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Production of theme-specific reports including recommendations on how to better protect the fundamental rights of migrants

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Abstract	This report analyses how states use human rights justifications to restrict or reshape migrants' rights while formally invoking human rights, across UN, EU and national levels. It recommends strengthening civil society, access to justice and strategic litigation to contest such justifications and better protect migrants' fundamental rights
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THEME-SPECIFIC REPORT INCLUDING RECOMMENDATIONS ON HOW TO BETTER PROTECT THE FUNDAMENTAL RIGHTS OF MIGRANTS

Introduction

This report examines the protection of fundamental rights of migrants in connection to human rights justifications (HRJs) used as an instrument of governance. This report also includes recommendations on how to better protect fundamental human rights of migrants through civil society engagement, legislative advocacy, strategic litigation and access to justice. The method for carrying out the examination in this report as well as production of recommendations is through the coproduction of knowledge through civil society engagement as well as desk research.

A “Human Rights Justification”, HRJ, arises when a state activates a human right for its own benefit, in justifying its decisions and actions concerning law and policy. Normally, it is the individual who is to invoke a human right against the state, but in the case of Human Rights Justifications, it is the state that invokes human rights for its own benefit and, in so doing, transforms them from a regime measuring state compliance into an instrument of state governance,¹ a tool then intended to serve the government currently in power. The State decides what right to activate, when to activate it, and against which other rights and interests each right should be balanced. Instead of judicial or committee interpretations of human rights where due process is a requirement, as is the case when individuals bring human rights violations to courts or committees, the state, by interpreting human rights in a different context—with no counterparty or argument—whether in enacting legislation or policy, frees itself to advance its own interpretation. In this way, HRJs result in a shift from a “top-down” to

¹ Maria Grahn-Farley (2025) ‘THE SILENT SOUND OF DROWNING: Human Rights Justifications and Complex Intersectionality’, 51 Brook. J. Int’l L. 1, 1.



a “bottom-up” mobilisation of rights language in law and policy formation.² When this happens, the question becomes what can be done, and by who? When is it an individual State in its use of the human right, and no longer an international uniform body, that decides the meaning of the human right as a human rights justification?

Migrants, regardless of documented status, possess certain fundamental human rights under international law, including the rights to life, liberty and security. They are entitled to due process, non-discrimination, access to emergency healthcare, education, and labour protections, such as fair wages and safe working conditions. These rights apply at all stages of migration, including at borders. It is important to note that the issue of migration involves not only the rights of migrants concerning entering a country, but also how those migrants are treated once they are in a receiving country.

The focus for many years was on entering a country, as refugees or asylum-seekers, as workers, due to family relations or other reasons accepted by the receiving country. The issue of so-called undocumented persons who for different reasons lack a residence permit also can arise. Increasingly though there has been a greater focus on the rights or lack of rights that apply to migrants and/or laws targeting migrants. These have even included removing the rights of migrants, including removing them from the country.

Both gender and intersectionality can be seen as ever present concerning human rights justifications in the context of migrants. Other aspects also however are put into play, children and youths are often contemplated by the legislator when drafting the legal provisions addressed by the HRJs. Socio-economic status is also often a tangible factor related to the rights of migrants.

Three levels of governance are in focus here, the UN, the regional/EU and the national. The national level has addressed three jurisdictions, Sweden, Ukraine and Taiwan. Sweden and Taiwan are host countries. Ukraine is a sender country. The recommendations as to how to better protect fundamental rights of migrants primarily relate to empowerment through civil society engagement, legislative advocacy, strategic litigation and access to justice. and access to justice.

Empowerment involves the strength of civil society, in particular those representing less powerful interests, to be able to effectively participate in democratic processes. Access to justice here is to be understood in broad terms. On the one hand, there is the legislative process, in which civil society is to have a certain amount of democratic influence and can engage in legislative advocacy. This includes the possibility of ex ante judicial review. On the other hand, there is the issue of access to justice concerning the legal system and the use of strategic litigation. The legislature, concerning civil laws intended to promote human rights such as laws

² Laura Carlson, (2025) ‘The Changing Paradigm of Human Rights Justifications: Challenges for Civil Society’, Ljubljana Law Review, vol. 85, 135–164, 137.



against discrimination, leaves many questions to the courts concerning implementation. Particularly in defendant friendly systems, it is important that the victims, as well as civil society, have an opportunity to participate in both the legislative process before laws based on HRJs are adopted, as well challenging them once adopted.

This ability to participate is of particular interest concerning current legislation focused on limiting migrant's rights. In Sweden, one example is the government's argument that the Child Rights Convention (CRC) recognizes collective rights to justify lowering the minimum age of criminal responsibility from fifteen to thirteen. In defending this policy, the government invoked the CRC's best interests of the child principle to prioritize the collective interests of children over the rights of the individual child.³ In Taiwan, Taiwan's restriction on job mobility for temporary migrant workers means e.g. that low-skilled migrant workers cannot unilaterally terminate their contracts within the three-year term unless their employer is at fault, which in turn severely limits migrant workers' right to work. The Taiwanese government justifies this policy as necessary to protect the right to work of Taiwanese nationals. This downplays migrant workers' rights, and reframes the issue as one of protecting nationals.⁴

These arguments indicate the importance for civil society to be able to assert how human rights conflict with human rights justifications at the international, regional/EU and, in particular, the national level. In other words, CSOs need to take part in the process asserting human rights in the legislative process while also developing strategic litigation and other means of challenging the laws and policies once adopted.

United Nations

Issue: International human rights conventions - Various international conventions provide protections covering migrants and migration. One of the more specific conventions is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) adopted on 18 December 1990, and entering into force on 1 July 2003. The ICRMW aims to protect the rights of all migrant workers and their families, regardless of their status. It focuses on equal treatment between migrants and nationals, non-discrimination based on factors such as sex, race, nationality, or economic status, and the protection of fundamental human rights for both regular and irregular migrants.

³ Maria Grahn-Farley (2025) 'THE SILENT SOUND OF DROWNING: Human Rights Justifications and Complex Intersectionality', 51 Brook. J. Int'l L. 1, 12.

⁴ Ya-Wen Yang (unpublished 2026) "Evaluating Human Rights Justification," Institutum Iurisprudentiae Academia Sinica, Taiwan, 5.



As of 2 March 2026, sixty state parties had ratified or acceded to the Convention.⁵ It is the least ratified of the core international human rights instruments, primarily lacking support from major migrant-receiving countries. Of the three national jurisdictions included here, neither Ukraine nor Sweden have taken any action as to the ICRMW, nor the EU nor Taiwan due to their respective statuses. The majority of state parties and signatories are sending countries, and the majority of countries taking no action are receiving countries.

Recommendation – The EU as well as Ukraine, Sweden, India and Taiwan⁶ should ratify and promote ratification of the ICRMW. This is a concrete means to protect the human rights of migrants. Furthermore, this is a means to support and promote the international rules-based order. This would provide a specific international legal framework for protecting the rights of migrants, thus helping to align national laws with international norms. This could help to counteract the tendency to a double standard where human rights are promoted abroad while states reject scrutiny of how migrants are treated at home. The convention can also help to fill in the gaps that exist in international law. Last, even though the ICRMW allows for such a procedure in principle, it does not yet have an operative individual communications mechanism.

Optional Protocols - Many countries have ratified Optional Protocols related to human rights conventions that allow for the submission of individual communications to the UN. For example, Sweden has ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which means that residents can submit individual communications to the UN Committee on the Rights of Persons with Disabilities (CRPD). This provides individuals and others the possibility to get an assessment as to national implementation of the Convention. At the same time, even when the CRPD agrees with the communication concerning a State's improper implementation of the Convention, and determines that the individual's legal costs should be compensated, Sweden refuses to do so. This type of action at the national level undermines the ability of individuals and affected groups to assert their Convention rights in an international context.

⁵ UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. UN General Assembly resolution A/RES/45/158, 18.12.1990. 211. URL: https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&clang=_en.

⁶ Once China entered the UN in 1971, Taiwan has been excluded from the UN and the human rights regime. Nevertheless, according to Art. 2 of the Taiwanese Act to Implement the ICCPR and the ICESCR: human rights protection provisions in the two Covenants have domestic legal status. See Laura Carlson, HRJust D5.1 Report/analysis, literature review, data collection, (Migration) p. 64.



Recommendation – The EU should work with the EU member states to develop uniform rules requiring countries to compensate the legal fees and expenses of individuals or groups that receive a positive UN committee decision including a recommendation concerning legal fees. This would provide added substance to the importance of optional protocols.

European Union

The EU Pact on Migration and Asylum is a set of new rules managing migration and establishing a common asylum system at EU level. They build on and amend previous reform proposals in the area of migration, offering a comprehensive approach that aims at strengthening and integrating key EU policies on migration, asylum, border management and integration. The rules are designed to manage and normalise migration for the long term, providing EU countries with the flexibility to address the specific challenges they face, and necessary safeguards to protect people in need. The new rules on migration introduced by the Pact entered into force on 11 June 2024 and become effective two years later. The ambition is to ensure that the Union has strong and secure external borders, that people's rights are guaranteed, and that no EU country is left alone under pressure.

In spite of the ambition level, the EU Pact on Migration and Asylum has been strongly criticized by human rights organizations asserting that it risks undermining the human right to asylum and violating the human rights of asylum seekers.⁷ Through the new pact, the EU has adopted an even stricter disciplinarian approach to migration and its management. The starting point to the EU Pact is to jointly regulate asylum law so that it results in a reduction in the number of people coming to the EU in need of protection. At the same time, the EU is working hard to find new and more effective ways to facilitate the immigration of so-called highly skilled labour migrants to its Member States.⁸ The disciplinarian approach of the EU continues to allow the regulated openness of “beneficial” migration as well as the restrictions of “unwanted” migration.

Professor Jordan Deliversky, among others, points out the landmark nature of the Pact, reconciling “the diverse interests and capacities of EU member states in handling migration and

⁷ See for example Civil Rights Defenders. (11 April 2024). *The EU's new migration and asylum pact hollows out the right to asylum*. URL: <https://crd.org/2024/04/11/the-eus-new-migration-and-asylum-pact-hollows-out-the-right-to-asylum/>; Civil Rights Defenders. (20 June 2024). *En rättighetsbaserad granskning av EU:s asyl- och migrationspakt*. URL: https://crd.org/wp-content/uploads/2024/06/En-rattighetsbaserad-granskning-av-EUs-asyl-och-migrationspakt_Civil-Rights-Defenders.pdf; and Amnesty International (20 December 2023). *EU: Migration Pact agreement will lead to a “surge in suffering”*. URL: <https://www.amnesty.org/en/latest/news/2023/12/eu-migration-pact-agreement-will-lead-to-a-surge-in-suffering/>.

⁸ European Commission, *Legal pathways to the European Union. Attracting skills and talent to the EU*. URL: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-life/migration-and-asylum/pact-migration-and-asylum/legal-pathways-european-union_en#documents.



asylum issues, set against a backdrop of political and social complexities. The successful implementation of this comprehensive strategy hinges on member states' adherence to its principles, effective execution of its policies, and the adaptability of the EU to future challenges in migration management.”⁹ Similarly as with others, Deliversky points out: “The effectiveness of the Pact’s provisions for identifying and protecting vulnerable individuals, including integration and protection measures, is critical for evaluating its human rights impact.”¹⁰ Member states adherence will in turn hinge at least in part on the ability of civil society to mobilise and advocate for both individuals and policies that support and maintain human rights. This is not an endeavour that can or should be turned over to policymakers to effectuate on their own.

Recommendation – The European Union Agency for Asylum (EUAA) currently provides a set of training modules, “pact training”, supporting the implementation of the Pact on Migration and Asylum.¹¹ These learning products are to help asylum and reception professionals understand the key legislative changes introduced by the Pact and prepare for their practical application in national systems. As the EU Pact is relatively complex and ensuring adequate enforcement of the protection of migrants’ rights as set out in the Pact (as well as in relation to international law) is a key issue, it would be important to also ensure that there is outreach with the “pact training” directed to CSOs focused on the rights of migrants, including smaller CSOs and individual activists. While it is important with outreach to administrations and practitioners in preparing for the implementation of the Pact on Migration and Asylum and in strengthening knowledge of the evolving EU asylum framework, there are going to be gray areas which without bottom-up pressure from civil society will likely lead to a minimalist result.

National levels

In challenging human rights justifications by States concerning migrants at the national level, even though there are varying environments in comparing the States, there are some similarities between the recommendations. The focus is on access to rights, access to justice, and empowerment of civil society through legislative advocacy and strategic litigation.

Sweden

Issues - Sweden is a receiving country. For many years, migrants have largely consisted of refugees/asylum seekers. Around 2015, there was particularly large influx. As a result of the

⁹ Jordan Deliversky (2024). ‘Illegal Migration Processes Management in the Light of the New European Union Pact on Migration and Asylum’, *Environment Technologies: Resources. Proceedings of the International Scientific and Practical Conference*, 46.

¹⁰ Ibid.

¹¹ EUAA, Pact training, <https://www.euaa.europa.eu/training-catalogue/pact-training>.



Russian war in Ukraine, Sweden has also recently hosted a large number of people from Ukraine. The 2015 influx led to various negative legal and policy changes concerning refugees. This negative trend has been accelerated with the current government due to the Tidö Political Agreement between the three conservative parties forming the government and a relatively large anti-immigrant party in the Parliament. A variety of laws have been or are being adopted, with an indirect or direct focus on limiting the rights of migrants, with the support of human rights justifications.

One concrete example has to do with the decision by the previous government to no longer grant permanent residence permits to persons in need of protection, i.e. they would receive only temporary residence permits, creating a more precarious situation. The Government claimed that it was necessary in order to “safeguard the right to asylum” and for Sweden to assume its responsibility for people in need of protection in a troubled world, that the Swedish framework did not deviate significantly from those of other EU countries.¹²

The Tidö government has accelerated the pace of legislation focusing on migrants. One example of the many government inquiries and laws adopted by the Tidö government since 2022 is the Security Visitation Zones Act, which came into force on 25 April 2024. This law gives the police the right to establish temporary areas where they have expanded powers to search people and vehicles without any suspicion of a crime. The aim is to prevent shootings and explosions in gang conflicts. The law was criticized due to its expected increase in the risk for discrimination and ethnic profiling. The Government used a combination of HRJs and fear rhetoric to defend the restrictions of the rights of children in these “zones” stating that “it is better for children to be protected from the violence and exploitation that crime entails, than to be protected from being somewhat more exposed to intervention in safety zones. This is also considered to be in line with the Child Rights Convention”.¹³

In this environment, CSOs as well as some government agencies have complained about the speed of the legislative process, limiting the potential to provide critical comments to inquiries and thus the democratic process, particularly those where the government is applying HRJs as a basis. This can be said to limit the CSOs access to justice in the legislative process. In addition

¹² Regeringen, Government bill referred to the Council on Legislation for consideration, *Ändrade regler i utlänningslagen* [Amended Rules in the Aliens Act], 8 April 2021, 53. URL: <https://www.regeringen.se/contentassets/fba5199a65f348269d82a8e6e146bda9/andrade-regler-i-utlanningslagen.pdf>.

¹³ Justitiedepartementet, Government bill Prop. 2023/24:84 *Säkerhetszoner* [Security Zones], 54. URL: <https://www.regeringen.se/contentassets/2b16cc5f506a4f4e9e781706d54f928d/prop-sakerhetszoner.pdf>.



there are already major access to justice issues concerning challenges to the application of laws that limit human rights. Potential solutions – building coalitions among CSOs working on human rights. Building bridges to stronger CSOs such as unions. Procedural law changes such as removing the loser pays rule in human rights cases. These solutions would help CSOs in developing their challenges to HRJs.

Recommendation - Greater coalition building is needed among CSOs with common interests in counteracting and testing the validity of HRJs in Sweden. Increased long-term funding for CSOs working with human rights is recommended. Added resources are needed in order to increase and mobilise CSO understanding of the EU Pact on Migration and the risk that states will use HRJs to undermine the protections that are supposed to be part of the EU Pact. This would also be the focus of funding contributing to greater cooperative efforts by CSOs on strategic issues such as better protecting the fundamental rights of migrants, particularly when those rights involve HRJs. States tend to pay more attention to issues if there are broad coalitions acting in common. This can be seen as a form of access to justice involving more effective coalition building, greater cooperative and synergy effects in relation to the legislative process, making sure that the CSO voices are heard in the legislative process and in strategic litigation when HRJs are used to limit the human rights of migrants. Such challenges would be primarily *ex ante*. Similar efforts could also relate to access to justice once those laws are in place, *ex post* challenges, in order to ensure that available legal challenges are carried out – at least in the form of strategic litigation based on e.g. situation testing. This should also lead to cooperative efforts to promote procedural rules helping to establish a more claimant-friendly legal process, such as the removal of the loser pays rule in human rights cases.

Taiwan

Issues - Taiwan is a receiving country. However, as compared to Sweden, most of the migrants are there with the status of migrant workers. The issue of human rights justifications often comes in the way that the rights of migrant workers are overlooked or disregarded. One example is that the requirement of frequent health checks imposed on migrant workers is deemed a necessary means to protect nationals' right to health. Limiting the right to work of migrant workers (i.e., no right to terminate employment and change employer unilaterally) and their freedom of movement is also counterbalanced by nationals' right to work. In addition to framing migrant workers' rights as being in conflict with nationals' rights, human rights justifications in Taiwan's migration context also tend to be paternalistic. Restrictions on, or insufficient protections of, migrants' rights are often articulated through the rhetoric of protecting migrant workers. This is also a notably gendered phenomenon, as it is more frequently observed where those affected are predominantly female, such as foreign caregivers and family immigrants. For example, the exclusion of foreign caregivers from the Labour Standards Act has been justified on the grounds that workers' freedom of contract is sufficient, while visa interviews that may be intrusive as to family privacy are said to facilitate immigrants' right to family reunification. As for asylum, the act of temporarily suspending deportation to a



third country is an ad hoc response to asylum requests, in the absence of a law on asylum is considered a means of fulfilling international human rights obligations under ICCPR.

Recommendation - It is important for CSOs and others in Taiwan that the EU continues to emphasise the issue of human rights in its foreign policy. This helps CSOs and others in highlighting and improving the precarious legal situation of migrant workers needs to be addressed. Particularly for the task to enhance Taiwan's migrant worker standards, the EU need not to play a proactive 'moralized' role. Rather, the EU should take its position of important trade partner as the leverage, insist Taiwanese migrant worker regulations should meet the EU standard of ethical supply chain management. In spite of the differences between Sweden and Taiwan, an emphasis is needed on civil society access to justice in both the legislative process as well as in litigation.

Legislation is needed to end the discriminatory treatment migrant workers are subjected to. In addition, while there are certain piecemeal provisions concerning non-discrimination, Taiwan needs to adopt a more comprehensive legislation against discrimination, emphasising that non-discrimination is a fundamental human right. In addition, an increased focus is needed for an empowerment process so that civil society actors become more effective in the legislative process establishing and supporting migrant's human rights and counteracting government tendencies to rely on human rights justifications. Empowerment should emphasize mutual sharing of human rights know-how. The EU provides training that offers nuanced experience on how to enhance labour and other human rights standards, while CSOs contribute local knowledge on how governments find and use pretexts.

Importantly, it cannot be emphasized enough that empowerment must be a reciprocal process. CSOs face very strict resource constraints, including limitations in funding and time. Therefore, EU overseas institutions should value their contributions and use their time efficiently. Whenever the EU invites CSOs to exchange knowledge, it should also provide follow-up by informing them how the shared information is used in its interactions with the Taiwanese government and the directions such efforts take. This approach will help build a trustworthy relationship with local CSOs and enable them to support the EU in advancing human rights in ways that align with its broader objectives. This is also a key to ex post challenges to existing legislation through strategic litigation.

Ukraine

Issues - Ukraine is a sender state in the migration/refugee context. The EU, regarding Ukrainian refugees, has used HRJs in a positive light, extending the Temporary Protection Directive to the protection to Ukrainians in EU member states. Before Russia's military aggression against Ukraine in 2014, Ukrainian migration to the EU was mainly labour based. Since the aggression was "limited" Ukrainians could move to safer areas within the country. However, the Russian invasion in February 2022 led to a substantial forced migration out of Ukraine, resulting in an unprecedented migration challenge for EU countries, even greater than the challenge in 2015-2017. The influx from Ukraine due to the war led the EU to activate, **on 4 March 2022, the**



European Union's Temporary Protection Directive (TPD)¹⁴ to ensure displaced persons have immediate, harmonized rights across EU Member States, allowing them to bypass lengthy, individual asylum procedures.

Though anticipated to be in effect for a maximum of 3 years as an emergency mechanism, it is now being prolonged until at least **4 March 2027**¹⁵ and has already reached the 5-year threshold. First applied for an initial period of one year, until 4 March 2023, the Directive was then automatically extended for one additional year until 4 March 2024, then by Council Implementing Decision (EU) 2023/2409¹⁶ – until 4 March 2025, by Council Implementing Decision (EU) 2024/1836¹⁷ – until 4 March 2026, and by Member States' support on Proposal for a Council implementing Decision extending temporary protection 2022/382¹⁸ – until 4 March 2027, as mentioned.

Several human rights justifications were given as grounds for the unprecedented implementation of the TPD and the granting of all the rights it provides for Ukrainian forced migrants after the Russian invasion of Ukraine in 2022:

- *the need for human rights protection and solidarity (in the context of the EU as a whole and Member States)* – the EU condemned Russia's aggression and granted temporary protection to Ukrainians under the TPD. This response aligns with EU values, particularly human rights and solidarity (Articles 2, 6, and 21 TEU) and treats the violation of Ukraine's sovereignty as a threat to the wider European community;
- *geographical proximity of Ukraine and a security factor for Europe* - Ukraine's proximity and visa-free access facilitated the rapid arrival of war-displaced persons to the EU. The invasion was seen as a broader European security issue, leading to the activation of the

¹⁴ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32022D0382>

¹⁵ EU Member States Agree to Extend Temporary Protection for Refugees from Ukraine. *Council of the EU Press release 13 June 2025*. Available here: <https://www.consilium.europa.eu/en/press/press-releases/2025/06/13/eu-member-states-agree-to-extend-temporary-protection-for-refugees-from-ukraine>

¹⁶ Council Implementing Decision (EU) 2023/2409 of 19 October 2023 extending temporary protection as introduced by Implementing Decision (EU) 2022/382. Available here: https://eur-lex.europa.eu/eli/dec_impl/2023/2409/oj/eng

¹⁷ Council Implementing Decision (EU) 2024/1836 of 25 June 2024 extending temporary protection as introduced by Implementing Decision (EU) 2022/382. Available here: https://eur-lex.europa.eu/eli/dec_impl/2024/1836/oj

¹⁸ Proposal for a COUNCIL IMPLEMENTING DECISION extending temporary protection, as introduced by Implementing Decision (EU) 2022/382, until 4 March 2027. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2025%3A650%3AFIN>



TPD in line with the EU's CFSP and Article 21 TEU. The war also reshaped EU security priorities and increased migration pressure on its eastern borders;

- *the temporality of protection* - the EU activated temporary protection for Ukrainians in March 2022 and repeatedly extended it until 2027 due to ongoing Russian aggression. Initially seen as short-term, the situation has become prolonged, showing that “temporary” protection may last longer due to continued risks, while still requiring periodic review;

- *solidarity of EU civil society towards Ukrainians, cultural and historical proximity* - strong public support, shared European identity, and cultural proximity played a key role in activating and extending the TPD. Civil society initially provided rapid assistance and influenced EU decisions based on human rights, while later the EU ensured continued support through legal mechanisms despite growing “compassion fatigue”.

Ukrainians have thereby been granted various rights that are similar to those of residents. Meanwhile, these provisions are **temporary**, as the very name of this Directive indicates. As the war has dragged on for years, the unconditional positivity of these unprecedented prolongations has become a significant discussion in its own right within the international law agenda on war-affected individuals. As Ukrainian adults have become increasingly established throughout the Member States under the umbrella of the TPD and national legislation of each of Member State since 2022, what kinds of choices should be made concerning their future, and in particular, concerning their children is still an open question (the gender breakdown of Ukrainian refugees, following the initial influx in the first months, still consists predominantly of prime-age women with dependent children¹⁹).

Thus, when temporary protection status ends, many will inevitably be placed in a **legal limbo** regarding:

- 1) returning to Ukraine,
- 2) remaining in the EU based on an irregular/another ambiguous status of residence,
- 3) applying for and successfully meeting the conditions for refugee or subsidiary protection status.

Recommendation - The temporary nature of the war-displaced persons from Ukraine should increasingly be reconsidered so that they are granted permanent residence or another secure, regular residence status in the EU after 4 March 2027.

Even if Ukrainians largely have equal rights to health care, social welfare, employment, and education, the precariousness related to their *temporary status* needs to be dealt with.

¹⁹ Three Years of War in Ukraine: We Must Support Women-Centered Refugee Solutions. *February 24, 2025*. Available here: <https://refugees.org/three-years-of-war-in-ukraine-we-must-support-women-centered-refugee-solutions/>.



Thus, in the interim period before TPD's expiration, the most promising option appears to be amending **Council Directive 2003/109/EC**²⁰ of 25 November 2003 also known as Long-Term Residents Directive or the LTR Directive), namely its Art.3 (b), stating that it can't be applied to third-country nationals who are "authorized to reside in a Member State on the basis of **temporary protection** or have applied for authorization to reside on that basis and are awaiting a decision on their status".

In its current state the LTR Directive excepts, through its key provision "granting long-term resident status to third-country nationals who have resided legally and continuously within the EU territory for five years immediately prior to the submission of the relevant application" (Art.4 (1)), the considerable number of Ukrainian refugees with temporary protection status given the prolongation that is already in the fifth year in a row (given the prolongation to 4 March 2027).

Furthermore, whilst already having the European Commission's proposal on recasting the LTR Directive (LTR Recast Proposal) as of 27.04.2022²¹, particularly counting time under temporary protection toward the five-year threshold for third-country nationals (e.g., Ukrainians), there is no mention of such a measure as the promising one in today's EU law rhetoric on the TPD's alternatives. Instead, it would rather foster Ukrainian refugees with temporary protection status into **national residence permits** (presumably designed and issued in every Member State) and/or encouraging their **voluntary return under the special schemes**²².

If the latter option seems like a premature solution, considering the ongoing intense hostilities in a large part of Ukraine (where most forced migrants still flee to the EU from), the former (national residence permits) seems to be a sufficiently realistic scenario. However, it needs to be coordinated at the EU institutional level to avoid, in particular, "asylum bargaining" – the situation in which beneficiaries of temporary protection choose to relocate to Member States with more favourable transition frameworks for their long-term legal settlement in the EU. Otherwise, the alleged phenomenon would trigger secondary movements and a renewed imbalance in situational "migration clusters" within the EU.

²⁰ *Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents*. Available here: <https://eur-lex.europa.eu/eli/dir/2003/109/oj/eng>

²¹ *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the status of third-country nationals who are long-term residents (recast)*. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0650>

²² *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A predictable and common European way forward for Ukrainians in the EU*. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52025DC0649>



In conclusion, this report analyses how states deploy human rights justifications (HRJs) to reshape or restrict migrants' rights while formally invoking human rights language, transforming rights from benchmarks of state compliance into instruments of governance serving current political priorities. Migrants' internationally protected rights—including life, liberty, non-discrimination, emergency healthcare, education and labour protections—are examined against the use of HRJs across UN, EU and national levels (Sweden, Ukraine, Taiwan), with gender, intersectionality, age and socio-economic status treated as constant dimensions. At UN level, the report highlights the limited ratification of the ICRMW, especially by migrant-receiving states, and recommends ratification by the EU, Sweden, Ukraine and Taiwan, and stronger use of optional protocols with effective compensation for successful complainants' legal costs. At EU level, it critiques the new Pact on Migration and Asylum for a disciplinarian approach that risks undermining asylum rights while facilitating “beneficial” high-skilled migration, and urges EUAA “pact training” extended to CSOs. Nationally, it documents Swedish and Taiwanese HRJs that curtail migrants' rights, contrasted with the EU's rights-expansive HRJs underpinning the Temporary Protection Directive for Ukrainians. Core recommendations focus on empowering civil society through inclusive engagement, legislative advocacy, strategic litigation and broad access to justice to contest HRJs and better protect migrants' fundamental rights.

