

**ECONOMIC, SOCIAL, AND CULTURAL RIGHTS OF
MIGRANT CHILDREN AND CHILDREN BORN TO MIGRANT PARENTS:
CHALLENGES, GOOD PRACTICES AND RECOMMENDATIONS**

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Executive Summary

At the request of the Human Rights Council, the Special Rapporteur on the human rights of migrants will be submitting a report on the economic, social and cultural rights of migrants (ESCR). The following paper reflects UNICEF's contribution to the Special Rapporteur's report.

The report demonstrates the extent to which ESCR are deeply implicated in migration. The deprivation of these rights is intrinsically related to the root causes of migration in countries of origin, heightened vulnerability during transit and the challenges involved in integration in destination countries.

The report is ambitious as it tackles the issue from the perspective of the child as well as the child's family and takes into account relevant gender issues. The report also considers the relevant issues from the perspective of particularly vulnerable groups including irregular migrants and unaccompanied children.

The paper is divided into three sections. The introduction to the paper provides a background to the ESCR implicated in the migration context and guaranteed in the International Covenant on Economic and Social Rights and further contextualized in the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the International Covenant on Economic, Social, and Cultural Rights.

Part two of the paper presents the constraints, abuses and good practices concerning the ESCR of migrants, especially children. These are 19 overarching points made. These can be broken down into the following themes: deprivation of ESCR generally; legislative, policy and programmatic issues; and research and data. Many of these points are accompanied by concrete examples of deprivations or violations of ESCR and where applicable, examples of best practices.

Part three of the paper presents challenges and recommendations. These are grouped into four categories: (1) General Recommendations; (2) Indicators Needed for Data Collection on the ESCR of Migrants; (3) Recommendations Concerning Non Discrimination and Migrant Children's Right to Education; and (4) Recommendations made by UN Committees on non-discrimination and ESCR of child migrants.

KEY MESSAGES

Deprivation of ESCR generally

- Disparities exist between the well being of migrants and nationals due to constraints on ESCR.
- Xenophobia is inextricably linked to a deprivation of ESCR.
- The economic crisis may lead to regressive measures regarding the ESCR of migrants.

Legislative, policy and programmatic issues

- Legislative restrictions on the ESCR of migrants are prevalent, particularly for undocumented migrants.
- There is an absence of policies needed to ensure, both in law and practice, the ESCR of all migrants, regardless of their immigration status.
- Some states are increasingly adopting policies that reduce the access of migrants to ESCR, especially undocumented migrants.

- The lack of a child’s perspective in the vast majority of migration laws and policies negatively affects the rights of children, including their ESCR.
- There is an absence of policies that are aimed at addressing the particular needs of unaccompanied children, ensuring their human rights, and adopting effective short and long term solutions.
- Restrictions of ESCR frequently occur in practice, despite legislation and policies.
- Migration control policies, deportation and controls in social service delivery have a severe impact on ESCR.
- Family reunification policies as well as restrictions on the right to family life have a severe impact on ESCR.
- Deportation and repatriation measures in most countries do not incorporate a child perspective or account for the economic or social rights of children.
- The absence of regularization programs is strongly linked to the denial of ESCR.
- The lack of a gender approach within migration policies has a severe impact on the ESCR of migrant women and female children.
- The absence of rights-based integration policies for adolescent migrants leads to a deprivation of ESCR.
- Restrictions on access to justice result in an inability for migrants to defend their ESCR.
- The deprivation of the social rights of migrants frequently occurs in detention centres.

Research and Data

- The lack of accurate and updated data hinders the design, implementation, and monitoring of public policies meant to protect the ESCR of all migrants, especially rights-based indicators, including age and gender dimensions.

KEY RECOMMENDATIONS

General Recommendations

- States should **recognize ESCR in laws** for all individuals, regardless of their nationality or immigration status.
- States should **adopt public policies** meant to effectively ensure ESCR for all migrants.
- States should adequately **monitor the implementation and enforcement** of these laws and policies.
- Migration **policies should include a child perspective** in order to ensure that the particular needs and rights of migrant children are properly addressed.
- Migration **policies should also take into account the particular needs and rights of unaccompanied children.**
- States should develop policies and programmes meant to ensure, through a rights-based approach, the **social integration of migrant adolescents.**
- States should ensure a **gender approach to migration policies and programmes.**
- States should develop **public policies to regularize undocumented migrants** (especially children and their families), through flexible, permanent, and regular legal avenues and by extraordinary regularizations.
- It is critical that states **guarantee access to justice**, as well as to due process of law, for all migrants, regardless of their immigration status.

Need for Indicators for Data Collection on the ESCR of Migrants, disaggregated by age, nationality and sex.

- Indicators for data collection on the ESCR of migrants should include, *inter alia*:
 - On equality and non-discrimination;
 - On signs of progress;
 - On basic financial context and budgetary commitments;
 - On data and access to information;
 - On social security;
 - On the impact of migration control policies and practices;
 - On disparities between nationals and migrants regarding access to ESCR (e.g., school drop-out rate, access to university, illnesses, unemployment rate, access to social security benefits –retirement, pensions, unemployment insurance, etc.);
 - On access to justice;
 - On disparities regarding undocumented migrants.

Recommendations Concerning Non-Discrimination and Migrant Children’s Right to Education

- States have to take strong proactive measures to ensure that children born to migrant parents have equal access to education.

- States must facilitate enrolment in schools at all levels for children with missing or incomplete documents, as well as children who cannot present a birth certificate, and make sure that they are not discriminated against in practice.
- States must ensure that all children are able to gain full academic credit for their school attendance.
- States must adopt measures to reduce dropout rates to ensure the right to education for all children living on their territory, and strengthen educational and vocational programmes, particularly for children who do not attend regular school (especially migrant children).

Recommendations made by UN Committees on Non-Discrimination against Migrants

- States must launch comprehensive massive public education campaigns, to prevent and combat negative societal attitudes towards migrants as well as develop a culture of tolerance in the society at large through all possible channels, including schools, media and the law.
- States should closely monitor the incidence of, and combat, racism and xenophobia, and promote intercultural understanding and tolerance among all groups in society.
- Public officials must be trained on the elimination of discrimination against migrants.
- States must take administrative and judicial measures to prevent and eliminate de facto discrimination against foreigners, and in particular, children.

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