always been an important component of international migration.. Women often migrate officially as dependent family members of other migrants or to marry someone in another country. Female migrants are, however, increasingly part of flows of migrant workers, moving on their own to become the principal wage earners for their families. Most migrant women move voluntarily, but women and girls are also forced migrants leaving their countries in order to flee conflict, persecution, environmental degradation, natural disasters or other situations that affect their security, livelihood or habitat. It is important to understand the causes and consequences of international migration from a gender perspective because hierarchical social relations related to gender shape the migration experiences of migrants, whether male or female. Understanding whether migration occurs because of gender inequality or whether migration itself helps to perpetuate gender disparities is important to guide the formulation of policy and measures to address the specific needs of women who migrate. ²⁸⁷

Most migrant women in Albania are integrated in the labor market, while some live in the country as a result of family reunification. Usually migrants bring their families in Albania, a phenomenon that has produced a significant level of family migration in place.

The Law on Asylum addresses the needs of female asylum seekers, but this should also be reflected in the implementation process, especially during pre-screening process, where the presence of female screening staff at most border crossing points shall be the rule. Some women may tend either to refuse to talk to border authorities or ask a male family member to respond on their behalf; which results in a procedure that is not in line with the pre-screening rules foreseen for the identification of potential victims of trafficking. Apart from the cultural sensitivities of approaching female members of particular immigrant groups, at-risk women (victims of potential victims of trafficking or human smuggling), might have potential security risks (due to their marginalized and exploitative status) that can be better addressed by female staff members and tailored services in accommodation facilities.²⁸⁸ Besides the interpreter, cultural mediators shall be added values to the border team authorities, They can provide information on different sets of value, orientations to life, beliefs, assumptions and socio-cultural conventions by clarifying culture-specific expressions and concepts that might give rise to misunderstanding.²⁸⁹

Foreign nationals or stateless persons who have sought international protection according to the asylum law , and foreigners with regular residence for various reasons according to legislation in

force for foreigners, are included in the category of subjects granted special protection by **Law no. No.9669, dated 18.12.2006 “On measures against violence in family relations”, as amended.**

Box 42. Rights of victims of violence

- be treated with dignity, without discrimination;
- to request the fulfillment of the claim for protection order from the perpetrator;
- file a criminal report against the perpetrator;
- have free legal aid;
- Provide immediate protection for them and their family;
- seek shelter in a Center for Victims of Violence;
- have medical care, psychological help, counseling and other services provided by the authorities, organizations or institutions responsible for assistance to victims of violence.

C.7. Labor migration governance

C.7.1. Rights of migrant workers and their families

Integration is defined as the two-way process of mutual adaptation between migrants and host societies in which migrants are incorporated into the social, economic, cultural and political life of the receiving community. As such, integration entails a set of joint responsibilities for migrants and host communities, and, in this broad understanding, incorporates other related notions such as social inclusion and social cohesion. Integration is a cross-cutting and multi-sectorial issue that pertains to policy areas that address the economic, social, legal, cultural, and civic spheres and impacts all aspects of migrants' lives and their communities. Integration requires comprehensive and coherent policy approaches across sectors based on partnerships between States and various stakeholders, including intergovernmental organizations, civil society organizations, private sector actors and migrants themselves. Integration services and social cohesion support help facilitate access to health care, education and employment, and seek to ensure migrants' social and economic inclusion. Integration policies are more effective when they take a "whole-of-society" approach, and when there is a clear understanding of expectations and obligations from all involved - the migrants and the receiving society, including authorities at the local, regional and national levels.²⁹⁰

Promoting quality jobs and skills opportunities for all, as well as fostering decent job opportunities considering specific needs migrants remain among the strategic objectives of Albanian authorities.²⁹¹ Migrant workers in Albania possess fundamental rights that have been given expression in a number of ILO Conventions and other human rights instruments that embody the internationally elaborated consensus on the treatment migrant workers are to be accorded. Applying international standards, in respect to migrant workers, benefits both national and migrant workers of the receiving country. National workers will not be displaced if foreign workers are paid equal wages. Enterprises will make the necessary adjustments to stay competitive. And the social problems that come with exploiting certain groups can be avoided.²⁹²

Measures designed to secure decent work for migrant workers form an essential part of a sound, comprehensive approach to regulating migration. The normative framework elaborated by the ILO and the UN provides a foundation on which to base national legislation, policy and practices.

Strengthening the governance of the labor market and the qualification systems is a responsibility distributed among various ministries and subordinate agencies, such as:

- *Ministry of Internal Affairs;*
- *Ministry of Justice;*
- *Ministry of Education, Youth and Sports;*
- *INSTAT.*

International organizations include:

- *International Organization for Migration (IOM);*
- *the International Labor Organization (ILO);*
- *the United Nations High Commissioner for Refugees (UNHCR);*
- *the United Nations Development Programme (UNDP);*
- *the United Nations Children's Fund (UNICEF).*

The migrant workers' rights in Albania are addressed by a **comprehensive legal framework**, which has been developed in compliance with international instruments.

- *The Constitution of Albania;*

The Constitution of Albania defines the rights of foreigners in Albania and prohibits deportation collective of foreigners from Albania. Individual deportation is allowed, if it meets the conditions set by law.

- *Labor Code;*

Some of the latest amendments affect foreign workers who are temporarily employed in Albania, such as: a) a foreign company sends its employees to Albania to work for a local company, for a period of less than 12 months; b) a foreign company sends its workers to work for its branch in Albania; c) an employment agency sends foreign workers recruited to work for a local company in Albania. In all the above cases, the employment relationship is regulated by the Albanian legislation. However, in cases where Albanian legislation is less favorable than the domestic legislation, the labor relations are regulated by the legislation of the country of workers origin.

- *Law no.9668, date 18.12.2006 "Labor Migration of Albanian Citizens;*

The law defines the rights of Albanian migrants such as: political rights, the right to representation, the right to benefit from public services, fiscal and customs incentives, the right to receive migrant status. The law sets out the government's obligations to create the following conditions for migrants: free movement, gender equality, prohibition of trafficking, non-discrimination, publication of job offers, prohibition of false information, education, maintained links with migrant communities, promotion of return, administrative facilities, compulsory repatriation of children, exemption from fees and taxes travel and airport, cooperation with host countries, social security agreements and pensions, regulation and monitoring of private migrant services.

- *Law no.10428, date 02.06.2011, "On International Private Law";*

- *The law addresses the rights of individuals with multiple nationalities and stateless individuals;*
- *Conditions for foreign marriages with Albanians must respect Albanian legislation;*
- *The forms of marital relations of foreigners with Albanians must be respected the legislation of the country where the marriage is entered into and where it is legally recognized;*
- *Marital relations;*
- *Marriage property regime;*
- *Divorces;*
- *Obligation regarding provision of food for children;*
- *Parent-child relationships;*
- *Adoption and adoption care;*
- *Property rights of a person married to a foreigner;*
- *Intellectual property rights of a person married to a foreigner;*
- *Contract.*
- *Law no.108/2013 "On Foreigners" amended,²⁹³*

This law provides for general conditions for foreigners employment in Albania. It regulates quotas, which serve as reference for issuing work permits. Types of residence permits for employment or self-employment purposes are also regulated.

- *Law no.10/2021 “Asylum in the Republic of Albania” and the respective Council of Ministers Decisions and the regulatory framework stemming from these legal acts address migrant workers’ rights.²⁹⁴*

This law provides conditions and procedures for granting and removal of asylum; additional protection; temporary protection; the rights and obligations of asylum seekers, refugees and persons under temporary and subsidiary protection; refugee status; right for family reunification; conditions for the integration of refugees and persons under subsidiary protection in Albania. Asylum seekers enjoy these rights equally with Albanian citizens: in education, work although they are provided with a one-year work permit (renewable), social assistance, social care, health care, health insurance, social security, housing, family reunification, protection of temporary and subsidiary protection. Employed asylum seekers enjoy the same rights as migrants for employment purposes.

The National Employment Strategy and Diaspora Strategy remains crucial **strategic documents** to ensure an effective labor policy implementation in respect of standards on ethical and fair recruitment that are aligned to internationally recognized standards.

The employment standards of foreigners in Albania are in line with EU standards for the issue of visas, the employment of foreign resident legal workers, the employment of professionals’ qualified foreign residents, and repatriation of irregular residents, support for foreigners, victims of human trafficking, student entry, trainees and volunteers, and equal treatment of foreigners in employment and occupation.²⁹⁵

Albania has ratified and is successfully implementing the majority of **international conventions** on migrant workers. Both ILO and UN instruments recognize that all migrant workers, including those in irregular status, should enjoy their fundamental rights. Unless otherwise stated, **most ILO instruments apply to all workers, including migrant workers in irregular status**. Although it is a typical country of origin, Albania has an almost complete legal framework on migrant workers. Albania’s legislation favors the entrance, stay, employment and study of foreigners in Albania.²⁹⁶ Migrant workers, though non-nationals, are generally entitled to the same human rights under domestic legislation as local citizens.

The implementation of rights of migrant workers in Albania is guided by the following principles:

- *Respecting human rights: the right of life, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment humiliating, the right to freedom of thought, conscience and religion, the right to life privacy, the right to liberty and security, the right to a fair trial,*
- *Eliminating discrimination on race, colour, ethnicity, language, culture, economic, sex and gender grounds;*
- *Transparency of the process;*
- *Integrity and dignity;*
- *The right of migrant workers to appeal to General Directorate of Border and Migration the decisions taken by regional authorities and to appeal to the court the decisions taken by General Directorate of Border and Migration;*
- *Granting the right of family reunion and the full rights to migrants' family members. In this respect, the legislation is becoming more liberal. Migrant workers can now bring their family members in the country without completing one year of work and stay in the country;*
- *The synergy between the residency rights and employment rights or other motives of foreigners legally staying in the country.*

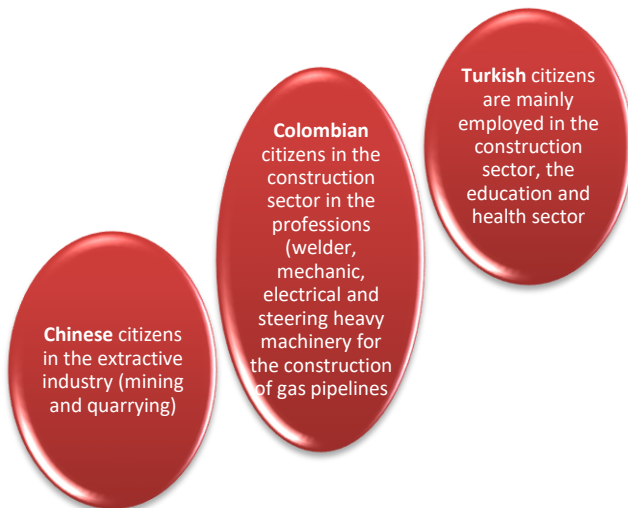
The rights of migrant workers are implemented closely linked with the country's safety and public order. Therefore, the legislation sanctions the right of proper institutions and agencies to deny entrance and refuse visas, remove, and expulse and repatriate the foreigners who create and pose threats to the country's security and public order. The legislation defines the right of the Government to declare foreigners falling within the above categories *persona non grata* for a period of five years or more. The standards of employment of foreigners in Albania are in compliance with EU standards on visa issue, employment of legal resident foreign workers, employment of legal resident foreign qualified professionals, repatriation of irregular migrants, support to foreigners, victims of human trafficking, entrance of students, trainees and voluntaries, and equal treatment of foreigners.

Albania approves each October the **employment quota for managing labor immigration** determining the sectors and professions in which there are shortages, along with the number of work permits, in line with.²⁹⁷ **EU citizens are eligible to work in Albania without a work permit.** This is in line with the Law on foreigners (as amended) under which nationals of an EU Member State or Schengen country, legally residing in Albania do not need a work permit or business registration certificate.

For citizens who are not from EU or Schengen countries the procedure to obtain the Work Permit in Albania has been simplified, more respectively as follows:

- The work permit is issued within a 10 days period compared to the 30 days period;
- The Albanian company/branch of foreign company does not need to file anymore the Employment Offer before the Labor Offices and wait 3 – 4 weeks in order to start the procedures for Work Permits. Upon the signature of the employment contract, the company may file normally the request for Work Permit.

Figure 13 Migrants from non-EU countries



Foreign workers employed in the IT sector in Albania are now excluded from the “Quota regime”. Migrants are employed in IT & Communication, agriculture, mining, productive activities, basic services, trade, construction, transport, financial services and other services. The main sectors are information technology and communications, manufacturing and extractive industries and wholesale and retail trade, construction sectors and other service activities.²⁹⁸

Before being provided with a visa, a work permit and a residence permit the foreign worker shall pay the required fees. The residence permit is issued for an employed person, self –employed, highly qualified, seasonal worker. The residence permit shall be issued in accordance with the work permit, and the holder is obliged to notify the competent authorities of any change of conditions for which the permit is issued and request for its approval if the change is related to: *a) name and address of employer, and address of place of residence and place of work; b) valid employment contract.* This permit of both categories, can **be revoked or annulled**, except for:

- Public health reasons, if the holder suffers a disease or becomes incapable for working after the residence permit has been issued;
- May not be cancelled because of changes in the internal labor market;
- Unemployment/financial loss in itself shall not be a sufficient reason for annulment of the “residence permit for an employed person”, except for the cases when the period of unemployment exceeds the following periods:
 - 3 months within a 12-month period for the holder of the “residence permit for an employed person”, who has lawfully exercised activities as employed person at least for 3 years;
 - 6 months within a 12-month period for the holder of the “residence permit for an employed person”, who has lawfully exercised activities as employed person for over 3 years.

The top countries of origin of work permit recipients in 2017 included:

- Turkey (582 work permits or 34% of the total)
- China (208 work permits or 12% of the total)
- Colombia (85 work permits or 6% of the total)

In order to be employed in Albania, foreigners must be provided with: work permit, the certificate of temporary work up to 60 or 90 days/year; permanent work certificate than 90 days/year; special permit based on international conventions ratified by Albania, or defined by sublegal acts.²⁹⁹

The preliminary actions for establishing a business activity or service are not considered as work.

The application for a work permit for a foreigner can be presented by the **legally staying foreigner** in the Republic of Albania or **by the employer**, who:

- has the right to apply for a work permit for foreigners only after having published the job vacancy for 4 weeks and within the limits of the approved or categories set out Law on Foreigners.
- must notify the relevant employment office and the regional structures responsible for border and migration within 8 days after the beginning of the work of the foreigner.

The processing of the application and issuance of work permit when the criteria required in the legislation in force are satisfied is made **within 30 days from the date of application**.

Work permit shall be renewed – refused to be renewed – expires - become invalid – cancelled.

An employer may not employ a foreigner who is staying irregularly in Albania.
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Migrants have the right to fair remuneration, just and favorable conditions of work and freedom of association in labor rights. Slavery and servitude and forced labor are prohibited, as well the use of illegal confinement and withholding travel documents as a means to force migrants into compulsory labor. With respect to **migrant children**, the minimum age is 16 years for admission to employment, except for other situations regulated by the Labor Code. Medical control is fundamental to the employment of persons under 18 years. **Migrant women** enjoy the same guarantees of Albanian women in employment relations, especially during pregnancy or when becoming mothers.³⁰⁰

C.8. Rights of Migrants

Albanian legislation aim at enforcement and the implementation of a range of the human, economic and social rights to foreigners in the country. Legislation in force is generally in compliance with EU standards regarding the legal provision on non-discrimination. **Equality of the rights of foreigners with those of nationals is enshrined in Article 16 of the Constitution of Albania, which also extends to non-nationals a range of fundamental human rights and freedoms, including equality and non-discrimination.**³⁰¹

Migration legislation grants foreign long-term residents economic rights, health-related and social rights on the same terms as the Albanian nationals. Access is also extended to residents on family reunification permits as under Article 84 of the Law on Foreigners, foreign family members of Albanian nationals who are willing to work are treated the same as Albanian nationals. Migrants' rights are explicitly guaranteed in several laws and sub legal acts implementing legislation, such as:

- *Labor Code*;
- *Law No. 9668 dated 18.12.2006 "On the emigration of Albanian citizens for employment purposes"*;
- *Law No. 10 428 dated 2.6.2011 "On International Private Law"*;
- *Law No. 108/2013 On Foreigners" as amended*;
- *Law no. 10/2021 "On Asylum", the Law No. 23/2015 on Foreign Service*;
- *Law No. 10221/2010 "On protection against discrimination", as amended.*

Albania has also ratified the majority of **international human rights instruments** and the main conventions on the rights of migrants, and implements successfully the majority of international conventions on migrant workers with domestic migration legislation generally reflecting the principles of international conventions on migrants' rights.

C.8.1. Social and economic rights

Equal access to social protection (social insurance, health care and other social and economic rights) for all Albanian citizens and migrants are among constitutional guarantees. Under Albanian legislation, **foreign citizens working in Albania for Albanian employers, and foreign citizens working in Albania for non-Albanian employers are entitled to Albanian social insurance**, provided they do not enjoy other more favorable social insurance protection.

Migrants' employment is oriented in the field of construction, services and commerce. The law on foreigners regulates work permit or registration certificate issuance criteria and procedures. On the coordination of social security systems, Albania has bilateral agreements with Belgium, Czech Republic, Germany, Luxembourg, Hungary, Austria, Romania, North Macedonia, Turkey and Kosovo. It has concluded new agreements with Switzerland and Canada and negotiations with Bulgaria for a new agreement started. There have been exchanges Montenegro, Spain, France and Croatia on coordinating social security schemes.

Box 43. Best practice in migrant employment

Slovenia: Skuhna is a social enterprise that runs a restaurant providing authentic food from Africa, Asia and South America. The Skuhna project was launched in 2012 as a three-year project of the

Institute for Global Learning with Voluntariat Institute as a partner organization. The European Union and the Slovenian Ministry of Labor funded the project. During the project 8 migrants were provided with training mainly in culinary work. Six of them were then employed in the project.

Portugal: Make Food Not War started in October 2016 as a social project to help refugees, based in gastronomy of the Middle East. The associations Crescer/Grow and Popular Cuisine from Mouraria joined the initiative and the food started to be cooked. Lunches cost €15 and the money is given to the refugees.

C.8.2. Access to health care

Regular migrants generally enjoy the same status as Albanian citizens in accessing government funded health services. All economically active persons, permanently resident in Albania, make use of health services on the basis of their obligatory contributions to the state health insurance fund. Undocumented migrants who are in urgent need of medical assistance can access the necessary care; and that this included in at least one case admission to hospital and surgery.³⁰²

The Law on Foreigners guarantees health care to foreigners hosted in closed reception facilities and for all categories of immigrants irrespective of their legal status when found in a situation of medical emergency and in cases when lack of medical care may jeopardize their life.

The health system in Albania is mainly public. The state provides most of the services offered to the population in the field of health promotion, and disease prevention, diagnosis and treatment. Preventative, diagnostic and curative health care is organized in three levels: primary, secondary and tertiary health care. Public health services and promotion are provided within the primary health care service and supported and supervised by the Institute of Public Health through local health care offices. The Compulsory Health Insurance Fund administrates the health insurance scheme, which operates on the principle of solidarity and equality principle, in order to provide flexibility in financing of health services, transparency in administration and maximum reliability of population, in line with national health care policies. The insurance scheme model of health care in Albania is mixed and based on mandatory and voluntary health contributions, as well as on funding from the state budget.

Box 44. Best practice in health of migrants³⁰³

Migrant Friendly Hospitals, sub-project A: Improving interpretation in clinical communication-nine pilot hospitals in Denmark, Greece, Spain, Finland, Ireland, Italy, Netherlands, Sweden and UK participated to improve clinical communication with migrant/ethnic minority patients by implementing four measures: 1. Professional interpreter services should be made available whenever necessary to ensure good communication. 2. Patients should be informed about the language services that are available and about how to obtain them. 3. Clinical staff should be empowered to work competently with interpreters. 4. Education materials for patients should be made available in non-local languages.

C.8.3. Access to education

In Albania, according to the Constitution, the right to education of foreigners and stateless persons is guaranteed by law without discrimination based on gender, race, color, ethnicity, language, sexual

orientation, political or religious beliefs, status, economic or social, age, place of residence, restricted ability or for other reasons defined in the Albanian legislation. In public schools, compulsory education and upper secondary education are free of charge. Especially, the **Law no. 69/2012, dated 21.06.2012 “On pre university education in Albania”, as amended** ensures education for migrants’ children, thus fostering their socioeconomic integration and improving their livelihoods as adults.

The foreigner willing to apply for a residence permit for study purposes must be granted a D/ST visa. General requirements for a foreigner that wants to apply for a residence permit for study purposes:

- a proof for admission in one education institution in Albania;
- sufficient knowledge of the study program;
- sufficient financial resources for the all living costs coverage in Albania.³⁰⁴

Box 45. Best practices in access to education³⁰⁵

Several countries offer targeted language training to immigrant students. For example, classes in the Estonian language are provided to any student in pre-primary school who does not speak Estonian at home.

In Finland, the National Core Curriculum for Instruction Preparing Immigrants for Basic Education was introduced in 2009 to support students with an immigrant background who are not proficient in the Finnish or Swedish language. The curriculum is differentiated according to age, learning abilities and background.

Austria developed a national curriculum framework for language learning in kindergarten and standards for second-language learning.

In Belgium, every school co-operates with a Pupil Guidance Centre (CLB). The CLB guides students as they develop into independent adults and monitors students’ health and well-being, either systematically or if requested to do so. Parents, teachers, school-management teams and the young people themselves may turn to the CLB for information, help and guidance. Various professionals, including doctors, nurses, social workers, psychologists and educators work together within a CLB. Working with the school, this team ensures that every child and young person can develop his or her knowledge, talents and skills at school. The CLB operates in four guidance domains: learning and studying, educational career, psychological and social behavior, and preventative health care.

C.9 Durable legal status of migrants

C.9.1. Long-term residence

The opportunity to acquire long-term residence after meeting criteria is a vital step in ensuring a durable migrant status. Clear and transparent prospects for legal status are key to long-term integration, along with guarantees of equal treatment. The importance of a rights-based migration policy that creates legal opportunities for long-term settlement and full integration of those who qualify shall be recognized.

All foreigners who have been granted temporary residence in Albania are entitled to apply for an indefinite residence permit under equal conditions. An application must be lodged 60 days before the expiry of the existing residence permit with the local Border and Migration authority.

Application for a long-term residence permit can only be refused if:

- they do not meet the criteria provided by law;
- belong to some categories that are excluded expressly by law;
- at the time of the application a trial has started and is ongoing for criminal offences committed in Albania;
- if there is the risk that they pose a threat to national security and public order.

When an application is rejected, the reasons behind it must be clearly explained along with information on how to challenge that decision in courts, in line with the provisions of the Administrative Procedure Code.

Long-term residence status is permanent and the permit is automatically renewed after seven years. The foreigner, provided with a permanent residence permit, is called a long-term resident and must be registered at the relevant civil status office. The foreigner, as well as temporary residents, if they meet the criteria, **is provided with an identity card for foreigners, employed, self-employed or engaged in direct business activities, without having to obtain an employment permit. Long-term residents enjoy the economic, health and social rights of the same with Albanian citizens, in accordance with applicable law.**

Revocation:

- if it was obtained by means of fraud or false representation;
- if the foreigners pose a threat to public security or have been living abroad for more than 12 consecutive months.

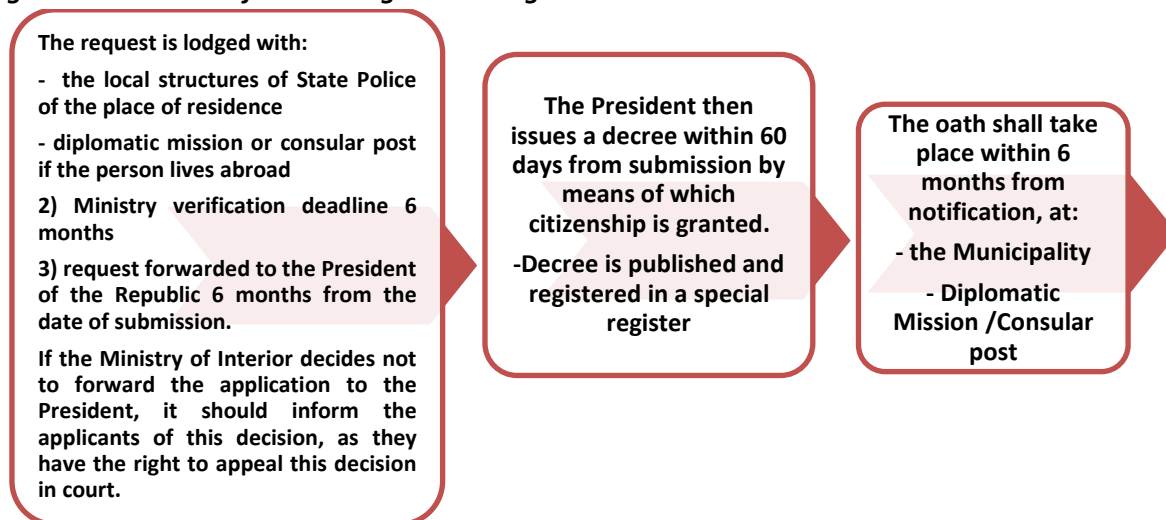
Termination: When the long-term residence is terminated for reasons other than security, such as having been away from the country for a lengthy period, the applicant should be provided with information on how to re-apply once they can demonstrate that the requirements are fully met again, such as closer ties to Albania, family status or length of residence, as mitigating circumstances in countering a removal decision.

C.9.2. Citizenship

Law on Albanian Citizenship provides that Albanian citizenship shall be acquired by: **a) birth; b) descent; c) birth in the territory of the Republic of Albania; d) naturalization; e) adoption.** Adult foreign applicants shall fulfill the **primary requirements and provide the required documents:**

- has reached the age of 18 (eighteen) years;
- has legal capacity to act;
- stay in a lawful manner and has resided for a continuous period for no less than 7 (seven) years in the territory of the Republic of Albania, and has performed a permit permanent residence, valid at the time of submission of claims, according to the law to maintain;
- has a dwelling in order with the approved housing standards in Albania;
- distribution of income and source of funding of the law, sufficient for living in Albania, which corresponds to the minimum standard of living, to be indexed every year link to the price index of some goods of choice, provided in the regulation of Social Insurance Institute;
- has not been convicted by a final court decision in his own country, in Albania or in any third country for criminal offenses for which Albanian law provides for sentences of not less than 3 (three) years of imprisonment. Exception to this rule is made only in those cases when it is proved that the sentence is given for political motives;
- possesses knowledge of the Albanian language, spoken and written, certified by the institution relevant education, as well as basic knowledge of the history of Albania, according to the rules to be determined by higher education institutions;
- does not pose a threat to the public order and national security of Albania.

Figure 14: Procedure for receiving durable legal status



Documents required to apply for citizenship are:

- The **request** of the foreign citizen addressed to the President of the Republic;
- **Birth certificate** (original with Apostille stamp or legalization in the diplomatic missions of the Republic of Albania in the country where the document was issued);
- **Marriage certificate** (original with Apostille stamp or legalization in the diplomatic missions of the Republic of Albania in the country where the document was issued);
- **Residence permit** in the Republic of Albania (5-year residence permit, for all foreign citizens, 3-year residence permit, for those foreigners who prove their Albanian origin up to two degrees,

even from one parent, (with a certificate where to reflect the Albanian citizenship of the firstborn), 1-year residence permit, for those foreigners married to Albanian citizens, but not less than three years of marriage);

- **The act of ownership of the apartment or the lease contract** of the apartment in the Republic of Albania (notarized photocopy);
- **Employment contract** for employees or **certificate from the Tax Office** for the self-employed (notarized photocopy);
- Documents proving the **availability of sufficient financial means for living** (such as bank guarantees, savings book, official proof of income in the Republic of Albania);
- **Proof of criminal record** obtained in the country of origin (original with Apostille stamp or legalization in the diplomatic missions of the Republic of Albania in the country where the document was issued);
- **Certificate of Judicial Status** in the Republic of Albania;
- **Photography** (piece 3)³⁰⁶

Review procedure key features:

- Although the ultimate decision is discretionary, it is vital that the **review procedure is transparent, providing genuine opportunities for effective appeal**;
- The applicant should be notified of any delay in the review, and, if necessary, s/he should be given an opportunity to submit evidence in support of the application;
- The standards of the review by the Ministry of Interior should reduce arbitrary interpretation of the formal grounds for accepting the application. In particular, it is necessary to establish and inform applicants accordingly of the interpretation of the criterion of uninterrupted residence in the country;
- The negative decision of the review by the Ministry ought to result in the issuing of a written notice, which, with the exception of grounds of public security and national defiance, should include detailed explanations of the grounds for refusal with clear legal and factual references;
- Acquisition of citizenship ought to consider the welfare of children as a particularly vulnerable group.

C.9.3. Family reunification

Albania allows for family reunification of all migrants in visa or residency categories in accordance with the EU Directive on Family Reunification.

Law on Foreigners grants the right of reunification to spouses of Albanian nationals and children under their custody, family members of regular migrants or of refugees. The border and migration authority then issues residence permits.

Foreign citizens equipped with a residence permit may submit an application for family reunification purposes only if the following requirements are met:

- Have a family/civil partner relationship with the host (Albanian or foreigner residing in Albania);
- To have the consent of the other parent, when the family reunification is required by one parent of the child/children;

- To have legally entered or resided in Albania;
- To have an adequate accommodation in Albania;
- To have sufficient financial resources;
- To have valid health insurance for the period the residence permit is required;
- The passport/travel document shall be valid at least 3-months after the expiry of the deadline of the residence permit required;
- Not pose a threat to public health.³⁰⁷

Module D

SOCIAL INCLUSION (RE)

INTEGRATION OF MIGRANTS

AND

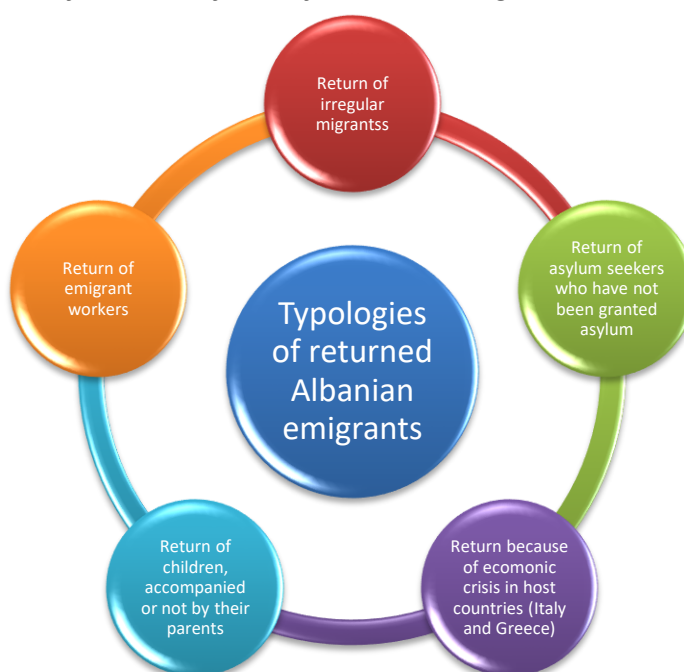
BEST PRACTICES

In the last years, Albanian emigration has been characterized by the return of migrants to their country of origin. The profile of the Albanian returning migrants, mainly from Italy and Greece during 2013- 2016, has been analyzed for identification of reintegration needs related to services, specific or general provided to Albanian citizens.³⁰⁸

Albanian migrants return to their home country due to the following reasons:

- *forced return by the authorities from the migration countries.*
- *failure to become integrated in the labor market of destination countries.*
- *return for family reunification or psychological reasons.*
- *after they have realized their initial plans for “starting a business” in Albania or “having saved enough money”.*³⁰⁹

Figure 15 Migration Profiles, return factors for Albanian migrants



Albanian citizens return under the EC-Albania **Readmission Agreement and bilateral readmission agreements** signed between Albania and other countries, or through other forms of forced return are based on the following principles:

- Prevent positive discrimination for non-immigrant population, implying that “reintegration support” should consist mainly of improving access to information made available to returned Albanian citizens on existing social services available to all Albanian citizens under the Albanian legal framework, rather than providing them with extra services;
- Extra services are provided only to certain categories of returnees stipulated by law (for example victims of trafficking, unaccompanied children, Roma people, Albanian migrants with economic problems, such as low income, unemployment, numerous family, household to sustain, or through tailor made projects/programmes designed and implemented either from the Albanian authorities with the support of different donors, or the later exclusively;

- Free will of returnees to access available public information and reintegration support services (employment, vocational training, recognition of diplomas, language training and orientation);
- Use and enhancement of existing institutional structures;
- Promotion of public services by fostering institutional communication and continuous information of returnees and the population in general;
- Enhance cooperation among public structures and civil society in development initiatives;
- Gender equality and sensitivity; equal treatment of returnees in terms of gender and address needs also in line with gender specifics.³¹⁰

Institutional Framework in place to ensure effective and timely social inclusion and reintegration of returned Albanian citizens includes:

Ministry of Health and Social Protection is responsible for:

- inclusion of the category of Albanian returnees who have economic problems such as low income, unemployment, numerous family, household to sustain in the special group of unemployed and job-seekers who benefit from the employment promotion programme;
- identification of existing needs for the vocational training of Albanian returnees;
- provision of free of charge of vocational training in the regional directorates of public vocational training of Albanian returnees who have economic problems, such as low income, unemployment, numerous family, household to sustain, etc;
- establishment and making functional of the Migration Counters in all the Local Employment Offices;
- coordinating work for the implementation of policies in the field of reintegration of returned emigrants;
- in cooperation with the State Social Service and the local government units, responding to the needs for provision of social care services as well as supporting the filling in of the application for provision of economic aid to the returned emigrants.

Migration Counters (MC), established initially in 2005 with IOM support, have been operating under the National Employment Service and set up in all the Local Employment Offices, as important part of the mechanism of support for reintegration for returning migrants. Migration Counters serve as key contact points at local level to collect detailed data for the Albanian returnees who approach them voluntarily, offering the following services:

- interviewing Albanian citizens, returnees who approach the counters voluntarily;
- giving information on public and private services in line with the identified needs (where appropriate);
- referring to the public and private services (where relevant) as well as specific projects of civil society in line with their needs.

Ministry of Foreign Affairs: The Albanian Consular service under this ministry, in cooperation with the structures of the Ministry of Interior, is responsible for issuing documents and permits to returning Albanian citizens independently for the reason of return (*laissez passé*).

Ministry of Internal Affairs is one of the key actors of migration management for aspects related to entry, stay, transit and exit from the Republic of Albania, and particularly for the implementation of readmission agreements.

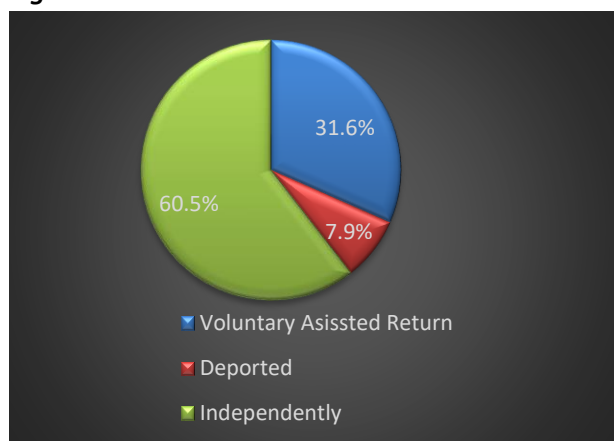
Ministry of Education Youth and Sports has to ensure that Albanian nationals living abroad are granted with necessary documentation in relation to the education received in Albania or abroad (e.g. ensure equivalency of diplomas obtained abroad and registration in the Albanian education system).

Ministry of Economy and **Minister of State for Diaspora** ensure that Albanian citizens living abroad invest in the priority areas in Albania set forth by the government/competent authorities. Albanian Diaspora Chamber of Commerce promotes investments through public – private partnerships, while sectors considered with development potential are renewable energy, tourism, agro tourism, agriculture, transport and logistic, IT services, etc.³¹¹

Ministry of Finance through the General Directorate of Customs ensures the implementation of the Customs Code provisions concerning exemptions from customs obligations for personal effects and work tools used by Albanian returnees who started a business abroad and are willing to continue once back in Albania. **Social Insurance Institute**, under the supervision of the Ministry of Finance through its schemes enables voluntary pension insurance of emigrants in Albania.

Ministry of Agriculture, implements support schemes in rural areas, namely for the production of fruits, olives, grape, meat and milk; production, storage and marketing by building refrigeration facilities; production of bio products; and provides interest rate subsidy for credit provided to agro-processing establishments. Beneficiaries to these support schemes are also the returnees living in rural areas, whose investments falls under the support schemes areas.

Figure 16 Returnees in Albania 2019³¹²



Two decades after massive migration of its citizens to Western European countries, migration flows from Albania have decreased due to increasing stability and economic progress in the country. Given the circular nature of migration from Albania and the effect of visa liberalization on mobility of the Albanian citizens in the EU Schengen area as of December 2010, the propensity to migrate and consequently to return remains considerable. Strong national capacities are therefore

required in preparing for future challenges of labor mobility, including return and reintegration of migrants.³¹³

Return migration can contribute to the development of origin country in two basic ways: **first**, the economic impact of financial capital entering the country (remittances and savings), and **second**, the transfer of human capital (skills and professional experience acquired abroad). Remittances and

savings can be directed towards consumption, the buying of land or property, or productive investment. The impact of return migration to the origin country is subject to many factors, such as:

- the number of peoples going back and the time when return takes place;
- the length of staying abroad;
- the place where returnees settle;
- the profession and education of the returnees, and
- the degree to which the returning process is organized, and the returnees are supported regarding their reintegration.³¹⁴

Box 46. Characteristics of Albanian returnees in 2018

- Age: The age group 25-34 stands on the top position with 135 registered returnees or 41.7% of the total, followed by the age group 35-45 with 76 registered returned emigrants or 23.5% of the total number. Over 45 comprise 19.1 % of the returned migrants, while group age 15-24 represent 15.7 % of the returned.
- Country of emigration: Most of the returnees come from EU Member States with 52.5% of the total number, followed by the returnees from Italy, 19.1%; Greece 17.3 %, and non EU countries 11.1%.
- Reasons of return: Unemployment: 128 returned emigrants or 39.5%; Lack of documentation: 128 returned migrants or 39.5%; Other reasons: 68 returned migrants or 21%.
- Support for reintegration: 55.6% of the returnees are consulted for employment opportunities and placement, 43.8% are oriented to the vocational training courses, 16.4% are supported with cash based interventions and 12.7% of the returnees are provided with information and referral to medical services; 17.3 % are supported to start a business, while 13.3% are provided other services.

There are several formal government programmes and policies focused on attracting and integrating nationals who have previously migrated from Albania. Such measures are foreseen in the National Strategy for Employment and Skills 2014–2020 and Law No.10389/2011. The measures include:

- inclusion of the category of Albanian returnees who have economic problems, such as low income, unemployment, numerous family, household to sustain, etc. in the special group of unemployed jobseekers benefiting from the employment promotion programme;
- identification of existing needs for the vocational training of Albanian returnees with economic problems and provision of free training in the regional directorates of public vocational training;
- provision of social care services; and
- providing support in completing applications for receiving economic aid.³¹⁵

D.1. Rights in action and best practices in social inclusion and (re) integration of migrants

Reintegration is a fundamental though challenging aspect in return migration. Enabling migrants to re-establish themselves in the society of their country of origin and empowering them to participate in social, cultural, economic and political life again should be the aim of reintegration assistance in order for the return to be successful. There is a growing understanding among stakeholders that the reintegration process needs to be supported in order to be successful.³¹⁶

Successful reintegration programs shall be **sustainable, measurable, balanced, individualized, complementary and innovative.**³¹⁷ Reintegration assistance can range from limited, onetime reinstallation grants at the micro level, to a range of economic and social assistance measures, including for the community of return and individualized assistance for vulnerable migrants. Assistance may be provided directly to the migrants and in the form of institutional assistance at the macro level to the communities of return in the country of origin. Targeting communities in return countries may involve longer-term, structural and development aid.³¹⁸

In Albania, the referral system upon return is designed in a way that ensures the return Albanian citizens with the enjoyment of a dignified cultural, economic and social inclusion and re-integration:

- *National Social Service for psycho-social assistance;*
- *Public vocational training centers;*
- *Education institutions for the education of children or recognition of equivalency of diplomas;*
- *Municipality administration for shelter needs;*
- *Relevant health care institutions to follow procedures established to access health care services;*
- *Business promotion institutions (Chambers of Commerce, banking system) in the event migrants wish to invest in Albania;*
- *Relevant structures of MAFCP in the case of returnees from rural areas who will benefit from agricultural subsidy schemes;*
- *Programmes of civil society for reintegration of returnees that are active in the operating area of the Migration Counter.*³¹⁹

Box 47. Best practice Brain Gain programme³²⁰

Brain Gain Programme 2006 -2011 sought to reverse Albania's "brain drain" and supported the Government in the preparation of a policy framework to address the issue. This programme has supported the establishment of a policy framework and has made available an electronic database linking the demand of the academic institutions, public administration and private sector with the expertise offered from abroad. Moreover, during 2008 - 2011, the programme has supported with re-integration financial packages 138 individuals who have returned to Albania either permanently or temporarily as visiting professors. An online database was established to match the demand of Albania's academic institutions, public administration, and private sector with the expertise offered by the Albanian Diaspora members. Changes were made to laws and by laws regulating employment in the Public Administration to favor returnees both financially with rewards for the graduate degrees obtained abroad and in terms of the DPA entrance exams. It supported the creation of 400 new job positions in higher education

institutions, thus enabling quality returns of individuals and putting a halt to the brain drain process.

Promotion of the skilled migrants return remains one of the key strategic objectives. Diaspora Strategy aims at assessing the supply and demand for qualified staff in the Albanian labor market and **establishing contact between emigrants and small and medium sized enterprises in Albania** by creating an electronic database of enterprises and CVs of qualified migrants residing abroad. As a specific measure it provides for reassessing the consideration of the condition of return to Albania (for a period of not less than one year) for all the **students** who obtain scholarships to study abroad in the framework of educational programmes of various donors for Albania.³²¹

Box 48. Best practice in individualized assistance for returnees³²²

In Kosovo the individualized assistance given to returnees led to increased job opportunities for local residents. Throughout the duration of IOM Austria's AVRR programme to Kosovo*, 33.95 % of assisted returnees established a formal or informal business in their places of origin. Other reintegration measures chosen by beneficiaries were employment subsidies for up to six months and provision of temporary accommodation given on top of the grant for business startups in around 7 % of cases.

D.1.1. Employment³²³

Integration will be enhanced where Albanian returnees are able to access appropriate language classes and other training and educational opportunities to equip them to enter the labor market, to engage actively with the local community and to effectively access other social services. Support to enter the labor market and/or maintain and progress in their employment is also a key.³²⁴

Regional Directorate on National Employment Service Tirana identifies and collects information about Albanian returnees based on the self-declaration of individuals addressed to the **Labor Offices**. These offices are responsible for mediating in finding a job for individuals who turn to them, as well as for the provision of professional courses in cases where this is deemed necessary. In this process, priority is given to applications by an individual been an immigrant, women or girl and head of household, being a mother with many children/numerous family, recently come out of school, etc.³²⁵

Box 49. Best practice social reintegration

Another program to ensure the social reintegration of returnees after migration, is the creation of social enterprises (SE), i.e. an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative way and uses its profits primarily to achieve its social aim. Approval of law no. 65/2016 "On social enterprises in the Republic of Albania" and sublegal acts (DCM no.56/2018) has defined best the purpose of their creation and functioning; regulate the integration and reintegration of persons excluded from the labor market, where one of the categories of groups of disadvantaged persons are migrant workers who moved or have been returned in the country.³²⁶ Three most addressed issues by the social enterprises part of the sample are: employment of marginalized groups (62%), economic empowerment (50%) and social protection of marginalized groups (33%). Three most frequent group of beneficiaries that social enterprises

serve are: unemployed people (74%), youth (74%), and poor people (69%) Social enterprises claim to have integrated unemployed women and youth or those living in rural areas with scarce opportunities, Roma and Egyptian communities, persons with a physical or mental disability, victims of trafficking and/or domestic violence, returnees, and ex-prisoners. The main industries in which surveyed social enterprises operate are hotel/food service activity (21%); followed by manufacturing (21%); social services, healthcare and educational services (18%).³²⁷

For most professions, Albania has an accreditation system that recognizes foreign degrees and qualifications. **Law No.10247/2010 on the Albanian Qualification Framework (AQF) and National List of Occupations based on International Standard of Classification of Occupation (ISCO 2008)** regulated these issues.³²⁸

D.1.2. Housing

Everyone has the right to an adequate standard of living, *i.e.* adequate food and nutrition, clothing, housing and the necessary conditions of medical and health care when required. Adequate standard of living encompasses a right to adequate housing, to ensure human dignity.³²⁹

In Albania, social housing programs are intertwined with other social service programs, mainly those of employment, education and health care.

The institutional framework includes Ministry of Finance and each LGU, which are the responsible authorities to implement the Law "On Social housing". The latter regulates among others, the criteria, conditions and procedures to provide with *housing, rent subsidy or temporary housing, among other vulnerable categories*, the Albanian return migrants, victims of trafficking or pVoT, foreign citizens with a regular residence in Albania and who have benefited from the competent bodies status as "Migrant worker" and / or "asylum seeker".

The municipality distributes social housing programs for citizens such as:

- Social housing for rent;
- Low cost housing;
- Housing Bonus;
- Equipping the necessary infrastructure into the land being public or private (both options are possible).

Housing procedures are carried out by Local Government Units social administrators, competent to verify the economic and financial conditions of the family or per individual applicant, based on a scoring system based among others in the incomes level provided by the specific social program.³³⁰ The decision is subject to appeal to the Mayor.³³¹

D.1.3. Education

Albania efforts to integrate migrants in their education and training systems continue - from early childhood education and care to higher education.

The Ministry of Education and Sports (MES) has been taking measures to ensure the registration and treatment of students who return from emigration, to:

- register and treat the student returnees with priority, by facilitating their integration into local school and community;
- draft a special action plan by the unit of the psycho-social service in the RDE/EO for the provision of services that help educational, social and personal development of students who return from emigration.;
- provide free Albanian language courses to students returning from emigration;
- provide tailor-made treatment to students registered with educational institutions to fulfill obligations of the curricula during the period of their absence.

A specific guide has been issued by MES for execution by subordinate institutions, to take measures on priority registration in kindergartens and schools of this group of the population, and the pursuit of cases through individual lesson plans. Information leaflet containing details on the process to follow to enroll children in school is distributed to each border point. Instructions are sent in each school for implementation.³³² Other measures include:

- the individual learning plan, extra hours after regular classes to help returning students to fill inborn gaps due to school dropout for one period of time;
- psychological service for returned children.

Box 50. Best practice in integration of migrants in all sectors of education and training³³³

In Albania school-age returnees are treated with priority and facilitated for inclusion in education system. At each stage of the school year, local pre-university education offices (ZVAP) do the unification of school documents that they bring with them and enrol them in the school. When is if necessary, they are also supported by an individual program for the Albanian language and for special subjects, depending on the education level, or the time of learning process suspension in the host country. Since 2010, information materials have been distributed at border crossings on education of Albanian citizens returned from emigration.

D.1.4. Social and health protection³³⁴

Social security systems may include a wide range of healthcare benefits, including primary and secondary care, preventive care, maternity services, dental treatment, medicine and medical equipment. In Albania, state's social security fund comprises four components:

- state economic assistance;
- retirement benefits;
- unemployment assistance; and
- disability payments.

Law No.121/2016 “On social care services” extends the assistance provided to both Albanian and foreign citizens, in addition to cash-based assistance granted in the past. In particular, this law envisages a range of new services, including: para-social services; services in community centers; residential services (including shelters); social services in emergency situations; alternative care for children without parental care; online and phone-counseling and other specialized services. The law mentions among the beneficiaries of the above-services foreign citizens, stateless persons and refugees or beneficiaries of subsidiary protection.³³⁵

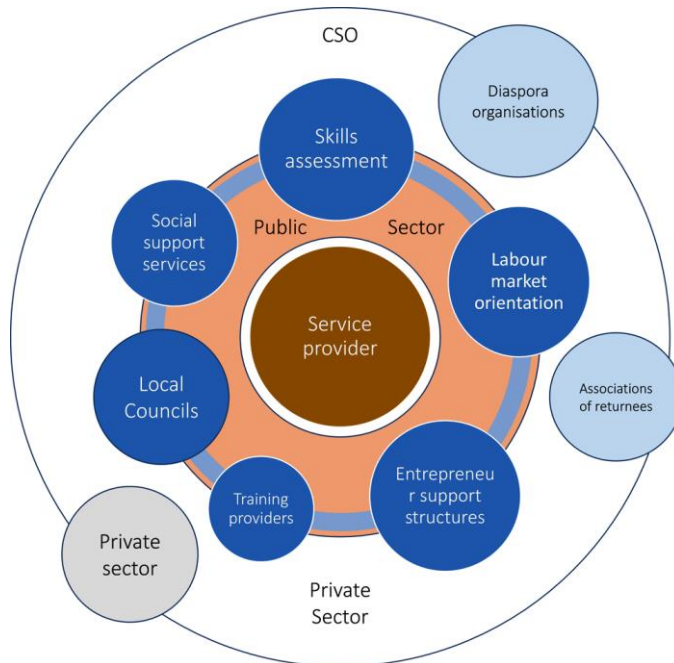
Several agreements are concluded with other countries on social protection, which guarantee the portability of pensions along with other social security benefits. While the number of concluded agreements has increased significantly recently, the need to undertake negotiations on signing bilateral agreements on social protection with key host countries is explicitly featured in the Diaspora Action Plan, in which they were considered crucial for the effective transfer of social insurance benefits for Albanian returnees.

The MoHSP has prepared leaflets containing information on procedures and documents to be provided by Albanian citizens returning from abroad so that they can be reintegrated into the health insurance scheme and benefit from health services. This information is also published on the official website of the MoH. Psychosocial support and mental health services were established in the Regional Directorate of Public Health (DRSHPs) and in the Regional Health Authority (ASHR) Tirana, offering services to returned migrants according to their needs. Returned migrants are provided with health services in line with those provided to the rest of the population such as registration and assignment to a family doctor, provision of the “health card” and control of the vaccination scheme. The provision of these services continues in the same way as before emigration (free or paid depending on the health insurance payment on their part). In terms of health insurance coverage, this is mainly related to the employment status of the individual. In cases where the individual is employed, health insurance is also paid regularly according to the law in force.³³⁶

D.2. Role of international organizations, NGOs and private sector – Partnerships

Partnerships with the private sector and civil society organizations in supporting the implementation of policies and in securing donor funding to govern migration remains crucial. The progress in this area is also of a fundamental importance when it comes to making migration governance more transparent and able to respond to emergencies in a flexible manner.

Figure 17 Sustainable Reintegration of Returning Migrants³³⁷



Sustainable and fair migration policies are developed in partnership with a wide variety of stakeholders, both national and international. Lessons learned from past efforts indicate the need for further strengthen institutional ownership on migration governance through continuous learning, sharing of best practices, active involvement in the design and implementation of migration policies and programmatic actions, the advancement of legislative framework in the field of migration, regular participation in international fora in the field of migration and constant monitoring and evaluation of the achieved progress.

Local government structures role in implementing migration policies and legislation and in delivering

On the national level, the close cooperation between government institutions and civil society actors has been crucial to designing comprehensive policies on various aspects of migration, such as the National Strategy against Trafficking of People and the Action Plan 2018-2020, through the National Coalition of Anti Trafficking Shelters (Non-profit Organisation), and the National Diaspora Strategy 2018-2024.

services to various categories of migrants remains crucial and therefore, there is a need for a continuous and comprehensive review of their role. Effective coordination mechanisms among the central and local government on migration management and sufficient funding available to match the priorities remain basic prerequisite.

To maximize the impact of these

policies on the population at large, government institutions should identify ways to strengthen and **formalize collaboration with migrant communities, with the private sector and civil society in both countries of origin and destination.** IOM and/or Albanian Government have consulted migrants themselves throughout the process of preparing the National Strategy on Migration 2005, the Action Plan on Remittances, the Diaspora Strategy, etc.

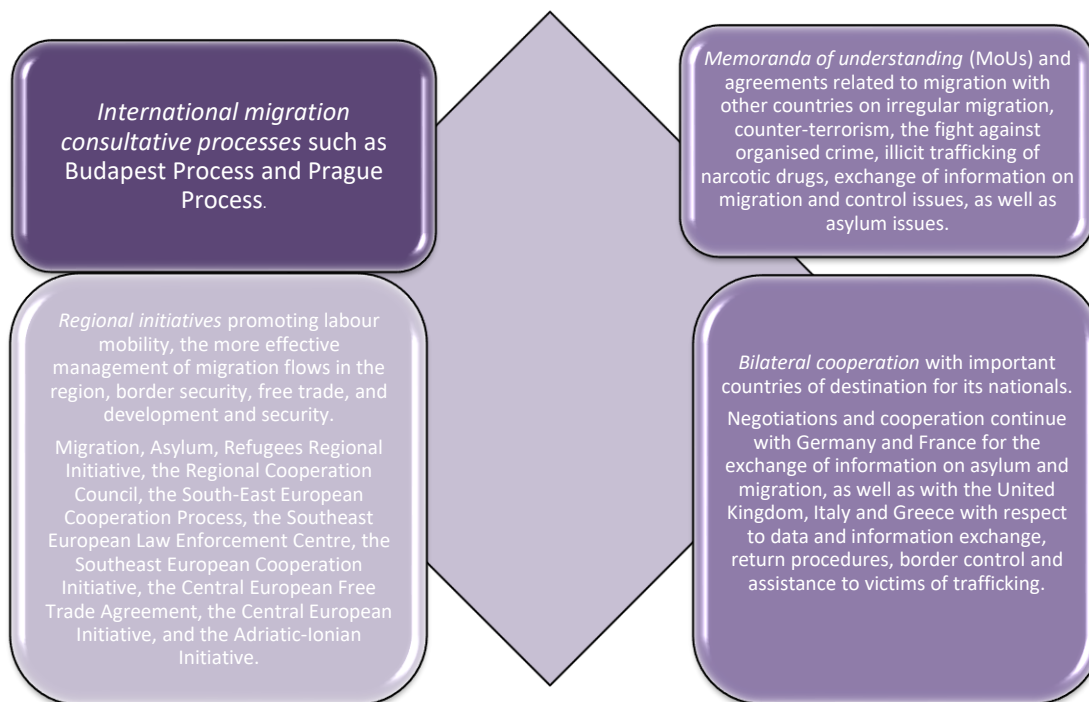
Private sector actors assume five roles in relation to migration cycle:

- Private sector actors provide goods and services to refugees and migrants;
- Private sector actors provide services to governments in support of migration governance and, in some cases, act on behalf of the government;
- The private sector acts as an employer of labor and is engaged in job creation for refugees and migrants, as well as for prospective migrants and migrant hosting societies;
- The private sector is engaged in lobbying to influence migration policies and legislation and thus contributes to shaping the governance of mobility;
- The private sector also acts as a consumer or buyer of goods and services provided or produced by migrants.³³⁸

In Albania, the private sector acted as sponsors for services to migrants (particularly victims of trafficking), setting up businesses. Private sector in partnership with public agencies continues to support the improvement and changing the livelihood of returned migrants and marginalized youth in Albania. Such an example is the cooperation between the private sector and National Agency for Employment Services and Vocational Training Center, which are implementing jointly “Coaching for Employment and Reintegration (C4ER)”, a project that continues its work in changing the livelihood of returned migrants and marginalized youth in Albania. In the second phase (2020-2021), the project will exclusively focus on partnering with private sector entities to implement Coaching in Business approach and providing a systemic solution for recognizing prior learning.³³⁹

At international level, Albania actively participates in several regional, as well as various initiatives promoting labor mobility, the more effective management of migration flows in the region, border security, free trade, and development and security.

Figure 18 Albania’s position in partnership and international cooperation



Partnership with International organizations remains key to the drafting and successful implementation of policies and strategies.

➤ **IOM** is one of the strategic partners of Government of Albania in implementing migration good governance, with extended contribution in drafting and implementation of migration policies, improvement of legislation, as well strengthening the capacities of Albanian institutions. It supports active participation of civil society and private sector in migration related initiative. In addition IOM facilitates regional and international dialogue on migration issues.

➤ **UNHCR** engages in migration issues that affect refugees and other categories in his mandate, including asylum seekers, displaced persons within the territory and stateless persons. The organization has played an essential role in advancing legislation on asylum in the country and on addressing institutional challenges related to asylum and guaranteeing international protection for people in need.

➤ **The International Labor Organization (ILO)** is a leading organization in the field of migration labor and protection of migrant workers. In the Albanian context the organization plays one important role in drafting employment policies, including those of employment abroad or for returned migrants.

➤ **United Nations Development Program (UNDP)**, which assists the Albanian government in addressing labor market needs in Albania (increasing the skills of unemployed jobseekers, including marginalized population, support for young entrepreneurs, etc.)

➤ **The United Nations Children's Fund**, also known as UNICEF (International United Nations Emergency for Children), helps strengthen local capacity for address the challenges related to the migration, exploitation and trafficking of children and provide adequate and long-term protection.

➤ **The German Agency for International Cooperation (GIZ)** supports a number of programs that aim at addressing migration challenges. Thus, GIZ is the contracting party with the Ministry of Finance and Economy for the implementation agreement, between the Republic of Albania, represented by the Ministry of Finance and Economy, and the German Agency for International Cooperation (GIZ), for the project "Advice on migration in Albania" (ratification law no. 59/2018). The objective of the project "Migration Counseling" is the fight against irregular migration, offering information on legal labor migration routes and providing information about education and vocational training, as well as labor market prospects in Germany and Albania.

Partnerships with NGOs/CSOs: In Albania there are a number of organizations that carry out their non-profit activity for the benefit of different categories of migrants. The following list is not exhaustive, but presents some that are particularly active in the reintegration of returned migrants, including the reintegration of categories in need of migrants.

❖ **Terre des hommes** is a child protection organization implementing a range of targeted programs establishing a sustainable system for the protection of children against trafficking and exploitation. The organization is also active in identifying and implementing best practices for reintegration of Albanian citizens returned from migration.

❖ **World Vision** is a community development organization, working in 220 communities in need and helps about 30 thousand children in 13 municipalities of the country, to provide social justice, development opportunities economic for children and young people in need. The organization assists the reintegration of Albanian citizens' returnees through small business support for returnees or social interventions in communities where returnees settle.

❖ **"Different and equal"** is a local organization whose mission is the reintegration of successful in society of victims of trafficking, exploitation and violence. To enable a sustainable and long-term reintegration of the organization has created very successful models of social businesses that actively engage (potential) victims of trafficking. This organization is part of

the National Coalition of Anti-Trafficking Shelters, which also includes other organizations such as centers psychosocial center “Vatra”, association “Tjetër vizion”, as well as two reception centers for victims of trafficking in Tirana and Gjirokastra.

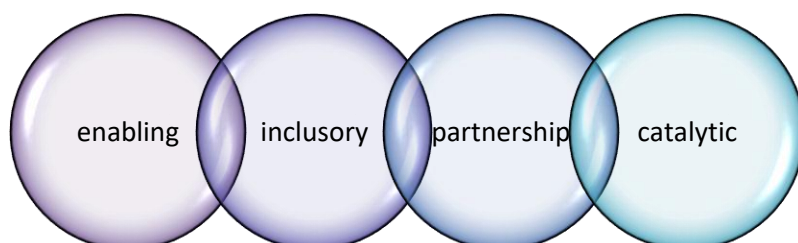
- ❖ **The Center for Social and Economic Studies** represents a local organization active in the field of research scientific on migration. It counts dozens of articles and observations on various aspects of Albanian migration.
- ❖ ***Other CSO are Refugee and Migrant Services in Albania, CARITAS Albania, Tirana Legal Aid Society, Institute of Romani Culture in Albania, Albanian Helsinki Committee, etc.***

Box 51. Enhanced and integrated approach regarding Information on return and reintegration in countries of origin

Using an online platform for potential returnees to receive information from the country of origin to provide potential returnees with crucial information about conditions and prospects in their respective countries of origin. IRRiCO's website provides information on return and reintegration opportunities in 20 countries of origin.

D.3. Engaging diaspora in development

“Enable, engage and empower Albanian Diaspora, as agent for development, is the key goal to effectively manage the migration cycle in Albania.” Diaspora role in boosting social and economic development requires increasingly recognizing four roles: ³⁴⁰



The Albanian Diaspora includes:

- the early Albanian communities in the world;
- any person who was born in Albania and lives outside its territory;
- any person who enjoys

Albanian origin, who was born outside the territory of Albania, maintains linguistic, cultural and traditional ties continuously and who wishes to maintain ties with Albania.

INSTAT data January 1, 2019: Diaspora amounts to 1.641.354 individuals outside the territory of Albania, where 862.622 are males and 778.732 females. During 2019, Diaspora had an increase of 3,6 % in total (males 4,1% while females 3%.) Population is relatively young: 19 % - group age 0-14, 76 % - group age 15-65 and 5 % - group age over 65 years.

The old diaspora consists of emigrants who emigrated before 1944, who are considered very early diaspora as well as those who left during the years 1945-1990 and which coincides mainly with the Albanians in the former Yugoslavia.

The new diaspora consists of immigrants who emigrated after the 1990s which coincides with the great wave of migration after the fall of communism.³⁴¹

The biggest groups of diaspora consist of emigrants for economic reasons, family members of emigrants in search of better opportunities abroad and students. These groups are defined as very dynamic and found in many states of the world such as the United States, the United Kingdom, Germany, Greece, Italy, Turkey, Switzerland, Norway, Sweden, Finland and France, but also more recently in Canada and Australia.

Diaspora and migration are two communicating “pots” in the process. The extent to which migrants can contribute to development is directly linked to their ability to access services, integrate into society and stay connected to with their communities of origin.

Remittances contribute to improving the standard of living; better health and education, as well as in the creation of human and financial values.³⁴² In Albania, most remittances are transferred through informal channels. The use of banking channels by immigrants’ remains restricted. A combination of high transaction costs as well as socio-economic avoidance - becomes a burden for families in rural areas and/or with a low level of financial culture - may be the main factors for the continued use of informal channels for these remittances. From the economic development point of view, but also the well-being of families, the transfer of remittances through official channels is highly important, thus

creating access to basic banking services for immigrant families. Creating such a relationship with banking and non-bank financial institutions, enables access to even more sophisticated products such as financing and investment, supporting the creation of a customer history. Based on the above, remittances contribute to the well-being of the family not only by directly financing the consumption of the household, but also by creating a wider access of these families to financing and investments.³⁴³

The Law no.55/2020 'On payments services' will have a direct impact on the payments in small values, fostering the efficiency and reduction of the costs of transfers. The law aims to balance the gap between the payments conducted by the banks and other financial institutions, allowing the latter to open current accounts and issue electronic instruments for payments. This is an innovative tool in the area of payments, by creating efficient and less expensive instruments for the clients, including migrants.

Albania is a country mainly receiving remittances. It is estimated that 39% of remittance come from unregulated channels, while 57% pass through non-bank financial institutions and only 4% through banks. Remittances in Albania, even in the cases when they are transferred in official sending channels, are disbursed in cash, contributing to the promotion of the use of cash in the Albanian economy. According to the Bank of Albania estimates, during 2020, total remittances amounted to EUR 1,276 million, of which EUR 244 million from seasonal migrant income and EUR 1,032³⁴⁴³⁴⁵

Box 52. Best practice - The Greenback project³⁴⁶

The Greenback project is a World Bank Group initiative committed to promoting the financial education of remittances and their remittance families in selected cities based on remittance flow volumes. The project consists of increasing the involvement and financial education of migrants and their families, as well as the use of more efficient channels in terms of cost of sending funds. The World Bank, in cooperation with the Bank of Albania, has selected BERAT as the champion city for the Greenback 2.0 project. The implementation of the project in the city of Berat, has started with the development of meetings with focus groups, during the return of emigrants for the holidays.

The institutional development and governing of the responsible state structure for the diaspora is represented by:

- The Sub-Committee on Diaspora and Migration in the Parliament of Albania.
- The State Committee for Diaspora.
- The State Minister for Diaspora.
- The Coordination Council of the Diaspora.
- The National Agency of Diaspora.
- The Albanian Diaspora Development Fund.
- The Publishing Center for Diaspora.

Promotion of investments: Engagement of the Albanian diaspora in the development of the country of origin through know-how and skills transfer remains fundamental to the economic development of Albania. Establishing dedicated Government programmes specifically designed to attract the human and financial capital of Diaspora members and to utilize to the benefit of Albania's socioeconomic advancement could also encourage engagement of the diaspora. The establishment of the **Albanian Investment Development Agency** has brought some major improvements in this respect. "**Connect Albania**", in an innovative investment-boosting platform, which serves to the

Albanian diaspora will have the means to engage as development agent for referring businesses from abroad, subsequently supporting employment generation in Albania.

Box 53. Best practice engaging diaspora³⁴⁷

Diaspora Engagement HUB Moldova

Encouraged the transfer of human capital and professional experience to the academic, social and economic spheres by way of three sub-programs focusing on the Return Diaspora Professionals, Diaspora Innovative Projects and Thematic Regional Partnerships, and Educational Centres among the Diaspora community. The Diaspora is awarded grants to implement various components of the programme through funding by the Swiss Government.

100 Villages Program

Albania - Aims at increasing investment in agriculture and tourism through the development of agro-tourism, the growth and development of the agro-processing businesses. The Ministry of Agriculture and Rural Development may facilitate the absorption of EU funds by all Albanian citizens, migrants included, through projects that promote investments in agriculture (IPARD and SARED funds) or by reducing taxes on agricultural machine.

The 3x1 Programme for Migrants in Mexico - Supports the initiatives of Mexicans living abroad and gives them the opportunity to channel their resources into works of social impact that directly benefit their home communities in Mexico. The project is implemented with the assistance of clubs or federations of migrants living abroad, the Federal Government and the state and municipal governments. It is a matching funding scheme through which for every peso sent by migrants, the Federal, State and Municipal governments add 3 pesos each, hence it being called the 3x1 programme. The funds raised are used for public works that improve the infrastructure of local communities (roads, schools, health services) and promote local economic development.

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