

Human Rights-Based Migration Governance

Fellow: Srgjan Karanfilovski

Country of residence: North Macedonia

Country of fellowship: Kosovo

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“How our societies treat migrants will determine whether we succeed in building societies based on justice, democracy, dignity and human security for all.”

Navanethem Pillay,

UN High Commissioner for Human Rights¹

¹ Address by Ms Navanethem Pillay, United Nations High Commissioner for Human Rights, at the Global Forum on Migration and Development/Civil Society Days, Puerto Vallarta, Mexico, 8 November 2010.

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List of Used Acronyms and Abbreviations

WB6	Western Balkan Six Countries
OHCHR	Office of the High Commissioner for Human Rights
KOSOVO	Republic of Kosovo
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
GAM	Government Authority on Migration
ILO	International Labor Office
ROME	
CONFERENCE	International Conference on Emigration and Immigration in Rome 1924
UN	United Nations
UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention for the Elimination of All Forms of Discrimination
CEDAW	Convention for the Elimination of Discrimination Against Women

CRC	Convention for the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ECtHR	European Court of Human Rights
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
IOM	International Organization for Migration
PEA	Private Employment Agencies
GAM	Government Authority on Migration
EU	European Union
Strategy on Migration	Strategy

Introduction

Labor migration (meaning emigration) in the countries of Western Balkan also known as WB6 countries (including Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia), has been historically high, with a drastic increase in recent years.

Thus far most of the reporting on the migratory processes in the region has been focused on migration through an economic perspective. The reports were mostly on the economic consequences on the local labor markets due to the occurring brain drain in the WB6 countries or on the influence of the diaspora remittances on the local economies.

This report turns away from the economic perspective to the legal perspective. More specifically the focus will be on the human rights of migrants and the policies taken or the ones needed to be taken by States to respect, protect and fulfill these rights.

The protection of the human rights of the migrants is of paramount importance because these rights among others include the right to life and liberty, freedom from slavery and torture, freedom to hold an opinion and to express it, the right to family life, the right to work, the right to education and many other crucial rights. Human rights are rights that are inherent to every human being, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. We are holders of these rights because we were born into this world, not because they were granted to us by the State.

It has been estimated that approximately 3.6% of the total world's population or 281 million people live outside of their country of origin.² The reasons behind the decision of these people to leave their countries of origin are different. Many of these people are forced to leave their homes due to conflicts, persecution, and high levels of poverty, which could be the reason for the absence of healthcare, food, and water, housing, and education. Recently there has been a growing trend of people migrating due to the environmental and climate changes occurring in their states of origin.

While migration can be an empowering experience leading to positive changes in the lives of many migrants, they could face violations of their human rights throughout this experience. Therefore, many relevant international institutions and bodies for human rights protection such as the Office of the High Commissioner for Human Rights (OHCHR) advocates for migration governance based on human rights law, at the national and international level.³

² IOM, *World Migration Report 2022*, p.3.

³ United Nations, Office of the High Commissioner for Human Rights, *About Migration and Human Rights*.

The aim of this research is not to identify and provide data on migration in the WB6 countries, not to explore and analyze the serious challenges presented upon these countries by the emigration of young talented people, nor to discuss the possibilities in which there could be strengthening of the ties with the growing diaspora. The rights of migrants in this report will not be discussed through the norms of international labor law.

Due to the large numbers of migrant workers among the various types of migrants, this report is aimed at exploring the protection of their human rights. These rights are the most basic, yet the most significant rights for the existence of an individual.

The goal of the research will be achieved by finding answers to the following questions.

What policies and measures are States taking to protect their citizens who are moving to another State for labor purposes? What mechanisms are available for the protection of these rights? Are there any avenues that people living outside of their countries of nationality can resort to? What are the suggestions for solutions made by some of the leading organizations and institutions in the field toward the States?

State of origin which will be analyzed is the Republic of Kosovo (Kosovo). This is because Kosovo is one of the countries with the highest emigrant population among the WB6 countries and therefore it was the reason for choosing it as a case-country.

The first chapter of this report contains a brief presentation of the founding principles of international migration law. This segment will be followed by the presentation of the evolution of the human rights of migrants, from minimum standards to the emergence of international human rights law as the primary source for the protection of these rights.

The second chapter of this report provides comprehensive and applicable elaboration and overview of the international human rights law instruments and mechanisms at the regional and international levels used for the protection of the human rights of migrant workers. For this purpose, the international Bill of Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) are elaborated.

The third chapter of this report contains a presentation of the migration governance in Kosovo. Relevant institutions, policies, and mechanisms are discussed. In this chapter current trends and aspirations for fostering more human rights-centered migration governance, promoted by distinguished international organizations will be discussed. The chapter concludes with a final analysis of Kosovo's efforts in protecting the human rights of its emigrants, and on the measures needed for achieving this goal.

The report finishes with a conclusion.

In the writing of the report, several methodological approaches have been combined to examine the human rights protection of migrant workers, granted by the States of origin. The methodological approach of mapping and gathering the relevant legislation and data, analysis of the collected materials, and comparison to the practices on the ground, were utilized in the writing of the report.

During the preparation of the report, there were some challenges in the process of mapping and gathering the relevant national Kosovar legislation and data. It was particularly challenging in identifying relevant laws regarding labor migration, and identifying the particular institution/s which are working in this field. Even when such an entity, the Government Authority on Migration (GAM) was identified, the attempts to arrange interviews with its representatives did not come to fruition. This was most probably due to the complicated organizational structure of this governmental entity, which consists of several ministries and institutions, charged to govern the migratory processes in Kosovo.

Historical Evolution of Human Rights Protection

The Invention of the Migration Control Systems

After the climax of the free movement in the 19th century, at the end of it and the beginning of the 20th century is the time when historically the long-standing tradition of immigration liberalism has come to an end. States such as the USA and the United Kingdom started to implement measures of prohibitions and restrictions to control the entry of specific categories of aliens into their territories. Immigration controls became more prominent and generalized during the First World War when passport requirements were introduced. The economic crisis caused by the Great Depression of 1929, just strengthened the system of immigration control. By the end of the Second World War, passports became the standard of the so-called modern states. The emergence of strong welfare protection provided by the states has just heightened the approach that the domestic labor market must be preserved and protected from foreign workers.⁴

The development of immigration control systems in states around the world posed some challenges to international law, regarding the regulation of migration at the international level. The interwar period was a period of intense intergovernmental collaboration at the international level. During this period international law introduced and explored many features which became the basis of the legal framework for migration that is in use today. Among those features are the development of bilateral treaties for governing labor migration, the organization of intergovernmental consultative processes, and the adoption of various conventions and treaties for the protection of refugees and migrant workers.⁵

⁴ Vincent, 2019

⁵ Vincent, 2019.

With the Treaty of Versailles in 1919, the International Labor Organization (ILO) was created.⁶ This is the first international organization mandated to work on the protection of the interests and the well-being of workers employed in countries different than their own. Another historic event happened in 1919, the first International Labor Conference held in Washington. During this conference, the International Emigration Commission was established.⁷ This international commission was established to provide possible measures which will regulate the emigration of workers from their States and measures to protect migrant workers with residence in States other than their own. The commission also issued a recommendation to ILO regarding the promotion of equal treatment of foreign and national workers regarding the labor and social insurance legislation, relief, and the rights of association.

Another milestone in building the international system of migrants was the International Conference on Emigration and Immigration (Rome Conference) held in Rome in May 1924. This conference is significant because it was the first deliberate attempt to draft soft law standards in the field of migration. These standards were meant to promote the interests of both, the States of emigration and the States of immigration on an equitable basis. During its work, the Conference on Emigration and Immigration has achieved some outstanding results such as the approval of 49 recommendations addressing a variety of issues regarding migration and the adoption of the Emigrants Charter. The 49 recommendations are considered to be the precursor of the UN Global Compact for Migration from 2018. The provisions of the Emigrants Charter have set the standards for the basic rights of migrants, which are now contained in some contemporary international instruments in the field. The right to emigrate, the right to family reunification, and the right to equal treatment between nationals and foreigners were some of the rights guaranteed by this Charter.

The interwar period may be characterized as a period of intensified intergovernmental cooperation aimed at regulating migration at the multilateral level, despite that considerable hesitation was present among the states to accept and to be legally bound by the international legal norms at the international level. The diverging views on inter-state cooperation between the States of emigration and the States of immigration have deepened. The growing differences have seriously impeded the work of the ILO and the adoption of multilateral treaties. The Emigrants Charter was not adopted by states historically considered immigration states, such as the US, Australia, and New Zealand.⁸

⁶ Martin, 2014, & Böhning, 2012, in Vincent, 2019.

⁷ International Labor Conference, First Annual Meeting, October 29, 1919- November 29, 1919 (Government Printing Office 1920) Appendix, 276.

⁸ Vincent, 2019.

The Transformation of the Human Rights of Migrants, from the Concept of Minimum Standards to Fundamental Human Rights Concept

As the systems of migration control have risen, the recognition of the rights of migrants in the host states has also risen. Historically the issue of the treatment of aliens in countries different than their own fell within the scope of international law. Following the stance of classical international law, aliens must be granted protection in the same way as nationals, due to the perception of them to personify their own state. This treatment was a result of the purely inter-state legal system. Therefore the individuals were entitled to protection abroad simply because they were seen as the embodiment of their state of nationality. Failure of the hosting state to protect the alien could invoke the law of state responsibility of that state. The possibility of invoking the law of state responsibility was the reason behind the conflicting interests of the states regarding the appropriate standard of treatment for aliens.

The developing states, primarily Latin American states, were promoting the doctrine of national treatment of aliens. According to the doctrine of national treatment, aliens were to be treated on an equal level as the nationals of the State. They were entitled to the same rights as the nationals with the exclusion of political rights. Only in situations where aliens were treated differently than the nationals, the law of state responsibility was to be invoked.⁹

On the other side, the Western States were in favor of the more traditional concept of treatment of aliens provided by the minimum international standard of international law. According to this concept aliens enjoy the same treatment and protection as their nationals, provided that the treatment and the protection given by the State to its nationals conform to the standards accepted by the civilized states. In situations where a State provides treatment lower than the international standard, even though its nationals are content or obliged to live under this treatment, the State would violate its obligations. The reasoning behind this is that no other State can be obliged to accept a treatment of its nationals below the minimum international standard.¹⁰

Despite being vague and controversial, the concept of the minimum international protection was to clarify itself in a core set of fundamental guarantees such as the right to life and the respect for physical integrity, recognition as a person before the law, the prohibition of arbitrary detention, the right to a fair trial in civil and criminal proceedings, the right to property and the right to freedom of consequence.¹¹

From what has been said thus far, it could be concluded that classical international law on the aliens and the minimum international protection doctrine were the predecessors of international

⁹ Calvo, 1896.

¹⁰ Root, 1910.

¹¹ Vincent, 2019.

human rights. The inter-state approach in the treatment of aliens has evolved into a human rights-based approach, based on the idea that there are rights that are inalienable to each human being. These rights must be granted to each one of them, although those individuals are foreigners within the State territory. The international human rights law fuses the two concepts of the treatment of aliens. It includes the core content of the basic rights in line with international standards, favored by the international minimum standards. The treatment of equality between citizens and non-citizens promoted by the national treatment standard is included.

After the Second World War, the notion of human rights came to the center of attention of international law. The robust expansion in this sphere of international law is of significant importance for the protection of the rights of migrants. From the adoption of the UN General Assembly Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live in 1985, to the adoption of the New York Declaration for Refugees and Migrants from 2016, the UN plays a proactive role in the promotion of international protection of migrant workers through the international human rights protection system.

Today there are two distinct sets of norms that regulate and govern the human rights of migrants. One set of norms encompasses specialized treaties concerned with the protection of migrant workers. Until now the ratification rate of this set of norms is still very low. The second set of norms is the general treaties on human rights. These legal norms are extensively recognized. Most of them produce legally binding effects due to the ratification by the States since they contain provisions with the status of customary international law.¹²

This report is focusing on the protection of the human rights of migrant workers provided by the general treaties on human rights and the enforcement bodies and mechanisms created by them.

Legal Framework and Mechanisms for the Protection of Human Rights

Human Rights Protection at the Universal Level

Human rights are rights to which every person without any exception is entitled. These rights are not acquired because of citizenship, social status, or any other status. The principle of equality and non - discrimination is affirmed in Art.1 of the Universal Declaration of Human Rights

¹² Vincent, 2019.

(UDHR) from 1948.¹³ This article with the notion that all “*human beings are born free and equal in dignity and rights*” embodies the idea of fundamental human rights.

The principle of equality and discrimination is also contained in Art.2 of the International Covenant on Civil and Political Rights (ICCPR).¹⁴ There is an exception of this principle only regarding the rights contained in Art.25 (Regulating political rights, to vote, to be elected, and access to public service) of the ICCPR, which are only applicable to the citizens, whereas Art.13 (regulating the lawful expulsion of aliens) applies only to aliens.¹⁵

Consequently, all migrants regardless of their status and category enjoy the protection of their fundamental human rights.

This was also confirmed by the Global Migration Group¹⁶, according to which the fundamental rights of all persons regardless of their migration status are:

The right to life, liberty, and security of the person and to be free from arbitrary arrest or detention, and the right to seek and enjoy asylum from persecution;

The right to be free from discrimination based on race, sex, language, religion, national or social origin, or other status;

The right to be protected from abuse and exploitation, to be free from slavery, and from involuntary servitude, and to be free from torture and from cruel, inhuman or degrading treatment;

The right to a fair trial and to legal redress;

The right to protection of economic, social and cultural rights; including the right to health, an adequate standard of living, social security, adequate housing, education, and just and favorable conditions of work; and

Other human rights as guaranteed by the international human rights instruments to which the State is party and by customary international law.¹⁷

¹³ United Nations, Universal Declaration of Human Rights, 10 December 1948, Paris.

¹⁴ International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, New York.

¹⁵ Human Rights Committee, General Comment No.15: The Position of Aliens under the Covenant, on 11 April 1986.

¹⁶ The Global Migration Group (GMG) was an inter-agency group bringing together heads of the International Labour Organisation (ILO), the International Organisation for Migration (IOM), the Office of the High Commissioner for Human Rights (OHCHR), the UN Conference on Trade and Development (UNCTAD), the UN Development Programme (UNDP), the UN Department of Economic and Social Affairs (UNDESA), the UN Education, Scientific, and Cultural Organisation (UNESCO), the UN Population Fund (UNPF), the UN High Commissioner for Refugees (UNHCR), the UN Children’s Fund (UNCF), the UN Institute for Training and Research (UNITR), the UN Office on Drugs and Crime (UNODC), the World Bank and UN Regional Commissions. It is now replaced by the UN Network on Migration.

¹⁷ GMG, Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situation.

The principle of universality attached to human rights is of paramount importance for the protection of migrants. As a result the protection of human rights is provided in both, national and international law. The international protection of human rights consists of the universal legal framework and the regional framework. The universal legal framework includes the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). These three legal instruments are also referred to as the International Bill of Rights. The fundamental human rights reaffirmed by the Global Migration Group are already part of legal instruments within the International Bill of Rights.

The universal legal framework for the protection of human rights also contains other legal instruments which regulate the respect, protection, and promotion of the human rights of specific categories of people and specific human rights. These legal instruments are the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Rights of the Child (CRC) and its Protocols; the Convention on the Rights of Persons with Disabilities (CRPD); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the International Convention for the Protection of All Persons from Enforced Disappearance (CPED) and the International Convention on the Protection of the Rights of All Migrant Workers and their Families (ICRMW).

The Monitoring System for the Implementation of Human Rights Treaties

After a State becomes a party to an international treaty and accepts to be legally bound by that treaty through ratification, accession, or succession, the treaty produces an obligation on a State to respect, protect, implement and promote human rights at the national level. To ensure State compliance with a treaty, each treaty creates a treaty body in the form of an international committee of independent experts to supervise the implementation of the provisions contained in the treaty.

The treaty bodies are tasked to perform various functions to ensure proper implementation of the treaties by the State parties. Except for the Subcommittee on Prevention of Torture, all other treaty bodies receive and consider periodical reports by the States.

The purpose of these reports is to allow the States to present in which manner they are implementing the provisions of the treaties at the national level. Guidelines and assistance in the reporting process are provided by the treaty bodies to the states. For this purpose, the treaty bodies draft general comments with the interpretation of the treaty provisions and organize thematic discussions.

The most important function of the treaty bodies for this report is the function of considering complaints and communications from individuals with allegations that their rights have been violated by a State party.¹⁸

Individual Complaint Procedure

The individual complaint procedure is optional for the State parties. This means that a treaty body is not able to consider complaints made against a State-party which has not accepted the competence of the treaty body in this regard. The State-party can accept the competence by making a declaration under the relevant article contained in a treaty or by accepting the relevant optional protocol in cases where a treaty does not contain an article regarding the individual complaint procedure competence of the treaty body.

The decisions made by the treaty bodies are referred to as “quasi-judicial” due to the lack of legally binding effect towards the States-parties. Nevertheless, there have been numerous cases where State-parties have accepted and acted accordingly to the decisions of the treaty-bodies.¹⁹

Eligibility requirements to make a complaint to the treaty-bodies

Any individual who is under the jurisdiction and who considers that his/her rights guaranteed by a treaty have been violated by a State-party to that treaty is eligible to complain to the relevant committee. There is a possibility for the complaints to be made by third parties after obtaining proper authorization.

For a complaint to be admissible the admissibility requirements must be fulfilled.

The complaint must be compatible and sufficiently substantiated with the provisions of the treaty invoked. The events complained about must occur after the entry into force of the complaint mechanism for the concerned State. All available domestic remedies must be exhausted. The claims in the complaint must not be examined under another mechanism of international protection of human rights.²⁰

The individual complaint procedure is of paramount importance for the protection of the fundamental human rights of any individual. The principle of equality and inclusion gives an option to migrants, and especially to irregular migrants to seek protection for a violation of their human rights by the State under which jurisdiction they are.

¹⁸ United Nations, Office of the High Commissioner for Human Rights, The United Nations Human Rights Treaty System, Fact Sheet No.30/Rev1, 2012.

¹⁹ United Nations, Office of the High Commissioner for Human Rights, The United Nations Human Rights Treaty System, Fact Sheet No.30/Rev1, 2012.

²⁰ United Nations, Office of the High Commissioner for Human Rights, Individual Compliant Procedures under the United Nations Human Rights Treaties, Fact Sheet No.7/Rev.2,

Protection provided by the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

This Convention was adopted in December 1990 and entered into force in July 2003. The provisions of the Convention regulate the whole process of migration, starting with the preparation for migration, departure, and transit to the total period of stay and remunerated of the host State and the return to the State of the origin or of a habitual residence.

The Convention includes the principle of non-discrimination in the enjoyment of the rights provided by it to all migrant workers and the members of their families, regardless of their status. In light of the particular situations of migrant workers, the Convention envisages minim rights for irregular migrants and additional rights for documented migrants. When it comes to civil and political rights, the Convention mirrors the rights contained in the ICCPR.

The application of the human rights provided by this Convention is monitored by the Committee on Migrant Workers.²¹

Art.77 of the Convention provides the possibility for individual communications from or on behalf of individuals subject to the jurisdiction of a State-Party, who claim that their rights have been violated by that State.²²

The main challenge that the Convention is facing is the low rates of acceptance and ratification. Only 56 states are parties to this Convention, and the majority of them are States of origin. The reason why the receiving States are hesitant in becoming State-Parties to this Convention may be the reason that most of the rights contained in it are relevant to them. As a result of this, the receiving States might be afraid that with the ratification of this Convention there will be additional obligations for them. These concerns are irrational because most of the rights contained in this Convention are already included in other general international human rights treaties.

Human Rights Protection at the Regional Level

Aside from the universal system of protection of fundamental human rights which is led by the UN, there is also protection of these rights at the regional level. The Inter-American system, the African system, and the European regional system are three main regional systems of human rights protection with a relevant legal framework and supervisory bodies for the implementation of this framework. The creation of human rights protection systems in Asia and the Arab world is still in the process of creation.

This report focuses on the European regional system for human rights protection.

²¹ United Nations, Office of the High Commissioner for Human Rights, The United Nations Human Rights Treaty System, Fact Sheet No.30/Rev1, 2012.

²² United Nations, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, 2220 UNTS 3, New York.

The European System for Human Rights Protection

This regional system is led by the Council of Europe, which is the leading human rights organization in Europe. This organization was created in 1949. Today it includes 46 member States, of which 27 are members of the European Union. All Member States are State-parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its additional Protocols. The ECHR is an international treaty designed to protect human rights, democracy, and the rule of law.

The Convention was drafted in 1950 and entered into force on 3 September 1953. The European Court of Human Rights (ECtHR) with a seat in Strasbourg is a judicial body created by the provisions contained in the ECHR. This body was created with a mandate to oversee the implementation of the ECHR in the High Contracting States.²³

The significance of the ECHR for the protection of the fundamental human rights of migrants is visible from the provision contained in Article 1 of the Convention.²⁴ Under this article, the Convention puts upon the High Contracting Parties the obligation of securing the rights and freedoms provided by the Convention to everyone within their jurisdiction. The universal nature of the rights defined by the convention is evident by the use of the expression “everyone.” From the wording used it can be inferred that besides the rights of the citizens of the High Contracting Parties, the ECHR also protects aliens, stateless persons, and persons such as children or severely disabled persons who do not possess a legal capacity.²⁵

Another significant article of the ECHR is Article 34. This article contains the right of individual petition. The right of individual petition embodies one of the most effective instruments for human rights protection. The ECHR provides protection only to individuals who have directly experienced violations of their rights and infringements of their freedoms. There is no possibility for “*actio popularis*” provided by the Convention. This would mean that even when a group complaint is brought in front of the ECtHR, each applicant within the group must be an alleged victim.²⁶

It can be concluded that the ECHR is the crucial legal instrument that protects a wide range of civil and political rights at the European regional level. All types of migrants who are under the jurisdiction of a State which is a High Contracting State to the ECHR can seek the protection of his/her fundamental human rights and freedoms because of the principle of universality embodied in Article 1 and the possibility of an individual petition provided by Article 34 of the ECHR.

²³ Council of Europe, Who we are.

²⁴ Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No.005), Rome 04/11/1950.

²⁵ Gomien, “Short guide to the European Convention on Human Rights, 3rd edition, Council of Europe,

²⁶ Ibid.

Migration Governance Centered on the Concept of Human Rights

The emerging global trend of building comprehensive migrant protection systems based on international human rights law has become more prominent in recent years. Various international organizations and institutions (such as the UN, OSCE, ILO, and IOM) have been working on creating policy directions and handbooks encompassing all dimensions of migration, both holistically and comprehensively. All these initiatives are aimed at providing and developing policy approaches, solutions, and practical measures for a safe, orderly and regular migration which will benefit all the actors involved if it is performed in a well-informed, planned, and consensual manner.

As the most conspicuous policy instruments in the field, are the Handbook on Establishing Effective Labor Migration Policies (the Handbook) drafted and published by the OSCE, the International Organization for Migration (IOM), and the International Labor Office (ILO), and the Global Compact for Migration by the UN.

This report elaborates on all the measures suggested by these two documents, aimed at improving the protection of migrants (meaning emigrants with a focus on migrant workers) by the countries of origin.

Handbook on Establishing Effective Labor Migration Policies – Mediterranean Edition

The Handbook on Establishing Effective Labor Migration Policies was prepared with the objective to assist States in developing new policy solutions and taking new approaches to improve the system of labor migration and labor migration flows in both, countries of origin and countries of destination.

The handbook identifies some of the challenges faced by the countries of origin. Some of those challenges include:

- Challenges in protecting migrant workers from exploitative recruitment and employment practices and in providing appropriate assistance to migrant workers in terms of pre-departure, welfare, and on site services;
- Building institutional capacity and inter-ministerial coordination to meet labor migration challenges;
- Increasing cooperation with destination countries for the protection of migrant workers, access to labor markets, and the prevention of irregular migration.²⁷

The Handbook addresses policies aimed at promoting and protecting the welfare of migrant workers. In achieving this goal it identifies two main policy options that the countries of origin shall take regulatory measures and the provision of support services.

²⁷ OSCE Handbook on Establishing Effective Labour Migration Policies- Mediterranean Edition, 2007.

-Policy strategies

In order to establish human rights-centered migration governance, the countries of origin have a wide range of policy strategies that they can implement. These policies must encompass abuse preventive measures and promotion of decent labor freely enjoyed by all migrants with security and respect for human dignity.

Among those policies suggested in this Handbook are:

- Conduct pre-employment orientation seminars and intensified information campaigns;

- Empowerment of migrant workers, especially through the formation of community-based organizations, to enable their voice to be heard and taken account of in policy development;

- Close supervision and monitoring by the government of recruitment activities undertaken by overseas employment promoters/agencies, to minimize malpractice and abuses against those seeking overseas jobs;

- Introduction of support services such as pre-departure orientation and a welfare fund;

- Inter-state cooperation between countries of origin and destination, and many other policy strategies.²⁸

- Regulation of recruitment

Various international instruments oblige States to protect migrant workers from abuse during the process of recruitment. Therefore they have to implement measures incorporating international standards to regulate the recruitment process and the work and the functioning of the private employment agencies (PEA) and state employment agencies. The states must regulate the registration and licensing of the PEAs with appropriate monitoring and enforcement of the regulation.²⁹

- Procedures for departure/Employment contract

Development and enforcement of minimum standards in employment contracts are suggested measures for the countries of origin for the protection of their nationals abroad. Efforts to ensure employment contracts that guarantee fair wages and basic provisions must be made by the countries of origin.³⁰

- Support services

²⁸ OSCE Handbook on Establishing Effective Labour Migration Policies- Mediterranean Edition, 2007.

²⁹ Ibid.

³⁰ Ibid.

The support services listed in the Handbook are diverse and far-reaching. It extends from pre-departure services such as employment information dissemination and pre-departure orientations through setting migrant welfare funds aimed at providing support services to vulnerable and distressed migrants, to government assistance in destination countries through labor attaches.³¹

- Promotion of inter-state cooperation

Regardless of all the efforts to protect migrant workers made by the countries of origin, there are still violations of their basic rights in the destination countries. As a result of that the Handbook advocates for increased inter-state cooperation in expanding the protection of migrant workers and curbing irregular migration.³²

The Global Compact for Migration

It was adopted by the majority of the UN Member States at an Intergovernmental Conference in Marrakesh, Morocco on 10 December 2018, which was followed by formal endorsement on 19 December. Although it is a non-binding instrument, it presents an important opportunity for the enhancement of migration governance.

This document is comprised of 23 objectives, with each of them containing a commitment, followed by a range of actions considered to be relevant policy instruments and best practices. Among all the objectives for the subject matter of this report, objective number three, five, and six deserve further elaboration.

Objective number three envisages strengthening efforts on the provision and dissemination of accurate, timely, and transparent information regarding migration at all stages, for and between all the actors involved. For the realization of this objective, numerous actions of commitment are included. These actions extend from the launching of centralized and publicly available national websites with information on regular migration to the promotion of systematic, bilateral, regional, and international collaboration to the provision of targeted, gender-responsive, child-sensitive and comprehensive information and legal guidance on their legal rights, and obligations for the newly arrived migrants and many others.³³

Enhancing the availability and flexibility of pathways for regular migration, in a manner that will facilitate labor mobility, optimizes education opportunities, and upholds the right to family life is envisaged in objective number five.

³¹ OSCE Handbook on Establishing Effective Labour Migration Policies- Mediterranean Edition, 2007.

³² Ibid.

³³ UN General Assembly, Global Compact for Safe, Orderly and Regular Migration, 73/195, 19 December 2018.

Development of human rights-based and gender-responsive bilateral, regional, and international labor mobility agreements, review and revision of existing options and pathways for regular migration, and facilitation of procedures for family ratifications are only a few of the numerous actions predicted for the realization of this objective.³⁴

Facilitation of fair and ethical recruitment and safeguarding conditions which ensure decent work is the commitment made in objective number six. Improving the regulation of public and private recruitment agencies by following international guidelines and best practices, implementation of national law aimed at sanctioning human and labor rights violations, development and improvement of national policies and programs regarding international labor mobility, with consideration of relevant recommendations by various relevant international institutions in the field.³⁵

Migration Governance in Kosovo

For this report, Kosovo was chosen as a state with a history of a long tradition of emigration. Compared to the other countries of the WB6 region, in the period 2015/16 with over 498 000 migrants residing in the countries of the Organization for Economic Co-operation and Development (OECD) Kosovo had the third largest migrant stock and the second highest emigration rate with 22% of its population living within these countries.³⁶

Due to the very high emigration rates, it is important for Kosovo as a state of origin to establish a robust system of migration governance that will be able to protect the most basic rights of its citizens working abroad, and will significantly attribute to the prevention of irregular migration activities and processes. As with any other country of origin, Kosovo is faced with challenges in protecting its emigrants from exploitative recruitment and employment practices, challenges in the process of building institutional capacities to meet labor migration, and especially challenges in international cooperation and its ability to join relevant international organizations and institutions.

What are the challenges faced by Kosovo when it comes to the creation of institutional capacity to meet the challenges presented by labor migration?

To answer this question, it is needed to explore the existence of the Governmental institutions and the legal framework regarding this matter in Kosovo.

³⁴ UN General Assembly, Global Compact for Safe, Orderly and Regular Migration, 73/195, 19 December 2018.

³⁵ Ibid.

³⁶ OECD, Labour Migration in the Western Balkans: Mapping Patterns, Addressing Challenges and Reaping Benefits, report p.171

Migration Governance in Kosovo consists of the Deputy Minister of Internal Affairs who is assigned as a National Coordinator on Migration and the Government Authority on Migration (GAM). In terms of its structure, the GAM is a permanent inter-institutional body that was established by the Kosovar Government on 29 November 2013.³⁷

Since 2017, GAM has been working with the support of the “Strengthening Migration Management Authorities for Migration” which is a Swiss-funded Project, implemented by ICMPD and Maastricht University. Since its creation, GAM has provided analysis of trends in migration and prepared migration profiles every year. Nevertheless, policy proposals provided by GAM were omitted in the strategies of the relevant institutions. Due to its complicated organizational structure, GAM lacks a clear definition of its duties and responsibilities, and a mechanism to monitor and assess the implementation of migration policies and of the legal and institutional measures taken by the relevant institutions and international partners.³⁸

It could be inferred that Kosovo as a State is challenged in creating a governmental institution with a clearly defined mission and scope of duties and responsibilities to successfully tackle the challenges of migration. This could be achieved with reformation and restructuring of the present governmental body - GAM.

Is there a relevant legal framework, and what is the level of the implementation?

When it comes to the development of the legal framework and strategic documents, Kosovar institutions have a good record. Enacting new legislation and creating policies in the field of migration is heavily influenced and inspired by meeting the standards set by the Stabilization and Association Process and Visa Liberalization Dialogues with the European Union.

The good legal framework is overshadowed by its weak implementation in practice.³⁹ Kosovo has created a robust strategic framework which encompasses the Strategy against the Trafficking of Human Beings, the Strategy on Integrated Border Management, the Strategy for the Reintegration of Repatriated Persons, the Visa Regime Policy, etc.⁴⁰

The most recent strategic document for the enhancement of migration processes in Kosovo is the Strategy on Migration 2021-2025.⁴¹

The Strategy on Migration 2021-2025 is a strategic document that reflects the priorities of the

³⁷ Balkan Policy Research Group, Kosovo Migration Trends Require a New Policy Response, 2020.

³⁸ Government Authority for Migration (GAM) is a permanent inter-institutional body established with Government Decision on 29 November 2013 tasked to coordinate and monitor migration-related policies. For more see: https://kryeministri-ks.net/wp-content/uploads/docs/Vendimet_e_mbledhjes_se_158-te_te_Qeverise_2013_.pdf. Since 2017, GAM has been supported by the Swiss funded Project ‘Strengthening Migration Management’

³⁹ Balkan Policy Research Group, Kosovo Migration Trends Require a New Policy Response, 2020.

⁴⁰ Balkan Policy Research Group, Kosovo Migration Trends Require a New Policy Response, 2020.

⁴¹ Republic of Kosovo, Ministry of Internal Affairs, Strategy on Migration 2021-2025.

Government of the Republic of Kosovo concerning the management of migration in the country and it was developed in parallel with the National Development Strategy 2021-2030.

This document contains two parts: the first part is The Strategy on Migration and the second part is the Action plan. The second part encompasses strategic and specific objectives and activities targeted for the implementation of the strategy during the five years period of 2021-2025.

The Strategy on Migration 2021-2025 contains four objectives:

- Strategic objective 1: Management of regular migration;
- Strategic objective 2: Ensuring safe, orderly, and regular migration;
- Strategic objective 3: Management of Internal Migration;
- Strategic objective 4: Advancing in the area of migration management and the international protection system.⁴²

Every one of these strategic objectives contains additional specific objectives.

It could be inferred that Kosovo is taking active steps (by the creation of GAM and the Strategy on Migration 2021-2025) in overcoming the challenge of institutional capacity building, although there are still some weaknesses and shortcomings present. This has also been recognized by the Kosovar Government itself in the first and the fourth objective of the Strategy.

The first strategic objective aims to advance the migration management system which will lead to regular and safe circular migration.

To achieve this goal, the Kosovar Government is determined to create an environment for the mobility and movement of migrants in a regular and safe manner. The protection of migrants' rights is also envisaged.

There is no additional information in the Strategy on what measures will be taken for the creation of a regular and safe movement of migrants, nor the modes of protection of their rights.⁴³

The fourth objective is aimed at the advancement of migration management and strengthening the international protection system. The Strategy acknowledges the achievements of GAM throughout the years but also points out the weaknesses and shortcomings of its works.

Among the specific objectives strengthening the role of GAM through the enhancement of the strategic and technical level of this body is envisaged.⁴⁴

Nevertheless, this objective also does not contain extensive information about measures that will be taken and what policies will be created for the advancement of migration management to protect Kosovo's emigrants.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Republic of Kosovo, Ministry of Internal Affairs, Strategy on Migration 2021-2025.

Does the strategy on Migration contain policies and measures for overcoming the challenge of protecting migrant workers by providing appropriate assistance and protection from exploitative recruitment?

The second strategic objective predicts specific measures for ensuring safe, orderly, and regular migration are envisaged.

These measures include capacity building for the Border Police, including sophisticated equipment which can extract biometric elements to identify record and refer cases from the migratory flow.⁴⁵ In the list of specific objectives, there are evident goals and measures for the protection of migrants and Kosovo's emigration population. The best representative is the specific objectives 2.1 and 2.4. The first specific objective is aimed at informing Kosovo's citizens on the rules of entry and stay in the Schengen by conducting a study about the degree of awareness of the citizens on these rules. The latter specific objective is aimed at the protection of migrants from trafficking.⁴⁶

These measures could be qualified as pre-departure assistance to migrant workers.

What measures and policies could the Kosovar Government incorporate for the creation of a human rights-based governance system?

From what has been elaborated thus far it can be inferred that besides the legal framework, the main strategic instrument on migration governance is the Migration Strategy 2021-2025.

The Strategy incorporates several objectives contained in the Global Compact for Migration and aspirations for future harmonization of the national legislation in the area of migration with the new European Union's Pact on Migration and Asylum.

Except for the specific objectives 2.1 and 2.4, it is evident that the Strategy on Migration lacks policies and measures aimed at protecting the emigrant Kosovar Population.

The Strategy could have included some of the policies suggested in the Handbook on Establishing Effective Labor Migration Policies – Mediterranean Edition.

It does not provide any information on regulation of recruitment. Due to the high number of private employment agencies in Kosovo, comprehensive regulation and monitoring of recruitment and functioning of these agencies would enhance the migration governance in Kosovo. Aside from informational campaigns on entry and stay duration within the Schengen zone, the Strategy does not provide an introduction to pre-departure dissemination of information regarding the practical, legal, social and economic consequences involved in migrating to another country. The Strategy does not include specific inter-state cooperation on the matter concerning people emigrating from Kosovo. It is evident that the Strategy lacks on envisaging and incorporating specific actions and measures for achieving its objectives.

⁴⁵ Ibid.

⁴⁶ Ibid.

Conclusion

In conclusion it can be said that the building of a human rights-based migration governance system is a long-lasting process. The protection of aliens by the minimum international protection doctrine of classical international law has evolved to the protection provided by the robust system of international human rights protection systems existing today.

When it comes to migration governance in Kosovo, there is a solid national legal framework, which implementation has to be enhanced. The migration governance of Kosovo requires broader and intensified creation and implementation of law and policies that would be aimed at protecting people emigrating from Kosovo.

This could be achieved by reformation and restructuring of the present body on migration governance. Making additional amends to the Strategy on Migration 2021-2025 is also one of the solutions.

For this purpose, the Kosovar Government needs to simplify the structure of GAM and clearly define its mission and vision. The Strategy on Migration, as the chief strategy document needs to enhance its scope of human rights protection of emigrants. This could be achieved by incorporating international standards promoted by the Global Compact for Migration, and recommendations from the Handbook on Establishing Effective Labor Migration Policies.

Pre-departure education campaigns on the legal protection of their basic human rights are one of the policies which will benefit this category of people.

There is no doubt that the future admission of Kosovo to international institutions and organizations, and accession and ratification of legally binding international treaties by its government will have a positive and accelerating impact on the creation of human rights-based migration governance.

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