

HUMAN RIGHTS INDICATORS FOR MIGRANTS AND THEIR FAMILIES

OVERVIEW



KNOMAD
Global Knowledge Partnership on Migration and Development

This document was prepared for KNOMAD's Thematic Working Group 7: Migrant Rights and Social Aspects of Migration, in the context of its initiative to develop human rights indicators for migrants and their families.

It summarises *Human Rights Indicators for Migrants and their Families*, a KNOMAD working paper (in publication) developed and refined in consultation with experts and key stakeholders.

The working paper explains the value of human rights indicators and proposes a framework, with examples of indicators for the rights to non-discrimination and equality, education, health, and decent work. It builds on a KNOMAD case study by Rosalia Cortes that describes progress in Argentina towards fulfilling the human rights of migrants and their families.

Human Rights Indicators for Migrants and their Families was written by Pablo Ceriani Cernadas, of the Committee on Migrant Workers and the National University of Lanus (UNLA), Argentina, assisted by Luis Campos, UNLA, and by Michele LeVoy and Lilana Keith of the Platform for International Cooperation on Undocumented Migrants (PICUM). Robert Archer, Plain Sense, copy edited the overview document.

This summary provides a few key examples of indicators for measuring major obstacles to achievement of migrants' rights. To see the indicator tables in full, please refer to the working paper.

For more information, to read the working paper, the case study, or to discuss the initiative, please visit the KNOMAD website: <http://www.knomad.org/>, or contact the Working Group Focal Point, Hanspeter Wyss, at hwyss1@worldbank.org.



The Global Knowledge Partnership on Migration and Development (KNOMAD) is a global hub of knowledge and policy expertise on migration and development issues.

Overview

KNOMAD draws on experts from all parts of the world to synthesise existing knowledge and generate new knowledge for use by policy makers in countries of origin and destination.

KNOMAD works in close coordination with the Global Forum on Migration and Development (GFMD) and the Global Migration Group (GMG). KNOMAD's Secretariat is with the World Bank which has established a multi-donor trust fund to implement KNOMAD. The Swiss Agency for Development and Cooperation (SDC) and the Federal Ministry of Economic Cooperation and Development (BMZ) are the largest contributors to the trust fund.

Thematic Working Group 7: Migrant rights and social aspects of migration

KNOMAD activities are organised around 12 Thematic Working Groups. The goal of the Thematic Working Group 7: "Migrant rights and social aspects of migration", is to foster creative and innovative discussion and thinking to advance and inform the dialogue at national, regional and global levels on migrants' rights. Within this dialogue, the group has identified the need to develop a series of human rights indicators for migrants and their families as a means of adding to the evidence base informing migration policy. This Thematic Working Group is chaired by William Gois, Migrant Forum Asia (Chair), Rhea Saab, UNICEF (Vice-Chair), and Pia Oberoi, OHCHR, (Co-Chair).



WHY HUMAN RIGHTS INDICATORS FOR MIGRANTS AND THEIR FAMILIES?

All migrants have rights

The international human rights framework, which includes civil, cultural, economic, political and social rights and ILO international labour standards, affirms that all migrants are entitled to enjoy all their human rights, without discrimination, subject to particular conditions with respect to political participation and freedom of movement.¹ In many parts of the world, regional human rights treaties, constitutional provisions and national legislation provide similar levels of protection for all people, regardless of their nationality and residence or migration status.

The principle that migrants are legally entitled to rights is nevertheless continuously questioned, particularly when their residence or migration status is irregular. Migrants are often subject to systematic discrimination and their human rights are frequently violated, notably in the context of migration controls and as a result of discriminatory economic and social welfare policies.

Human rights indicators for migrants can monitor progress and compliance...

Indicators that measure migrants' rights, alongside good practices, can identify steps that states need to take to respect, protect and fulfil the rights of migrants and their families, help monitor progress towards these goals, and assist duty-bearers to understand, and fulfil, their obligations to migrants. They can also assist civil society to monitor and hold duty-bearers accountable.

... promote policies based on evidence...

Migration and other public policies commonly take for granted that policies designed to protect the rights of all migrants would be impractical, exorbitantly expensive, and generate a dramatic rise in irregular migration, though this is not supported by evidence. Serious misperceptions also colour discussion of the scale of migration, the scale of irregular migration, the reasons why people migrate, and migrants' use of public services.

More importantly, the fulfilment of the rights of all members of society is an essential tool for achieving human development. Numerous cities, regions and countries successfully protect the civil, cultural, economic, political and social rights of migrants.²

Little evidence suggests that the scale of irregular migration is significantly influenced by policies that promote or restrict migrants' rights. Research and experience tend rather to show that irregular migration is higher where few channels for regular migration exist and those who use them face restrictive conditions (residence permits tied to a particular employment or personal relationship, for example).³ Migration is driven by many factors, including poverty, discrimination, differences of income between countries, human rights violations, poor human security, lack of work opportunities in countries of origin, and demand for workers in destination countries. Migrants themselves often say that they moved to their adopted country because they had linguistic, cultural, social or historical ties to it, or wished to join their family.⁴ Research suggests that migrants generally use public services (including those to which they have legal access) less than nationals, and generally contribute more to development, the economy and public finances than they cost.⁵

... and strengthen objective policy planning and evaluation.

Human rights indicators promote evidence-based policy-making and can help identify specific measures to achieve public policy objectives that safeguard migrants' rights.

- They provide tools for analysing the impact of public policies on migrants, their families, and societies of origin, transit and destination, and thereby improve policies.
- They help states and other actors to see the social and development benefits of fulfilling the human rights of everyone, including migrants, and the negative effects of constraining rights, at an important moment when the post-2015 UN development framework is taking shape.⁶
- They promote improvements in data collection and analysis, and cooperation, given the intersecting and complementary roles of government, public services, rule of law institutions, workers' and employers' bodies, and academic, faith-based and non-governmental organisations.
- The evidence they provide can increase public understanding of migration and migrants, and help to reduce anti-migrant and xenophobic attitudes.

In these ways, a human rights indicators framework can provide tools for government at several levels, and help other stakeholders to meet their legal obligations and advance public policy objectives by protecting the human rights of migrants.

The Argentina case study prepared in conjunction with the working paper in the context of this initiative highlighted three lessons learned:

- Policies that grant all migrants, regardless of status, the same social rights as nationals and enable migrants to regularize their status improve respect for human rights and advance human development goals.
- Where disaggregated rights-based indicators are not applied, it is difficult to measure the impact of policies and policy change.
- Rights-based migration policies advance migrants' rights when they are supported by social policies (to eradicate poverty, to ensure quality education and health care, to reduce informal employment, to promote decent work, etc.) that include all migrants.



EXAMPLES OF HUMAN RIGHTS INDICATORS FOR MIGRANTS AND THEIR FAMILIES

The Methodology

The indicators framework is based on a model developed by OHCHR.⁷ It has been enriched and implemented by international and regional human rights bodies and institutions, and a number of States.⁸

To each human right, the model attaches specific characteristics or **attributes**. Taken together, these capture the full meaning of the right. The attributes of human rights identified by OHCHR for the general population can be adapted for specific groups, as in the proposed framework for migrants and their families.

To illustrate, the right to health for migrants has five attributes: (i) accessibility to health facilities, services and goods; (ii) cultural adaptability of health services; (iii) mental health; (iv) sexual and reproductive health; and (v) child health care.

To each attribute, the model attaches **structural**, **process** and **outcome** indicators. These make it possible to consider:

- › The commitments that states have made (the legal and policy framework).
- › Key process issues (such as the scope and application of the legal and policy framework, implementation of programmes, financing, and provision of remedies).
- › The (individual and collective) outcomes of those commitments.

To ensure that the framework remains a practical tool for policy making and evaluation, it shows clearly the links between specific laws and policies, factors that facilitate or hinder migrants' access to services or protection in practice, and outcomes.

Indicators also pick up cross-cutting principles, including accountability, the prohibition of discrimination, and the rights to equality, participation, and access to justice.

Accessibility is a critical attribute, which determines the development outcomes for individuals, their families, and countries of origin and destination. Migrants who enjoy rights on paper often face barriers to their enjoyment in practice. Laws, policies and practices are needed to ensure accessibility. We provide examples below of indicators for the accessibility attributes of the rights to education, health and decent work.

The right to education and accessibility of education facilities and services

Examples of indicators that track the degree to which states ensure access to compulsory and non-compulsory education in accordance with international human rights standards.

<p>Structural</p>	<ul style="list-style-type: none"> ➤ Does legislation explicitly establish the right to compulsory education for all migrants, regardless of migration or residence status?⁹ ➤ Do legislation or policy address practices that, formally or practically, hinder or prevent enjoyment of the right to education (by requiring students to possess a residence permit, or teachers and other officials to report migrants to migration authorities, for example)?
<p>Process</p>	<ul style="list-style-type: none"> ➤ What proportion of the migrant population is enrolled in educational institutions (disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence and length of residence)?
<p>Outcome</p>	<ul style="list-style-type: none"> ➤ What percentage of migrant children and adolescent migrants complete compulsory education? What percentage of all children with migrant parents (both those classified as foreign and nationals) complete compulsory education? How do these figures compare with the percentage of nationals who complete compulsory education? (Figures to be disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence and length of residence).

The right to health and accessibility of health facilities, services and goods

Examples of indicators that track the degree to which states ensure access to health facilities, services and goods.

Structural	<ul style="list-style-type: none"> › Does legislation affirm the right of migrants to access health services? Is their access to certain services legally restricted? Is access conditioned in law by migration or residence status? › Do public policies bar health services from levying fees that are determined by migration or residence status?
Process	<ul style="list-style-type: none"> › How many awareness-raising activities and campaigns for health workers, health authorities and civil servants linked to health facilities have focused on the right of migrants to health care and services that operationalise the right? › What proportion of migrants are covered by health insurance schemes, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence and (public or private) insurance provider?
Outcome	<ul style="list-style-type: none"> › What is the rate of: (a) mortality; (b) morbidity; (c) life expectancy; and (d) prevalence of diseases, disaggregated by migration or residence status as well as age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence and specific health conditions?

The right to decent work and access to just and safe working conditions

Since migrant workers are very often exploited, the degree to which working conditions are just and safe is a critical attribute of the right to decent work. Access to justice and official enforcement of labour rights, in both cases regardless of migration or residence status, are also vital because, in the absence of these protections, employers may dismiss, deport or intimidate workers who challenge exploitative conditions.

Examples of indicators that track the degree to which states ensure just and safe working conditions.

Structural	<ul style="list-style-type: none"> › Does the law (including case law) recognise and protect the labour rights of migrant workers, regardless of their migration or residence status? › Do administrative entities receive complaints from migrants about violations of labour rights regardless of migration or residence status?
Process	<ul style="list-style-type: none"> › What proportion of labour inspections were carried out in employment sectors which are known to contain a high number of migrant workers (e.g. agriculture, construction, domestic work), disaggregated by sector? › What proportion of the workplace inspections that resulted in administrative action or prosecution addressed the labour rights of migrant workers?
Outcome	<ul style="list-style-type: none"> › What proportion of migrants, and migrants in an irregular situation, did not receive their full wages, compared to the national average?



GOOD USE OF HUMAN RIGHTS INDICATORS AT REGIONAL LEVEL

The European Union (EU)

Building on the OHCHR's indicator framework, the Fundamental Rights Agency (FRA) is developing indicators for the European Union (EU). EU Member States do not have a common approach to data collection. FRA is developing indicators on key rights that will improve comparability and close gaps in data collection and provision, in order to assist EU institutions and Member States to improve fulfilment of rights.

To illustrate, FRA is developing indicators on disability that will track selected rights covered by the UN Convention on the Rights of Persons with Disabilities (CRPD).

The Organisation of American States (OAS)

The OAS is developing a process to monitor and report on States' fulfilment of the San Salvador Protocol on Economic, Social and Cultural Rights. A Working Group has been developing human rights indicators to support the process. States will submit the first reports using agreed indicators on education, health care, and social security in 2014.

The mechanism will apply agreed evidence-based indicators to measure realisation of social rights. States will collect the same core information, using a single methodology. In consequence, it will be possible to compare the situation in different countries of the region.

Some indicators already address migrants' issues. Adding more specific indicators on migrants' rights will help to fill gaps in this area.



SOME KEY CONSIDERATIONS

Data availability and sources

Data availability is a particular concern, because data is rarely disaggregated in terms of migration and residence status, and socioeconomic and administrative statistics often fail to capture migrants, particularly undocumented migrants, or do not identify their residence status when they do.

Nonetheless, many undocumented migrants have held a visa or residence permit, claimed asylum, or tried to regularise their status. They may seek or obtain medical treatment or social assistance, and their children are likely to have attended school. In countries where all residents enjoy access to certain public services and data protection, more information on undocumented migrants is available, though it may not record migration or residence status. Governments can therefore draw on a range of information sources in addition to immigration enforcement statistics. Unfortunately, data from these sources is rarely systematised, usually only reflects certain groups of undocumented migrants, and is increasingly used for purposes of immigration enforcement.¹⁰

Other sources of data, including national human rights institutions, academic researchers, and non-governmental organisations (NGOs), can play a pivotal role, especially in countries where migrants have limited access to public services. While such organisations do not necessarily have contact with all migrants, users of their services may be more representative of the migrant population, and include undocumented migrants who avoid official institutions. In some circumstances, NGOs and academic researchers may be in a position to gather information more reliably than the state, or reveal discrimination that may not be visible in official statistics.

To understand the situations faced by migrants, and improve governance and policy, it is vital to support the collection of sound information from a variety of sources, and ensure it is used ethically. A few pioneering initiatives illustrate good practice.¹¹

Good data collection initiatives by governments

Ensuring that all children, regardless of migration or residence status, have access to birth registration is essential, to fulfil their rights and ensure that all residents are included in administrative data on births.

In Vietnam, the law on civil registration enables parents to register children born in the country, if either or both parents are Vietnamese, have dual nationality, or are foreigners or stateless. Provided a child is not already registered elsewhere, it permits parents who return to reside in Vietnam after residing abroad to register a child born overseas; the law covers Vietnamese migrant or trafficked mothers, regardless of the nationality of the father or the parents' civil status.¹²

Good data collection initiatives by civil society

ANALYSING USE OF HEALTH FACILITIES IN EUROPE

The European Observatory on Access to Healthcare, an initiative of Médecins du Monde (MdM), routinely collects data from those who use its services. Every visitor to the organisation's health centres in Europe is interviewed. The quantitative and qualitative data collected cover users' health, their experiences of accessing health care services, social factors, and personal information (including gender, country of origin, and residence status).

Some key findings from 2012 include (for the whole interview sample):

- › 81% were unable to access care without paying the full costs on the day of the initial MdM consultation.
- › 59% of pregnant women did not have access to ante-natal care on the day of the initial MdM consultation.
- › 60% of all patients did not know where to go to obtain vaccinations.
- › Asked why they had migrated, only 1.6% cited personal health; 42.8% moved for economic survival and 5.8% to escape war. The data showed that most undocumented migrants did not know their state of health when they travelled, and few understood how to access healthcare systems in Europe or their entitlement to treatment.¹³

ANALYSING PUBLIC EXPENDITURE IN MEXICO

In collaboration with the Mexican Federal Public Administration, Fundar analysed the budget of the National Migration Institute (INM) in 2011. It found, *inter alia*, that migrants received only 1% of the entire budget in direct assistance (provision of food, medical care and information guides). 11% was spent on migrant protection programmes. 88% was allocated either to migration management and control activities (82%), or to detention centres and assisted returns (6%). The research concluded that more resources should be allocated to migrant protection programmes, and that a floor of minimum expenditure on migrant protection should be imposed by the Federal Expenditure Budget.¹⁴

Ethical and human rights implications

The use of indicators to monitor human rights compliance, and the collection, processing and dissemination of information in support of indicators, has human rights implications, *inter alia* for the rights to information and privacy, and data protection.

Specific concerns arise when gathering and disseminating data about migrants, particularly undocumented migrants. Data and statistics about migration are often misused and misrepresented to support political positions; data protection is often not respected; and the right to privacy of undocumented migrants is frequently violated (when

personal information is shared with immigration authorities, for example). It is unquestionably difficult to promote evidence-based policies on migration that objectively measure the situation of groups subject to discrimination while protecting their rights. Data-gathering, data-generating mechanisms, data analysis and dissemination of data, all associated with the application of indicators, should avoid compromising confidentiality, the right to privacy, and data protection.

To this end, policies should not require service providers to report undocumented migrants to the immigration authorities. It is essential to establish a 'firewall' between immigration enforcement and provision of essential services. A firewall makes it possible to collect information without compromising privacy and also to protect human rights.

ENDNOTES

- 1 OHCHR (2013), *Migration and Human Rights: improving human rights-based governance of international migration*.
- 2 See, for example, OHCHR (2012), *The Rights of All Children in the Context of International Migration*, Committee on the Rights of the Child, 2012 Day of General Discussion Background Paper, Annex 2, August 2012; UN Secretary-General (2013), Report of the Secretary-General on the Promotion and protection of human rights, including ways and means to promote the human rights of migrants, A/68/292; Special Rapporteur on the Human Rights of Migrants (2013), Report by the Special Rapporteur on the human rights of migrants, François Crépeau, Global migration governance, A/68/283 (2013: 81).
- 3 Clandestino project, *Undocumented Migration: Counting the Uncountable. Data and Trends Across Europe*, European Commission, DG Research, Sixth Framework Programme, Priority 8: Scientific Support to Policies.
- 4 See, for example, ILO (2010), *International labour migration: A rights-based approach*, Geneva; Doctors of the World (2013), *Access to Healthcare in Europe in times of crisis and rising xenophobia*, April 2013.
- 5 See, for example, ICF GHK & Milieu Ltd for the European Commission (2013), *A fact finding analysis on the impact on the Member States' social security systems of the entitlements of non-active intra-EU migrants to special non-contributory cash benefits and healthcare granted on the basis of residence*, DG Employment, Social Affairs and Inclusion via DG Justice Framework Contract, Final report submitted by ICF GHK in association with Milieu Ltd, 14 October 2013 (revised on 16 December 2013); I. Gordon *et al* (2009), *Economic impact on the London and UK economy of an earned regularisation of irregular migrants to the UK*, April 2009, London School of Economics: London; F. Moreno Fuentes and M. Bruquetas Callejo (2011), "Immigration and the Welfare State in Spain", *Social Studies Collection No. 31*, La Caixa Foundation Welfare Projects.
- 6 The post-2015 UN development agenda goals should both include migrant-specific targets and indicators, and support the development and application of human rights indicators for migrants to measure progress on achieving goals and targets.
- 7 OHCHR (2012), *Human Rights Indicators. A Guide to Measurement and Implementation*, Geneva
- 8 Examples are provided in the working paper.
- 9 In this framework, migration or residence status refers to the administrative status that a person has in the country. It therefore includes residence status (migrant with a regular or irregular status, or citizen), attached conditions, and length of residence.
- 10 For example, the European Union uses several data systems to manage migration and asylum. They include 'Eurodac', which compares fingerprints of asylum seekers and some categories of migrants with irregular status; the Visa Information System (VIS), which allows Schengen States to exchange visa data; and the European Border Surveillance System (EUROSUR). An Entry-Exit System (EES), to register non-EU nationals entering and leaving the EU territory, and a Registered Traveller Programme (RTP), to speed up border-crossing for pre-vetted or 'bona fide' travellers, are in development.
- 11 More examples are provided in the working paper.
- 12 Circular No 01/2008/TT-BTP guiding the implementation of a number of provisions of the government's Decree No.158/2005/ND-CP of December 27 2005, on civil status registration and management. See UNICEF, *Access to Civil, Economic and Social Rights for Children in the Context of Irregular Migration*, Submission to the UN CRC Day of General Discussion on "The rights of all children in the context of international migration", 28 September 2012, p.17.
- 13 Doctors of the World (2013), *Access to Healthcare in Europe in times of crisis and rising xenophobia*. The survey took place in 14 cities (in Belgium, France, Germany, Greece, the Netherlands, Spain and the UK) and covered 8,412 individuals, 19,302 consultations (including 10,968 medical consultations) and 11,921 diagnoses.
- 14 From Fundar (2013), *An exploratory journey through the budget of the National Migration Institute in Mexico: Where did its priorities lie in 2011?*, Fundar Center for Analysis and Research: Mexico.

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