

Expert meeting on
INDICATORS ON THE HUMAN RIGHTS OF MIGRANTS

Geneva, Switzerland, 8-9 April 2014

INFORMAL SUMMARY CONCLUSIONS

On 08-09 April 2014, the Office of the High Commissioner for Human Rights (OHCHR), in cooperation with the Global Knowledge Partnership on Migration and Development (KNOMAD), held an expert meeting on “Indicators on the Human Rights of Migrants”. The aim of the expert meeting was to develop and improve a set of indicators on the human rights of migrants, particularly in relation to the rights to health, education, and decent work. A background paper, which included a draft set of human rights indicators, was prepared in order to inform the deliberations at the meeting.

The following informal summary conclusions of the meeting do not necessarily reflect the views of the participants, or of OHCHR or of KNOMAD, but reflect broadly the themes, ideas and discussions that emerged from the two-day meeting.

Introduction

Throughout the world, migrants face daily and systematic violations of their human rights. Despite perceptions to the contrary, the international human rights framework – encompassing civil, cultural, economic, social and cultural rights as well as the ILO international labour standards - provides that all migrants have all human rights without discrimination, and with only a few limited exceptions related to political participation and freedom of movement.

Indicators on the human rights of migrants are important tools to translate human rights standards into effective policy formulation, ensure greater accountability and to implement and follow-up on recommendations from the UN human rights mechanisms. The meeting discussed a typology of indicators first developed by OHCHR in consultation with a range of stakeholders (i.e. structure, process, and outcome indicators). A key feature of discussions was the collection and availability of suitable data, which can comprise events-based data, socioeconomic and administrative statistics, perception and opinion surveys or expert judgements. Data collection should be based on a human rights approach and involve the participation of migrants themselves.

RIGHT TO HEALTH

Introduction

The right to health, as set out in the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights, as well as in other core human rights instruments, includes the right to fair and equitable access to services, treatment, medicines etc. and is closely connected to other rights, such as the right to an adequate standard of living or housing.

Challenges

Migrants' access to the right to health, especially in the case of irregular migrants, is hampered by various factors. In many cases their access is limited by barriers put in place to respond to pervasive misperceptions about the real impact of migrants on health systems. Other barriers include lack of access to medical facilities in law, the obligation placed on medical personnel to denounce undocumented patients, a lack of awareness on the part of medical personnel to ensure non-discrimination in their provision of healthcare to all migrants, and unawareness of the part of migrants about being insured or able to access healthcare.

Suggestions on human rights indicators

A number of suggestions were made regarding the set of indicators presented in the draft background paper. While most participants appreciated the scope of indicators, and some raised the need to develop and include even more indicators, especially concerning irregular migrants, there was some discussion about the usefulness of a big number of indicators for policy makers. This resulted in the affirmation that migrants' "access to health" was an essential enabling indicator and that this should be reflected in the tables, but that indicators focusing on the quality of medical services were equally valuable and that a collection of several indicators was, first, important to stress the underlying human rights based approach and, second, as it opens up data collection possibilities as well as possibilities for stakeholders to pick those indicators which best fit their specific purposes. Further suggestions were made regarding, e.g., enlarging the framework of indicators to include violence against women and girls as well as to include further determinants of health, the operationalization of laws and policies as well as practical measures. Moreover, the need was stated to take into account the progression of indicators over time as well as different levels of governance. Also, the wish was expressed for the WHO to systematically gather data on the right to health for migrants.

Good Policy Examples/ Best practices

The "Mobile Outpatient Clinics of community health" (CAMSCO), a programme providing medical services to undocumented migrants in Geneva, which was established following an initiative of the Geneva Canton government in 1997, was presented as a

successful solution to ensure that all migrants are able to access their right to health. The programme, which aims at providing accessible, affordable and acceptable health care as well as social services to uninsured persons, based on the principles of trust and confidentiality, has been supported by local authorities since its implementation and can be seen as a successful model enabling undocumented migrants' rights to health.

Another means to overcome the challenges faced by undocumented migrants in accessing health care services is the issuance of a so called "City Card", which can be given to everybody residing in a certain area, independent of his or her legal status, and which entitles him or her to access all kinds of services, including health services.

RIGHT TO EDUCATION

Introduction

The right to education, as enshrined in the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, is both a right in itself and an enabling right, thus a means to other rights. Education should be available, accessible, acceptable and adaptable and it should allow for the fullest development of the human personality.

Challenges

Access to their right to education is often most problematic for undocumented migrant children. Challenges faced by migrants in respect to the right to education include arbitrary decisions by school directors, problems in terms of obtaining a school-leaving diploma, the inability to pay school fees, parents not being willing to bring children to school due to fear related to their status, schools not registering children due to their status etc.

Suggestions on human rights indicators

A number of suggestions were made regarding the set of indicators presented in the draft background paper. The following changes were suggested: Indicators should more strongly reflect the migrant's perspective, and additional indicators should be added on literacy rates for adults, on non-compulsory education, access to remedies and complaints mechanisms. Further, some adaptations regarding wording and structure were proposed, such as to pay attention to the phrasing distinction between compulsory education and compulsory schooling, to include "such as" and "like" in order to make issues more illustrative, as otherwise it would invoke too general answers, to avoid controversies and to keep the language simple. Indicators should also reflect how the role of education can be measured as a key for a positive social environment of migrants.

Good Policy Examples/ Best practices

Portugal's "National Registry for Undocumented Migrants", under the responsibility of the High Commission for Migration, was presented as a successful solution to guarantee that

all undocumented children have access to health and education. With a 100% reply rate, it is very well accepted among undocumented migrants, but also, and importantly, by other authorities, thus ensuring undocumented children's access to school. Cooperation between governments and schools is working well. Lastly, Portugal has created 38 indicators of evaluation of children in the school system, thus proving that a complex system of indicators can be useful.

RIGHT TO DECENT WORK

Introduction

The right to decent work is set out in several ILO Conventions as well as the Universal Declaration of Human Rights and the Covenant on Economic, Social and Cultural Rights. It is also a precondition for the fulfilment of other rights.

Challenges

An important challenge stressed by participants was that international human rights and labour law is somewhat unclear about extending a right to work to irregular migrants. An indicator concerning such a right might therefore be difficult to implement particularly in respect of the lack of political will. Concerning discrimination in accessing work as well as in the workplace, it was noted that innovative data sources are needed. Lastly, migration only being depicted in negative terms was noted as an obstacle to migrants' right to decent work, which could be overcome by promoting research on the positive effects of migration. Weak institutional developments as well as policies of incoherence further contribute to violations of migrants' rights to decent work.

Suggestions on human rights indicators

Participants mentioned that indicators on domestic work, child labour issues, trade union issues and social security issues should be added to the collection, that the indicators should better reflect civil society engagement and that regional issues should be much more balanced across all indicators. Further, regarding the desired convergence between different ministries, the importance of cross cutting indicators was stressed. There were further organizational concerns regarding the appropriate allocation of indicators to structure, process and outcome as well as the suggestion to disaggregate indicators and to avoid repetition. Terminology issues concerned the use of the term "sanctions" under indicators of decent work. Additional concerns addressed the measurability of indicators. Moreover, structural and process (policy) indicators should be embedded in a human rights based approach. Indicators should always be assessed with regard to the global, national and local level, that structural indicators need to take into account national standards and that indicators should be adapted according to national contexts. Lastly, the set of indicators should be accompanied by an advocacy strategy to strengthen states' commitment. As for a future publication, the idea was raised to create a table for every indicator to concretize its content.

Good Policy Examples / Best practices

The regularization of migrants was found to facilitate migrants' access to decent, "registered" employment, opening up possibilities of access to health insurance, public retirement schemes etc. Regularization can also lead to positive changes in various areas, as e.g. a lower unemployment rate of migrants and a decreased ratio between nationals and non-nationals in employment. It is also important to provide support services for migrants to inform them on their labour rights. Concerning child labour, the need for legal measures, such as the creation of a minimum age for work and psychological assistance were highlighted, as well as the significance of birth registration and education. Finally, good practices need to be shared.

DATA AVAILABILITY

Introduction

Eurostat's EU data collection system was presented, in particular the MED-HIMS Programme, comprising regionally coordinated surveys on international migration. The programme is multi-topic, multi-level, and contains both retrospective and comparable data, mainly considering emigration. It is characterised further by a huge methodological development, strong coordination between member states and an applicability of its concept to other states.

Challenges

Important challenges were highlighted with regard to the data collection of undocumented migrants, particularly concerning most vulnerable groups who are not bound to networks and therefore hardly accessible, such as migrant women in prostitution. Further, governments do not necessarily apply a human rights framework concerning data collection or allocate financial resources to migrants, nor might they be willing to adopt specific indicators related to migrants. Reliance on civil society organizations for data collection though, might be hampered by a potential bias in their data, which can occur due to lack of financial means or small size. Lastly, attention should be paid to cooperation, so that data or indicators being available in a specific sector or country can be widely accessed.

Suggestions on human rights indicators

The idea to measure each state's compliance with human rights indicators by its own capacity, as applied under the Protocol of San Salvador, was well received. Further, the importance of some cross-cutting indicators, like non-discrimination, access to justice, information and participation, was highlighted.

Good Policy Examples/ Best practices

Civil society engagement is crucial in data collection and the development of alternative indicators, which they can use as a basis for negotiations with governments. Further, civil society can draft alternative reports to states reports, thus pressuring governments into more compliance. Civil society also plays an important role in accessing undocumented migrants,

as they usually have special relationships to different community groups which can facilitate access to vulnerable groups.

GENERAL CHALLENGES

- Responses on migration are often based on misperceptions, myths, and a lack of (rights-based and comprehensive) data.
- Even if data exists, its transference into policy change is a challenge, as there is a disconnect between the development of indicators on the global and national level and its implementation on the local level. Also, governments tend to report only on their compliance with indicators as well as on their data collection efforts, but rarely address specific programmes they conduct.
- Particular challenges arise with regard to undocumented migrants and the associated context of fear and restrictions.
- It should be taken into account that many human rights violations are happening in the private space and are thus hard to measure.
- There is a lack of communication between different agencies on various levels regarding data collection on the human rights of migrants.

GENERAL CONCLUSIONS

Human rights indicators can be practical tools for a variety of stakeholders on all levels (national, regional, local), involved in monitoring and public policy. The role of civil society is hereby of special importance. Hence, ways have to be found to involve CSOs and NGOs so that they can use the publication of human rights indicators as a tool for collecting data and driving policy change, implying the need to adequately respond to their lack of funding. In particular, civil society organizations can enable access to undocumented migrants and thus facilitate data collection on them. Importantly, migrants themselves need to be included in the process of indicator development and data collection. Further, data collection needs to be accompanied by advocacy work concerning migrants' rights. In the Post-2015 development agenda a focus needs to be placed on migrants as rights-holders, which means that migrant sensitive targets and indicators should be developed to inform the new agenda. Lastly, human rights indicators developed by other institutions should be shared and used as much as possible. Concerning next steps after the Expert Meeting, attempts will be made to liaise with governments in order to share, promote and implement indicators at the national level.