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# Human Rights Indicators for Migrants and their Families

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## Human Rights Indicators for Migrants and their Families\*

Pablo Ceriani Cernadas, Michele LeVoy, and  
Lilana Keith†

### Abstract

Migrants face daily and systematic violations of their human rights. The international human rights framework accords all human rights to all migrants without discrimination, except for a few, limited instances relating to political participation and freedom of movement. However, there has been inadequate attention to the systematic collection of quantitative and qualitative information by which to measure the social and human impacts of migration and migration policies. This KNOMAD working paper shows that the use of indicators for the human rights of migrants can facilitate and monitor progress and compliance with legal obligations; that the fulfilment of migrants' rights is an essential tool for social integration in multicultural societies, and that migrants' rights indicators promote evidence-based policy-making. The paper provides a practical tool for governments at all levels and other key stakeholders to advance development objectives through the protection of migrants' human rights.

Keywords: Migration, Human Rights Indicators, Right of Migrants, Low-skilled migration, Access to Education, Access to Health Care, Right to Decent Work, and Evidenced-Based Migration Policy

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## 1. Introduction

Throughout the world, migrants face daily and systematic violations of their human rights. The UN High Commissioner for Human Rights, Ms. Navi Pillay, has throughout her mandate stressed the particular vulnerability of migrants to discrimination, exploitation, and abuse, and has repeatedly underscored the importance of the international human rights regime for protecting migrants.<sup>1</sup> Despite perceptions to the contrary, the international human rights framework – encompassing civil, cultural, economic, social, and cultural rights, as well as the ILO international labor standards – provides that all migrants have all human rights without discrimination, except for a few limited instances related to political participation and freedom of movement.<sup>2</sup> In many regions and national contexts, regional human rights treaties, as well as national legislation and constitutional provisions, provide similar levels of protection for all people, regardless of their residence or migration status.<sup>3</sup>

Yet, migrants’ “right to have rights” is continuously called into question, particularly when their residence or migration status is irregular, and migrants are subject to systematic discrimination and human rights violations. In the context of migration control, migrants can be submitted to identity checks, imprisonment, and deportation in conditions which may breach an array of civil, cultural, economic, political, and social rights.<sup>4</sup> The process around length and conditions of immigration-related detention have been found by international and regional human rights courts and monitoring bodies on numerous occasions to violate migrants’ human rights, including the prohibition of inhuman and degrading treatment and the right to freedom from arbitrary deprivation of liberty.<sup>5</sup> Nevertheless, migrants are systematically detained for immigration purposes in all world regions.<sup>6</sup> Migrants may face family separation due to detention, deportation, and discrimination within child protection systems (in which migrant children are at times placed in alternative care when not in their best interests, due to family poverty or prejudice toward migrants rather than child protection concerns), as well as limited opportunities for family migration. Even migrants’ right to life is at times threatened by, for example,

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<sup>1</sup> See, for example, Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situation, adopted by the principals of the Global Migration Group on 30 September 2010 in Geneva (when Ms. Pillay was Chair of the Global Migration Group); Speech given at OHCHR High-level Meeting on Migration and Human Rights: towards the 2013 High-level Dialogue on International Migration and Development, Geneva, 4 September 2013 (available at: <http://www.unmultimedia.org/tv/unifeed/2013/09/geneva-migration/>).

<sup>2</sup> The OHCHR report on global governance is at [http://www.ohchr.org/Documents/Issues/Migration/MigrationHR\\_improvingHR\\_Report.pdf](http://www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvingHR_Report.pdf)

<sup>3</sup> In this framework, migration or residence status refers to the administrative status the person holds in the country, so includes the status of the residence (irregular or regular migrant, or citizen), its conditions (e.g., tied to a particular relationship or employment), and length of residence.

<sup>4</sup> See, for example, reports of the UN Special Rapporteur on the human rights of migrants, including, Report of the Special Rapporteur on the Human Rights of Migrants (2012, 2011). See also UNICEF, Special Rapporteur on the Human Rights of Migrants, PICUM, National University of Lanús (2013), “Human Rights of Undocumented Adolescents and Youth”. An abridged version of this paper will be published as part of a forthcoming publication of the Global Migration Group (2014).

<sup>5</sup> Relevant judgments relating to immigration detention by the European Court of Human Rights are available at [http://www.detention-in-europe.org/index.php?option=com\\_content&view=article&id=316&Itemid=214](http://www.detention-in-europe.org/index.php?option=com_content&view=article&id=316&Itemid=214)

<sup>6</sup> See, for example, the International Detention Coalition’s monthly International Detention Monitor.

border control practices and immigration enforcement practices that can endanger lives and limit or refuse access to justice for violence, whether by police, border or immigration detention officials, traffickers, employers, landlords, or partners.

Exercise of social rights linked to access to services, including education, health, shelter, and social protection is restricted for migrants in many countries, according to migration or residence status.<sup>7</sup> In general, the provision of universal services is threatened by political and economic models that qualify the right to access services according to criteria such as financial contributions (taxes, health, and social security schemes; direct payments for services), health insurance status, and citizenship and residence status.<sup>8</sup> The portability of rights, and social rights in particular, is often limited. As a result, migrants with dependent statuses, in low-wage employment, and those who are in an irregular or undocumented situation face the most significant restrictions, in law, policy, and practice.

### **1.1 Discrimination in Access to Education, Health Care, and Decent Work**

Education – a right universally recognized as having invaluable human and social development potential – is essential to combating generational cycles of poverty and discrimination by empowering economically and socially marginalized individuals. Yet, even in developed countries, there are children who are rejected from school admission and denied an education due to their or their parent’s migration or residence status (UNICEF 2012).

Health – intrinsically linked to the right to life, survival, and development, and to the enjoyment of all other rights — is another example in which the gap between a right and its actual enjoyment is vast. The International Covenant on Economic, Social and Cultural Rights recognizes that many states lack the capacity to provide sufficient health services to enable all individuals under their jurisdiction to enjoy the highest attainable standards of health, and that states may need to progressively develop health policies and services.

However, in doing so they have a duty not to discriminate, since that is innate to the core of the right; whatever services are available must be made accessible to all without discrimination. Yet, in many countries, migrants are restricted access to public health facilities, goods, and services.<sup>9</sup> Furthermore, migrants often experience social conditions linked to poor health, such as poor living and working conditions, which place them at further disadvantage.

Migrant workers and their families are often denied the right to decent working conditions and employment opportunities, another major challenge in ensuring rights and positive development outcomes for their countries of origin, transit and destination. Migrant workers face discrimination in

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<sup>7</sup> See, for example, Special Rapporteur on the human rights of migrants (2012, 2011).

<sup>8</sup> See, for example, recent restrictions on access to healthcare services in Spain: Legido-Quigley, H. et al (2013:1977), and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2013:12-13).

<sup>9</sup> See, for example, Report of the Special Rapporteur on the right to health (2013:12-14).

national labor laws in many countries, despite international standards that should apply equally to all workers regardless of status. Many earn sub-standard wages and work in trying conditions, are excluded from social protection schemes, denied freedom of association and collective bargaining rights, and face general discrimination (ILO 2010:71-81). Migrant workers face significant barriers to enforcing the rights they have when their residence and/or work permit depends on a single employer or employment situation, or they are working irregularly. Policies which tie migrant workers to one employer or specific position and deny them justice when their labor rights are violated in irregular employment facilitate exploitation, because they enable workers to be fired and made undocumented, threatened with deportation, and even actually deported if they challenge exploitative working conditions (ILO 2010:99-100).

## 1.2 Importance of Accurate Data for Evidence-Based Migration Policies

Migration and public policies are frequently developed on the basis of general, and often flawed, assumptions about migration.<sup>10</sup> A common misperception is that ensuring the human rights of *all* migrants is impractical and would lead to a dramatic increase in the number of migrants with irregular status. This is at times linked to misperceptions about the number of migrants and how many are in irregular situations, the reasons why people migrate, and migrants' use of public services. The systematic restrictions of rights are at times favored by policy-makers who, with the aim of reducing irregular migration, seek to create a hostile environment for irregular residence.

At the same time, there are numerous examples of cities, regions, and countries that successfully protect various civil, economic, cultural, political, and social rights for *all* migrants,<sup>11</sup> and little evidence to indicate that irregular migration is increased or decreased by policies that provide or restrict migrants' access to rights. Rather, the prevalence of migrants residing irregularly has been linked to the limited channels for regular migration and restrictions placed on those migrating through those channels, such as tying their residence permit to a particular employment or personal relationship.<sup>12</sup>

Migration is driven by increasing inequalities between countries, a lack of gainful, decent work and human security in countries of origin, as well as discrimination and human rights violations, and the growing demand for high- and low-wage workers in destination countries. People frequently cite linguistic, cultural, social, and historical ties to a country as primary reasons they choose one country over another for migration.<sup>13</sup> On average, migrants have also been found to use public services

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<sup>10</sup> See, for example, developments in migration policy in the United Kingdom, which are increasingly restricting access to health care, housing, bank accounts and justice for migrants, in order to create a "hostile environment" for undocumented migrants (e.g., Travis 2013).

<sup>11</sup> See, for example, OHCHR (2012a), Special Rapporteur on the human rights of migrants (2013: 81), UN Secretary-General (2013).

<sup>12</sup> 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.

<sup>13</sup> See, for example, ILO (2010:18); Doctors of the World (2013).

(including those they are entitled to) less than nationals, and generally contribute positively to development and growth – i.e., contributing more to the economy and public finances than they cost.<sup>14</sup>

There have been significant advances in data in the field of migration and development in recent years. However, data collection and analysis have focused mainly on issues such as remittances and global migrant stocks and flows; and on data for the purposes of migration control, such as the development of large databases to store personal (and biometric data) of persons granted visas, lodging asylum applications, and those apprehended for irregular entry and stay across Europe.<sup>15</sup> Inadequate attention has been paid to systematically collecting quantitative and qualitative information to measure the social and human impacts of migration and migration policies, and the links between the human rights and the human development of migrants, their families, and their societies of origin, transit, and destination. Furthermore, the available information is not being adequately used by governments in either policy making, or to challenge common misperceptions and raise awareness about the positive impacts of migration and migrants, not least on local development outcomes.

In this context, the development of human rights indicators for migrants will make an important contribution toward fostering more evidence-based policy-making on migration and migrants' rights. It will facilitate better analysis of the impacts of migration and public policies on the outcomes of migrants, their families, and their societies of origin, transit, and destination. In doing so, it will improve such policies, and foster broader acceptance of migration by the wider public. It will enable states and other actors to demonstrate the societal and developmental benefits of ensuring fulfilment of human rights for all, including migrants, at a critical time in the development of the post-2015 UN development framework.<sup>16</sup> Drawing on various and diverse data sources, it will also promote improvements in data collection and analysis from various actors, and the building of alliances, recognizing the complementary roles of governmental, public service, rule-of-law, academic, and non-governmental organizations. Supported by training, such multi-stakeholder data collection can contribute to better policy planning and evaluation, for the benefit of all. Further, a specific indicators framework for the human rights of migrants will be useful to clearly delineate and address the levels of discrimination migrants often face on the basis of their migration or residence status. Within the migrants' rights indicators framework,

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<sup>14</sup> See, for example, ICF GHK & Milieu Ltd for the European Commission (2013: 202-204); Moreno Fuentes, F.J. and M. Bruquetas Callejo (2011); Gordon, I. et al (2009, 11:14)

<sup>15</sup> The European Union has a number of large-scale data systems for management of migration and asylum, including the "Eurodac" system, for comparing fingerprints of asylum seekers and some categories of irregular migrants (to facilitate the application of the Dublin II Regulation, which makes it possible to determine the European Union (EU) country responsible for examining an asylum application); the Visa Information System (VIS), which allows Schengen States to exchange visa data; and European Border Surveillance System (EUROSUR). An Entry-Exit System (EES) designed to register non-EU nationals entering and leaving the EU territory, and a Registered Traveller Programme (RTP) aimed at speeding up border-crossing for pre-vetted or "bona fide" travellers based on automated identity checks and border-crossing gates are also being developed.

<sup>16</sup> Discussions on the post-2015 development framework are also increasingly calling for a more rights-based analysis for the intersections between migration and development. See for example UN System Task Team on the Post-2015 UN Development Agenda (2012).



there is space for indicators that are disaggregated or otherwise targeted to reveal the impacts of discrimination on outcomes according to status, as well as those that are applicable to all migrants.

In this way, the goal is for the indicators framework to become a practical tool for governments at all levels, and other key stakeholders, to advance development objectives through the protection of the human rights of migrants. It will highlight the intersections, and the intrinsic links, between rights fulfilment and development and foster consensus on key benchmarks. As well as serving as a tool to monitor compliance, the indicators will provide concrete guidance on measures that can be taken progressively to implement sustainable and effective development plans by ensuring migrants' rights and human rights-based migration policies and programs.

### **1.3 Structure of the Document**

The Office of the High Commissioner for Human Rights (OHCHR) has produced a comprehensive guide for the development of human rights indicators based on an extensive literature review.<sup>17</sup> The OHCHR conceptual and methodological framework has already been put into practice by a number of international institutional actors, regional bodies, including the Inter-American Commission on Human Rights (IACHR), national governments, and local level actors, including non-governmental organizations. Some of these initiatives are detailed in Annex 1.

Therefore, this document uses the OHCHR framework as its main methodological basis drawing also on a number of additional key texts that have elaborated indicators to support policy development and monitor compliance with human rights, including labor rights, and also largely based on the OHCHR model (see Annex 2 for more information about the methodology used).<sup>18</sup> The document is structured in four sections. The first elaborates further on the purpose of developing indicators. The second presents an illustrative indicators framework for the human rights of migrants, for discussion and adaptation according to context, and specifically for the right to non-discrimination and equality of treatment, the right to education, right to health, and right to decent work. The third discusses some key methodological concerns with specific relevance to migrants, and explores in particular questions around sources of information for use as indicators. The fourth provides several examples of data collection on migration and migrants rights' from across the globe, by various different stakeholders. A brief comparative review of the key texts is also included in Annex 2, in order to present the state of play regarding relevant methodology for the development of migrants' human rights indicators, and to provide background for and explanation of the methodology used (e.g., conceptual framework; structural, process, and outcome indicators).

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<sup>17</sup> OHCHR (2012:5).

<sup>18</sup> Although the OHCHR guide was only published in 2012, the indicators have been being developed since 2005.

## 1.4 Key messages

1. **Human rights indicators for migrants facilitate and monitor progress and compliance with legal obligations.** Indicators that measure migrants' rights, alongside good practices, 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 assist also civil society to monitor and hold duty-bearers accountable.
2. **The fulfilment of migrants' rights is an essential tool for achieving human development and public policy objectives, especially regarding social integration in multicultural societies.** Indicators that measure migrants' rights 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. This should be reflected also in the post-2015 UN development framework.
3. **Human rights indicators for migrants promote evidence-based policy-making.** Indicators provide adaptable tools for analyzing the impacts of public policies on migrants, their families, and societies of origin, transit, and destination, and thereby improve policies. 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 organizations. Such evidence-based policy-making may also reduce or prevent xenophobia.

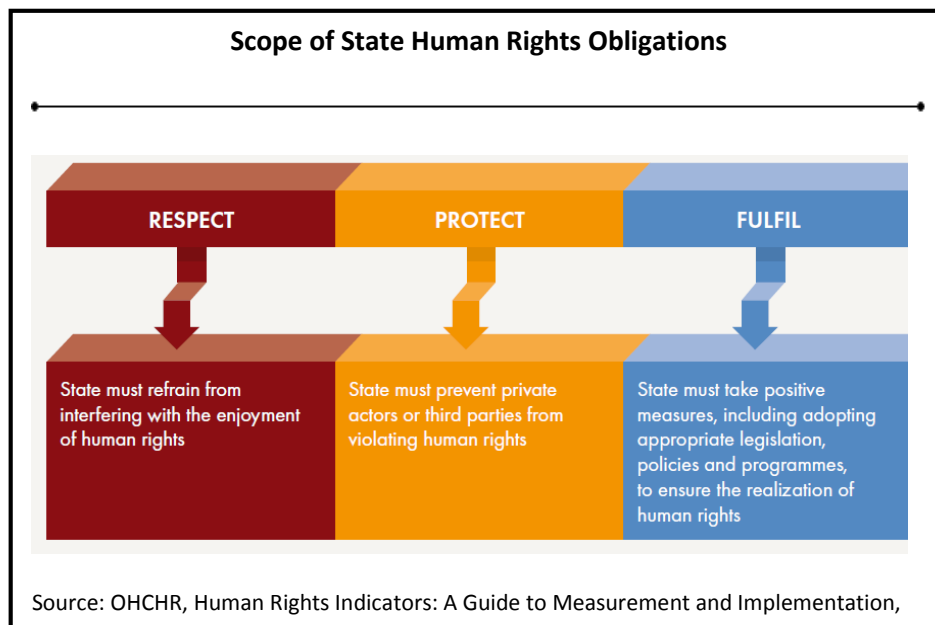
## 2. Purpose of Indicators

The Office of the High Commissioner for Human Rights has defined human rights indicators as "specific information on the state or condition of an object, event, activity or outcome

- that can be related to human rights norms and standards;
- that addresses and reflects human rights principles and concerns; and
- that can be used to assess and monitor the promotion and implementation of human rights." (OHCHR 2012: 16)

The use of indicators to monitor compliance with human rights instruments has been common in the United Nations system; there are various provisions on and references to statistical information or including indicators or benchmarks in the different treaties and General Comments of the treaty bodies (OHCHR 2012:24-25). Extensive indicators have also been developed by the International Labour Organization in relation to decent work (ILO 2012).

The OHCHR has underlined how indicators provide practical tools to operationalize human rights obligations into law, policy, and practice, and monitor implementation (OHCHR 2012:2). Indicators serve to concretize the positive and negative obligations on states to *respect*, *protect*, and *fulfil* human rights.



Indicators can also assist in the disaggregation of immediate and progressive obligations regarding economic, social, and cultural rights. The model developed by the Organization of American States (OAS) working group to examine the national reports envisioned in the Protocol of San Salvador, which identifies both *indicators* and *signs of progress*, fulfils this purpose in particular, assisting in the setting of medium-term priorities and intermediate monitoring and evaluation (IACHR 2008).

Indicators have also been a key tool in the field of international development, to measure global and national development and progress towards priority targets, most notably with the Millennium Development Goals (MDGs). While not anchored specifically in human rights provisions and compliance with the human rights framework, there are similarities between development indicators and human rights indicators, as the links between the fulfilment of human rights and development are clear (OHCHR 2012:19-20; IACHR 2008:20-21). The post-2015 UN development framework provides a critical opportunity to strengthen analysis of the links between international migration, development, and human rights, for example, through the development of a number of indicators to capture the impacts of fulfilling the rights of migrants on development, as well as the negative effects of constraining such rights. This should entail both integrating migrant-specific targets and indicators into the post-2015 UN development agenda goals, and developing and supporting the use of human rights indicators for migrants in order to measure progress in achieving those goals and targets.

Further, human rights indicators can be a useful tool to identify discrimination. In contrast to development indicators that have been criticised for focusing on global aggregates and national averages that often masked or overlooked inequalities (UNICEF 2013:7), the use of disaggregated human rights indicators reveals discrimination and inequality. As a group (or rather groups) facing

persistent and systematic discrimination, the development of a set of human rights indicators specifically for migrants (and further disaggregated according to migration or residence status, as well as age, sex, gender, employment, sector, etc.) will serve to better address the layers of barriers that prevent migrants from enjoying their rights in law, policy, and practice.

Alongside examples of good practice in the protection and provision of rights, specific indicators for migrants' rights will be a timely and important contribution to demystifying, and making tangible and concrete, the measures required and progressively possible for states to ensure protection of the human rights of migrants and their families. Indicators will strengthen the capacities of duty-bearers to know their obligations in relation to migrants and their families and the links between human rights protection and positive development outcomes. Adapted as appropriate to the context, indicators will assist in policy planning and evaluation, including developing strategies to protect, respect and fulfil rights in line with their obligations and other specific policy objectives in related fields. Especially if developed and disseminated in partnership with key stakeholders, including governmental actors from all levels, human rights institutions and other supervisory bodies, and civil society, the indicators will serve as a practical tool to improve monitoring of the human rights situation of migrants and improve policy-making based on evidence. Securing institutional commitment for implementation and follow up will be key, as well as mobilizing and building the capacity of various stakeholders to maintain engagement with the tool and evidence base. The evidence base could also contribute to a more accurate understanding of migration and migrants among the general public, and thus help to address anti-migrant and xenophobic attitudes.

### **3. Illustrative Indicators**

#### **3.1 Introduction**

The use of human rights' indicators for measuring the recognition, protection and effective realization of migrants' rights can address a number of purposes, such as:

1. Comparing the level of human rights realization between
  - a. Migrants in different countries of transit and destination, in order to better understanding the impact of migration and other public policies in migrants' living conditions,
  - b. Migrants and nationals who live in the same country,
  - c. Groups of migrants, according to their sex, age, ethnic origin, national origin, migration or residence status, and other social conditions;
2. Analyzing migration policies and related public policies on matters such as child protection and development, labor/employment, social protection, economic, health care, and education policies, among others;

3. Identifying policy or practical changes in regard to migrants in general as well as particular migrants' groups — children, domestic workers, low- and middle-wage migrant workers in certain sectors (e.g., agriculture, construction, fisheries, mining) female migrants, migrants with specific ethnic or national origin, religion, migrants in an irregular status, etc.;
4. Developing rights-based, intercultural, integration programs, aimed at ensuring equitable human development to all members of society;
5. Measuring the progressiveness or regressiveness of the rights of migrants and their families over time;
6. Monitoring the improvements in implementation of each state's obligation regarding migrants' human rights by UN bodies and other international and regional human rights mechanisms.

The illustrative indicators proposed in this paper are aimed at specifically measuring a selection of some of the human rights of migrants. It is important to note that state governments and other stakeholders should include these types of indicators within general human rights monitoring mechanisms. In this regard, the principle of non-discrimination is a critical cross-cutting human rights indicator. In the OAS context, for example, the states' commitment to periodically reporting on the realization of social rights (education, decent work, health care, social security) must transversally incorporate the situation of different groups covered by the prohibited grounds according to the non-discrimination principle (OAS, 2011 2013).

The situation of migrants worldwide can be included in what the OAS has called "structural inequality". Examining the non-discrimination cross-cutting indicator, the OAS has stressed:

"The starting point to be considered is the structural inequality situation lived by vast social sectors in the region, such as those mentioned in the Standards, namely: women, indigenous peoples, African Americans, immigrants in an irregular situation and consider with respect to each State Party, the groups and sectors that can suffer serious inequality situations that condition or limit the possibility of exercising their social rights. Once the sectors traditionally discriminated with regard to access to specific rights are identified, it is necessary that the State Party defines before the formulation of policies in the social area, which sectors require priority attention (for example, residents of a specific geographical area of the country, or the people of a specific ethnic or age group) and that it establishes special or differentiated measures to strengthen and guarantee their rights in the implementation of its policies and social services." (OAS 2011)

Likewise, in the context of the post-2015 UN development agenda discussions on indicators, it has been stressed that there are different ways to include social groups in vulnerable conditions, including migrants, when developing indicators. The principle of non-discrimination supports the need for systematic statistics on racial and gender equality, rights of children, migrants and persons with disabilities, as well as statistics on other social groups at risk of exclusion. One approach is to prepare a separate list of indicators for each group or related groups of interest, following a standard list of

themes, such as that in the MDGs. These indicators can be more flexibly tailored to the needs and priorities of each group. An alternative is to designate indicators for each group within each theme in an overall, consolidated list. A third approach is to have a stand-alone goal for a group within a single list, and design a set of indicators for each goal that may draw on the other themes but be tailored and limited to priorities for that group (UN System Task Team on the Post-2015 UN Development Agenda 2013:28).

Taking into account these remarks and considering that the KNOMAD initiative on the rights and social dimension of migration is expected to be as concise and concrete as possible, the indicators are proposed in the following manner:

- On the one hand, the indicators to be described here are directly connected to the situation of migrants, focusing on the right to education, the right to health, and the rights related to decent work.
- On the other hand, while a few indicators on the non-discrimination principle are included in this paper, it is recommended that these indicators — once defined after an in-depth experts' discussion — are complemented by other general indicators on human rights that have already been developed. The OHCHR (2012) and OAS's (2008) indicators on the right to education and the right to health care, as well as OAS' (2013) indicators on the right to work and the right to form and join trade unions, through the principle of non-discrimination, are existing key mechanisms for evaluating migrants' rights. Namely, both techniques — specific indicators on migrants' rights and those on a particular human right or a human rights principle — can complementarily measure the impact of migration policies and other related policies on the situation of migrants and their families.
- The indicators proposed are illustrative examples that should be adapted as appropriate to fit the context of their application, to be a practical policy tool.
- The indicators proposed should be seen as complementary, illustrating links between law, policy, implementing measures and outcomes, and between different facets of a particular issue. In other words, it is often necessary to look at the results related to a number of different indicators to understand a particular issue.

An additional challenge in the case of indicators on migrants' rights — addressed further in section 4 of this paper — is how to measure the realization of the rights of migrants in irregular migration or residence status, considering that governmental data usually do not take into account this group. The Global Migration Group Working Group on Human Rights, Migration and Gender Equality has recently highlighted that the post-2015 agenda could ensure systematic disaggregation of indicators by migration or residence status under relevant focus areas in order to measure the progress of disadvantaged migrant groups including through identifying structural discrimination (GMG WG 2014). Although some indicators are suggested below to address this challenge, there is also a need to creatively consider broad and heterogeneous sources of data in order to measure the progress of disadvantaged migrants more comprehensively.

In general, there is a lack of important data on different aspects related to the situation of migrants. In many countries, as evidenced in the accompanying background paper on the situation of migrants in Argentina (Cortés 2014), key information for more comprehensive indicators, or for better understanding the available indicators, is usually missing, such as:

- ❖ Arrival date and length of residence, complemented with periodic labor, education, and health conditions indicators;
- ❖ Migration or residence status,<sup>19</sup> complemented with labor conditions, access to education and health services, among other indicators.

In addition, indicators should be integrated with crucial information on existing migration policies and practices in each country, including

- data on residence categories and their scope in law and practice;
- avenues for changing migration or residence status within the destination country (from irregular to regular status; from temporary to permanent residence; etc.) based on labor relations, family ties, length of residence, or other grounds;
- type of obstacles for regularizing migration or residence status;
- discriminatory practices regarding access to job opportunities.

This data would comprise extremely useful information for explaining indicators, especially outcome indicators.

Moreover, developing and evaluating migrant rights' indicators may require contemplating other human rights indicators in some cases. For instance, an assessment of the right to education and health care of child migrants or children born to migrant parents would need to take into account issues such as working conditions of their parents, which might also be shaped according to their migration or residence status or the sector in which they work, the possibilities of receiving a residence and work permit, as well as the scope of migrants' labor rights recognized by law, among other issues.

Prior to presenting a set of illustrative indicators for the rights to education, health care, and decent work, the following section briefly introduces a set of indicators based on the principle of non-discrimination.

### **3.2 Indicators on Non-Discrimination and Equality of Treatment**

The UN Committee on Economic, Social and Cultural Rights has stated that the ESCR Covenant rights “apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant

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<sup>19</sup> In this framework, migration or residence status refers to the administrative status the person holds in the country, so includes the status of the residence (irregular or regular migrant, or citizen), its conditions (e.g., tied to a particular relationship or employment) and length of residence.

workers and victims of international trafficking, regardless of legal status and documentation” (2009:30). Specifically with regard to migrant workers, the Committee has observed in its General Comment No. 18 on the right to work that the principle of non-discrimination as set out in Article 2(2) of the ICESCR and Article 7 of the ICRMW “should apply in relation to employment opportunities for migrant workers and their families” (2006: 6, para. 18). In relation to discrimination against non-citizens, the UN Committee on the Elimination of Racial Discrimination has noted that differential treatment based on citizenship or migration status will constitute discrimination if the criteria for such differentiation are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim (2004:4). The prohibition against discrimination enshrined in Article 2 (2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination (ESCR Committee 1999:33).

Likewise, the UN Committee on the Rights of the Child has stressed that states should ensure that all children in the context of migration have equal access as national children to economic, social, and cultural rights and to basic services regardless of their or their parent’s migration or residence status, making their rights explicit in legislation. In doing so, states are strongly encouraged to expeditiously reform legislation, policies and practices that prevent or discriminate against children affected by migration and their families, in particular those in an irregular situation, from effectively accessing services and benefits such as health care, education, long-term social security benefits and social assistance, among others (CRC Committee 2012:86).

Despite the clear, international standards on the human rights of migrants, nationality and/or migration or residence status are grounds taken into account in many countries for imposing unreasonable obstacles for ensuring these basic rights. In addition, migrants may face additional restrictions — by law or in practice — due to their ethnic origin, age and gender, among other social conditions.

In addition, requiring social services and labor market institutions such as labor inspection authorities to undertake migration control mechanisms constitutes discriminatory policies, considering that civil servants in many countries are tasked with checking and subsequently reporting an administrative offense only committed by a particular social group: migrants. These kinds of migration control policies can have a negative impact on migrants, who would be afraid of attempting to use social and other services, as well as civil servants, who may increase restrictions or unequal conditions for realizing basic rights such as education, health care and labor rights.

The non-discrimination principle plays a key role in the international human rights legal framework, as well as for measuring the realization of human rights of persons belonging to groups in vulnerable situations, such as migrants. Therefore, while non-discrimination indicators will be proposed in each of the sections on the rights selected (e.g., education and non-discrimination), some basic, general



indicators are suggested below.<sup>20</sup> These indicators are meant to gather contextual information regarding policies, legislation, practices and actual figures related to equality/discrimination levels in the corresponding destination country society where migrants' rights are to be examined.

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<sup>20</sup> Some of these indicators are based on IACHR (2008) and OHCHR (2012).

### Illustrative Indicators on Non-Discrimination and Equality and Migration

	<b>Equality Before the Law</b>	<b>Discrimination Against Migrants by Public or Private Actors Nullifying or Impairing Equality of Social Rights</b>	<b>Combating Racism and Xenophobia</b>
<b>Structural</b>	<ul style="list-style-type: none"> <li>▪ Inclusion of the principle of equality and non-discrimination in the Constitution, including based on nationality.</li> <li>▪ Ratification by the state of the core international human rights treaties and their protocols, including ESCR, CRC, ICERD, CEDAW, and ICRMW</li> <li>▪ Ratification of ILO Conventions No. 100, 111, and 143</li> <li>▪ Legal prohibition of restriction on social rights based on prohibited grounds, including nationality and migration or residence status</li> <li>▪ Anti-discrimination legislation that includes nationality and migration or residence status as prohibited grounds</li> <li>▪ Legal recognition of equal access to justice, legal aid and effective remedies by victims of discrimination, without repercussions on grounds of their residence status</li> <li>▪ Inclusion of the non-discrimination principle in migration law</li> </ul>	<ul style="list-style-type: none"> <li>▪ Existence of public bodies in charge of anti-discrimination policies at all levels, in articulation with other local or national bodies</li> <li>▪ Existence of national and local equality and anti-discrimination policies based on prohibited grounds, including nationality and migration or residence status Mechanisms directed at ensuring governmental coordination (among ministries, between local and national levels), in order to remove obstacles to enjoyment of economic, social and cultural rights</li> <li>▪ Independent public human rights institutions that include areas of work on: a) anti-discrimination; b) social rights; and c) migrants' rights</li> <li>▪ Mechanisms aimed at ensuring consultation with and participation of civil society in anti-discrimination bodies, including migrants' associations</li> </ul>	<ul style="list-style-type: none"> <li>▪ Policies for promoting migrants' integration</li> <li>▪ Policies for preventing xenophobia in the media, such as media codes of conduct aiming to promote diversity and overcome negative stereotypes</li> <li>▪ Mechanisms aimed at ensuring equal access to justice and effective remedies of victims of discrimination, racism and xenophobia, without repercussions on grounds of their residence status</li> <li>▪ Independent public institution that monitors and receives complaints concerning cases of xenophobia and racism</li> </ul>

<p><b>Process</b></p>	<ul style="list-style-type: none"> <li>▪ Number of initiatives directed at removing discriminatory regulations and practices based on nationality, ethnic origin and migration or residence status</li> <li>▪ Percentage of specific budget resources for implementing anti-discrimination policies, including discrimination against migrants</li> <li>▪ Number of positive measures for preventing discriminatory practices and promoting equal treatment by social services based on nationality or migration or residence status, such as training programs and activities that disseminate rights-based information to social services</li> <li>▪ Proportion of expended budget for promoting anti-discrimination practices in social services</li> <li>▪ Proportion of programs aimed at implementing intercultural social policies, disaggregated by national and local jurisdictions</li> <li>▪ Number of programs aiming to remove discriminatory obstacles to enjoyment of economic, social and cultural rights , based on nationality, ethnic origin and migration or residence status</li> <li>▪ Number of programs directed at developing protocols for preventing discrimination in social services</li> </ul> <p>Funding available for civil society organizations working on anti-discrimination and migrants' rights</p>	<ul style="list-style-type: none"> <li>▪ Number of programs for disseminating information on the right to submit complaints in cases of racism and xenophobia</li> <li>▪ Number of campaigns directed at preventing racism and xenophobia against migrants at different levels (media, education centers, health services, at work)</li> <li>▪ Proportion of incidents of crimes and other offenses, including racism and hate speech, against migrants, disaggregated by the victim's migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence</li> <li>▪ Proportion of expended budget on campaigns and related programs for preventing racism and xenophobia</li> <li>▪ Proportion of complaints submitted on xenophobic and hate speech in media and public institutions</li> </ul>
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<p><b>Outcome</b></p>	<ul style="list-style-type: none"> <li>▪ Human development rates and gaps (poverty, indigence, employment, housing, education level, health conditions, etc.), disaggregated by age, sex, nationality, national origin, ethnic origin, migration or residence status</li> <li>▪ Number of complaints of discrimination for social rights submitted by migrants before administrative and judicial bodies (anti-discrimination, human rights public institutions, judiciary, etc.)</li> <li>▪ Complaints submitted by civil society organizations before international human rights mechanisms, regarding discriminatory policies or practices, including based on nationality and migration or residence status</li> <li>▪ Judicial decisions that recognized equal social rights for migrants</li> <li>▪ Number of migrants that access culturally sensitive social services, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ratio of people convicted for hate crimes against migrants, disaggregated by the victim's migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence</li> <li>▪ Number of migrants that submitted claims as victims of racism and xenophobia</li> </ul>
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### 3.3. Right to Education

The right to education, according to the Convention on Economic, Social and Cultural Rights, as well as the standards developed by the ESCR Committee, encompasses the following interrelated and essential features:

- ❖ Availability—functioning educational institutions and programs have to be available in sufficient quantity;
- ❖ Accessibility, based on three dimensions:
  - Non-discrimination
  - Physical accessibility
  - Economic accessibility — education has to be affordable to all;
- ❖ Acceptability — the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; and
- ❖ Adaptability — education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

In addition, specific components of the right to education (though not exhaustive) include:

- ❖ The right to primary education
- ❖ The right to secondary education
- ❖ Technical and vocational education
- ❖ The right to higher education
- ❖ The right to fundamental education
- ❖ The right to educational freedom, and
- ❖ A school system; adequate fellowship system; material conditions of teaching staff.

These attributes of the right to education must be respected, protected, and fulfilled for all individuals. Indicators directed at measuring the level of compliance with such obligations must include all of these elements. Nonetheless, a limited set of indicators are proposed in this paper to better assess several social aspects of migration, particularly the level of enjoyment of key social rights, such as the right to education. Therefore, according to the circumstances briefly described below, a number of indicators are suggested.

Migrants' right to education can play a key role on a number of issues. First, as stated by the UN Committee on Economic, Social and Cultural Rights, education is both a human right in itself and an indispensable means of realizing other human rights. Education is a primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities (ESCR Committee 1999). Consequently, it becomes critical for migrants and their families' integration to destination countries, as well as for realizing some of their envisaged purposes before migrating.

In addition, ensuring education to all children, regardless of their nationality, ethnic origin and migration or residence status, among other social conditions, is an essential step for promoting human development, sustainable livelihoods, and equitable growth. The ESCR Committee recalled also that this right must be fulfilled in line with the non-discrimination principle: "article 2 of the Convention on the Rights of the Child and Article 3 (e) of the UNESCO Convention against Discrimination in Education confirms that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status" (ESCR Committee 1999:34).

Moreover, a coherent articulation between migration and education policies may play a critical role in multicultural, destination countries. First, because migrants' access to education on an equal basis with nationals is an essential means for promoting intercultural integration and social cohesion, as well as preventing social conflicts and disparities based on ethnic or national origin. Second, because a proper treatment of migration issues within education plans and curricula — especially at primary and secondary level — could be fundamental for reducing xenophobia and encouraging an equitable human development and social environment.

However, child and adolescent migrants and those born to migrant parents, particularly those in irregular migration or residence status, face a variety of obstacles and restrictions in accessing education. While some are not able to attend school due to their or their parents' migration or residence status (at any level or at a specific level, usually non-compulsory education), others face obstacles in obtaining a degree certificate. These obstacles could be established in law or by practice. In addition, migrants experience unequal treatment regarding education fees, or access to scholarships or other supporting programs (including specific programs for particularly vulnerable groups), resulting in lower rates of school attendance, educational outcomes, etc.

Therefore, indicators on migrants' right to education should be able to measure the extent to which states ensure migrants the core elements of this right according to the standards developed by the UN ESCR Committee (1999). In this regard, *accessibility* and non-discrimination are two key aspects that indicators must include through measures implementing the negative obligations to respect and protect and the positive obligation to fulfil. Likewise, *availability* can play an important role for avoiding unequal conditions in education centers where the rate of the migrant population is higher than the national average, usually due to segregation patterns regarding access to housing and other social rights.

In addition, addressing the right to education's element of *acceptability* includes measures such as those directed at addressing challenges in multicultural societies and promoting social integration and cohesion, training teachers, or removing language and cultural barriers. Finally, *adaptability* means, among other aspects, the incorporation of migration, xenophobia and related topics into the curricula, which is essential for adapting the education system to development planning based on diverse societies.

Taking into account the above, the following are illustrative indicators for migrants' right to education:

### Illustrative Indicators on the Right of Migrants to Education

	Access to Education (Compulsory and Non-compulsory)	Equitable Education Conditions	Cultural Acceptability	Curricula and Education Resources
<b>Structural</b>	<ul style="list-style-type: none"> <li>▪ International human rights treaties relevant to the right to education ratified by the state</li> <li>▪ Laws explicitly establishing the right to compulsory education for all migrants, regardless of migration or residence status, equal to nationals</li> <li>▪ Laws or regulations explicitly establishing the right to non-compulsory education for all migrants, regardless of migration or residence status, equal to nationals</li> <li>▪ Public policies aimed at promoting effective access to education without discrimination</li> <li>▪ Mechanism for gathering and publishing periodic data on access to education and education conditions, disaggregated migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence, and socio-economic status</li> <li>▪ Mechanisms aimed at evaluating and publishing causes of early school leaving of all children, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence, and socio-economic status</li> <li>▪ Existence of case law on the right to education for migrants, disaggregated by their migration or residence status</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Legislation that does not require educational authorities to check migration or residence status as a requirement for enrolment and report irregular status to migration authorities</li> <li>▪ Measures meant to remove practical obstacles that hinder or prevent the enjoyment of the right to education, such as requiring a residence permit for access to schools, to take official exams or receive certification for studies completed</li> </ul>	<ul style="list-style-type: none"> <li>▪ National/regional/local laws that recognize the equal right to education at all levels for all children, adolescents and young people, within the state jurisdiction, without discrimination.</li> <li>▪ Policies directed at periodically ensuring equitable qualitative and quantitative conditions in educational centers, preventing social segregation based on prohibited grounds</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legal framework directed at facilitating migrants' integration in schools</li> <li>▪ Legislation that prohibits any act of discrimination and xenophobia at school, including violence</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislation aimed at promoting intercultural education programs</li> </ul>



### Illustrative Indicators on the Right of Migrants to Education

	Access to Education (Compulsory and Non-compulsory)	Equitable Education Conditions	Cultural Acceptability	Curricula and Education Resources
<b>Process</b>	<ul style="list-style-type: none"> <li>▪ Proportion of received complaints about restrictions of migrants’ right to education, and number of judicial decisions on migrants’ right to education</li> <li>▪ Percentage of public expenditure directed at promoting the right to education of child migrants (access, equitable conditions, intercultural education programs)</li> <li>▪ Public campaigns for raising awareness on the universal right to education without discrimination based on nationality, ethnic origin, migration or residence status or other prohibited grounds</li> <li>▪ Number of programs aimed at training teachers on migrants’ rights and prevention of racism and xenophobia</li> <li>▪ Number of free programs for learning languages of the destination country to promote integration at school of child migrants</li> <li>▪ Number of programs meant to include a rights-based and comprehensive approach to migration in education plans</li> <li>▪ Funding available for civil society organizations working to improve enjoyment of the right to education for all without discrimination</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Proportion of migrants enrolled in education centers, disaggregated by education level and type of center (public/private)</li> <li>▪ Proportion of migrants enrolled in education centers, disaggregated migration or residence status, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence and socio-economic status</li> <li>▪ Proportion of children born to migrant parents enrolled in education centers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of affirmative action measures for ensuring access to education of groups in vulnerable situations, without discrimination, such as measures to improve the equitable geographic distribution of schools, conditional cash transfer programs, etc.</li> <li>▪ Proportion of complaints received concerning school conditions (e.g., infrastructure, educational materials –books, computers-, budget), in relation with the rate of migrant pupils in the center</li> <li>▪ Number of migrants that receive public support or scholarships for</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proportion of institutions that teach destination country languages to child migrants</li> <li>▪ Number of programs implemented for reducing xenophobia at school</li> <li>▪ Proportion of education centers that incorporated intercultural programs</li> <li>▪ Proportion of teachers trained on intercultural education and migrants’ rights</li> </ul>	

### Illustrative Indicators on the Right of Migrants to Education

	Access to Education (Compulsory and Non-compulsory)	Equitable Education Conditions	Cultural Acceptability	Curricula and Education Resources
		education, compared to nationals with similar socio-economic status (disaggregated by sex)		
<b>Outcome</b>	<ul style="list-style-type: none"> <li>▪ Percentage of: a) children and adolescent migrants; b) children born to migrant parents; and c) nationals who attend and finish compulsory education, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence and length of residence</li> <li>▪ Percentage of: a) children and adolescent migrants; b) children born to migrant parents; and c) nationals who attend and finish non-compulsory education, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence and length of residence</li> <li>▪ Ratio of early-school leaving child migrants in relation to early-school leaving national children</li> </ul>	<ul style="list-style-type: none"> <li>▪ Variation patterns on the proportion of child migrants at each school and in each education district</li> <li>▪ Migrants' educational performance and literacy rate, in relation to nationals</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of child migrants that attended language training programs</li> <li>▪ Number of cases reported of xenophobic incidents at school, amongst students as well as amongst students and teachers/administrative assistants/authorities</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of schools that include topics such as migrants' rights and intercultural integration in the curricula, disaggregated by education level and district</li> </ul>

### 3.4. Right to Health

According to the ICESCR and its interpretation by the ESCR Committee (2000:12-15), the right to health in all its forms and at all levels contains a number of interrelated and essential elements, such as:

- ❖ Availability of public health and health-care facilities, goods and services, as well as programs, in sufficient quantity for all individuals under state jurisdiction;
- ❖ Accessibility of health facilities, goods and services to everyone, based on four specific dimensions:
  - Non-discrimination on any prohibited grounds;
  - Physical accessibility to all individuals and groups, particularly those in vulnerable situations;
  - Economic accessibility (affordability); and
  - Information accessibility (the right to seek, receive and impart information on health issues);
- ❖ Acceptability, which entails that the goods and services must be respectful of medical ethics and culturally appropriate; and
- ❖ Quality (scientifically and medically appropriate and of good quality).

In addition, although they are not an exhaustive list of the contents of the right to health, some specific elements are explicitly included in the ESCR Convention:

- ❖ The right to maternal, child and reproductive health
- ❖ The right to healthy natural and workplace environments
- ❖ The right to prevention, treatment and control of diseases, and
- ❖ The right to health facilities, goods, and services.

The right to health is also closely related to and dependent upon the realization of other human rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly, and movement (ESCR Committee 2000:3). Therefore, the Committee has noted that within the determinants of the right to health, the following aspects must be considered:

- ❖ access to safe and potable water and adequate sanitation

- ❖ access to an adequate supply of safe food and nutrition
- ❖ access to adequate housing
- ❖ access to health-related education and information, including on sexual and reproductive health, and
- ❖ participation of the population in all health-related decision-making at the community, national, and international levels.

While it is critical to take into consideration all of the elements and determinants of the right to health, a limited number of indicators are developed in this paper to measure key aspects of the enjoyment of this right by migrants. While these indicators could be complemented by others in further developments, a group of indicators have been selected according to some criteria to be explained below.

As in the case of the right to education, international human rights standards are consistent in establishing that the right to health care must be equitably fulfilled to any individual, regardless of their nationality or migration or residence status. The UN Special Rapporteur on the Right to Health Care is mandated to ensure that the availability, accessibility, acceptability and quality of health facilities, goods and services on a non-discriminatory basis, especially for vulnerable populations such as migrant workers, is a core obligation under the right to health. Non-discrimination requires that regular migrant workers and those in irregular status be equally entitled to freedoms and entitlements available to nationals (2013: 38).

Likewise, nearly 15 years ago, the UN Committee on Economic, Social and Cultural Rights affirmed that states' obligations on the right to the highest attainable standard of health include refraining from denying or limiting equal access for all persons, including migrants in irregular status, to preventive, curative and palliative health services (Committee on ESCR 2000:34). The World Health Assembly also adopted a resolution specifically relating to the health of migrants at its 61<sup>st</sup> session in 2008.

However, on a daily basis, millions of migrants, including children, cope with a number of restrictions, exclusions, and unequal practices regarding their right to health. In recent years, there have been an increasing number of arbitrary restrictions on migrants' access to health services. As the Special Rapporteur on the Right to Health describes, access to health care in many destination states is dictated by restrictive immigration policies and public perceptions of "non-deserving" migrant workers, particularly those in an irregular situation. In addition, in the wake of the global economic crisis and associated austerity measures, states have legislated limitations on previously available health-care benefits for migrant workers, which are contrary to the prohibition of taking regressive measures (Special Rapporteur on the Right to Health 2013:38). Restrictions also extend to sexual and reproductive health, including maternity care, and health care for children, with children often afforded no more protection of health than adult migrants.

Moreover, as has been stressed by the Special Rapporteur on the Human Rights of Migrants, several measures of immigration control may indirectly preclude the enjoyment of human rights by migrants in an irregular situation. Laws imposing requirements on public servants, health professionals and other stakeholders to report migrants in irregular status to the police or immigration authorities effectively deny irregular migrants access to health care and other rights, as they become reluctant to seek public services (Special Rapporteur on Human Rights of Migrants 2010:15). In addition, a common obstacle that migrants face concerning equal access to or enjoyment of health services is the lack of intercultural health policies and practices. Therefore, cultural and linguistic differences may magnify the vulnerability of migrant workers in destination states, especially in the absence of family or social support networks (Special Rapporteur on the Right to Health Care 2013:5).

The variety of constraints regarding migrants' rights is directly linked, on the one hand, to increasingly restrictive migration policies. Universality and equality of the right to health care are at stake due to the fact that these policies are usually adopted based on myths and prejudices, rather than on empirical and periodically-gathered data (Ceriani and Finkelstein 2013), as well as the fact that migration — a multidimensional phenomenon — is currently governed on the basis of an extremely narrow approach, rather than on the basis of a comprehensive, rights-based focus that takes into account key human development insights and outcomes.

In this regard, discussions on the post-2015 UN development agenda have argued that the exclusion of migrants from public health systems is not just a violation of migrants' rights, but is also counterproductive from a public health perspective. As migrants are an increasingly large part of today's societies, addressing their health needs and rights should thus be a vital component of any effective public health policy promoting sustainable health outcomes (IOM 2012).

In this context, it is critical to improve and spread data-collection mechanisms that not only contribute to fulfilling migrants' rights to health, but also challenge prejudices and misconceptions about the impact of migration in countries of destination, the consequences of unequal social policies, and related issues. As has been pointed out by the Special Rapporteur on the Right to Health, fulfilling the right to health requires States to adopt and implement an evidence-based national health policy which does not discriminate against non-nationals and addresses the needs of regular migrant workers and those in an irregular situation (2013:11).

On the other hand, migrants' experiences *en route* and in countries of transit and destination present a range of challenges and social conditions that are linked to poor health outcomes, for example, in relation to poverty, poor living and working conditions.

Considering these circumstances, a set of indicators have been selected, aimed at measuring the key challenges that migrants face on their right to health. It is important to reaffirm the relevance of taking into account all of the determinants of the right to health for each individual

within state jurisdiction, including migrants, regardless of their migration or residence status. Nonetheless, this paper intends to assess some decisive aspects that currently frame migrants' treatment in countries of destination regarding their right to health.

The extension and variety of constraints that affect migrants' right to health in a considerable number of countries leads to the necessity of focusing in this stage on a group of elements and determinants of this right. In this context, while it is critical to measure the impact of policies and measures that restricts this right on the basis of national origin and/or migration or residence status, it is also extremely relevant to take into account the cases where equal treatment between nationals and all migrants are mandated by law — as has been examined in the case study relating to Argentina that complements this background paper.

Therefore, taking into account the circumstances briefly mentioned and largely described in a number of reports developed by UN human rights mechanisms, as well as the attributes in the right to health indicators framework developed by OHCHR — the core aspects included in the illustrative indicators are accessibility of health facilities, goods and services; cultural acceptability of health services; natural and occupational environment, sexual and reproductive health, and child health care. Non-discrimination and equality are included as cross-cutting perspectives. It also must be noted that another health determinant, such as a healthy workplace environment, is reflected in the indicators on decent work. Hence, the following is an illustrative set of indicators on the human right of migrants to health care.

**Illustrative Indicators on the Right of Migrants to the Enjoyment of the  
Highest Attainable Standard of Physical and Mental Health**

	<b>Accessibility of Health Facilities, Goods and Services</b>	<b>Cultural Acceptability of Health Services</b>	<b>Natural and Occupational Environment</b>	<b>Sexual and Reproductive Health</b>	<b>Child Health Care</b>
<b>Structural</b>	<ul style="list-style-type: none"> <li>▪ International human rights treaties relevant to the right to the enjoyment of the highest attainable standard of physical and mental health ratified by the state</li> <li>▪ National/regional/local legislation that recognizes the equal right to health for all individuals under state jurisdiction, without discrimination based on prohibited grounds</li> <li>▪ Recognition of migrants’ right to health in law, including its scope based on type of health service (e.g., emergency only) and migration or residence status</li> <li>▪ Inclusion of migrants within public health policy and programs, as a particular target group, including those aiming to reduce health inequalities and inequities and address the social determinants of health</li> <li>▪ Mechanism for gathering and publishing periodic data on health conditions and health services, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence, and socio-economic status</li> <li>▪ Date of entry into force and coverage of the right to health of migrants, regardless of their status, in the constitution or other forms of superior law</li> <li>▪ Date of entry into force and coverage of domestic law for implementing the right to health of migrants, including prohibition of direct or indirect discrimination by public or private actors nullifying or impairing access to health</li> <li>▪ Existence of case law on the right to health of migrants, disaggregated by their migration or residence status</li> <li>▪ Mechanisms aimed at data gathering for evaluating causes of higher prevalence of health problems in the migrant population, in relation to nationals</li> </ul>				
	<ul style="list-style-type: none"> <li>▪ Legislation that does not oblige health workers and civil servants to detect migration or residence status to provide goods and services and report irregular migrants to migration authorities</li> <li>▪ Measures meant to remove formal and practical obstacles that hinder or prevent the enjoyment of the</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislation that prohibits any act of xenophobia at health facilities</li> <li>▪ Public institutions developing intercultural health policies, programs and services</li> <li>▪ Legal framework and policies aimed at removing</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legal protection of the right to adequate housing, including access to water and sanitation services, without discrimination based on nationality and migration or residence status</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legal protection of migrants’ right to sexual and reproductive health services, regardless of nationality and migration or residence status, equal to nationals</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legal protection of children’s right to health, regardless of their migrant status or</li> </ul>

	<p>right to health, such as requiring a residence permit, or additional fees based on nationality or migration or residence status, and reporting migrants in irregular status to migration authorities</p> <ul style="list-style-type: none"> <li>▪ Policies directed at periodically ensuring equitable qualitative and quantitative conditions at health facilities</li> </ul>	<p>language and cultural barriers at health facilities and services</p> <ul style="list-style-type: none"> <li>▪ Policies aimed at including intercultural, rights-based approach to migration in medical training curricula</li> <li>▪ Health services aimed at addressing mental health problems related to migration</li> </ul>	<ul style="list-style-type: none"> <li>▪ Application of regulations and/or existence of case law on the rights of tenants, disaggregated by their migration or residence status</li> <li>▪ Application of legislation on occupational safety and health, including workers' rights and protections, to all workers regardless of status</li> </ul>		<p>their parents'</p> <ul style="list-style-type: none"> <li>▪ Legal recognition of the right to birth registration, regardless of the migration or residence status of parents</li> </ul>
<p><b>Process</b></p>	<ul style="list-style-type: none"> <li>▪ Proportion of judicial decisions on migrants' right to health</li> <li>▪ Number of programs aimed at promoting and disseminating migrants' right to health, directed at health facilities, health workers, migrant communities, etc.</li> <li>▪ Campaigns directed at raising public awareness about migrants' right to health care in equal conditions as nationals</li> <li>▪ Public expenditure on the promotion of the right to health of migrants as a proportion of public health expenditure, total public expenditure or gross national income</li> <li>▪ Number/proportion of received complaints on the right to health of migrants investigated and adjudicated by national human rights institution, ombudsperson or other mechanisms and proportion of these responded to effectively by the government</li> <li>▪ Number of programs directed at ensuring adequate health services for migrants in detention facilities</li> <li>▪ Number of training programs for health workers on cultural diversity, international migration and human rights</li> <li>▪ Funding available for civil society organizations working to improve enjoyment of the right to health for all without discrimination</li> </ul>				
	<ul style="list-style-type: none"> <li>▪ Proportion of migrants with health insurance, disaggregated by sex, national and ethnic origin, migration or residence status, place of residence</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proportion of health facilities that include an intercultural approach to health services, including nutrition, and sexual and reproductive rights</li> </ul>	<p>Proportion of population that was extended access to an improved</p>	<ul style="list-style-type: none"> <li>▪ Number of programs aimed at ensuring women and adolescent migrants' access to</li> </ul>	<ul style="list-style-type: none"> <li>▪ Inclusion of child migrants within programs</li> </ul>



	<ul style="list-style-type: none"> <li>▪ Number of campaigns directed at disseminating migrants’ right to health within migrant population</li> <li>▪ Number of activities/campaigns implemented to raise awareness about migrants’ right to health care amongst health workers, authorities and civil servants in health facilities</li> <li>▪ Ratio of migrants’ access to each health facility, compared to statistics of health services quality and conditions of each facility</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of programs at Medicine Schools that address intercultural approach to health policies and services</li> <li>▪ Proportion of health workers trained in cultural diversity, migration and human rights</li> <li>▪ Number of interpreters and cultural mediators working in health facilities, disaggregated by languages</li> <li>▪ Training programs for health workers on the impact of migration on mental health of migrants</li> <li>▪ Number of health services that include mental health migration-related issues, such as Ulysses Syndrome</li> </ul>	<p>drinking water source, disaggregated by nationality and migration or residence status</p> <ul style="list-style-type: none"> <li>• Proportion of population that was extended access to improved sanitation, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, and length of residence</li> <li>• Proportion of population that was extended access to adequate housing, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, and length of residence</li> <li>• Proportion of population or households living or working in or near</li> </ul>	<p>sexual and reproductive health services and programs</p> <ul style="list-style-type: none"> <li>▪ Proportion of women and adolescent migrants that access to sexual and reproductive health services</li> <li>▪ Proportion of maternal mortality rate of women migrants, compared to nationals and disaggregated by , migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, and length of residence</li> <li>▪ Time frame and coverage of plan(s) of action on sexual and reproductive health of migrants,</li> </ul>	<p>aimed at preventing child mortality</p> <ul style="list-style-type: none"> <li>▪ Proportion of migrant and born-to-migrant parents children covered under nutrition and health programs, including medical check-ups</li> <li>▪ Proportion of children of migrant families immunized against vaccine-preventable diseases</li> <li>▪ Proportion of children born to migrant</li> </ul>
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			hazardous conditions rehabilitated, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, and length of residence	including on family planning and inter-cultural aspects  ▪ Programs aimed at preventing early pregnancies among adolescent migrants	parents with birth registration
<b>Outcome</b>	<ul style="list-style-type: none"> <li>▪ Rate of: a) mortality; b) morbidity; c) life expectancy; and d) prevalence of diseases; disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence, and specific disease</li> <li>▪ Rate of migrants' access to each public health facility, in relation to nationals</li> <li>▪ Number of migrants that were not able to access to a health service, due to their migration or residence status or their parents', disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence, and specific disease</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of migrants that access health services in their native language</li> <li>▪ Cases reported of xenophobic incidents at health facilities</li> <li>▪ Proportion of migrants that perceived discriminatory treatment in health facilities</li> <li>▪ Number of migrants that received mental health services</li> </ul>	<ul style="list-style-type: none"> <li>▪ Prevalence of deaths, injuries, diseases and disabilities caused by unsafe natural and occupational environment, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, and length of residence</li> <li>▪ Mortality and injury rates of women and girl migrants due to domestic violence and sexual violence</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rate of female, male and adolescent migrants that accessed sexual and reproductive health care services</li> <li>▪ Rate of female migrants that equally accessed pre-natal health care services</li> <li>▪ Rate of unsafe abortions of migrant women, compared to women nationals</li> </ul>	<ul style="list-style-type: none"> <li>• Child mortality rate, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence and cause of death</li> <li>• Proportion of children born to migrant parents without birth registration</li> <li>• Infant and</li> </ul>

					<p>under-five mortality rates of migrant and born-to-migrants parents children</p> <ul style="list-style-type: none"><li>• Proportion of underweight migrant children under five years of age</li></ul>
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### 3.5. Right to Decent Work

There is a widely observed link between migration and work. This is not only due to the fact that seeking employment is a key driver of migration (although migrants may leave their countries for a number of other reasons due to the non-fulfilment of rights, including persecution, discrimination, or for family reunification), but also because migrants contribute greatly both to the labor market, and to the realization of employment, social and other related public policy outcomes in countries of destination (e.g., job creation, social protection systems).

The UN Committee on Migrant Workers has stated that, while some migrant workers and members of their families are successful in their attempts to seek decent working and living conditions abroad, others face discrimination, abuse and exploitation in the workplace, experiencing violations of their rights. Reports from all over the world describe a wide range of work conditions and situations faced by migrant workers that constitute violations of international standards. Examples of these exploitative situations and their consequences experienced by migrant workers include: deaths; working in dangerous or harmful conditions; high incidences of occupational injuries; receiving wages below the minimum wage (if this exists) or below a living wage, or not receiving wages at all; fraudulent practices; excessive hours at work; illegal confinement by their employers; sexual harassment; threats of deportation; denial of freedom of association and collective bargaining rights; confiscation of passports or travel documents; absence of social protection, as well as being told they have no rights and not being able to access justice (MWC 2014).

In addition to the conditions faced by migrant workers in the workplace, it is important to underline that the legal framework in most states prohibits migrants with irregular migration or residence status from working. The Universal Declaration of Human Rights, the ESCR Covenant and international labor standards recognize that everyone has the right to work, though this does not translate necessarily to equal rights to access the labor market. Nevertheless, undocumented migrants are not entitled to work at all, according to the vast majority of migration and employment laws. Despite the abovementioned structural aspects of the migration and work nexus and the universally acknowledged human right to work, migration policies are invoked for adopting such restrictions that may not be completely coherent with other policy goals, such as under employment policies — meeting real labor market needs at all skill levels and equal opportunities' policies.

This legal obstacle at the national level is complemented by a number of aspects, such as migration control mechanisms at the workplace, and the lack of regularization programs or regular migration avenues (either permanent or temporary) for migrant workers. This approach may not only lead to migrants' rights constraints, including labor exploitation and abuses, but it may also hinder labor/employment policy goals, such as reducing informal work, or social policies, such as diminishing inequality and income gaps within the population. In sum, ensuring migrants' labor rights, including those of undocumented workers, is a critical tool for achieving human development objectives. The inclusion of migrants and their representatives (e.g. trade

unions) in policies directed at increasing the number of good and decent jobs and livelihoods is also fundamental. Fulfilling sustainable livelihoods and equitable growth should take into account the labor conditions of millions of migrants to address the gaps and challenges for effectively protecting their rights on an equal basis to national workers.<sup>21</sup>

In order to adequately address these challenges, collecting rights-based, comprehensive data becomes a key step. The ILO Multilateral Framework on Labour Migration has highlighted that priority should be given to gathering accurate and adequate data to formulate, implement and evaluate labor migration policy and practice (ILO 2006). The ILO Multilateral Framework also contains a set of guidelines aimed at addressing this principle:

- ❖ improving government capacity and structures for collecting and analyzing labor migration data, including sex-disaggregated and other data, and applying it to labor migration policy;
- ❖ encouraging and facilitating the international exchange of labor migration data, such as by contributing to the International Labour Migration database;
- ❖ promoting and supporting research on labor migration issues, including the impact of emigration on countries of origin, as well as the contribution of immigration to countries of destination, and disseminating it;
- ❖ developing bilateral and multilateral exchange of labor market information; and
- ❖ collecting and exchanging profiles of good practices on labor migration on a continuing basis (ILO 2006: 9).

ILO Indicators on Decent Work are based on the four strategic objectives of the Decent Work Agenda: *full and productive employment; fundamental principles and rights at work; social protection, and promotion of social dialogue*. In addition, the indicators are disaggregated into 11 elements linked to these objectives (see Annex 2 for a full listing). The ILO Manual on Decent Work Indicators provides tools for implementing these 11 elements through an articulation between statistical indicators (*quantitative indicators derived from official national data sources*) and legal framework indicators (*qualitative in nature primarily based on legal texts and other related textual information*). In addition, contextual indicators do not measure decent work per se but rather serve to provide data users with information that relates to the context of decent work measurement in an economy (ILO 2013).

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<sup>21</sup> The case study on the situation of migrants' rights in Argentina might be a very useful tool for discussing these issues. As evidenced in Cortés (2014), migrants' labour conditions in Argentina have been improving during the period in which migrants' rights have been recognized by law, and approximately one million migrants have been able to obtain regular residence status.

Considering this framework and the human rights indicators developed by the OHCHR and other institutions, the following suggested indicators seek to combine these initiatives to have accurate tools for measuring migrant workers' conditions according to international human rights and labor standards.

### Illustrative Indicators on the Right of Migrants to Decent Work

	Access to Decent and Productive Work	Just and Safe Working Conditions	Equal Treatment and Prohibition of Discrimination	Access to Social Security and Social Protection
<b>Structural</b>	<ul style="list-style-type: none"> <li>▪ Inclusion in national legislation of the right to work for all individuals, without discrimination based on prohibited grounds</li> <li>▪ Ratification and entry into force of the international human rights treaties relevant to the right to work, ILO eight core conventions (n° 29, 87, 98, 100, 105, 111, 138, and 182) and other relevant ILO conventions</li> <li>▪ Existence of a decent work agenda at the national level that includes specific focus on challenges faced by migrant workers</li> <li>▪ Measures directed at gathering and publishing periodic data on migrant workers' working conditions, disaggregated migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence and type of activity</li> <li>▪ Existence of case law on labor rights concerning migrant workers, disaggregated by their migration or residence status</li> <li>▪ Existence of regional or bilateral agreements to protect migrant workers' rights</li> <li>▪ Legal and policy measures to address gender-related challenges to the right to decent work across framework</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Scope of recognition of migrants' right to work in national law, according to each residence status, such as temporary or permanent residence, migrant worker's spouse, etc., and each type of labor relations, including self-employed workers.</li> <li>▪ Recognition in national migration law of the right to work of the migrant's spouse/partner and other family members.</li> <li>▪ Measures meant to remove legal or</li> </ul>	<ul style="list-style-type: none"> <li>▪ Labor market institutions applicable to migrant workers (e.g., minimum wages, collective bargaining, social protection, among others).</li> <li>▪ Inclusion in migration law of a path to regular residence based on a work relationship and self-employed job</li> <li>▪ Policy on monitoring labor rights' violations, including against migrant workers</li> <li>▪ Number of administrative entities that receive complaints concerning violations of migrants' labor rights,</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislation that sanctions discrimination in the workplace, including based on nationality and migration or residence status</li> <li>▪ Mechanism for periodic analysis of complaints concerning discrimination at work, including against migrant workers based on their nationality or migration or residence status</li> <li>▪ Measures for ensuring migrant workers' access to free legal aid in labor proceedings</li> </ul>	<ul style="list-style-type: none"> <li>▪ National laws ensuring equality of treatment for all workers, regardless of nationality or sector, in respect of social security benefits</li> <li>▪ Bilateral and/or regional social security agreements that recognize the portability of social security benefits in accordance with international labor standards.</li> </ul>

**Illustrative Indicators on the Right of Migrants to Decent Work**

	<b>Access to Decent and Productive Work</b>	<b>Just and Safe Working Conditions</b>	<b>Equal Treatment and Prohibition of Discrimination</b>	<b>Access to Social Security and Social Protection</b>
	<p>practical barriers for migrants' access to work, including regularization programs</p>	<p>regardless of their migration or residence status</p>	<ul style="list-style-type: none"> <li>▪ National legislation establishes that labor inspectors and authorities and judicial bodies should/should not report irregular migrants to migration authorities</li> </ul>	<ul style="list-style-type: none"> <li>▪ Social protection policies directed at workers below the poverty line, including migrants, regardless of migration or residence status.</li> <li>▪ Mechanisms directed at protecting migrant workers in case of labor-related accidents and diseases, regardless of their migration or residence status</li> <li>▪ Existence of old-age benefit schemes with mechanisms aimed at including migrant workers</li> <li>▪ Existence of maternity benefits that include migrants</li> </ul>



### Illustrative Indicators on the Right of Migrants to Decent Work

	Access to Decent and Productive Work	Just and Safe Working Conditions	Equal Treatment and Prohibition of Discrimination	Access to Social Security and Social Protection
Process	<ul style="list-style-type: none"> <li>▪ Number of awareness raising programs on observance of labor rights in migrant communities</li> <li>▪ Number of programs directed at facilitating migrants' access to the labor market</li> <li>▪ Number of programs aimed at reducing informal unregistered work, including migrant workers in irregular status</li> <li>▪ Number of programs aimed at combating discrimination against migrant workers in the workplace</li> <li>▪ Percentage of public expenditure directed to promoting the right to decent work for migrants</li> <li>▪ Proportion of complaints received concerning migrants' right to decent work, including just and safe working conditions, investigated and adjudicated by national labor courts/tribunals, the national human rights institution, human rights ombudsperson or other mechanisms (e.g., ILO procedures, trade unions) and the proportion of these effectively responded to by the authorities</li> <li>▪ Funding available for civil society organizations working to improve enjoyment of the right to decent work for all without discrimination</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Proportion of migrants receiving effective public support to access decent and productive work</li> <li>▪ Proportion of migrants that access public vocational training programs</li> <li>▪ Number of migrants that regularize their status based on a work relationship</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proportion of migrant workers who moved from informal jobs to formal employment during the reporting period</li> <li>▪ Proportion and frequency of businesses inspected for conformity with labor standards and proportion of inspections resulting in administrative action or prosecution related to labor rights violations of migrant workers</li> <li>▪ Proportion of complaints concerning migrants' working conditions submitted before administrative or judicial bodies, compared to national workers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proportion of migrant workers reporting discrimination and abuse at work who initiated legal or administrative action</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proportion of migrant workers' requests for benefits (e.g., unemployment benefit, pension) reviewed and met in the reporting period</li> <li>▪ Proportion of cases or complaints concerning social security obligations related to migrant workers effectively responded to by government or relevant social security agency</li> </ul>

### Illustrative Indicators on the Right of Migrants to Decent Work

	Access to Decent and Productive Work	Just and Safe Working Conditions	Equal Treatment and Prohibition of Discrimination	Access to Social Security and Social Protection
<b>Outcome</b>	<ul style="list-style-type: none"> <li>▪ Employment rate and unemployment rate of migrant workers, compared to nationals</li> <li>▪ Estimated number of migrant workers without a residence permit and/or work permit</li> <li>▪ Employment rate of adolescent and young migrants, compared to nationals</li> <li>▪ Number of migrant workers' complaints before labor courts/tribunals, compared to national workers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proportion of migrant workers whose income is above the minimum wage, compared to nationals</li> <li>▪ Rate of overtime of migrant workers, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, and type of activity, and compared to nationals</li> <li>▪ Proportion of non-payment of wages to migrants, particularly in irregular situations, compared to nationals</li> <li>▪ Rate of informal workers, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence, and type of activity</li> </ul>	<ul style="list-style-type: none"> <li>▪ Wage gap between migrant and national workers, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, and job</li> <li>▪ Unemployment gap between migrant and national workers</li> <li>▪ Proportion of migrant workers in the informal economy, compared to nationals</li> <li>▪ Proportion of female migrant workers legally covered by maternity leave</li> <li>▪ Proportion of migrant workers who submitted claims for having experienced discrimination at work</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of migrant workers who access unemployment benefits</li> <li>▪ Number of migrant workers who receive old-age benefits</li> <li>▪ Number of migrant workers who receive benefits in case of labor-related accidents and diseases</li> <li>▪ Number of migrant workers covered by social security agreements that provide for portability of social security benefits (long-term benefits)</li> <li>▪ Ratio of migrants' coverage by each social security program, compared to nationals, disaggregated by sex</li> </ul>

### Indicators on Migrants' Rights and Decent Work (cont.)

	Protection Against Forced Labor	Protection Against Migrant Child Labor	Healthy Workplace Environment	Trade Union Rights, Collective Bargaining, and Social Dialogue
<b>Structural</b>	<ul style="list-style-type: none"> <li>▪ Inclusion in national legislation of the right to work for all individuals, without discrimination based on prohibited grounds</li> <li>▪ Ratification and entry into force of the international human rights treaties relevant to the right to work, ILO eight core conventions (n° 29, 87, 98, 100, 105, 111, 138, and 182) and other relevant ILO conventions.</li> <li>▪ Existence of a decent work agenda at the national level that includes specific focus on challenges faced by migrant workers</li> <li>▪ Measures directed at gathering periodic data on migrant workers' working conditions, disaggregated migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence, and type of activity</li> <li>▪ Existence of case law on labor rights concerning migrant workers, disaggregated by their migration or residence status</li> <li>▪ Existence of regional or bilateral agreements to protect migrant workers' rights</li> <li>▪ Legal and policy measures to address gender-related challenges to the right to decent work across framework</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Ratification of the UN Protocol on Trafficking</li> <li>▪ Criminal law includes trafficking in persons and forced labor</li> <li>▪ Governmental bodies and/or policies directed at eradicating, investigating and prosecuting forced labor, including against migrants</li> <li>▪ Programs for comprehensive protection of migrant victims of forced labor, including through regularization and access to justice</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legal prohibition of the worst forms of child labor</li> <li>▪ Policies directed at ensuring adolescent workers' rights, including migrants regardless of their migration or residence status</li> <li>▪ Policies on elimination of child labor, including by child migrants;</li> <li>▪ Measures directed at regularizing child migrants' residence status</li> </ul>	<ul style="list-style-type: none"> <li>▪ Policies meant to protect workers, including migrants, from injuries at work</li> <li>▪ Programs aimed at ensuring migrant workers access to administrative and legal procedure in cases of injuries at work.</li> <li>▪ Measures directed at ensuring migrant workers' occupational safety and health</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legal recognition of trade union rights for all workers, including migrants regardless of migration or residence status</li> <li>▪ Legal limitations for exercising union rights by migrant workers, including limitations in the statutes and/or constitutions of trade unions</li> <li>▪ Measures directed at equal implementation of collective bargaining rights for all workers, regardless of migration or residence status</li> </ul>

**Indicators on Migrants' Rights and Decent Work (cont.)**

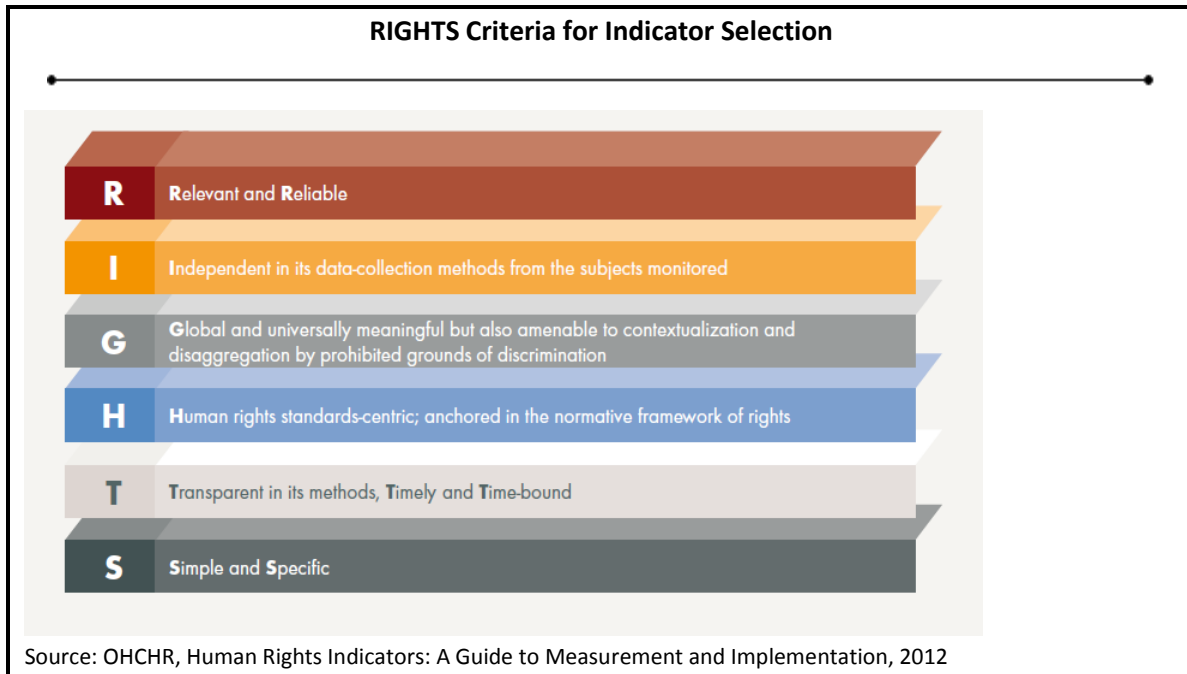
	Protection Against Forced Labor	Protection Against Migrant Child Labor	Healthy Workplace Environment	Trade Union Rights, Collective Bargaining, and Social Dialogue
Process	<ul style="list-style-type: none"> <li>▪ Awareness and promotion programs on observance of labor rights in migrant communities</li> <li>▪ Percentage of public expenditure directed at promoting the right to decent work for migrants</li> <li>▪ Percentage of public expenditure directed at eliminating forced labor and child labor, including migrants</li> <li>▪ Proportion of received complaints on the right to decent work related to migrants, including just and safe working conditions, investigated and adjudicated by the labor court/tribunal, national human rights institution, human rights ombudsperson or other mechanisms (e.g., ILO supervisory procedures, UN human rights mechanisms, trade unions) and the proportion of these responded to effectively by the government</li> </ul>			
	<ul style="list-style-type: none"> <li>▪ Proportion and frequency of labor inspections resulting in administrative action or prosecution related to forced labor, including by migrant workers</li> <li>▪ Proportion of workers victims of forced labor who receive public support (e.g., cash transfers, vocational training), including migrant workers, disaggregated by migration or residence status</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of programs meant to ensure equal vocational training opportunities for adolescent migrants, compared to nationals</li> <li>▪ Proportion and frequency of labor inspections resulting in administrative action or prosecution related to child labor, including by child migrants</li> <li>▪ Proportion of adolescent workers who participate in vocational training programs, including migrant workers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Proportion of injuries at work of migrant workers, compared to nationals, disaggregated by sex, age, nationality, type of activity, and migration or residence status</li> <li>▪ Proportion of migrant workers that submit complaints due to injuries at work</li> </ul>	<ul style="list-style-type: none"> <li>▪ Inclusion of migrant workers' issues in the social dialogue agenda at the national level</li> <li>▪ Inclusion of migrant workers' rights in the collective agreements</li> <li>▪ Number of programs on migrant workers' protection as a social dialogue outcome</li> <li>▪ Number of programs aimed at promoting migrants' unionization</li> </ul>

**Indicators on Migrants' Rights and Decent Work (cont.)**

	<b>Protection Against Forced Labor</b>	<b>Protection Against Migrant Child Labor</b>	<b>Healthy Workplace Environment</b>	<b>Trade Union Rights, Collective Bargaining, and Social Dialogue</b>
<b>Outcome</b>	<ul style="list-style-type: none"> <li>▪ Average number of migrant workers in total cases of forced labor, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence, and type of activity</li> <li>▪ Number of migrant workers victims of forced labor that access new, decent jobs</li> <li>▪ Number of migrants victims of forced labor who regularize their migration or residence status</li> </ul>	<ul style="list-style-type: none"> <li>▪ Percentage of child migrant victims of forced labor</li> <li>▪ Percentage of child migrant workers, compared to nationals, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence, and type of activity</li> <li>▪ Number of child migrant victims of worst forms of child labor</li> </ul>	<ul style="list-style-type: none"> <li>▪ Number of deaths of migrant workers through accidents at work, compared to nationals, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence, and type of activity</li> </ul>	<ul style="list-style-type: none"> <li>▪ Rates of trade union membership in different population groups, including migrants, compared with the trade union membership overall, disaggregated by migration or residence status, age, gender, sex, ethnic origin, nationality, nationality of parents, place of residence, length of residence, and type of activity</li> <li>▪ Participation of migrant workers' representatives in tripartite and bipartite negotiations</li> </ul>

#### 4. Methodological Considerations in the Selection of Indicators

The previous section of the paper presented proposed indicators for selected human rights. In the development of any indicators framework, there are a number of methodological considerations. This section explores some of the critical issues that must be considered when selecting human rights indicators, and when selecting human rights indicators for migrants specifically. The OHCHR has summarized the criteria for indicators as RIGHTS criteria (OHCHR 2012:50):



Other technical considerations applied by UNICEF and the University of Lanus in its selection of indicators included feasibility, validity, comparability, and singularity (to avoid duplication and overlap) (UNICEF-UNLA 2012:11).

##### 4.1 Quantitative vs. Qualitative Indicators

All the sources reviewed used both *quantitative* (numerical) and *qualitative* (narrative) indicators for human rights, with the OHCHR triangulating this further into fact-based or objective and judgment-based or subjective indicators (OHCHR 2012:17-19). Objective quantitative and qualitative indicators are preferable to subjective indicators, in other words, indicators that are based on factual information that can be directly observed rather than judgments, assessments, and opinions of individuals. The distinction between these can be blurred, as perceptions can play a role in the categorization and classification of factual data. For example, available data on the number of children held in detention for immigration purposes can vary widely, both between actors in a country and between countries, depending on how “detention” is defined. Subjective indicators can also be useful to complement objective data and highlight discrimination that may otherwise be hidden, particularly in contexts where there

is a lack of systematic data collection, as is the case with migrants. Nonetheless, objective or fact-based indicators are preferred as generally more verifiable, replicable and easy to interpret, and should be accompanied by efforts to establish and operationalize universal and transparent definitions.

## **4.2 Context-Specific Indicators**

The need for context-specific indicators is also emphasized by the OHCHR in order to meet national and local needs and build ownership. A balance is sought between universally relevant core human rights indicators and more detailed and focused indicators depending on the requirement of a particular situation based on a practical, transparent and structured approach. Process indicators are those most likely to need contextualization. The observations made by the human rights monitoring bodies provide an important source of contextual information on challenges as well as possible indicators (OHCHR 2012:85-86).

## **4.3 Data Availability and Sources**

While the literature does not require indicators to be limited to available data, the existence of reliable and secure data is critical for the indicators to be effective, and indicators should combine and reconfigure data that is commonly available in order to be a useful and practical tool. Data source and generating mechanisms outlined by the OHCHR include

- events-based data on human rights violations,
- socioeconomic and administrative statistics,
- perception and opinion surveys, and
- expert judgments (OHCHR 2012:51-69).

Disaggregated data is particularly important to measure discrimination on prohibited grounds. The practical and political challenges surrounding disaggregation of data must be considered, and adapted to local contexts. Nonetheless, disaggregation of data to enable analysis to determine the occurrence of discrimination on prohibited grounds is encouraged (OHCHR 2012:68-70).

The availability of data may be a particular challenge for the migrants' rights indicators, as disaggregated data according to migration or residence status is not commonly available, and undocumented migrants are for the most part not captured in socioeconomic and administrative statistics or are captured in a way that does not identify their residence status.

Data on undocumented migrants is particularly challenging. Many migrants with irregular status previously had a visa or residence permit, have claimed asylum, or in the process of trying to regularize their status. Therefore, there are records that these migrants are in countries of destination. As well as figures relating to enforcement (e.g., apprehensions), governments therefore have various other information sources. However, this data is rarely systematized,

cannot reflect an accurate picture of all undocumented migrants, and is increasingly being processed for purposes of immigration enforcement.<sup>22</sup>

In countries or localities where all residents are ensured access to public services, and protection of data, much more robust data on the presence of undocumented migrants is possible. While differentiation between national, regional and local level provision of services can conceal local differences and make aggregate data collection and analysis problematic, and thus present particular challenges for the use of indicators, in some cases local and regional authorities have made particular efforts to register or at least count their irregularly residing population, in order to better develop and implement public policies and services.

**The Spanish Municipal Population Register (Padrón Municipal):  
collecting data on irregular migration at local level**

In Spain, local authorities are responsible for collecting demographic information within the Municipal Population Register (*Padrón Municipal*) on an ongoing basis. The *Padrón* collects data on the resident population irrespective of migration or residence status. Undocumented migrants can safely register themselves without risk of immigration enforcement consequences.

Until recently, health care and other services were provided on an equal basis to those registered in the municipal register, regardless of their status.<sup>23</sup> Therefore, while still to a certain degree under-representative of the whole irregularly resident population, due to practical barriers, the municipal registers provided an effective source of data on the irregularly resident population at the local level.

The National Statistical Institute (INE) is responsible for centralizing, processing and publishing all data collected by local municipalities. Therefore, undocumented migrants can be included within national demographic statistics.

The number of undocumented migrants residing in Spain can also be inferred by comparing the number of residence permits issued with the number of third-country nationals who have registered in the *Padrón*.<sup>24</sup> Estimates calculated in line with this methodology in 2012 show that the total number of undocumented migrants in Spain was approximately 600,000.<sup>25</sup>

<sup>22</sup> See footnote 16.

<sup>23</sup> See, for example, “Fundamental Rights of Migrants in an Irregular Situation in the European Union”. Fundamental Rights Agency (FRA). 2011. Publications Office of the European Union. Luxembourg: p35.

<sup>24</sup> For more information see Solanes Corella, Á. “*Inmigración y Responsabilidad Municipal*”. Instituto de Derechos Humanos, Universitat de València, Documentación Social. 2010: p. 191-210, available at [http://www.proyectos.cchs.csic.es/politicas-migratorias/sites/proyectos.cchs.csic.es/politicas-migratorias/files/Inmigracion\\_y\\_Responsabilidad\\_Muni.-\\_A\\_SOLANES.pdf](http://www.proyectos.cchs.csic.es/politicas-migratorias/sites/proyectos.cchs.csic.es/politicas-migratorias/files/Inmigracion_y_Responsabilidad_Muni.-_A_SOLANES.pdf).

<sup>25</sup> These estimates are obtained by comparing the number of residence permits issued by the Spanish Home Office (Secretaría General de Inmigración y Emigración), which amounts to 2.7 million, according to statistics up to June 30, 2012, with the number of third-country nationals who have registered in the *Padrón* — i.e., 3.3 million — according to data from the National Statistical Institute (INE) as at January 1, 2012. Data can be consulted at the Secretaría General de Inmigración y Emigración, [http://extranjeros.empleo.gob.es/es/estadisticas/operaciones/certificado/201206/Principales\\_resultados\\_30062012.pdf](http://extranjeros.empleo.gob.es/es/estadisticas/operaciones/certificado/201206/Principales_resultados_30062012.pdf) and National Statistical Institute (INE), <http://www.ine.es/jaxi/menu.do?type=pcaxis&path=%2Ft20%2Fe245&file=inebase&L=0>.



The City of Barcelona has further developed its municipal registration system. It is the only city in Spain where registration is possible without a fixed address (using the address of a social organization). In addition, the Autonomous Region of Catalonia has adopted complementary regional provisions which allow undocumented migrants that have been registered within the municipal register for a period of at least three months to be provided with a special health card that grants access to primary health care services across the region (*Servicio Catalán de Salud - CatSalud*). Further specialist services are available after one year of residence through a separate procedure.<sup>26</sup> Registration also provides access to education and several municipal services. Therefore, although some barriers remain in practice, the municipal register represents a good source of data on residents in the city, and facilitates evidence-based and locally adapted service provision at local level.

Data collection from civil society, such as National Human Rights Institutions and Ombudspersons, researchers, and particularly non-governmental organizations (NGOs), can also play a pivotal role, particularly in countries where migrants have limited access to public services. While organizations that provide services to migrants do not have contact with all migrants, their service users may be more representative of the irregular migrant population, and include some of those who would not access public services due to risk or perceived risk of immigration enforcement consequences. NGOs can also gather more reliable information than the state, as conflicts of interests and impacts of power relations that may influence data collected by state actors are reduced. Many NGOs have been striving to collect data systematically, filling the gaps both in service provision and data collection, to support evidence-based policy-making in line with data protection standards. NGOs may also be able to analyze the categorization and classification of data to reveal discrimination which may be hidden in official statistics. Thus, information gathered by NGOs can be a vital complementary source to government or institutional data, both in terms collection and analysis.

#### **Médecins du Monde – European Observatory on Access to Healthcare**

The European Observatory on Access to Healthcare, an initiative of Doctors of the World/Médecins du Monde (MdM), routinely collects data from their service users. Each patient who consults MdM, through the organization's health centers across Europe, is systematically interviewed using one of three questionnaires (social form, initial medical form, and re-consultation form).<sup>27</sup>

The data collected combines quantitative and qualitative data related to the service users' health (including mental health and perceived health), their experiences accessing health care services, and relevant social factors, including housing situation, experiences of violence (in countries of origin, transit and destination), whether they limit their mobility due to fear of apprehension, if without permission to

<sup>26</sup> See Instrucción 10/2012 of September 1, 2012, available at [http://www.bcn.cat/novaciudadania/pdf/ca/salut/tramits/InformatiuSanitat\\_es.pdf](http://www.bcn.cat/novaciudadania/pdf/ca/salut/tramits/InformatiuSanitat_es.pdf). For more information, see also Médicos del Mundo, *Dos años de reforma sanitaria: más vidas humanas en riesgo*, p. 49, available at <http://www.medicosdelmundo.org/derechoacurar/wp-content/uploads/2014/04/AF-IMPACTO-RDL-A4-baja-OK.pdf>.

<sup>27</sup> There is some variation in the questions asked in the different locations.

reside, and reasons for migration. Personal information, including gender, country of origin, and residence status is also collected and enables disaggregation.

A recently published report presents analysis of data collected in 14 cities across seven countries (Belgium, France, Germany, Greece, the Netherlands, Spain, and the UK) in the course of 2012 (Doctors of the World 2013). It covers a sample of 8,412 people, 19,302 consultations (including 10,968 medical consultations), and 11,921 diagnoses.

Half of the patients were undocumented migrants from non-EU countries,<sup>28</sup> with the proportion much higher in Brussels and Antwerp (72.3 percent), Amsterdam (89.1 percent), and London (57.1 percent), but was notably lower in Munich (8.5 percent).

Some key findings (for the whole interview sample) were that:

- 81 percent had no possibility of accessing care without paying the full costs on the day of the initial MdM consultation
- 59 percent of pregnant women did not have access to ante-natal care on the day of the initial MdM consultation
- 60 percent of all patients did not know where to go to get vaccinations
- 36 percent of the patients had given up seeking health care in the last 12 months
- 76 percent of all the diagnoses required an “essential” treatment. More than half of those patients who needed essential treatment had not received any on the day of the initial MdM consultation
- 49 percent has unstable or temporary housing
- Of the reasons given for migration, personal health reasons represented only 1.6 percent, escaping from war 5.8 percent, and economic survival 42.8 percent. The data also shows that undocumented migrants are usually not aware of their pathologies before migrating and often lack awareness on the functioning of the healthcare systems in Europe and on their entitlements to health treatment.

Thus, the importance of both strengthening the systematic collection of data relevant to migrants in socioeconomic and administrative statistics, including administrative data, labor force, and household surveys and censuses (while respecting data protection) and utilizing various sources of data, including those produced by civil society organizations, is further underlined. Especially given the layers of barriers that migrants face to enjoying their rights, efforts to support and promote the ethical collection of data through these various means are necessary for data analysis to glean a comprehensive view of the situation in reality.

Various examples from around the world of data collection and analysis to monitor the impacts of law, policy, and practice on the rights and development outcomes of migrants, their families and their societies of origin, transit and destination are provided in the following section.

Data classification and clarity of definitions also pose challenges to data collection and comparability. For example, different countries have different systems for collecting data on

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<sup>28</sup> A further 11.4 percent were EU citizens who had lost their right to reside in the country of destination due to lack of financial resources and/or health insurance.

migrants, and these may relate to any combination of data on nationality, place of birth and/or nationality of parents. Places where migrants are detained due to their migration status may be called, for example, accommodation, shelter, migratory stations, guest houses, ad hoc facilities, removal/ reception centers, and detention centers. It is important for these challenges to be considered in the adaptation and application of indicators to local contexts, and efforts made to establish common understanding among those gathering data, for example through the use of glossaries.

#### **4.4 Ethical and Human Rights Implications**

The use of indicators for monitoring human rights compliance relies on the collection, processing, and dissemination of statistical information. This has human rights implications regarding, for example, the right to information, the right to privacy, data protection, and confidentiality. The OHCHR has identified the three main human rights principles in relation to data-collection processes as self-identification, participation, and data protection. There are also related legal and institutional standards to be met. These are reflected in the above RIGHTS criteria, and addressed in detail in the guide (OHCHR 2012:46-49).

There are particular considerations when gathering and disseminating data about migrants, particularly about undocumented migrants. Given the highly political discussions around migration, data and statistics are often misused and misrepresented to justify certain policy responses. There are also frequent violations of data protection and the right to privacy of undocumented migrants, when their personal information gained for the purpose of accessing essential services, for example, is shared with immigration authorities. It is a challenge to promote evidence-based policy-making on migration and visibility of discriminated groups in a manner that protects their rights. The particular risks around the ethical use of data on migration and confidentiality, the right to privacy and data protection should be mitigated in the development of indicators, data-gathering and data-generating mechanisms, data analysis, and dissemination.

For example, a possible source of data on school attendance of migrant children with different statuses would be if schools included residence status information in registration records. However, in some countries where the right to education is well protected for undocumented children, it is not appropriate for school management or administration to request specific information, and staff may remain unaware of a student's irregular status. Requiring this information to be collected could have contradictory implications for access to education, by, for example, enabling discrimination and fostering parents' fear that school registration may lead to immigration enforcement. In some countries, measures have been proposed or put in place to require schools to check residence status during registration for the purposes of preventing access, and in some cases even share the personal information of potential students

with immigration authorities.<sup>29</sup> Such practices effectively negate undocumented children’s right to education.

Therefore, it is essential while promoting improvements in the collection of data, and of disaggregated data, to look at possible sources of information, the implications of collecting information through this source, and ways to ensure that data protection and privacy rights are respected. Policies that do not require service providers to report undocumented migrants to the immigration authorities, and further prohibit such information sharing, and train and raise awareness among services providers and migrant families of these rules, create an essential “firewall” between immigration enforcement and services provision, while collecting data essential for the effective provision of services.

## **5. Examples of Data Collection and Analysis on Migration and Migrants’ Rights**

### **5.1 Estimates of the Number of Irregular Migrants**

The United States is one of few countries worldwide with reliable estimates of the undocumented population, due to the use of the government data collected through the census (see text box below). Recent statistics on irregular migration estimate that 11.1 million undocumented migrants are currently living in the country.<sup>30</sup>

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<sup>29</sup> For example, in Germany, until 2011, the duty of all public administrations to report undocumented migrants to the immigration authorities effectively overrode undocumented children’s access to education. The German parliament passed a resolution on July 7, 2011, excluding school administrations from the duty to denounce. In the UK, there has been discussion around introducing a requirement for schools to check the residence status of potential students prior to registration to prevent undocumented children from accessing education (see e.g., Malik, S. and P. Walker, “Ministers planning immigration crackdown on ‘education tourists’”, *The Guardian*, March 27, 2013; Watt, N. “David Laws vetoes plan to force schools to check immigrant status of pupils”, *The Guardian*, May 22, 2013; In the context of rising xenophobic tensions and racist violence against migrants in Greece, the Greek Vice-Minister of Interior, Evripidis Stylianidis, sent a letter to municipalities in the island of Crete on October 2, 2012, requesting public nurseries to compile a list of non-Greek children currently attending nurseries, including their country of origin. The Vice-Minister stated that the aim of the survey was to collect information in response to a specific Golden Dawn MP’s question raised in the Greek parliament (PICUM Bulletin, October 24, 2012).

<sup>30</sup> See “A Nation of Immigrants: A Portrait of the 40 Million, Including 11 Million Unauthorized”. Pew Hispanic Center. January 29, 2013, available at [http://www.pewhispanic.org/files/2013/01/statistical\\_portrait\\_final\\_jan\\_29.pdf](http://www.pewhispanic.org/files/2013/01/statistical_portrait_final_jan_29.pdf)

## Analyzing Census Bureau Data to Gather Qualitative Information on Undocumented Migrants in the United States

Research led by the Pew Research Center in the United States, through the Pew Hispanic Center (now called the Pew Research Center's Hispanic Trends Project), provides a statistical portrait of the 11.1 million undocumented migrants living in the US.<sup>31</sup>

The Pew Hispanic Center estimates the stock of undocumented population using a "residual method", a widely accepted technique based on official government data. Under this methodology, a demographic estimate of the foreign-born population with a regular residence status is subtracted from the total foreign-born population: the residual is the source of population estimates of undocumented migrants. The statistical findings of the Pew Research Center are based on the Census Bureau's 2011 American Community Survey and feature not only the estimated number, but also detailed characteristics of undocumented migrants living in the US. Topics covered include age, citizenship, origin, language proficiency, living arrangements, marital status, fertility, schooling, health insurance coverage, earnings, poverty, and employment.

The research also analyses the work and social conditions faced by undocumented migrant workers, and the findings focus on the situation of undocumented migrant children, particularly school enrolment, estimates of educational attainment, income, poverty rates, and health conditions.<sup>32</sup> According to recent estimates, around one million children in the United States are undocumented and approximately 5.5 million children are born to undocumented migrant parents.<sup>33</sup> The research also shows that 46 percent of undocumented migrants in the United States are parents of children under 18 years of age, and analyses of the Census Bureau data also estimate that 9 million people currently live in "mixed-status" families.<sup>34</sup> The Pew Research Center has also published several reports on public opinion about immigration.<sup>35</sup>

Census data has also been used to measure the impacts of irregular migration or residence status on human development outcomes, including completion of school education. For example, according to the 2000 Census, only 40 percent of undocumented Latino males aged 18-24 years who arrived in the United States before the age of 16 years completed high school or obtained a General Educational Development certificate (a high school-equivalent degree).<sup>36</sup>

In the European Union, reliable and systematic data collection mechanisms on irregular migration still have to be developed and implemented. In recent years, a number of studies

<sup>31</sup> Ibid.

<sup>32</sup> For more information see Passel, J. and D. V. Cohn, *A Portrait of Unauthorized Immigrants in the United States*. April 14, 2009, available at <http://www.pewhispanic.org/files/reports/107.pdf>

<sup>33</sup> See "Unauthorized Immigrant Population: National and State Trends, 2010", Pew Hispanic Center, February 1, 2011, p. 13, available at <http://www.pewhispanic.org/files/reports/133.pdf>

<sup>34</sup> Taylor, P. et al., "Unauthorized Immigrants: Length of Residency, Patterns of Parenthood", December 2011, available at: <http://www.pewhispanic.org/files/2011/12/Unauthorized-Characteristics.pdf>.

<sup>35</sup> See, for example, "Immigration Rises on Washington's Agenda, Not the Public's", Pew Research Center, January 28, 2013, available at <http://www.pewresearch.org/2013/01/28/immigration-rises-on-washingtons-agenda-not-the-publics/> and "Any Court Health Care Decision Unlikely to Please. Immigration: Public Backs AZ Law, But Also Path to Citizenship", Pew Research Center. June 18, 2012, available at <http://www.people-press.org/2012/06/18/any-court-health-care-decision-unlikely-to-please/>.

<sup>36</sup> Sabates-Wheeler, R. "The Impact of Irregular Status on Human Development Outcomes for Migrants", Human Development Research Paper. July 26, 2009. UNICEF, Special Rapporteur on the Human Rights of Migrants; François Crépeau, PICUM, National University of Lanús. 2013: 34.

have focused on measuring the total number of migrants with irregular status in the EU.<sup>37</sup> However, analyses of irregular migration are often confronted by inconsistent terminology and incomplete and incomparable data between states. EU member states often rely on different standards to identify undocumented migrants and recorded irregular migration mostly covers apprehensions at borders or irregular entries.

Research from the European Commission-funded “Clandestino” project refers to 1.9-3.8 million undocumented migrants in Europe (see text box below). Prior to the completion of this project, estimates ranged from 4.5 million to 8 million undocumented migrants in Europe and were quoted in policy documents of the European Union.<sup>38</sup> According to the findings of the Clandestino project, it seems that the previous estimates quoted by the European Commission are the result of a long quotation chain, initially relying on an old newspaper article that was quoted and re-quoted until it was called a “recent estimate”.<sup>39</sup>

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- <sup>37</sup> See, for example, Morehouse, C and M. Bloomfield, “Irregular Migration in Europe”, Migration Policy Institute (MPI), December 2011, available at <http://www.migrationpolicy.org/pubs/TCMirregularmigration.pdf>. See also “PROMINSTAT: Statistics on Migration, Integration and Discrimination in Europe”, PROMINSTAT Final Report, Vienna, Kraler, Albert and David Reichel. ICMPD 2010; CLANDESTINO Research Project: *Size and Development of Irregular Migration to the EU*. Comparative Policy brief. Vogel, Dita, December 2009, available at [http://clandestino.eliamep.gr/wpcontent/uploads/2009/12/clandestino\\_policy\\_brief\\_comparative\\_size-of-irregularmigration.pdf](http://clandestino.eliamep.gr/wpcontent/uploads/2009/12/clandestino_policy_brief_comparative_size-of-irregularmigration.pdf); International Centre for Migration Policy Development (ICMPD) REGINE, Final Report. “Regularisations in Europe: Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU”. Baldwin-Edwards, Martin and Albert Kraler, ICMPD. 2009. Ref. JLS/B4/2007/05 and Koser, K. “Irregular Migration, state security and human security”, Global Commission on International Migration (GCIM). September 2005, available at [http://iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy\\_and\\_research/gcim/tp/TP5.pdf](http://iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/gcim/tp/TP5.pdf).
- <sup>38</sup> According to the European Commission: “Precise figures [on the size of irregular migration] are difficult to obtain, but recent estimates of illegal migrants in the EU range between 4.5 million and 8 million, with an estimated increase of 350,000 to 500,000 per year”, see: European Commission, Press statement: “Towards a comprehensive European Migration Policy: Cracking down on employment of illegal immigrants and fostering circular migration and mobility partnerships”, May 16, 2007, IP/07/678, available at [http://europa.eu/rapid/press-release\\_IP-07-678\\_en.htm](http://europa.eu/rapid/press-release_IP-07-678_en.htm).
- <sup>39</sup> See Clandestino project final report, November 2009, p. 109, available at <http://cordis.europa.eu/documents/documentlibrary/126625701EN6.pdf>

## **The Clandestino Project: “Undocumented Migration: Counting the Uncountable — Data and Trends across Europe”**

Access to well-documented and structured information is a necessary first step for creating more transparency concerning the size of irregular migration. The Clandestino Project, funded by the DG Research of the European Commission, was developed between 2007 and 2009 with the aim of collecting reliable data on trends in irregular movements across Europe. The project aimed at providing an inventory of data on migration stocks and flows in selected EU countries and at analyzing the comparative data collected. The project also aimed at developing a methodology for the use of data in the context of the formulation of migration policies and at discussing the ethical issues involved in the collection of data and in their use.<sup>40</sup> The project also took into account and analyzed policy-related factors that drive migrants into irregularity.

In 2009, the Clandestino project produced minimum and maximum estimates of the size of the irregular migrant population for 2008.<sup>41</sup> The aggregate estimate presented by the Clandestino Project for the 27 EU member states ranged from 1.9 million to 3.8 million undocumented migrants.<sup>42</sup>

As a result of the project, a database on irregular migration in Europe has been created. The Clandestino database provides an inventory of the data collected and estimates based on country reports and indicators (i.e., the composition of the irregular migrant groups in the selected countries, age, gender, nationality, and employment sectors where regular migrants tend to overstay their work or residence permits). The data collected through the Clandestino Project provided the basis for an in-depth analysis of irregular movements at different entry points. The research results demonstrated that irregular entry is the least frequent path of entry into the EU, and that consistent and evidence-based migration policy could reduce patterns of irregularity in Europe.

## **5.2 Disaggregated Data on Migrant Children**

Specific data on migrant children are limited. This is especially so for dependent migrant children, due in part to the fact that the children’s movements are often not recorded separately from those of their parents. The Population Division of the United Nations Department of Economic and Social Affairs (DESA) reports that, globally, 16 percent of migrants are under the age of 20 years. However, there is a general lack of official estimates on the number of migrant children, and on the number of undocumented children in particular, both at global and regional levels.

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<sup>40</sup> For more information about the ethical issues involved in data collection analyzed as part of the Clandestino Project refer to <http://clandestino.eliamep.gr/category/irregular-migration-ethics-in-research/>

<sup>41</sup> 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.

<sup>42</sup> The results of the Clandestino project are now cited, amongst other institutions, by Eurostat, the European Commission and the FRA. See, for example, EU Fundamental Rights Agency, “Fundamental rights of migrants in an irregular situation in the European Union”. 2011. Available at [http://fra.europa.eu/sites/default/files/fra\\_uploads/1827-FRA\\_2011\\_Migrants\\_in\\_an\\_irregular\\_situation\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1827-FRA_2011_Migrants_in_an_irregular_situation_EN.pdf)

## Data on Undocumented Children

Eurostat figures show that 41,455 of undocumented migrants apprehended in Europe in 2011 were children.<sup>43</sup> Of these, 16,250 children were below the age of 14 years and 25,205 were aged between 14 years and 17 years.

The Council of Europe Parliamentary Assembly stated in 2011: “*The rapporteur is at a loss to estimate the number of undocumented migrant children in Europe*”.<sup>44</sup> However, some national-level estimates on undocumented children in Europe do exist. The Clandestino project estimated between 44,000 and 144,000 UK-born undocumented children out of a total of between 417,000 and 863,000 undocumented migrants. Following the data collated by Clandestino, the COMPAS research project at the University of Oxford found an estimate of 120,000 undocumented children in the UK in 2011, of which over 85,000 are thought to be UK-born.<sup>45</sup>

By comparison, Clandestino estimated 26,314 undocumented children in Greece in 2007. This number was derived by adding together the number of third-country nationals on the school and birth registries, and subtracting the estimated number of regularly-resident children aged below 18 years.

In 2009, a proposal was drafted for a regularization scheme for children born in Greece to migrant parents, or for children who had been in Greece from early, formative years, and undertaken Greek school education. Official discussion over the proposed scheme anticipated it to affect about 250,000 children, many of whom would have been undocumented. It is unclear how figures were sought in the latter instance.

According to a study conducted by the Swiss Monitoring Office for Asylum and Foreigners’ Law, children make up at least the 10% of undocumented migrants in Switzerland. This estimate has also been referred to by the Council of Europe Committee on Migration, Refugees and Population in 2011 when discussing the issue of undocumented migrant children as a real cause for concern in Europe.<sup>46</sup>

In the United States, research conducted by the Pew Hispanic Center estimates that around 5.5 million children in the U.S. are born to undocumented migrant parents. Among children of undocumented migrants, an estimated 4.5 million are born in the U.S. and have acquired birth right citizenship and one million are foreign-born and therefore undocumented.<sup>47</sup>

<sup>43</sup> Eurostat (2011) Enforcement of Immigration Legislation statistics, extracted on July 7, 2011, and authors’ calculations.

<sup>44</sup> Council of Europe, “Undocumented migrant children in an irregular situation: a real cause for concern”, Council of Europe Committee on Migration, Refugees and Population, Doc. 12718, September 16, 2011, para. 9, available at <http://assembly.coe.int/main.asp?link=/Documents/WorkingDocs/Doc11/EDOc12718.htm>.

<sup>45</sup> For more information see Sigona, N. and V. Hughes, “No way out, no way in. Irregular migrant children and families in the UK”. University of Oxford, COMPAS, May 2012: pp. 6-8, available at [http://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/NO\\_WAY\\_OUT\\_NO\\_WAY\\_IN\\_FINAL.pdf](http://www.compas.ox.ac.uk/fileadmin/files/Publications/Reports/NO_WAY_OUT_NO_WAY_IN_FINAL.pdf)

<sup>46</sup> Council of Europe Parliamentary Assembly, Doc. 12718, September, 16, 2011. “Undocumented migrant children in an irregular situation: a real cause for concern”, available at <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileId=13007&Language=EN>.

<sup>47</sup> See: “Unauthorized Immigrant Population: National and State Trends, 2010”. Pew Hispanic Center, February 1, 2011: p. 13, available at <http://www.pewhispanic.org/files/reports/133.pdf>.



## UNICEF Data Collection Enables Disaggregation of Data on Migrant Children and Argentinian Children of Migrant Parents

In the framework of the Global Survey of UNICEF (Multiple Indicator Cluster Surveys), the UNICEF office in Argentina promoted the inclusion of various criteria for assessing the situation of migrant children and their families. The indicators of nationality of children and nationality of their parents are included in a transversal way, in order to gather information on the situation both for migrant children and for Argentinian children whose parents are migrants.

The following issues have been included in the survey:

- General characteristics of children and adolescents and their homes
- Activities promoting early childhood care and education
- Educational aspects
- Use of leisure time and participation in social organizations
- Maternal and child health
- Sexual and Reproductive Health
- Child protection in specific situations

Each general characteristic can be examined in a way that distinguishes between native families, migrant families or those composed of migrant parents and native children.

### 5.3 Ensuring All Migrants, Regardless of Status are Included in the Civil Registry

Administrative data gathered through civil registries on births and deaths are also key datasets regarding resident populations. However, there are a number of obstacles to migrant parents registering their children's births, particularly when undocumented. These include:

- Strict requirements for identity documentation (such as birth certificates and valid passports) and marriage certificates of parents;
- Lack of awareness among civil servants of migrants' entitlements, particularly concerning undocumented children;
- Lack of awareness among parents of procedures;
- Bureaucratic and complicated procedures; and
- Costs, both direct, in terms of registration fees and fines for late registration, and indirect, such as costs of travel, time off work, etc.<sup>48</sup>

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<sup>48</sup> Kanics, Jyothi. "Realizing the rights of undocumented children in Europe", in Bhabha, Jacqueline (ed.). 2011. *Children without a State: a global human rights challenge*, MIT Press, Cambridge, Massachusetts: p. 135; Miller, Michael. 2007. "Birth registration and the rights of the child", a report prepared for the European Parliament: p. 6.

Fear of detection can also be a significant barrier for undocumented parents. While there is generally a separation between civil registries and immigration enforcement, in some countries where civil servants have a duty to report undocumented migrants, and in others, undocumented migrants nevertheless risk denunciation when interacting with civil servants who are not aware of their duties towards migrants, regardless of status.<sup>49</sup>

In addition, in some countries, birth registration is carried out in hospitals or an official certificate is required from the hospital to register the birth. In such cases, limited access to subsidized maternity services and high costs for child birth in hospitals can be an additional barrier to migrant children having their birth registered.<sup>50</sup> There are a number of countries that are addressing these barriers in law, policy and practice to ensure all children, regardless of status, are included in administrative birth registration data.

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<sup>49</sup> UNICEF, "Access to Civil, Economic and Social Rights for Children in the Context of Irregular Migration". 2012. Submission to the UN CRC Day of General Discussion on "The rights of all children in the context of international migration", September: pp.5-6.

<sup>50</sup> For example, in Israel, uninsured migrants must cover the costs of delivery and hospitalization (about US\$480 per day), and in 2011 alone, the Hotline for Migrants Workers counseled 70 women who were denied official birth notification documents after non-payment. Furthermore, the notification of birth provided by the hospital is not an official birth certificate, which is normally issued based on registration in the official population register, from which migrants are excluded. Thus, migrants face great difficulty also in obtaining birth certificates; there have been cases where birth certificates have been issued only after a voluntary return declaration has been signed (Information provided to PICUM by the Hotline for Migrant Workers, June 26, 2012) c.f. UNICEF, "Access to Civil, Economic and Social Rights for Children in the Context of Irregular Migration", *supra note...* p.6.

## Ensuring All Children are Registered in the Civil Birth Registry, Regardless of Status<sup>51</sup>

In **the Netherlands**, it is a legal obligation for all births to be registered, and migrant parents are equally bound by this duty.<sup>52</sup> The law allows registration to be made by an appropriate third party,<sup>53</sup> if undocumented parents fear presenting themselves at the municipality to register their child.

In **Thailand**, the 1991 Civil Registration Act and its amendment, the 2008 Civil Registration Act (No.2), provide a legal basis for birth registration of every child born in Thailand, regardless of the legal status of their parents.<sup>54</sup> The Civil Registration Act (No.2) B.E. 2551 (2008) also clarifies the procedures for registering the birth of abandoned children and children whose parents are unknown. Officials of the Ministry of Social Development and Human Security, and staff of care institutions operated by non-governmental organizations are tasked to facilitate birth registration of the children in their care. The updated legislation has given new impetus to ensuring universal birth registration, and the government, with UNICEF support, is now implementing a new online birth registration system which links all public hospitals to their local civil register office, thereby capturing records of all new births.

In **Vietnam**, the law on civil registration specifies the competence and procedure for a variety of scenarios regarding birth registration, including registering the birth of children born in Vietnam if either or both parents are Vietnamese, with dual nationality, or if either or both parents are foreigners or stateless. It further details the registration of children born overseas if both parents were residing abroad and have returned to reside in Vietnam, without having registered their child previously. Moreover, it addresses a frequently-encountered need of returning Vietnamese migrant or trafficked mothers to register their children born overseas, regardless of the nationality of the father or the parents' civil status, provided that the child's birth was not registered previously.<sup>55</sup>

<sup>51</sup> Examples taken from UNICEF, "Access to Civil, Economic and Social Rights for Children in the Context of Irregular Migration", *supra note*... p.17.

<sup>52</sup> Title 1 Article 19e Civil Code Book 1 stipulates the obligation to register a new-born child. There are no groups mentioned as excluded from this obligation, while undocumented migrants are explicitly excluded from other provisions.

<sup>53</sup> This can be someone who was present at the birth (i.e., the doctor, nurse, or a friend who was present). If no one who was present at the birth is able to carry out the registration, the main occupant of the house or head of the establishment where the child was born is obliged to do so. As a final possibility, if no such competent person is available, the registrar at the municipality is authorized to register the birth (Title 1 Article 19e, Civil Code Book 1).

<sup>54</sup> Thailand's Civil Registration Law; Articles 14 and 15 of Civil Registration Act (No.2) B.E. 2551 (2008).

<sup>55</sup> 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.

## 5.4 Mapping Integration and Discrimination

There are several examples of data collection focusing on measuring integration and discrimination by mapping the outcomes of migrants and minorities.

### Gathering Data on the Outcomes of Permanent Migrants in Australia By Means of the Census

In 2011, as a result of many years of collaboration with the Australian Department of Immigration and Border Protection, the Australian Bureau of Statistics (ABS) included a number of additional questions in the national census that pertain to the relationship between a migrant's entry visa status and their outcomes after arrival, with regard to aspects such as language proficiency, employment, occupation, and income.<sup>56</sup> Prior to 2011, the census collected data on migrant residents but was limited to information such as country of birth, year of arrival in Australia, English language proficiency, citizenship, and ancestry.

The so-called "Migrants Census Data Enhancement" (CDE) uses data-matching algorithms, or "probabilistic linking" to enable migrant records from the Department of Immigration and Border Protection's Settlement Database to be linked to the corresponding migrant record from the 2011 census and, in 2011, created a dataset of almost 1.3 million joined-up records of people who were granted permanent residency between January 1, 2000 and August 9, 2011 (and responded to the census on that date).

Analysis of the data — comparing the entry visa type ("Skill Stream", "Family Stream", or "Humanitarian Stream", and whether main or secondary applicant) of permanent residents and their outcomes — finds that:<sup>57</sup>

- While the proportion of Humanitarian Stream migrants speaking only English was low (4.9 percent), almost 62 percent indicated that they spoke English well or very well.
- The occupational profiles of Skill Stream secondary applicants and Family Stream main applicants are very similar, and these distributions align quite closely with that of the general population. In terms of industry of employment, there is an overrepresentation of these migrants in health, accommodation, and food services, and an underrepresentation in public administration and safety (probably because of the Australian citizenship requirements for many public-sector jobs), transport, construction, and in the regionally-based industries of agriculture and mining.
- Both Skill Stream and Family Stream migrants are substantially better educated than the general population.

<sup>56</sup> Middleton, Andrew and David Smith. 2013. "Understanding migrant outcomes: Enhancing the value of census data in Australia", in *Migration Policy Practice*, Vol. III, Number 5, October-November 2013: pp3-13.

<sup>57</sup> Findings taken from Analysis by Middleton, Andrew and David Smith, *supra note...*

## Evaluating Policies on Migrant Integration by Indicators and Benchmarks

The **Migrant Integration Policy Index (MIPEX)**<sup>58</sup> measures integration policies in 34 countries: 27 European Union member states (all except Croatia), Norway, Switzerland, Canada, the USA, Australia, Japan, and Serbia.

MIPEX aims to be a regular assessment on a range of policy areas, critical to a migrant's opportunities to integrate. By measuring policies and their implementation, it reveals whether all residents have equal rights, responsibilities and opportunities.

The current edition focuses on seven policy areas: Labor Market Mobility, Family Reunion, Education, Political Participation, Long-term Residence, Access to Nationality, and anti-Discrimination. A number of policy areas cut across the MIPEX strands, such as integration programs, healthcare, and housing. Health will be introduced as an eighth policy area in 2014.

For each of the seven policy areas, MIPEX identifies:

- The highest European or international standards aimed at achieving equal rights, responsibilities and opportunities for all residents (e.g. from Council of Europe Conventions or European Union Directives) and
- A number of different dimensions.

Indicators have been developed for each dimension, in the form of questions relating to a specific policy component. The highest standards for equal treatment are used as benchmarks for current laws and policies, and the country is given a score according to how well they meet the standards (either 0, 50, or 100) set by national experts.

<sup>58</sup> Information taken from [www.mipex.eu](http://www.mipex.eu); Indicators available for download at: [http://www.mipex.eu/sites/default/files/downloads/mipex\\_indicators\\_2010.pdf](http://www.mipex.eu/sites/default/files/downloads/mipex_indicators_2010.pdf)

## 5.5 Collecting Disaggregated Data to Reveal Health Inequalities

Data on living conditions and health among the general population, that includes disaggregated information based on migration or residence status, can be an important tool in revealing and addressing health inequalities through policy reform and targeted programs.

### Revealing Inequalities in Health Outcomes in Sweden

In Sweden, respondents to the annual survey on living conditions are classified as first-generation migrant, second generation migrant, or non-migrant. The data is disaggregated by migrant status in order to determine which groups may face discrimination. Analyzing some of the data relating to health outcomes, for example, studies have found higher rates of stillbirth, early neonatal mortality, and pre-natal mortality among women who are registered refugees than among women from Sweden. The data shows also that migrants are at higher risk of contracting HIV and having chronic hepatitis C.<sup>59</sup>

Thus, disaggregated data can reveal inequalities. However, particularly when collecting data relating to health status (and communicable diseases in particular), there are ethical considerations regarding analysis and dissemination aimed at ensuring that discrimination and inequalities are understood and addressed as such, rather than taken out of context to indicate that migrants have poorer health in general, with negative consequences for public health.

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<sup>59</sup> Mladovsky, Philipa. 2007. "Migrant Health in the EU", in *Disaggregated Data and Human Rights: Law, Policy and Practice*, The University of Essex Human Rights Centre Clinic, October 2013: p31-32.

## 5.6 Monitoring Budgets to Improve Accountability

Financial expenditure is a common process indicator; while certain policy programs or institutions may exist, analyzing budget allocations can reveal where government priorities lie and increase accountability.

### Analyzing Public Expenditure from a Migrants' Rights Perspective in Mexico<sup>60</sup>

Utilizing Mexico's participation in the Open Government Partnership, a global and multilateral initiative to promote government transparency, citizen participation in public affairs, fight corruption, and leverage new technologies to strengthen governance, the organization Fundar, Center for Analysis and Research, carried out an analysis of the National Migration Institute (INM)'s budget for 2011 in collaboration with the Mexican Federal Public Administration.

The analysis found three distinctive features of the INM budget:

1. The amount budgeted for INM in the Federal Expenditure Budget (PEF) is much lower than the actual amount spent in the year 2011;
2. The two main sources of funding are (i) the PEF, which is approved annually by the Chamber of Deputies, and (ii) self-generated or surplus income; and
3. The amount approved by the PEF is only sufficient to cover current expenses (wages and salaries) foreseen for the year and operating expenses for the first quarter. Operating expenses for April-December every year are not ensured.

Furthermore, the analysis found that only 1 percent of the total budget of 2011 went directly to migrants (food, medical care, and information guides), and 11 percent to migrant protection programs. The vast majority of the budget — 88 percent — was allocated to migration management and control activities (82 percent), detention centers, and assisted returns (6 percent).

The analysis led to a number of recommendations regarding the nature of the INM's budget, and in particular, the need for more resources to be allocated to migrant protection programs, with a minimum percentage allocation defined through the PEF, to ensure progress in the field of protection.

Fundar is also a member of a collective of organizations, *Colectivo PND Migración*, which has developed recommendations for the inclusion of migrants in the National Development Plan of Mexico, identifying a number of objectives, along with corresponding strategies, indicators, and targets. Objectives include: improving coherence, structural coordination, participation and representation of affected groups, and budget accountability as well as changing public perceptions and guaranteeing the human rights of vulnerable groups, including migrants, in particular regarding access to services and justice.

<sup>60</sup> Information taken from "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, 2013.

## 5.7 Analyzing Discrimination Against Migrants Resulting from Data Management

Another related angle of investigation which is important to discussions around sources of data on migrants, is analysis of data management systems — how they include or exclude migrants, and the impacts on migrants’ rights.

For example, the right to education for undocumented children is well protected in Italy. However, a new online registration system was put in place for school registration for the 2013-2014 academic year, and had the unintended consequence of preventing undocumented children from registering, as one of the required fields to be entered in the registration form is the Italian fiscal code number.<sup>61</sup> The Ministry of Education later clarified that undocumented children could still register by using the old paper system. Nonetheless, this dual system can present obstacles for undocumented children’s access to education (for example, when there are issues around school capacity, timing of registration, etc.).

### Assessing Issues in the National Insurance Institute Database for Migrant Workers in Israel<sup>62</sup>

In Israel, the National Insurance Law guarantees that all non-Israeli workers employed by Israeli employers will receive insurance coverage through the Israeli National Insurance Institute (NII), regardless of their residence status. The degree to which they receive benefits is dependent on their residency or visa status, in relation to: 1) work accidents, 2) employer bankruptcy or closure, 3) pregnancy and maternity costs, and 4) child welfare.

However, through examination of the way in which non-Israeli workers are included in the NII database, the organization Kav LaOved (Worker’s Hotline), found that the system imposes unnecessary burdens on undocumented workers. The computer system is designed to identify non-Israeli workers according to their visa number, which undocumented migrants may not have. This means that their database records show as incomplete and they are unable to check the status of claims over the phone. Instead, these workers must visit their NII branch in person to follow up on claims. This can be highly problematic in terms of taking time from work to do so. Since databases of many other government agencies, including the ministries of Interior and of Economy, are able to identify non-Israeli workers according to the documents that they do hold, Kav LaOved strongly recommends that this practical barrier for undocumented workers in the national insurance system is urgently addressed. Kav LaOved also examines in-depth the handling of work accident-related insurance claims and maternity insurance claims of non-Israeli migrant workers on the part of the NII.

<sup>61</sup> [L’Unità](#), January 23, 2013, in *PICUM Bulletin*, February 6, 2013.

<sup>62</sup> Information from “Non-Israeli Workers: Failures in treatment of claims presented by migrant, asylum seeker, and Palestinian workers”. Kav LaOved, December 2013.



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## Annex 1

### Initiatives to Implement the Conceptual and Methodological Framework of Human Rights Indicators Developed by OHCHR on Regional, National, and Local Level

#### 1. State Level

##### **Bolivia**

The Ministry of Justice and the National Institute of Statistics of Bolivia partnered with the OHCHR in a joint development of human rights indicators based on the methodology developed by the OHCHR with the treaty bodies. As a first step, the work is focusing on six prioritized rights: adequate food, education, health, work, adequate housing, and the right of women to a life free from violence.

##### **Ecuador**

A collaborative effort involving the government — specifically the Secretariat for National Planning and Development, the ministries of Justice, Human Rights, and Cults, and the National Institute for Statistics and Census — the Defensor del Pueblo, and civil society organizations has initiated the development of human rights indicators (SIDERECHOS). The system aims to support the integration of human rights into the national planning process and follow-up to the recommendations of Human Rights Council's Universal Periodic Review.

##### **Kenya**

In operationalizing its mandate, the Kenya National Human Rights Commission (KNCHR) has been working on the development of indicators to help in monitoring the realization of civil, cultural, economic, political, and social rights in Kenya. In 2010, a working group on human rights indicators was established comprising KNCHR, the Ministry of Justice, National Cohesion and Constitutional Affairs, the Monitoring and Evaluation Directorate (MED) of the Ministry of Planning, and the Performance Secretariat. The objective was to encourage the use of the OHCHR framework on indicators among government agencies. The KNCHR also used the OHCHR framework to analyze the state of human rights implementation in Kenya in its third annual report.<sup>63</sup>

##### **Mexico**

The National Institute for Statistics and Geography and the Comisión Nacional de los Derechos Humanos have collaborated with the OHCHR to select indicators on specific human rights. The development of the indicators is part of a strategy to strengthen the state's capacity to monitor

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<sup>63</sup> Available at: <http://www.knchr.org/>

its compliance with international human rights instruments. In collaboration with the Mexico City Human Rights Ombudsperson and the OHCHR, the Judicial Council of the Tribunal of Justice of Mexico City in 2010 formally approved the implementation of validated indicators on the right to a fair trial, and started implementing them in other local tribunals in Mexico.<sup>64</sup>

## **Nepal**

The National Human Rights Commission of Nepal, the Office of the Prime Minister, and the Council of Ministers, several government ministries, and civil society organizations, in collaboration with the OHCHR, developed indicators with two parallel objectives. The first was for use in the National Human Rights Action Plan of Nepal (NHRAP) and the second was to promote and monitor the implementation of economic, social, and cultural rights in the country.<sup>65</sup>

## **Paraguay**

The Ministry of Justice and Labour, the Statistics, Survey and Census Unit and the Cabinet of the Presidency has formed a task force that has begun the first phase of constructing indicators for monitoring the right to health, education, water, and sanitation. The Supreme Court of Justice has also started its work in elaborating indicators to monitor the right to a fair trial. The use of human rights indicators in the country aims to reinforce capacity to monitor the human rights situation and to protect the most vulnerable groups.

## **Sweden**

The Swedish Agency for Disability Policy Co-ordination (HANDISAM) initiated work on human rights indicators, drawing specifically on the OHCHR framework. Lists of indicators for persons with disabilities in relation to their rights to participate in public affairs, health, work, education, and adequate housing have been developed.<sup>66</sup>

## **United Kingdom**

The Equality and Human Rights Commission (EHRC), in partnership with the Scottish Human Rights Commission, has worked on the development of a Human Rights Measurement Framework (HRMF) for England, Scotland, and Wales. The framework aims to provide a set of indicators to measure human rights progress and help the EHRC in fulfilling its monitoring and reporting mandate, including to the UK Parliament.

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<sup>64</sup> See <http://www.cdhd.org.mx/>

<sup>65</sup> See <http://nepal.ohchr.org/en/resources/publications/2011/Indicators%20for%20Monitoring%20ESCR%20in%20Nepal-%20A%20User's%20Guide.pdf>

<sup>66</sup> See [www.handisam.se](http://www.handisam.se)

## 2. Regional Level

### European Union

Building on the OHCHR conceptual and methodological framework, the European Union Fundamental Rights Agency (FRA) is developing indicators on fundamental rights in the European Union (EU). Among EU member states there are differences in data collection, ranging from the definitions of what should be measured and why, to the actual methods used to collect data. Recognizing that fundamental rights indicators can be invaluable in shedding light on the state of fundamental rights on the ground, the FRA seeks to develop indicators related to key fundamental rights areas addressed through its research, to improve comparability and to highlight gaps in current provision and availability of data. This, in turn, will help EU institutions and member states identify where there is a need to improve the fulfilment of fundamental rights.

For example, the FRA is working on developing rights-based indicators for people with disabilities on selected rights covered by the UN Convention on the Rights of Persons with Disabilities (CRPD).<sup>67</sup> Furthermore, the second phased on the FRA's EU-MIDIS survey on minorities and discrimination in the European Union will collect data on discrimination according to migration or residence status.

### Organization of American States (OAS)

During the last few years, the OAS has been developing a process aimed at reporting and monitoring states' fulfilment of the duties enshrined in the Protocol of San Salvador on Economic, Social, and Cultural (ESC) Rights. In this context, elaboration and implementation of indicators on ESC rights has been one of the key tools of this process. Therefore, OAS member states created the Working Group for developing social rights' indicators to be implemented by states at national level in order to periodically measure the level of fulfilment of the duties enshrined in San Salvador Protocol.

The Working Group has been elaborating a set of human rights indicators, divided in different groups, to be validated by states and then implemented. In 2011, the OAS approved the proposal of the Working Group regarding indicators on a first group of rights: the right to social security, the right to education, and the right to health care. Subsequently, in December 2013,<sup>68</sup> the Working Group approved the second group of rights: to work and organize in trade unions; to a healthy environment; to food, and to the benefits of culture.

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<sup>67</sup> Information taken from <http://fra.europa.eu/en/project/2011/fundamental-rights-indicators>.

<sup>68</sup> OAS Permanent Council, Approval of the Document "Progress Indicators for Measuring Rights contemplated in the Protocol of San Salvador — Second Group of Rights", CP/RES. 1022 (1951/13), December 18, 2013.

During 2014, states of the region are to submit their first round of reports that will include the indicators on the initial group of social rights (education, health care, social security). This mechanism may provide extremely useful information for a number of reasons. First, states are producing evidence-based validated indicators in order to measure realization of social rights, and second, they are using the same data collection tools and scope. This will facilitate not only understanding of the information to be collected by each country, but also comparative studies and analysis.

In this context, some indicators have already taken account of migrants' rights issues. Moreover, adding to this regional tool more specific indicators on migrants' rights might help to address more adequately the important information gap on this topic. As a result, there would be more data to facilitate the evaluation of current migration and related policies and, if necessary, propose policy changes.



## Annex 2

### State of Play on Methodology for Developing Human Rights Indicators

The main texts analyzed are:

1. Office of the High Commissioner for Human Rights (OHCHR) [Human Rights Indicators: A Guide to Measurement and Implementation](#), 2012;
2. International Labour Organisation (ILO) [Decent Work Indicators: Concepts and definitions](#), 2012;
3. Inter-American Commission on Human Rights (IACHR) [Guidelines for Preparation of Progress Indicators in the area of Economic, Social and Cultural Rights](#), 2008;
4. University of Lanús, *Human Rights Indicators Applicable to Migrant Children and Adolescents in Latin America and the Caribbean*, 2011 (unpublished), produced for UNICEF; and
5. UNICEF [Child Rights Toolkit: Integrating Child Rights in Development Cooperation](#). Module 5: Child Impact Assessment, 2013.

#### 1. Types of Indicators

##### Human Rights Indicators

A robust methodology to identify human rights indicators has been developed by the Office of the High Commissioner for Human Rights (OHCHR).<sup>69</sup> The methodology has been developed through an extensive process involving treaty bodies, special procedures mandates of the Human Rights Council, national human rights institutions, policymakers, agencies responsible for reporting on the implementation of the human rights treaties, statistical agencies, academics, and experts from civil society and international organizations. The methodology has been implemented by governmental, institutional and civil society actors on international, regional, national and local level across the globe. For example, in the Americas, the methodology has been used by the Inter-American Commission of Human Rights in its elaboration of indicators regarding economic, social, and cultural rights, which specifically address the situation of migrants, as well as by UNICEF and the University of Lanús regarding the rights of migrant children (UNICEF and National University of Lanús, *Human Rights Indicators Applicable to Migrant Children and Adolescents in Latin America and the Caribbean*, 2012 (unpublished)). For further examples, see Annex 1.

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<sup>69</sup> The OHCHR indicators are based on a full review of existing indicators, and all indicators reviewed have been subject to consultations and workshops to verify and test the methodology. See, for example, OHCHR (2012: 43) on validation of the conceptual methodology.

The model developed by the OHCHR specifies that there are three types of indicators for human rights: *structural*, *process*, and *outcome* indicators. This distinction enables the indicators to capture a substantial picture of duty-bearers' compliance with their obligations to respect, protect, and fulfil human rights. They measure the commitments made by states to meet human rights obligations (in law and policy), the results of those commitments, and aspects of the processes underpinning them.

#### Types of Indicators

**Structural** indicators focus on the legal and policy framework in place.

**Process** indicators seek to capture aspects such as those related to the scope, application (e.g., to all migrants regardless of status), budget, programs, and remedies in place to implement the right.

**Outcome** indicators measure the actual results — the individual and collective enjoyment of the right.

Process indicators are more time sensitive and enable monitoring of progress more easily than structural and outcome indicators. A degree of linkage and causality between some structure, process and outcome indicators can be traced through the selection of indicators.

#### Decent Work Indicators

The International Labour Organization does not follow the same model for developing structural, process, or outcome indicators, referring rather to *statistical indicators* and *legal framework indicators*. Similarities can be found in the content of these indicators. Legal framework indicators examine several aspects of the legal and policy framework, its implementation and statistical estimates of impacts in practice for rights-holders. For the most part, these could be characterized as structural and outcome indicators according to the OHCHR model, while some reflect process.

The bulk of the decent work indicators are based on statistical indicators, covering a broad range of outcome indicators (including *proxy indicators*).<sup>70</sup> For this reason the objective and rationale

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<sup>70</sup> Proxy indicators (or indirect indicators) are defined as follows in the OHCHR Guide: "Refer to the subject of interest in an indirect way. For example, using statistics on the proportion of women in parliaments to assess women's participation in public affairs. There are several reasons for working with proxy indicators: the subject of interest cannot be measured directly or it can but it is a sensitive issue such as income or safe sex and it may not be cost-effective to collect information on the actual indicator. A good proxy indicator has to weigh the reliability of the information and the efforts/resources needed to obtain the data (OHCHR, 2010:173).

behind each measurement is explained. Each statistical indicator is explained in the following sub-sections:<sup>71</sup>

1. Measurement objective and rationale;
2. Method of computation;
3. Concepts and definitions;
4. Recommended data sources, metadata and disaggregation; and
5. Interpretation guidelines.

### **Child Impact Assessment Indicators**

UNICEF has also used indicators in Child Impact Assessments (UNICEF 2013). Child Impact Assessments (Child IA's) provide a set of logical steps to assess the impacts on children of policy proposals and options. They are necessary for both compliance with the Convention on the Rights of the Child and to provide a tool to measure and monitor compliance of potential policies with children's rights. However, the methodology is different to human rights indicators, as the Child IA's approach is to ensure compliance from the perspective of a particular legislative, policy or budgetary proposal rather than from the perspective of a particular right and how that right is respected, protected, and fulfilled.

Nonetheless, some of the aspects to be considered in assessing the impacts of a particular policy on children seek similar information as process indicators.

Aspects include:

- the types of impacts on children;
- which children are likely to be affected;
- the significance of the impact;
- the extent to which the proposed options are participatory; and
- the impact of proposed options on child rights obligations (UNICEF 2013:21)

The significance of potential impacts is further defined according to:

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<sup>71</sup> Building on this format, the OHCHR has applied it to all indicators (structural, process, and outcome), not only statistical indicators. Annex 1 of the guide provides metadata sheets on selected indicators, explaining definition, rationale, method of computation, data collection, and source, periodicity, disaggregation, and comments and limitations (OHCHR, 2012).

- the numbers of children likely to be affected;
- the length of impacts;
- the importance of any impacts;
- the probability that the impacts will occur;
- whether there is a multiplier effect;
- whether particularly disadvantaged children are likely to be more affected; and
- the capacity to mitigate potential negative impacts and the management of financial resources (UNICEF 2013:23-25)

These considerations disaggregate the potential impacts of policies on children into tangible indicators.

Tools have also been developed for detailed assessments of potential impacts on particular rights. Again, while the methodology does not formally correspond to the other models reviewed, the questions asked seek substantively similar information as structure and process indicators. Questions focus on whether states have met their core obligations (in law, policy, and practice) and are working to progressively realize the right in question (UNICEF 2013:44-46).

## **2. Layers of Analysis for the Indicators**

### **OHCHR Human Rights Indicators**

The conceptual model developed by the OHCHR identifies specific characteristics or *attributes* of human rights provisions. Based on thorough analysis of the provisions related to that right in the various treaties and accompanying guidance, the attributes should, as far as possible, collectively reflect the essence of the norm, be few, and be mutually exclusive (OHCHR 2012: 30-32). For example, the right to health has been surmised with the following five attributes:

1. Sexual and reproductive health;
2. Child mortality and health care;
3. Natural and occupational environment;
4. Prevention, treatment and control of diseases;
5. Accessibility to health facilities and essential medicines;

Structural, process and outcome indicators are developed for each of these attributes (OHCHR 2012:80-81).

Indicators should also be developed to reflect cross-cutting norms and principles, such as the right to non-discrimination and equality, participation, access to remedy, and accountability. Structural, process and outcome indicators can be developed for each of these rights, as well as indicators to reflect these transversal norms in the analysis of other rights. As a general guide, the OHCHR has identified starting points for the identification of indicators for these principles. It is noted that accountability is promoted and strengthened through the use of indicators to monitor compliance with human rights (OHCHR 2012:38-41). Example indicators for the right to non-discrimination and equality are included in the guide.

### **ILO Decent Work Indicators**

Following a similar conceptual model to the OHCHR, the ILO model presents statistical and legal framework indicators for *substantive elements* of the Decent Work Agenda, and includes the following elements:

1. Economic and social context for decent work
2. Employment opportunities;
3. Adequate earnings and productive work;
4. Decent working time;
5. Combining work, family and personal life;
6. Work that should be abolished;
7. Stability and security of work;
8. Equal opportunity and treatment in employment;
9. Safe work environment;
10. Social security; and
11. Social dialogue, employers' and workers' representation.

### **Inter-American Commission on Human Rights (IACHR) Human Rights Indicators**

The indicators developed by the Organization of American States (OAS) working group to examine the national reports envisioned in the Protocol of San Salvador organize the information to be collected according to specific analytical levels or categories: *incorporation of the right, state capabilities, and financial and budgetary commitment.*

## IACHR Model — Layers of Analysis

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**Incorporation of the right** refers to domestic law, policy, and practice and seeks to understand the legal incorporation of the right (and status), scope of the right protected, persons who are possessed of the right, and conditions for its exercise (e.g., if it is enforceable in the courts and what redress mechanisms exist). It also includes what state services implement the right (whether rights-based or welfare-based) (IACHR 2008:34-36).

The **state capabilities** category seeks to evaluate whether the conditions are in place for effective implementation, and refers to the state apparatus, interagency relations, task allocation, financial capacity, and the skills of the people who must carry out the allotted tasks. Other aspects to consider are the existence of monitoring and evaluation agencies, and decentralization or fragmentation between agencies and different levels of government (IACHR 2008:38-41).

The basic **financial context** measures the amount of state funds available and how they are distributed (IACHR 2008:42).

Each category can be evaluated with structural, process, and outcome indicators, as appropriate. These categories are applied to all rights.

Indicators are also developed for cross-cutting themes: equality and non-discrimination, access to justice, access to information, and participation. As with the OHCHR model, structural, process and outcome indicators can be developed for each of these rights, and specific indicators to reflect these principles developed for each other right analyzed. In the methodology of the IACHR, these principles are applied systematically as layers of analysis for each right. Example indicators for all of the above rights are included in the guidelines. Thus, more detail is provided about what obligations these cross-cutting principles entail for duty-bearers.

For example, it is noted that equality is an obligation with immediate effect that requires the enactment of laws to protect groups at risk of discrimination, the adoption of special measures to ensure equality of access, and the collection of disaggregated data. Indicators on inclusion and exclusion are suggested, to capture discrimination against social sectors, groups and geographic zones (IACHR 2008:48-64). Specific references are made to migrants and refugees. For example, process indicators identified include: whether there are immigration offices and whether these have jurisdiction to promote equality and non-discrimination, and whether there are policies or programs on employment integration, regularization for migrants and refugees, and on access to other social rights. Outcome indicators include the individual documentary status of refugees, asylum-seekers and stateless persons. These indicators specifically relating to migrants should be reviewed for inclusion, as relevant, in future migrants' rights indicators. Similar guidance is available regarding the selection of indicators for the other rights mentioned.

## **UNICEF and University of Lanús Migrant Children’s Rights Indicators**

UNICEF and the University of Lanús use different layers of analysis for the indicators on migrant children’s rights. Indicators are identified for different *dimensions*, which are linked to migration-related barriers to accessing rights. These dimensions are a combination of the above two approaches. As with the OHCHR, particular dimensions of the right are identified (e.g., for the right to health: access to health care for pregnant women and refusal of entry into the territory for health reasons), as well as dimensions common across all rights (e.g., for the right to health: non-discrimination and migration control). Dimensions are identified for various rights of migrant children (UNICEF-UNLA 2012:18-19).

## **UNICEF Child Impact Assessments**

UNICEF’s tool for detailed assessments of the potential impacts on the right to health of a particular policy also split the right to health into two defining categories:

1. addressing the underlying determinants of health; and
2. The provision of health goods, facilities and services.

The underlying determinants of health were analyzed according to availability, accessibility, acceptability, and quality. As well as addressing both core obligations and efforts for progressive realization, the provision of health goods, facilities and services was assessed according to the cross-cutting principles of equality and non-discrimination, participation, information, and accountability (UNICEF 2013:44-48).

