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NOTE ON INTERNATIONAL LEGAL OBLIGATIONS TO MIGRANTS, NON- CITIZENS AND NATIONALS ABROAD IN TIMES OF CRISIS

KYRGYZSTAN

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*This Opinion is also available in Russian.
However, the English version remains the only official version of the document*

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I. INTRODUCTION

1. On 2 June 2020, the State Migration Service of Kyrgyzstan (hereinafter the Kyrgyz Migration Service) sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a comparative overview of international legal obligations to non-citizens and to nationals abroad in times of emergency/crisis.
2. On 26 June 2020 the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare an overview of relevant on international human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above request. The OSCE/ODIHR conducted this assessment within its mandate as established by a number of Ministerial Council decisions and other commitments.

II. SCOPE OF REVIEW

4. The scope of this Note comprises an overview of international legal obligations to non-citizens and to nationals who are abroad in times of crisis. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating migration.
5. This Note provides an overview of the relevant international legal obligations of states to migrants during times of crisis, focussing primarily on international human rights law, in particular, with respect to: (1) non-citizens or migrants within the territory of the State; and (2) citizens of a State living abroad.¹ The Note also identifies the key applicable principles as well as explaining specific rights protection challenges in emergency situations. The Note raises key issues and provides indications of areas of that often present concern.
6. When referring to national legislation or practice, the OSCE/ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.
7. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities,

¹ Please note that the term ‘citizens’ and ‘nationals’ are used interchangeably in this report.

programmes and projects, the Opinion's analysis takes into account the potentially different impact of the Draft Act on women and men.²

8. The Note is translated into Russian, but in case of discrepancies, the English version shall prevail.
9. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on respective legal acts or related legislation pertaining to the legal and institutional framework regulating migration in Kyrgyzstan in the future.

III. EXECUTIVE SUMMARY

10. OSCE/ODIHR welcomes the initiative of the Kyrgyz Migration Service to seek international expertise in relation to the international obligations on non-citizens and to nationals who are abroad in times of crisis administration. OSCE/ODIHR hopes that this Note will provide further guidance on how the relevant legislation and practices could be brought in line with international human rights obligations and OSCE commitments.
11. The OSCE participating States have consistently indicated strong commitment to protecting and guaranteeing the rights of individuals, including migrants. This includes the duty to respect international human rights standards related to migrants and refugees (Ljubljana Ministerial Meeting 2005).
12. The Note elaborates on possible derogations from human rights obligations, but underscores the utmost importance of such measures being exceptional, temporary, prescribed by law and proportionate as outlined in the Copenhagen Document (1990) and other international standards.
13. The Note particularly highlights the vulnerable position of non-citizens during emergencies due to the COVID-19 pandemic, which “serious and disproportionate effects on migrants and their families globally.”³ The key challenges faced by migrants during the pandemic are those relating to health, socio-economic position, and protection.⁴ The Joint Declaration of the ten UN Human Rights Treaty Monitoring Bodies on a human rights approach to fighting COVID-19 specifically identifies “minorities, indigenous peoples, refugees, asylum seekers and migrants” as vulnerable groups and emphasises that “(i)n countries that declare a state of emergency, such a declaration must be exceptional and temporary, strictly necessary and justified due to a threat to the life of the nation.”⁵ Recent examples from the COVID-19 pandemic response are used throughout this report.
14. The Note also analyses States' responsibility to assist both persons within their territory and nationals who are living abroad.

² See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), <<http://www.osce.org/mc/23295?download=true>>.

³ UN Committee on Migrant Workers and UN Special Rapporteur on the Human Rights of Migrants' “Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants” (26 May 2020), p. 1.

⁴ UN Secretary General, “Policy Brief on Covid-19 and People on the Move” (June 2020).

⁵ “UN Human Rights Treaty Bodies call for human rights approach in fighting COVID-19” (24 March 2020).

IV. ANALYSIS

1. INTERNATIONAL STANDARDS AND OSCE COMMITMENTS ON LEGAL OBLIGATIONS TO NON-CITIZENS AND TO NATIONALS ABROAD IN TIMES OF CRISIS

15. The principles of migration in times of crisis are outlined in several international documents, including OSCE Documents. The OSCE participating States have acknowledged from the very origins of the OSCE that migrants constitute an important economic factor and that they aim to ensure equality between nationals of the receiving country and migrants.⁶ OSCE participating States have also emphasised that everyone should have the right to leave any country, including his/her home country and return to his/her country.⁷
16. In addition to the commitment to allow migrants to leave and return to their country of origin, OSCE Commitments on migration also include that restrictions on this right should be “*necessary only if they respond to a specific public need, pursue a legitimate aim and are proportionate to that aim, and will not be abused or applied in an arbitrary manner*” (Copenhagen Document 1990).⁸
17. OSCE participating States have also emphasised the importance of the need to identify and address the root causes of displacement and involuntary migration and the need for international co-operation in dealing with mass flows of refugees and displaced persons, also recognizing that displacement is often a result of violations of OSCE commitments, including those relating to the Human Dimension (Helsinki 1992);⁹ and have also committed to ensure that policies related to freedom of movement of persons across the border and imposed restrictions are consistent with relevant OSCE commitments (Maastricht 2003).¹⁰ Furthermore, the OSCE participating States have reaffirmed the obligations and commitments on border-related issues that they have undertaken at all levels, including in particular international human rights, refugee and humanitarian law, and may consider as well standards and recommendations laid down by the World Customs Organization, the International Organization for Migration, the International Labour Organization, the United Nations High Commissioner for Refugees (UNCHR) and other relevant international organizations (Ljubljana 2005).¹¹
18. The basic principles relating to protection and assistance of migrants during a crisis are also set out by other commitments, as emphasised and clearly set out by the International Organisation for Migration (IOM), of which Kyrgyzstan is a member¹² as follows:

States bear the primary responsibility to protect and assist crisis-affected persons residing on their territory in a manner consistent with international humanitarian and

⁶ Final Act of the Conference on Security and Co-operation in Europe, Helsinki 1975, “Economic and Social Aspects of Migrant Labour”.

⁷ Concluding Document of Vienna – Third Follow –up Meeting 1989, par (20) and Section on “Human Contact” par (1) clarifying the “Human Contacts” - provisions in the Final Act of the Madrid Concluding Document of the Second Follow-Up meeting, 1983

⁸ CSCE/OSCE, 1990 *Copenhagen Document*, par. 9.5.

⁹ Concluding Document of Helsinki, – Fourth Follow –up Meeting 1992, par 40

¹⁰ Eleventh Meeting of the Ministerial Council 1 and 2 December 2003, MC.DOC/1/03, Section III, par 13 (1)

¹¹ Thirteenth Meeting of the Ministerial Council 5 and 6 December 2005, MC13EW66, Chapter 1, par 2.1

¹² <https://www.iom.int/member-states>

*human rights law. ... The duty to ensure protection and assistance for migrants caught in crises therefore rests with the State of destination, the State of transit to which a migrant may have fled, and the State of origin which has responsibilities for its nationals even when abroad.*¹³

1.1. International legal obligations to migrants and foreign nationals, in particular in emergency situations/COVID-19

19. While States retain a sovereign power to manage their borders and to devise rules to control the entry and residence of non-citizens, generally non-citizens enjoy the same human rights protections as citizens (subject to limited exceptions such as the right to vote in general elections), without discrimination. Limitations on these rights must be prescribed by law, pursue a legitimate aim and comply with the principle of proportionality. In times of emergency, some human rights treaties allow for derogations from some rights under strictly defined conditions. It is not permissible to derogate from or limit certain absolute rights such as the right to be free from torture or inhuman or degrading treatment, for example.
20. States' sovereign power to manage their borders includes protective border control measures in times of emergency. However, even while exercising border control in an emergency, states have a duty to protect the human rights of all individuals within their jurisdiction. Measures should be proportionate and should not prevent people from seeking protection from persecution or ill-treatment.¹⁴
21. OSCE/ODIHR has analysed responses of participating States to the COVID-19 Pandemic in a recent report.¹⁵ OSCE commitments envision derogations during a "state of public emergency" that is "justified only by the most exceptional and grave circumstances."¹⁶ Two key international human rights instruments applicable in most participating States contain derogation clauses, namely Article 4 of the International Covenant on Civil and Political Rights (ICCPR) and Article 15 of the European Convention of Human Rights (ECHR). Other key international human rights conventions, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), the UN Convention on the Rights of the Child (CRC), UN Convention on the Rights of Persons with Disabilities (CRPD), and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), do not contain express derogation clauses and remain applicable in emergency situations.
22. Despite some differences in interpretation and application by the UN Human Rights Committee (UN HRC) and the European Court of Human Rights' (ECtHR), the derogation clauses generally require the following overall conditions to be fulfilled for

¹³ International Organisation for Migration, *Protecting Migrants During Times of Crisis: Immediate Responses and Sustainable Strategies* (Background Paper to Intersessional Workshop in International Dialogue on Migration, 2012), hereinafter, "IOM Background Paper", available here: https://www.iom.int/files/live/sites/iom/files/What-We-Do/idm/workshops/protecting-migrants-during-times-of-crisis-2012/Background_Paper_EN.pdf

¹⁴ EU Agency for Fundamental Rights and Council of Europe, "Fundamental rights of refugees, asylum applicants and migrants at the European borders" (2020).

¹⁵ OSCE/ODIHR: "OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic", 2020, available here: https://www.osce.org/files/f/documents/e/c/457567_0.pdf

¹⁶ *Op. cit.* footnote 8 (Copenhagen Document)par. 25; and Moscow Document (1991), par. 28.1.

states to validly seek to derogate, as also elaborated in the Copenhagen (1990) and Moscow (1991) Documents:¹⁷

- The existence of an extraordinary situation posing a fundamental, real and current or imminent threat to a country;¹⁸
- The temporary nature of the emergency and of the derogation;
- Certain procedural requirements that need to be followed by the State in terms of declaration and public proclamation in accordance with provisions in law, and informing ODIHR and formally notifying the UN and the Council of Europe;
- The clarity and accessibility of the derogating measures;
- The existence of safeguards and oversight mechanisms, including ensuring the constant review of the necessity of maintaining a state of emergency and any measures taken under it;¹⁹
- The strict necessity and proportionality of derogating measures in terms of their temporal, geographical and material scope, to deal with the exigencies of the situation, while excluding certain non-derogable rights from their scope of application;²⁰
- The measures must not be inconsistent with other obligations arising under international law, including international humanitarian law and international refugee law; and
- The non-discriminatory character of the derogating measures in law and in practice. OSCE commitments specifically state that derogation cannot be sought for the “rights from which there can be no derogation” according to relevant international instruments.²¹

23. The UN Committee on Migrant Workers and the UN Special Rapporteur on the Human Rights of Migrants further notes:

*“it is of paramount importance that State emergency responses to the COVID-19 pandemic be necessary to achieve legitimate public health goals; proportionately apply the least intrusive means; and be non-discriminatory so as not to be used to target particularly vulnerable groups including minorities or individuals.”*²²

1.2. Overarching principles

1.2.1 *Obligation to respect and ensure the rights of all persons within the territory*

¹⁷ See *Ibid.* (Copenhagen Document), par. 25; and *Ibid.* (Moscow Document), par. 28.

¹⁸ Article 4 par. 1 of the ICCPR and Article 15 par. 1 of the ECHR refer to a public emergency “threatening the life of the nation”. While such a notion has been defined by the European Court of Human Rights “an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed,” (see e.g., European Court of Human Rights, *Lawless v. Ireland* (No. 3) (Application no. 332/57, judgment of 1 July 1961), par. 28), this notion remains rather uncertain and the European Court of Human Rights has generally left a wide margin of appreciation to the respective countries (see e.g. *Aksoy v. Turkey* (Application no. 21987/93, judgment of 18 December 1996), para. 68). The UN HRC does not provide a clear definition and notes that “[n]ot every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation,” emphasizing that careful justification needs to be provided if derogations are sought in situations other than an armed conflict (see CCPR, General Comment no. 29 on Article 4 of the ICCPR, par. 3).

¹⁹ Parliamentary Assembly of the Council of Europe (PACE), Resolution 2209 (2018) State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights, para 19.4.

²⁰ See OSCE/ODIHR: “OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic”, 2020, p. 22, available here: https://www.osce.org/files/f/documents/e/c/457567_0.pdf

²¹ *Op. cit.* footnote 8, par. 25; and *op. cit.* footnote 16 (Moscow Document), par. 28.6.

²² *Op. cit.* footnote 3 par. 1.

24. The principle of non-discrimination is fundamental: numerous general human rights treaties provide that states must guarantee the rights protected therein without discrimination.²³ This means that States may not discriminate on any of the prohibited grounds, and also that they must address discrimination by private actors. There is a broad range of prohibited grounds of discrimination; for example, Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) refers to “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. “Nationality” has also more recently emerged as a suspect ground of discrimination, meaning that any difference of treatment grounded on nationality should be justified by strong reasons and be strictly necessary to achieve the objectives pursued.²⁴ Pursuant to Article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), States Parties undertake to respect and to ensure to all migrant workers and members of their families the rights provided for in the Convention “without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.”
25. It should be noted that the social, economic and cultural rights obligations contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) are subject to the principle of progressive realisation (Article 2(1)). The content of the requirement of progressive obligation is subject to debate, however, States must satisfy the minimum essential levels of economic, social and cultural rights.²⁵ Moreover, although rights must be granted without discrimination (Article 2(2)), Article 2(3) states 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.” However, this is also subject to the core minimum rights doctrine mentioned above. Article 4 notes that the State may subject the rights contained in the Covenant “only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”.
26. See section also 1.1 *supra* on derogation and section 1.2.5 *infra* on *non-refoulement*

1.2.2 General legal obligations to migrants and non-citizens

27. As outlined above, the State’s core human rights treaty obligations generally apply to non-citizens present on the territory, with certain exceptions pursuing a legitimate aim and that comply with the principle of proportionality. In addition, protection frameworks for specific categories of people, most notably refugees, must also be observed in times of crisis. In cases of armed conflict, international humanitarian law also applies to migrants: the most relevant provisions include the principle of distinction between civilians and combatants, the right of migrants to leave the country in conflict, the prohibition of forced transfers, and departure arrangements.²⁶

²³ Although only the ICCPR and the ICRMW contain a general non-discrimination clause which may be invoked independently of any other substantive guarantee under the Convention.

²⁴ On nationality discrimination, see generally, Olivier De Schutter, “Links between migration and discrimination: A legal analysis of the situation in EU Member States” (European Commission, 2016).

²⁵ See further, Committee on Economic, Social and Cultural Rights, General Comment No. 3 “The Nature of States Parties’ Obligations” (E/1991/23, 14 December 1990).

²⁶ 1949 Geneva Conventions and their 1977 Protocols, in particular the Fourth Geneva Convention Articles 35-46 and Protocol I Part IV. See *op. cit.* footnote 13, p. 4.

28. Of particular interest in terms of international migration and emergencies is the right to leave a country, as protected by Article 12(4) of the ICCPR; and the right to return to the country of which one is a national (Article 12(3) ICCPR).²⁷ In the context of the Covid-19 crisis, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) and UN Special Rapporteur on the human rights of migrants note that states must guarantee the right of all migrants and their families to return to the country of their nationality and that this obligation must be harmonised with international health standards and guidelines issued by national health authorities, and covers (according to the standards of each State) measures of protection, access to information and assistance.²⁸
29. More broadly, the Office of the UN High Commissioner for Human Rights' (OHCHR) "Guidance on COVID-19 and the Human Rights of Migrants" identifies key themes and human rights issues relevant to migrants including: access to health services, goods and facilities; migrants living in camps or unsafe conditions; the right to decent work and social protection; access to the right to education; issues relating to immigration detention; border management; and xenophobia.²⁹ Finally, it should be recognised that access to safety during crises is even further compromised for those already experiencing extreme human rights violations, such as trafficked persons and exploited migrant workers.³⁰

1.2.3 Migrant workers

30. In respect of the specific category of migrant workers, Kyrgyzstan's obligations under ICRMW, to which it is a State Party,³¹ are particularly relevant.
31. The ICRMW applies to "all migrant workers and members of their families without distinction of any kind such as sex, race, colour, 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 1). Under the ICRMW, the term "migrant worker" has a broad meaning and refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. The ICRMW is "a comprehensive document, covering the entire migration process from pre-departure in the country of origin, through travel in countries of transit, to entry and residence in the destination state and return to the country of origin."³² It deals specifically with the rights of migrant workers in specific categories of employment, such as frontier workers, seasonal workers and self-employed workers in Part V (Articles 57-63). Documented workers are generally afforded a right to equal treatment with nationals of the State of employment, as well an enhanced protection against expulsion (Article 56).

²⁷ See also Article 8 of the ICRMW.

²⁸ *Op. cit.* footnote 3 par. 13.

²⁹ Office of the UN High Commissioner for Human Rights (OHCHR), "Guidance on COVID-19 and the Human Rights of Migrants (7 April 2020).

³⁰ See, for example, "Statement by OSCE Special Representative for Combating Trafficking in Human Beings on need to strengthen anti-trafficking efforts in a time of crisis" (3 April 2020).

³¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), adopted by the UN General Assembly by resolution 45/158 of 18 December 1990, Kyrgyzstan ratified the Convention in 2003: <https://indicators.ohchr.org/>

³² Alan Desmond, "Introduction", in Alan Desmond ed. *Shining Light on the UN Migrant Workers' Convention* (Pretoria University Law Press, 2018) at 6. Available at https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/1_Global/INT_CMW_CWP_8641_E.pdf

32. The ICRMW is wide-ranging and contains over 90 articles. The following provisions of the ICRMW may carry particular significance in the context of an emergency situation:
- States must inform migrant workers of their right to the consular protection and assistance of their state of origin when any right set out in the Convention is impaired, and particularly where expulsion is involved (Article 23).
 - Collective expulsion is prohibited (Article 22).
 - All migrant workers (including irregular migrants) are entitled to emergency healthcare (Article 28) and to equal treatment in respect of remuneration and working conditions (Article 25).
 - Migrant workers and members of their families shall have the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there, subject only to restrictions that are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals, or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention (Article 39).
 - Documented workers enjoy equal treatment with nationals in relation to a range of social and economic rights, including access to education and vocational education, housing, and social protection (Article 43).

1.2.4 Migrant Workers and COVID-19 Guidance from International Bodies

33. The Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants by the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the UN Special Rapporteur on the human rights of migrants (26 May 2020),³³ specifically addresses the issue of emergencies and includes concrete recommendations for States, including:
- Integrate migrant workers into national COVID-19 prevention and response plans and policies;
 - Guarantee access to social services for migrants and their families;
 - Guarantee the labour rights of migrant workers, especially of those working in essential sectors, and take measures to protect their health, such as by providing personal protection equipment;
 - Facilitate virtual channels to ensure access to education for children of migrants, irrespective of their migration status or of their parents;
 - Guarantee the rights of persons in need of international protection;
 - Avoid implementing migration-related control or repression actions and adopt measures to ensure the protection of personal data and information; and
 - Guarantee the right of all migrants and their families to return to the country of which they are nationals.
34. For its part, the International Labour Organisation (ILO) has also made recommendations for policy-makers and constituents in relation to protecting migrant workers during the pandemic. It emphasises the importance of bilateral and sub

³³ *Op. cit.* footnote 3 (CMW and UN Special Rapporteur Joint Guidance Note), see also Migrants in Countries in Crisis Initiative (MCIC) "Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster", available here: <https://micicinitiative.iom.int/guidelines>

regional cooperation to ensure the protection, safe return and effective reintegration into the labour market of migrant workers and their families.³⁴

1.2.5 Refugees, asylum seekers and non-refoulement

35. Kyrgyzstan is a State Party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol.³⁵ Article 1 of the Convention defines a ‘refugee’ for the purposes of the Convention, with most of the rest of the Convention devoted to setting out the content of refugee status, including rights relating to legal status, employment, welfare, and administrative status. The key protection against *refoulement* is provided in Article 33:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

36. There are also broader *non-refoulement* obligations in International Human Rights Law, primarily linked to the right to be free from torture, inhuman and degrading treatment and punishment).³⁶ This right to *non-refoulement* guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. UN Human Rights Committee explicitly defines that States must “not extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm”, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed”.³⁷
37. Article 1 of the Refugee Convention permits exclusion of individuals from refugee status in certain defined situations related to the circumstances of the individual concerned rather than the situation in the host state. Article 33(2) provides a limited exception to *refoulement* within the scope of the 1951 Convention in the case of “a refugee whom there are reasonable grounds for regarding as a danger to the security of the country where he/she currently is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.” However, this exception is not applicable to the broader prohibition of *non-refoulement* contained in International Human Rights Law. In particular, and as mentioned above, *refoulement* is prohibited if “there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed”.

³⁴ International Labour Organisation Policy Brief, “Protecting migrant workers during the COVID-19 pandemic: Recommendations for Policy-makers and Constituents” (30 April 2020).

³⁵ Kyrgyzstan acceded to the Convention and the Protocol on 8 October 1996:

<https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>

³⁶ *Op. cit.* footnote 18 (ICCP), Article 7; UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3; and the Universal Declaration on Human Rights, Article 14.

³⁷ UN Human Rights Committee, General Comment No. 31, par. 12, see also The UN Committee on the Rights of the Child General Comment No. 6 (treatment of unaccompanied and separated children outside their country of origin), UN Doc. CRC/GC/2005/16, pars. 27–28. See also European Court of Human Rights *Soering v. The United Kingdom*, (Application no. 14038/88), judgement 7 July 1989, para. 91; *Cruz Varas and Others v. Sweden*, Application no 15576/89 (judgment 20 March 1991), pars. 69–70; *Chahal v. The United Kingdom* (Application no. 22414/93) 15 November, 1996, para. 74.

38. In relation to the principle of *non-refoulement*, UNHCR has stated its position as follows:

*“Acknowledging that States may, in extreme circumstances, derogate temporarily from certain human rights, UNHCR has recalled non-refoulement is a non-derogable right constituting the cornerstone of international refugee protection. As such, non-refoulement prohibits non-admission and rejection at borders that could expose refugees or asylum-seekers to the risk of persecution, torture, or inhuman treatment or punishment. In those countries where states of emergency have expired, operations are advocating the reduction or removal of far-reaching restrictions as the rationale for their promulgation no longer applies.”*³⁸

39. The (non-binding) Global Compact on Refugees³⁹ emphasises the importance of upholding the civilian and humanitarian character of international protection and applicable international law in both emergency and protracted refugee situations, and also recognises the legitimate security concerns of host States in these circumstances.⁴⁰ “Adaptability” is one of the aspects of a quality asylum system recognized in the Compact.⁴¹ The Compact further notes that a concerned State can activate support through the Asylum Capacity Support Group (ACSG) to assist its national authorities to strengthen or adapt aspects of their asylum systems.⁴²

1.3. Overview of International legal obligations to nationals abroad and their families

40. As mentioned above, States’ legal obligations to individuals who are not within its jurisdiction are limited. Nonetheless, in emergency situations, the State of nationality is often asked to mediate issues faced by “stranded” or vulnerable nationals abroad. In the current global pandemic, this has included “demands for security and public health that are extra-territorial”.⁴³ The Migrants in Countries in Crisis Initiative (MCIC)⁴⁴ operational framework states that the organisation of safe evacuations for migrants to return home “is often the most effective method of protection for migrants caught in crises”.⁴⁵ In this context, one of the most fundamental legal issues is the right to return to the country of which one is a national. Other important issues include:

- The provision of consular assistance and protection;
- Access to healthcare and social protection for returning nationals;
- The protection of returning nationals against hostility and hate speech; and
- The protection of family unity.

³⁸ UNHCR, Report on Response to Covid-19 (March – September 2020) (hereinafter, UNHCR Covid-19 Progress Report), p.19.

³⁹ UNHCR: <https://globalcompactrefugees.org/sites/default/files/2019-12/Global%20compact%20on%20refugees%20EN.pdf>

⁴⁰ *Ibid*, par. 56.

⁴¹ *Ibid*. par. 62.

⁴² *Ibid*.

⁴³ Frédéric Mégret, “Homeward Bound? Global Mobility and the Role of the State of Nationality During the Pandemic” *American Journal of International Law Unbound*, Symposium on Covid-19, Global Mobility and International Law (2020), at 332.

⁴⁴ *Op. cit.* footnote 33 (MCIC)

⁴⁵ IOM, “Migration Crisis Operational Framework” (2012), p.3, para. 8.

41. This section considers these issues as relevant to the various categories of persons set out below. As outlined in the previous section, nationals who are abroad are also protected as non-nationals under the obligations of the country where they are located until they leave.

1.3.1 Kyrgyz nationals and their family members residing outside of Kyrgyzstan, including labour migrants

42. As mentioned above, the right to return to one's own state is a fundamental right, the importance of which has been highlighted during the COVID-19 emergency. Article 13(2) of the Universal Declaration of Human Rights states that "Everyone has the right to leave any country, including his own, and to return to his country". Article 12(4) ICCPR provides that "No one shall be arbitrarily deprived of the right to enter his own country", although this right may be derogated from in times of emergency if the conditions set out in Article 4(1) are satisfied. In addition, any restrictions on the right to enter one's own country – such as, for example, a border closure which may temporarily impact even the State's own nationals; severe quarantine measures; or health check requirements for entry – would need to be necessary, reasonable and proportionate.
43. Aside from the question of restricting entry for its own nationals, the question arises whether States are under a broader obligation to assist or facilitate return for their nationals. However, the ability of the State of nationality to offer repatriation may depend on the status of bilateral relations with the country in question.
44. In summary, restrictions on entry for the State's own nationals must be necessary, reasonable and proportionate. More broadly, States are not necessarily legally obliged to positively assist or facilitate the return of nationals abroad in an emergency, although this is sometimes done in practice, especially where fundamental rights are at stake.

1.3.2 Consular assistance and protection

45. Pursuant to the 1963 Vienna Convention on Consular Relations, States have agreed for other States to establish consular posts on their territory. These consular posts usually take the forms of consulates or embassies representing the interests of their State and nationals in the receiving country. Consular support generally includes citizen services such as registration, issuance and extension of travel documents, legalization of documents, funding for emergency transfers, birth and death registration and repatriation, amongst others. Consular functions "most notably include assisting their nationals in situations of emergencies, such as in conflict or disaster situations or during sanitary crises as the current COVID-19 pandemic".⁴⁶
46. Article 23 of the ICRMW provides that migrant workers and members of their families "shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognized in the present Convention are impaired. In particular, in case of expulsion, the person concerned shall be informed of this right without delay and the authorities of the expelling State shall facilitate the exercise of such right."

⁴⁶ IOM, "COVID-19 Analytical Snapshot #4: Consular and other assistance for stranded migrants and travellers" (2020), p. 1.

1.3.3 Returning Kyrgyz nationals

47. Returning Kyrgyz nationals should be granted access to at least primary healthcare, social protection, and essential socio-economic rights, in line with international human rights obligations as discussed above and at Annex 1. For example, Article 11 of the ICESCR provides that states should “recognise the right of everyone to an adequate standard of living for himself and his family”, and Article 12 recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. States are thus bound by a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights provided in the ICESCR, including: minimum essential food; essential primary health care; and essential basic shelter and housing.⁴⁷
48. Returning migrants, as well as migrant communities in Kyrgyzstan, may also need to be protected against hostility and hate speech, depending on the circumstances. Article 20(2) ICCPR clearly states: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Governments should avoid attributing blame to any particular ethnic or migrant group in an emergency and should aim to protect against hate speech in both the public and private spheres.

1.3.4 Family members of Kyrgyz nationals living abroad who remained in Kyrgyzstan

49. In terms of concrete obligations to families, states have an obligation to respect the right to family unity of Kyrgyz families who are separated because a member of the family is living abroad, as well as the right to family reunification of nationals living in Kyrgyzstan with foreign family members. Article 23 of the ICCPR provides that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the state”. Therefore, states should facilitate the unification of families that include residents and citizens of other countries. During the pandemic, some states have provided exemptions from entry restrictions for foreign national family members seeking to enter the country to be together with their families.

2. COMPARATIVE REVIEW OF EXISTING PROCEDURES ACROSS THE OSCE REGION WHICH RELATE TO THE ASSISTANCE OF MIGRANTS DURING EMERGENCY SITUATIONS

50. As noted in Part 1 of this Note, migrants are often disproportionately affected by emergency situations, especially temporary labour migrants, irregular migrants and others in a precarious legal and economic situation. The previously mentioned MCIC Initiative noted in 2017:

“As shown by a number of past occurrences, migrants face specific barriers to accessing information, assistance and resources in emergencies (including limited proficiency in the local language, discrimination and lack of local knowledge and social networks, lack of trust in host country authorities).”⁴⁸

⁴⁷ *Op. cit.* footnote 25, par. 10.

⁴⁸ Migrants in Countries in Crisis Template SOPs for Assisting Migrants in Emergencies (IOM, 2017), p. 1.

51. This part of the Note provides a non-exhaustive survey of the comparative practices of countries, mainly across the OSCE region, in relation to the assistance of migrants in emergencies. It is organised thematically to address issues relating to border management; the legal migration regime; access to public services and social protection; specific issues concerning refugees and asylum seekers; and, finally, the approach of countries to returning nationals. Several good practices will be mentioned in each thematic sub-section, including from countries outside the OSCE region. These practices concentrate on issues related to emergency response, rather than emergency preparedness. The objective of the Note is to outline identified practices of states, rather than to engage in in-depth critical analysis of those practices.

2.1. Basis of the comparative research

52. In the context of the Covid-19 pandemic, the UN Committee on Migrant Workers and the UN Special Rapporteur on the human rights of migrants have welcomed the range of measures adopted by States to protect migrants and their families.⁴⁹ A wealth of information and comparative material has been developed in response to the challenges of Covid-19. This part of the Note draws extensively on this information to inform its discussion of state practices. The data on comparative practices is primarily drawn from:
- a. International Organisation for Migration (IOM) Covid-19 Analytical Snapshots, Issue Briefs and Regional Reports;
 - b. European Migration Network (EMN) Bulletins and Information Notes (which provide extensive information about the practices of EU Member States);
 - c. UNHCR Briefs and Covid-19 Country Updates;
 - d. Country practices available on the MCIC Initiative website.

2.1.1 Template Standard Operating Procedure (SOPs) and Protocols

53. Before proceeding to the thematic discussion of comparative practices, it should be noted that a number of relevant template Standard Operating Procedures (SOPs) and Protocols have been made available through international organisations. The most significant of these is the Migrants in Countries in Crisis Template SOPs for Assisting Migrants in Emergencies (MCIC Template SOP).⁵⁰
54. The MCIC Template SOP is designed to support a set of organizational efforts that can help address the protection gaps experienced by migrants in emergencies. It can be used as a basis to develop SOPs to clearly define the responsibilities that governmental and non-governmental emergency response actors will bear, and the steps they will have to take, when responding to emergencies that affect migrants alongside native populations. It can also be used to define relevant procedures and options for cooperation among the various stakeholders. The MCIC Template SOP is comprehensive and provides concrete guidance for governments. It emphasises the need to carefully define the objective of the SOP and the scope of the SOP: what emergency situations will the SOP apply to? What groups of migrants will it cover? What kind of emergency management efforts will it apply to? It then suggests dealing

⁴⁹ UN Committee on Migrant Workers and *op. cit.* footnote 3, p. 1.

⁵⁰ See also, for example “Covid-19 Response Standard Operating Procedure for Returning Migrants (IOM and Ethiopia, May 2020); and IOM Issue Brief, “Mobility Crisis and Response in the Time of Covid-19: the Republic of Korea’s Response” (May 2020).

with the relevant issues under the following headings (and provides further detail on how each could be dealt with):

- Including migrants in assessments of risk, needs and impacts
- Mapping stakeholders
- Creating co-ordination and referral systems among actors
- Accounting for migrants in early warnings and emergency communications
- Including migrants in contingency plans
- Protecting migrants' rights during and after emergencies
- Providing culturally competent emergency assistance
- Renewing migrants' documents
- Facilitating migrants' voluntary departure from the country
- Communicating with and tracing family members
- Migrants' inclusion in relevant activities

The MCIC website also contains a compendium of state practices relating to the situation of migrants in emergencies.

55. On the issue of return migration, IOM Kazakhstan has developed and issued a training manual titled "Return Migration: International Approaches and Regional Specifics of Central Asia" (currently only available in Russian). The training manual deals with return migration, providing examples of successful application of the potential of returning migrants in Central Asian and other countries, as well as the challenges faced by returning migrants in their home countries. The aim of the training manual is to develop the knowledge, skills and capacity of state and municipal officials working in the field of migration and development to protect the rights, freedoms, and legal interests of migrants.

2.2. Border management and immigration admissions

56. The COVID-19 pandemic has highlighted the impact of emergencies (in particular, health-related emergencies) on border control procedures, with many countries closing their borders to all non-citizens. In April 2020, 167 States had implemented full or partial border closures, with 90 providing no exceptions for people seeking international protection. By September 2020, those figures stood at 156 and 75, respectively.⁵¹
57. As borders have opened up gradually in the second half of 2020, states are putting in place a wide variety of practices to try to ensure that admissions from other states do not contribute to the spread of the virus. Measures put in place by states include health-related visa requirements, temperature checks at the border, and quarantine restrictions. Some are now mooted the idea of an immunity passport which would enable greater levels of international travel.⁵² The IOM has developed useful Standard Operating Procedures for front-line border officials in response to the COVID-19 outbreak.⁵³
58. As indicated in the table below, states have, in tandem with restrictions on border crossing, greatly restricted the issuing of entry visas. However, many have provided various types of exemptions to this, for a range of logistical, humanitarian and economic reasons. For example, states have facilitated the entry of non-national family

⁵¹ *Op. cit.* footnote 42, p.19.

⁵² See IOM Policy Paper, "Cross-Border Mobility Amid and After Covid-19" (IOM, June 2020).

⁵³ IOM, "Standard Operating Procedures for Front-line Border Officials at the Points of Entry in Response to COVID-19 Outbreak" (30 April 2020).

members of residents of the country, have allowed people in transit to enter the state territory temporarily, and have also provided exemptions for seasonal workers and healthcare workers. Some countries have allowed for special humanitarian admissions to allow those seeking protection to access the territory.

Table of Comparative Practices Relating to Border Management and Immigration Admission⁵⁴

Practice	Examples
Exceptions to restrictions on the issuing of entry visas, for logistical, humanitarian and economic reasons	<ul style="list-style-type: none"> • Exemptions for people in transit - mobility corridor in Hungary • Exemptions for non-national family members of citizens and residents - Luxembourg • Exemptions for humanitarian reasons - Lithuania allowing admissions from Belarus • Exemptions for seasonal workers - Poland, Finland, UK • Exemptions for healthcare workers - Canada
Alternative protection measures adopted to facilitate opening of borders (e.g. in pandemic situations, health checks, quarantine measures)	<ul style="list-style-type: none"> • Health-related visa requirements - many states • Health checks at the border - many states • Distribution of information leaflets in different languages at the border - Belarus, North Macedonia • Detailed border control SOP provided by Republic of Korea
Mobility corridors and sub-regional ‘travel bubbles’ to facilitate mobility during a crisis	<ul style="list-style-type: none"> • Mobility corridor - Hungary • Travel bubble - Baltic States

2.3. Issues relating to the legal migration regime

59. States have also established a wide range of measures necessary to adapt legal migration systems to the reality of closed borders, public administration delays, and reduced air and land transport during the pandemic. As the ILO notes, addressing the impact on migrant workers is a particular issue for immigration systems in emergencies: “layoffs of migrant workers not only often lead to income losses but also the expiration of visa or work permits, putting migrants into undocumented or irregular status”.⁵⁵ It is widely recognised that irregular migrants and those with short-term or precarious immigration statuses are susceptible to exploitation and poverty, particularly in an emergency situation.⁵⁶ States have put in place various measures to prevent

⁵⁴ Key sources: European Migration Network (EMN) Bulletin No. 30 (May 2020) (including Special Annex); EMN Bulletin No. 31 (September 2020) (including Special Annex); IOM Issue Brief, “Mobility Crisis and Response in the Time of Covid-19: the Republic of Korea’s Response” (May 2020); IOM Policy Paper, “Cross-Border Mobility Amid and After Covid-19” (IOM, June 2020); EMN and OECD, “Inform No. 3: Managing Migration in Essential Sectors” (2020); IOM South-Eastern Europe, Eastern Europe, and Central Asia Covid-19 Situation Reports.

⁵⁵ *Op. cit.* footnote 34, p.4.

⁵⁶ *Op. cit.* footnote 13, p. 8.

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migrants falling into irregularity due to Covid-19 restrictions on administrative processes and travel (see table immediately below).

Table of Comparative Practices Relating to Legal Migration Regimes⁵⁷

Practice	Examples
Automatic extensions of visas and residence permits	<ul style="list-style-type: none"> • Automatic extension of visas to avoid irregularity - Greece, Ireland (and many countries) • Extension of seasonal work visas beyond what is usually permitted - Belgium, USA, Estonia
Simplification of legal migration registration requirements	<ul style="list-style-type: none"> • Russia
Regularisation programmes for irregular migrants	<ul style="list-style-type: none"> • Portugal, Italy and Spain
Periods of irregularity linked to emergency not considered to be illegal stay for the purposes of migration law and naturalisation procedures	<ul style="list-style-type: none"> • Bulgaria
Scaling back of immigration detention	<ul style="list-style-type: none"> • Spain, the Netherlands and France suspended immigration detention during the Covid-19 crisis.
Suspension of returns processes / allowing non-citizens whose residence permit expired during the COVID-19 measures to remain legally in the country until the end of the pandemic	<ul style="list-style-type: none"> • Croatia, Lithuania, Finland
Relaxing of requirements in relation to exit visas	<ul style="list-style-type: none"> • Allowing foreign nationals or stateless persons to leave the country without being issued an exit visa – ‘green corridor’ in Kyrgyzstan.
Facilitating access to citizenship for migrants who provide assistance on the ‘frontline’ of the emergency	<ul style="list-style-type: none"> • France

⁵⁷ Key Sources: European Migration Network (EMN) Bulletin No. 30 (May 2020) (including Special Annex); EMN Bulletin No. 31 (September 2020) (including Special Annex); EMN and OECD, “Inform No. 1:EU and OECD States’ Responses to Managing Residence Permits and Migrant Unemployment During the Covid-19 Pandemic” (2020); Sergey Ryazantsev, Zafar Vazirov, Marina Khranova, Alexey Smimov, “The Impact of the Covid-19 Pandemic on the Position of Labor Migrants from Central Asia in Russia” (2020) 21 (3) *Journal of Social and Political Studies, Central Asia and the Caucasus*; IOM South-Eastern Europe, Eastern Europe, and Central Asia Covid-19 Situation Reports; IOM Issue Brief, “Covid-19 and Impact on Seasonal Agricultural Workers” (27 May 2020).

2.4. Access to public services and social protection

60. The experiences of Central Asian labour migrants in Russia during the COVID-19 pandemic illustrates the serious economic difficulties often faced by migrants during emergencies, and the need to provide a functioning ‘safety net’ to assist migrants. According to research, the main reason for the inability to pay for housing and buy food among Central Asian migrants in Russia during the pandemic was the loss of income by a significant number of labour migrants, and difficulties caused by their registration status.⁵⁸ Research indicates:

“Although the Russian authorities have simplified migration procedures until 15 June, 2020 (registration, patents, work permits, temporary residence permit, visas), in reality, cases of police violence and violations of the rights of labour migrants in Russian cities have only become more numerous.”⁵⁹

Table of Comparative Practices on Access to Public Services and Social Protection⁶⁰

Practice	Examples
Access to social protection benefits	<ul style="list-style-type: none"> • Extension of pandemic social protection response to migrants, especially those with a residence permit or temporary working visa - Italy, New Zealand, Australia, Myanmar, and Uzbekistan • Pandemic unemployment payment applicable irrespective of migration status - Ireland • Cash payments to irregular migrants are excluded from the pandemic stimulus package – California, USA • Provision of food and accommodation to stranded migrants - Panama • Temporary camps created for homeless migrants - Bosnia and Herzegovina
Access to healthcare (including diagnostic testing)	<ul style="list-style-type: none"> • All measures extended to citizens applied to non-citizens - Spain • Granted for temporary migrant workers - Kazakhstan • Granted to migrant workers - South Korea • Granted to irregular migrants – Malaysia
Accessible and meaningful communication with migrants	<ul style="list-style-type: none"> • Efforts to convey messages in migrants’ own language - Ireland, Austria, Portugal

⁵⁸ Sergey Ryazantsev, Zafar Vazirov, Marina Khramova, Alexey Smimov, “The Impact of the Covid-19 Pandemic on the Position of Labor Migrants from Central Asia in Russia” (2020) 21 (3) *Journal of Social and Political Studies, Central Asia and the Caucasus*.

⁵⁹ *Ibid.*

⁶⁰ Key sources: IOM, “COVID-19 Analytical Snapshot No. 38: Social protection of migrants” (14 May 2020); European Migration Network (EMN) Bulletin No. 30 (May 2020) (including Special Annex); EMN Bulletin No. 31 (September 2020) (including Special Annex); IOM South-Eastern Europe, Eastern Europe, and Central Asia Covid-19 Situation Reports.

2.5. Specific concerns relating to asylum seekers, refugees and stateless persons

61. Access to territory for asylum seekers is a significant issue in the context of generalised border closures.⁶¹ In June 2020, the UN Secretary General noted that “People on the move face a protection crisis. More than 150 countries have imposed border restrictions to contain the spread of the virus. At least 99 states make no exception for people seeking asylum from persecution.”⁶² UNHCR notes that some States which maintained exceptional access for asylum-seekers during the pandemic serve as positive examples for those with stricter approaches.⁶³
62. Maintaining the facility for asylum seekers to register in the asylum system and the timely progress of applications is another key issue during emergencies. European states, in particular, have displayed some promising practices in respect of the adaptation of asylum procedures in the Covid-19 pandemic (e.g. remote hearings, online submission of documents).⁶⁴ However, the EU’s Agency for Fundamental Rights and others have highlighted the ongoing issues of long waiting times and difficulties in accessing legal representation throughout the asylum process as being compounded by Covid-19.⁶⁵ Challenges in registering asylum seekers also persist despite the easing of restrictions in many countries.⁶⁶

Table of Comparative Practices Relating to Refugees, Asylum Seekers and Stateless Persons⁶⁷

Practice	Examples
Procedures for ensuring respect of principle of <i>non-refoulement</i> at the border	<ul style="list-style-type: none"> • Explicit exemptions for asylum-seekers from entry bans and border closures - over 20 European countries
Adaptation of asylum procedures / access to registration as an asylum seeker	<ul style="list-style-type: none"> • Providing for online applications for asylum, appeals and/or documentation - Malta, Azerbaijan • Maintaining the pre-registration or registration of asylum-seekers - Austria, Georgia, Germany, Iceland, Ireland, Italy, Liechtenstein, Moldova, Slovakia, Slovenia, Switzerland • Allowing applications to be submitted by mail - Germany, Italy

⁶¹ UNHCR, “Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic” (2020), p.1 ; See also the range of practices described in European Council for Refugees and Exiles, Information Sheet No. 28 “Covid-19 Measures Related to Asylum and Migration Across Europe” (28 May 2020).

⁶² UN Secretary-General, António Guterres, Video message on COVID-19 and People on the Move, 3 June 2020.

⁶³ UNHCR Progress Report, p. 5.

⁶⁴ UNHCR, “Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic” (2020).

⁶⁵ EU Fundamental Rights Agency, “Bulletin No. 1: Coronavirus Pandemic in the EU: Fundamental Rights Implications” (2020).

⁶⁶ EU Fundamental Rights Agency, “Bulletin No. 5: Coronavirus Pandemic in the EU: Fundamental Rights Implications” (2020)

⁶⁷ Key sources: UNHCR, “Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic” (2020); UNHCR Progress Report; UNHCR Covid-19 Flash Updates; European Migration Network (EMN) Bulletin No. 30 (May 2020) (including Special Annex); EMN Bulletin No. 31 (September 2020) (including Special Annex); European Council for Refugees and Exiles, Information Sheet No. 28 “Covid-19 Measures Related to Asylum and Migration Across Europe” (28 May 2020).

	<ul style="list-style-type: none"> • Conducting asylum interviews digitally - Austria, Latvia, UK • Conducting interviews with physical distancing measures - Austria, Switzerland, Lichtenstein
Maintaining safe reception conditions for asylum seekers	<ul style="list-style-type: none"> • Removing older persons and vulnerable persons at medical risk from congregated living facilities - Germany, Latvia, Ireland, Belgium • Lowering the occupancy rate of collective facilities lowered - Sweden • Releasing asylum seekers from detention / not putting any new arrivals in closed facilities - Austria, Belgium, Luxembourg, Spain, Switzerland and UK • Providing information in different languages and through hotlines (Italy, Bulgaria), apps (Austria), online platforms (France).
Registering births to safeguard against statelessness	<ul style="list-style-type: none"> • Maintaining and resuming issuance of civil documentation - Burkina Faso and Côte d’Ivoire • Relaxing deadlines for registration of vital events - Iran • Allowing online submission of applications for statelessness and interviews to be conducted remotely - Costa Rica, Italy, UK

2.6. Nationals abroad and returning migrants

63. In the context of the global public health emergency, the IOM has encouraged Governments: “to expand remote consular support to assist stranded migrants and avoid situations of increased vulnerability, including migrants undertaking costly and sometimes unsafe journeys to access much needed consular support such as assistance with returns, regularization and up-to-date information in languages appropriate to migrants’ needs.”⁶⁸
64. Some countries have provided logistical assistance migrants to return home (for example, India assisted its nationals in returning from the Gulf states).⁶⁹ Canada, for example, provided loans to its nationals to assist them in returning to Canada. The recent conference on “Migration governance in Central Asia: New approaches, regional trends, and the impact of the COVID-19 pandemic” (19 November 2020) highlighted a range of services provided by the Kyrgyz Government to nationals living in Russia in the Covid-19 crisis, including immediate financial and food assistance to vulnerable migrants and information telephone-lines and WhatsApp messages.

⁶⁸ IOM Issue Brief, “Covid-19 and Stranded Migrants” (July 2020), p. 5.

⁶⁹ *Ibid.*

Table of Comparative Practices Relating to Nationals Abroad and Returning Nationals⁷⁰

Practice	Examples
Innovative use of remote technologies to provide consular assistance to nationals abroad during emergencies	<ul style="list-style-type: none"> • Social media and mobile phone technology – Sri Lanka • Hotlines - Kazakhstan, Kyrgyzstan • WhatsApp - Kyrgyzstan • Online platform - Belgium, France • Geolocation service - Slovakia • Virtual meetings - Indonesian Mission in Turkey
Bilateral or regional partnerships between States, allowing countries to share consular responsibilities and to extend services to nationals of other States	<ul style="list-style-type: none"> • Concluded among countries of the Association of Southeast Asian Nations (ASEAN)
Practical assistance for nationals abroad caught in a crisis	<ul style="list-style-type: none"> • Centralised purchase of food items, PPE, assistance to find employment vacancies - Kyrgyzstan
Logistical assistance for nationals abroad caught in a crisis and seeking to return home	<ul style="list-style-type: none"> • State-assisted repatriation of nationals during the pandemic - USA, India and China
Financial assistance for nationals abroad caught in a crisis and seeking to return home	<ul style="list-style-type: none"> • State loans for travel expenses - Canada
Support for returning migrants and assistance with reintegration	<ul style="list-style-type: none"> • State funding allocated for support – Georgia • SOP for returning migrants in the pandemic – Ethiopia and IOM

3. FINAL COMMENTS

3.1. Gender-neutral Legal Drafting

65. As referred to in Section 1.3 *supra* discrimination of any kind must not occur in legislation or legal practice, which also applies to migration. In order to facilitate the respect of the prohibition of discrimination, the OSCE/ODIHR encourages all legislation to use gender neutral terminology. Employing only the male form of a term,

⁷⁰ Key sources: IOM Issue Briefs I-III, “COVID-19 Emerging Immigration, Consular and Visa Needs and Recommendations” (15 July 2020); MCIC Initiative Compendium of State Practices; IOM South-Eastern Europe, Eastern Europe, and Central Asia Covid-19 Situation Reports; “Covid-19 Response Standard Operating Procedure for Returning Migrants (IOM and Ethiopia, May 2020); IOM, “COVID-19 Analytical Snapshot #4: Consular and other assistance for stranded migrants and travellers”.

that would imply that the position is occupied by a man only, should be avoided. Established international practice requires legislation to be drafted in a gender neutral manner.⁷¹ It is recommended that, whenever possible, the reference to post-holders or certain categories of individuals be adapted to use a gender neutral word. Alternatively, the plural form of the respective noun could be used instead of the singular or it is recommended to use both male and female words.⁷²

3.2. Impact Assessment and Participatory Approach

66. OSCE/ODIHR welcomes an approach in line with OSCE commitments, which requires legislation to be adopted “as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (Moscow Document of 1991, par 18.1).
67. In order to be effective, consultations on draft legislation and policies need to be inclusive and to provide sufficient time to prepare and submit recommendations on draft legislation; the State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions.⁷³ Public consultations should allow ample time for effective and meaningful discussion, as well as for feedback. To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the process,⁷⁴ meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings). Public consultations constitute a means of open and democratic governance; they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.⁷⁵ Discussions held in this manner that allow for an open and inclusive debate will increase all stakeholders’ understanding of the various factors involved and enhance confidence in the adopted legislation. Ultimately, this also improves the implementation of laws once adopted.
68. In light of the above, the legislator is therefore encouraged to ensure that any new legislation is subject to further inclusive, extensive and effective consultations, according to the principles stated above, at all stages of the law-making process.

[END OF TEXT]

⁷¹ See e.g., the UN Economic and Social Commission for Western Asia (ESCWA), Gender-Sensitive Language (2014), <https://www.unescwa.org/file/31312/download?token=TsPJ7paT>, Chapter IX C.

⁷² See e.g., OSCE/ODIHR, Report on the Assessment of the Assessment of the Legislative Process in the Republic of Armenia (October 2014), paras 47-48, <<http://www.legislationline.org/documents/id/19365>>.

⁷³ See e.g., Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015, <<http://www.osce.org/odihr/183991>>.

⁷⁴ See e.g., OSCE/ODIHR, Guidelines on the Protection of Human Rights Defenders (2014), Section II, Sub-Section G on the Right to participate in public affairs, <<http://www.osce.org/odihr/119633>>.

⁷⁵ *Ibid.*