

**Committee on Migrant Workers**  
**Day of General Discussion**  
Geneva, 22 April 2013  
**Role of migration statistics for**  
**treaty reporting and migration policies**

***What's Needed : migrants human rights statistics***  
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We start with a question: what do we mean by *migration statistics*?

Migration statistics as they are generally characterized and comprised, commonly measure migratory movement. That is to say, flows and stocks, entries, departures, country of origin, status, lengths of stay, change of status, origin, and usually with indications of gender and age. However, even this data is in many places notoriously inadequate and often inaccurate. And it seems that gender and youth factors are often poorly addressed.

Migration data as it's gathered have generally little information on conditions facing migrants, conditions motivating migration (where correlations can be established), and on labour market and social exclusion/inclusion factors, nor on roles and contributions –and costs-- of migration, including for migrants themselves.

A recent advance is development of profiles of migrants and potential migrants in some countries: their educational, skills and labour characteristics –obviously of economic importance, particularly to a skills and labour hungry world facing a deficit of 85 million skilled or trained workers by 2020. That's the population of France and that's in just 7 years-- according to the recent McKinsey Global Institute study « The world at work: Jobs, pay, and skills for 3.5 billion people »

However, there is very little, if any, widely available reliable and academically credible data on treatment of migrants in relation to rights protections, to differential treatment, and to experiences of racism and xenophobia that they face in many, I daresay most countries.

For economic and political reasons, much ado is made about remittances-- measuring remittances and seeking to determine their impact. However, that data says little about the concerns for treaty reporting and compliance with Human Rights standards. Nonetheless, it is clear that when migrants rights are respected to the extent they are paid for their work, obtain social protection and have adequate protection of rights at work, they can indeed obtain and send more earnings home. And go home to retire with social security coverage.

### **Measuring Human Rights implementation**

Treaty bodies generally face the enormous task of reviewing and measuring situations in reporting countries –never mind those not reporting, let alone those non-party. Notably, this comprises the challenge of verifying whether or not standards have been implemented and, over time, whether improvements have taken place. This is in a context where governments may wish to demonstrate good practice and improvement, yet may have little means to do so. Sometimes, however, it may be a case where little effective action has been taken.

The big challenge is to measure and verify that the standards are being realized in day to day reality, in the actual experience of migrants. It is not only a matter of reviewing law and policy, albeit these are essential foundations for realizing rights. It is a matter of also having concrete data on the

conditions and treatment migrants actually experience. Indeed, some of the most serious violations of rights of migrant workers take place in States with good if not best law and policy, in both countries that have ratified the ICRMW and that have not.

Measuring Human Rights implementation can be said to be a relatively 'new' field, although academic literature on the subject goes back well over a decade. The Norwegian Centre for Human Rights initiated an inter-agency interdisciplinary process to exchange practice and refine measurement in 2010, with participation by OHCHR, UNDP, ILO, and academic institutions. Reference was made to the specific challenges of measuring human rights implementation regarding migrants.

A significant contribution was publication last year of *Human Rights Indicators: A Guide to Measurement and Implementation*,<sup>1</sup> by the Office of the High Commissioner for Human Rights. As High Commissioner Navi Pillay said, "The human rights journey from standard-setting to effective implementation depends, in large measure, on the availability of appropriate tools for policy formulation and evaluation. Indicators, both quantitative and qualitative are one such essential tool."<sup>2</sup>

The questions posed are what constitutes evidence and data of human rights implementation; of how to verify compliance with norms and treaty obligations; of what measures improvement or not in rights protection conditions; and of demonstrably measuring violations of economic, social, cultural rights in quantitative and qualitative terms that can be considered verifiable, reliable and comparable.

One of the best --maybe the only-- detailed international review of implementation of rights of migrant workers is the EU Fundamental Rights Agency's report : « Migrants, minorities and employment - Exclusion and discrimination in the 27 Member States of the European Union (Update 2003-2008) ». This report provides a comparative overview and analysis of data and information documenting discrimination in workplaces and labour markets across the EU.

In an area I've worked in, discrimination, the dearth of relevant, substantive and credible data is legion. And most methodological approaches can only provide indirect -- presumably consequential-- differential outcome data. Which can suggest --but certainly not demonstrate-- that discrimination might be a, or the, cause of differential outcomes. But that does not provide direct evidence of discriminatory --that is to say proscribed-- behaviour as causal to differential outcomes. In fact, where discrimination was later demonstrated to be a major factor, it was previously denied by almost unanimous assertions that differential outcomes were explained almost entirely by differential characteristics, conditions, factors. The discriminatory treatment by host populations, employers, institutions vis a vis migrant workers was NOT one of them.

So how to demonstrate and measure treatment of migrants regarding rights? Discrimination? Even violence? How indeed to measure rights protection for population that includes persons completely invisible, disappeared as it were. For example, migrant domestic workers that simply disappear from any accounting when documents confiscated by employers and held in virtually slavery. One case discovered a couple years ago in a Gulf State, a now 58 year old Sri Lankan held as virtual prisoner in in sponsor's home for 15 years and forbidden to communicate with relatives. "...a record breaking case » as a diplomat put it.<sup>3</sup>

Keeping people undocumented effectively renders them, what happens to them, and how they are treated invisible. *If we don't see it, its not happening*, so to speak.

I've been working a frustrating two years to complete a global survey of data and evidence on discrimination against migrant workers worldwide. Outside a few places, no serious research has been done. Virtually no statistics have been gathered --let alone analyzed-- by research or State institutions.

<sup>1</sup> OHCHR.2012 *Human Rights Indicators: A Guide to Measurement and Implementation*  
[http://www.ohchr.org/Documents/Publications/Human\\_rights\\_indicators\\_en.pdf](http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf)

<sup>2</sup> See « Indicators: essential tools in the realization of human rights » OHCHR. 7 November 2012  
<http://www.ohchr.org/EN/NewsEvents/Pages/IndicatorsestentialtoolsinrealizationofHR.aspx>

<sup>3</sup> See « Lankan maid kept as slave for 17 years » The Sunday Times, February 20, 2011 Colombo, Sri Lanka.  
[http://www.sundaytimes.lk/110220/News/nws\\_25.html](http://www.sundaytimes.lk/110220/News/nws_25.html) (accessed 21-4-2013)

So no evidence means no problem, right? But then you have reports of body counts of foreigners killed by explicitly xenophobic violence, 24 in one month in one city in a major country –one of the BRICS. 80 dead and thousands in internal refugee camps in another. In an EU member state, graphic news reports of market stalls of foreigners being attacked and destroyed, their owners beaten bloody in the golden dawn of our new era. A new report this month asserting the impact of rising xenophobia in Europe connected to increasing denial of access to health care. And as I said to students recently, scratch just about any news headline these days and under it –or if you dig a bit-- there is a story of violence, discrimination, rejection against foreigners. Name any big city in virtually any country today and I can tell you I've seen evidence or stories about xenophobic treatment of foreigners. Most of whom are migrant workers or their family members.

So what are we looking at, for, and why?

Are we looking for *migration statistics*? Are they all that you really need for reviewing treaty implementation?

I can say from work at ILO, and from experience with ultimately both successful and unsuccessful policy change, that it was not *migration statistics* that improved law and practice reducing discrimination and increasing rights protection of foreigners, migrant workers.

In fact, migration stats seem sometimes unhelpful: they show or are easily made to show that migrants are a problem. First of all, that there are too many of them. And in some contexts, any migrant is too many. Like here in this town where a political party recently publicly labelled *frontaliers* --read White Christian French cross border workers-- as *scum* and called for expelling them because they are 'threats' to housing and employment for the *Genevois*. 60% of whom are born outside Geneva by the way. The group still got the highest score in a recent election.

Consequence of some migration statistics on policy evolution is greater emphasis on keeping migrants out, getting out those here, temporizing nonetheless essential migrant work forces, and placing the burden for integration --read assimilation-- fully on migrants. That's abandoned the EU definition of mutual accommodation to insist on migration contracts placing all the obligations on migrants --even before they arrive-- and providing little or no means of supporting contract compliance by migrants.

For the Committee on Migrant Workers, we need to identify the indicators, criteria and measures for data relevant to the standards you are expected to review compliance with. At least some of them.

And identify the means and methodologies to obtain that data, some of which requires empirical experimental research to obtain. Including measuring direct experiences of social behaviour.

One example of work on measuring implementation of fundamental rights convention was development by Roger Bohning of a methodology of reviewing adoption and application of fundamental ILO Conventions<sup>4</sup> It is a particularly relevant example of the kind of data needed to measure protection of human rights of migrants in view of the standards in the ICRMW. That was a first stage, an approach to measuring « international expression of national Adherence by counting, as it were, adherence to standards and reporting on them, and verification of national Implementation by the comments, character and effect given to supervisory body review of content of States' reporting.

### **Measuring discrimination**

A few words about generating data on one major arena of rights protection for migrant workers: discrimination. The so-called *ILO discrimination testing* methodology has been utilized in more than a dozen countries over more than 15 years. It retains a singular validity in the human rights and anti-

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<sup>4</sup> . Roger Bohning. "Normalised and disaggregated gaps in basic workers' rights" ILO Declaration Working Paper, No 17, November 2003. International Labour Office, Geneva.  
[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_decl\\_wp\\_19\\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_wp_19_en.pdf)

discrimination fields. That approach was proposed to be one of the two or three common indicator measures for discrimination in employment across the EU, directly relevant to measuring implementation of the EU “Race equality directive of 2000.”

This approach is equally relevant to measuring compliance with one of the most fundamental elements of the ICRMW, Articles 1 and 9 that incorporated the universal non-discrimination principle contained in all main human rights treaties. It is noteworthy that the ICRMW made a significant advance in international law in that it incorporated *nationality* as prohibited grounds of discrimination.

What was significant about this measurement of discrimination?

Firstly, it irrefutably demonstrated the prevalence of discriminatory behaviour against migrant workers and citizens of recognizable immigrant ancestry in all the labour markets surveyed. In country after country –several with a history of anti-discrimination law and practice-- migrants had to make three to five times more tries to land one success in application process in contrast to typical ‘nationals.’ That meant that if a ‘native profile’ candidate got a positive response –an invitation to interview, or ultimately a job offer-- the ‘migrant profile’ candidate needed to make an average of **20** or more times to land a positive result. And the comparison was between equally qualified, equally educated, pairs of candidates with the same level of experience and identical language fluency, over hundreds of applications for jobs in the same labour market catchment areas in each country.

Secondly, it showed that the State, as well as employers and unions had to do something. It wasn’t a foreigner problem. The problem was us.

So what? Well, in some cases, this evidence actually created a national scandal, and it prompted significant policy and practice change. A good example is Belgium:

The ILO testing research had significant impact in countries where it has been conducted. For example, in Belgium, the ILO study was credited with shaping the content of national legislation adopted in 2003 to put into effect the EU Directive on racism (Council Directive 2000/43/EC). Campaigns against discrimination were established at regional and federal levels by the three national trade union federations. The national federation of employers adopted a code of practice on anti-discrimination for its constituents. Prompted by the research outcome, both the regional and federal authorities adopted administrative and legal measures. The national Labour Inspectorate added discrimination criteria to its monitoring activity and included it in training of inspectors.

In Italy, the research outcome helped prompt establishment of a national anti-discrimination ombudsman office. In France, the testing provoked considerable debate in employer circles and the methodology is being used by major corporations to test –and correct-- their own behaviour, among them ADDECCO, one of the world's largest temporary work agencies.

However, discrimination in access to employment is but one important migrants’ rights standard that requires measurement of implementation and compliance.

## Cooperation

Regarding interstate cooperation, I see that civil society organizations (CSOs) are doing much of the monitoring, data gathering and analysis regarding treatment of migrants. This is also the case in many countries that are not yet Parties to the ICRMW. It should be noted that a considerable number of destination countries have ratified one or both ILO Conventions addressing migrant workers.

Fortunately now, the main international Civil Society human rights monitoring and advocacy institutions are doing extensive research and producing credible reports on treatment of migrants. I refer to Amnesty International, the *Fédération Internationale des Droits de l’Homme*, and Human Rights Watch in particular. I say fortunately because less than 20 years ago, migrants rights were barely acknowledged as a human rights concern.

Generally, anti-racism, anti-discrimination and migrant protection efforts have been abandoned to civil society and trade unions. My impression is that the European Network Against Racism (ENAR), PICUM, and the Migration Policy Group have done as much as any set of institutions in Europe to raise issues, document, conduct investigations, formulate alternative policy and practices, and advocate –sometimes with some success-- for their implementation.

The programmatic responses from international agencies remain modest at best, except for UN human rights Convention treaty bodies and the ILO supervisory committees, that have increasingly paid attention to treatment of migrants/foreigners according to their respective mandates. A most recent example is the Committee on the Rights of the Child Day of General Discussion on migrant children last September. We should also acknowledge the sustained attention given in this arena by the European agencies concerned, namely the EU Fundamental Rights Agency (FRA) and the European Commission on Racism and Intolerance (ECRI) of the Council of Europe.

An observation regarding the issue in the context of CMW: the challenge might be less about inter-state cooperation and more about cooperation on international advocacy for adoption and implementation. This cooperation means international assistance for implementation and compliance as well as support for international monitoring and reporting, that are mandate responsibilities of specific international agencies, namely OHCHR and ILO. These agencies have the explicit legal protection mandates, as does UNHCR for refugees. International Organization for Migration (IOM) efforts are certainly also welcome, but that can be said to be a voluntary contribution given that IOM does not have a formal standard setting, implementation and supervisory mandate. Thus advocacy, technical cooperation on implementation and monitoring depend in practice as much if not more on international agency and civil society mobilization and collaboration than on formal inter-governmental cooperation.

#### **What's needed: CMW homework.**

This situation, particularly the urgent need for data on the actual conditions of migrants regarding the standards contained in the ICRMW and other international instruments, leads me to suggest some specific options for work of the Committee on Migrant Workers –and those working in cooperation with it. In a way, I see more questions than answers, but certainly questions that the Committee can help answer. :

1. Firstly, the CMW would certainly benefit from a comprehensive review of relevant work and literature on Human Rights measurement and monitoring. This includes what concerned agencies, academics, research bodies, other treaty bodies have been doing. Certainly the new OHCHR guide on human rights indicators could be 'required reading' as we say in academia.
2. Secondly, it is crucial to identify the relevant indicators, measures, and methodologies that would be applicable, useful, and comparable for the standards that the CMW is expected to address.
3. Thirdly, it could be especially helpful to determine several 'selected' indicators and measures for which data and/or data gathering/research processes exist or would be priority for CMW utilization.
4. With these markers, the CMW could: (a) recommend States Parties to take up and give priority to utilizing selected indicators and measures in their implementation of treaty provisions (b) set such measurement as benchmarks for States Parties self-measuring of progress in achieving realization of Convention standards, (c) utilize the selected indicators and measures as reporting tools, and (d) apply them to analyze data and States Parties reports and to formulate more targeted recommendations for improvement of policy and practice.

Yes, we need migration statistics. But here, we need especially specific data on the human rights dimensions and practice of migration!

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