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# Indicators for Human Rights of Migrants and their Families in Tunisia

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# Indicators for Human Rights of Migrants and their Families in Tunisia<sup>1</sup>

Sarra Hanafi<sup>2</sup>

## Abstract

This report is a base document for the organization of a national consultation directed at promoting discussions on and evaluating the adequacy of the indicators for the human rights of migrants and their families in Tunisia. A selection of indicators proposed by the Global Knowledge Partnership on Migration and Development (KNOMAD) is adapted to the Tunisian context in order to measure and evaluate the enjoyment by migrants in Tunisia of the fundamental rights to health, education and decent work. A set of structural, process and outcomes indicators is established in relation to each of these rights and the data collection sources and systems that facilitate the adoption of these indicators are identified. The report identifies challenges and guidelines for raising awareness of the need to take account of migrants in data collection systems, so that the equitable access by migrants to their fundamental rights can be measured on a systematic basis.

Keywords: Migration, human rights indicators, migrants' rights, migration of low-skilled workers, access to education, access to healthcare, right to decent work, and evidence-based immigration policy.

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<sup>1</sup> The document was produced by KNOMAD's thematic working group "Migrants' Rights and Social Aspects of Migration," headed by William Gois (Migrant Forum in Asia), and comprising in particular Kerry Neil (UNICEF) and Hanspeter Wyss, focal point of the KNOMAD Secretariat. This document benefited as well from the guidance from Pia Oberoi (OHCHR), former co-chair of the KNOMAD TWG. The author thanks Mr. Chokri Arfa, Director of the National Migration Observatory, Ms. Ahlem Saidi and Ms. Monia Chebbi, of the National Migration Observatory. This document also takes account of the observations made during the peer review process conducted by KNOMAD.

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## **ABBREVIATIONS AND ACRONYMS**

CERD: Committee on the Elimination of Racial Discrimination

CNS: National Statistics Council

CNSS: National Social Security Fund

CPDTM: Committee on the Protection of the Rights of All Migrant Workers

CT: Labor Code

DEMOE: Directorate of Emigration and Foreign Labor of the Ministry of Employment

DGEPS: General Directorate for Studies, Planning and Statistics, Ministry of Education

DSSB: Directorate of Basic Health Care of the Ministry of Health

ICESCR: International Covenant on Economics, Social and Cultural Rights

ILO: International Labor Organization

IMO: International Migration Organization

INS: National Statistics Institute

INSP: National Public Health Institute

JORT: Official Gazette of the Republic of Tunisia

MAS: Ministry of Social Affairs

MDGs: Millennium Development Goals

ME: Ministry of Education

MFPE: Ministry of Vocational Training and Employment

MH: Ministry of Health

MI: Ministry of the Interior

NSP: National Statistics Program

ONFP: National Family and Population Office

PASS: School Social Action Program

RGPH: General Census of Population and Housing

RGS: Free Health Care Regime

RTR: Reduced Rate Regime

## Executive Summary

This report has been prepared for the national consultation to be conducted in Tunisia on human rights indicators for migrants and their families. It is based on KNOMAD Working Document No. 5 entitled “Human Rights Indicators for Migrants and their Families.” The report presents a selection of indicators adapted to the Tunisian context. These indicators serve to facilitate the measurement and evaluation of migrants’ access to rights to education, health and decent work in Tunisia.

The methodology advocated by the High Commission for Human Rights, and adopted by KNOMAD, entails the definition of indicators that can serve to measure commitment, actions and outcomes in relation to these rights. The indicators are presented as structural, process and outcome indicators for each of the rights identified above, bearing in mind their fundamental characteristics.

Several systems for the collection and sourcing of data are identified in this report. These systems may be tapped to provide the information required for the adoption of the indicators measuring the situation of migrants in Tunisia, notwithstanding the inadequacy and at times complete lack of precise, disaggregated data on the exercise of these rights.

The importance of information and follow-up of the situation of migrants’ rights is heightened by the fact that the post-2015 United Nations Sustainable Development Goals make specific reference to the need to combat inequalities and exclusion for measuring the achievement of the various development objectives and targets, for all, without discrimination.

The indicators proposed for the measurement of the fulfillment of the right to education provide information on the recognition of this right in Tunisia’s juridical and institutional framework. They also serve to illustrate the measures put in place to promote access by child migrants to education (level of budget allocation, the extent to which child migrants are taken into account in the system of support for students having difficulty in school). The completion rate of each instructional cycle is identified as an outcome indicator.

In relation to the right to health, in addition to the structural indicators, there are indicators for measuring the efforts made by the Government to reduce obstacles to migrants’ access to health (financial accessibility, information to migrants and sensitization of health workers). The rate of access of migrants to each public health establishment in relation to nationals is presented as an outcome indicator.

Regarding the right to decent work, the indicators proposed serve to measure the existence of a juridical framework that enshrines the protection of migrants’ right to decent work. It also helps to evaluate the measures put in place to give effect to such protection, such as the provision of information to migrants, the monitoring of respect for the principle of equality and the establishment of work regulations that are not discriminatory. Indicators are also proposed to provide information on the extent to which migrants’ rights to work are violated compared to those of Tunisian workers.

The need to establish precise and factual data on the human rights situation of migrants and the requirement to integrate the SDGs into the national planning process and to adopt indicators on migrants’ rights will entail the following actions:

- Consideration to the issue of migrants’ rights in the various information systems reforms carried out by the Ministries of Health, Justice, Social Affairs and Employment.

- Taking account of and integrating variables linked to migration into administrative data collection systems, while ensuring the confidentiality of data.
- the development of measures to process, analyze and share data among the relevant departments, and publication of the data identified.
- The strengthening of the capacity of civil society and the involvement of social partners to promote the provision of factual data on the rights situation, particularly for the categories of irregular migrants.

In order to adopt the indicators, it is necessary to separate the role of stakeholders involved in the collection of data on migrants (health workers, managers of the educational institutions, Labor Inspectorate), from that of the immigration control authorities. This entails introducing the necessary reforms to the law on irregular immigration and control of irregular work as a pre-requisite for the implementation of an effective system of data collection on migrants.

## HUMAN RIGHTS INDICATORS FOR MIGRANTS AND THEIR FAMILIES IN TUNISIA

### BASIC DOCUMENT FOR THE ORGANIZATION OF A NATIONAL CONSULTATION

#### 1. Introduction

It is today widely acknowledged that the effective governance of migration necessarily implies a human-rights based approach.<sup>3</sup> It is internationally recognized that the concepts of migration, development and human rights are inextricably linked.

This fact has been enshrined in the declaration of the high level dialogue on international migration and this has been echoed by the World Summit on Post-2015 Sustainable Development, held in September 2015.

Indeed, the new 2013 development agenda establishes as a specific objective the reduction of inequalities within and amongst countries. In addition to the two targets of goal number 10, which explicitly refers to migration,<sup>4</sup> a number of Sustainable Development Goals (SDGs) necessarily envisage the inclusion of all categories of the population, including migrants, in the evaluation of the outcome, as these objectives are intended for the universal enjoyment of these rights, without discrimination. For example, an overall target is established for objective 10 “to empower and promote the social, economic and political inclusion of all, irrespective of (...) origin, religion, economic or other status.”

It follows therefore that all migrants are included by the targets that pertain to the rights to: social security (1.3), health services (3.8), education (4.1-5), full, productive employment and decent work (8.5) and equal access to justice (16.3).

Target 8.8 even more explicitly refers to the need to “protect labor rights and promote safe and secure working environments for all workers, including migrant workers, in particular, women migrants and those in precarious employment.”

Overcoming exclusion and inequality of access to the specific rights is essential for achieving sustainable development.

The Special Rapporteur on Human Rights and the High Commissioner for Human Rights,<sup>5</sup> had underscored the fact that the Millennium Development Goals (MDGs) placed emphasis on overall progress, and that this approach did not adequately measure or highlight the exclusion of vulnerable groups and more particularly, migrants. The Special Rapporteur therefore recommended that migration be taken systematically into account in the Sustainable Development Goals.

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<sup>3</sup> Migration and human rights, improving the governance of human rights-based international migration, OHCHR.

<sup>4</sup> Goals 10.7 and 10.7.C.

<sup>5</sup>Cf. Report of the Special Rapporteur on human rights of migrants, August 11, 2014, A/69/302.

## The context of migration in Tunisia

In Tunisia, the transition to democracy and the significant interest generated in the protection of individual rights has brought a new focus on the question of migration. The protection of the rights of “foreign migrants”<sup>6</sup> and asylum seekers is included in the 2016-2020 National Migration Strategy document, as one of the strategic objectives for managing migration.

However, there exists no definition of the concept of “migrant” in Tunisian law, which does not recognize the juridical status of migrant, neither does it contain any specific text on the protection of migrants’ rights.<sup>7</sup> Migrants are included under the category of “foreigner,” and the law on the “condition of foreigners” stipulates rules on frequency of entry and stay of migrants, as well as the related sanctions for breach of these rules. Without mentioning migrants specifically, the law requires all foreigners desirous of extending their stay in Tunisia beyond three months to obtain a residence permit to that effect.

On the other hand, the National Statistics Institute (INS) recognizes the concept of “resident foreigner” as one who resides, or intends to reside in Tunisia for a period of more than 6 months.

The notion of foreign resident in Tunisia is separate from the more general category of international resident, which would apply to any person who “changes their usual place of residence.”<sup>8</sup>

The national strategy makes reference to immigrants, foreign nationals in Tunisia, foreign migrants and asylum seekers, as distinct from Tunisian migrants or Tunisians resident abroad.

Therefore, the term “migrants in Tunisia” is used to denote foreign nationals residing temporarily or permanently in Tunisia, regardless of their reason for migrating, whether they are workers, students, asylum seekers, or migrants without legal status.

In fact, Tunisia is increasingly becoming a receiving state for migrants, who either immigrate to Tunisia or use it as a point of transit to Europe. These migrants fall into diverse categories and for the most part, are highly vulnerable to violations of their fundamental rights.<sup>9</sup>

Migrants may therefore be divided into two categories: “regular” and “irregular” migrants, by virtue of their status of stay and/or work. Regularization of the status of foreigner in Tunisia may be understood from a dual standpoint: that of complying with the regulations governing stay in Tunisia and fulfilling the

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<sup>6</sup> The expression “foreign migrants” is used in the National Strategy Document on Migration to denote international migrants in Tunisia or immigrants, as opposed to Tunisian migrants abroad, or emigrants. Cf. National Migration Strategy, (NMS) October 2015, State secretariat on migration, unpublished text.

<sup>7</sup> Tunisia has not ratified, or even signed the 1990 UN Convention on the Protection of the Rights of Migrant Workers and their Families. Neither has it ratified ILO Conventions No. 143 or No. 97. However, as part of actions stipulated under objective 5 of the National Migration Strategy, Tunisia intends to ensure the protection of migrant workers and asylum seekers and revise legislative texts (..) in accordance with ratified international conventions *a well as ILO Conventions on Migrants’ Rights*.

<sup>8</sup> Basic definition of international migrant provided for in United Nations recommendations on statistics on international migration (U.N., 1998)

<sup>9</sup> Cf., Report of Special Rapporteur on the human rights of migrants, François Crepeau. Addendum, Mission to Tunisia, § 18, and ILO report, Examination of Legislation on Migrant Workers and Recommendations for the Protection of Male and Female Migrant Workers, October 2014.

conditions for labor contracts, both conditions being strictly interlinked. Therefore, obtaining the right to reside in Tunisia<sup>10</sup> is conditional upon the receipt of a labor contract approved and stamped by the competent authority, with such approval being subject to very restrictive conditions. The resident's permit makes mention of the right to work and has the same validity as its supporting documents, with the validity not exceeding one year.

Any foreigner who has entered Tunisian territory illegally or has entered legally but has extended their stay beyond three months without requesting and obtaining a residence permit, due to their inability to obtain a work permit, is in an irregular situation. A work permit is granted subject to proof by a prospective employer that no Tunisians possesses the equivalent skills for the job being sought. Unskilled laborers, or workers with limited qualifications, may therefore not obtain a permit to work in Tunisia.

Some migrants find themselves in an irregular situation with regard to the possibility to work, even though they have obtained a residence permit. Such is the case of foreign students, notably African students, who have a right to a residence permit but do not have the right to work. Some foreign spouses of Tunisians also fall into this category.

Asylum seekers are also included in this category<sup>11</sup> of persons, even though their particular status does not grant them the right to a residence permit. They only benefit from a level of legal protection regarding their entry into Tunisian territory.<sup>12</sup> This protects them from the relevant regulations on entry into the country and they are granted some leeway by the State authorities with respect to their stay in Tunisia, since they are issued with a registration certificate by the United Nations High Commissioner for Refugees (UNHCR). However, the certificate does not give them the right to work and they are therefore in an irregular situation as far as the right to work is concerned.

According to the last general population and housing census (RGPH 2014<sup>13</sup>), the total number of foreigners residing in Tunisia is 53,490<sup>14</sup>, as against 35,192 in 2004. The number of nationals from the Maghreb (Algerians, Libyans and Moroccans) was estimated at 24,333 in 2014 compared to 15,007 Europeans, and 7,524 Nationals from Sub-Saharan Africa. In 2014, approximately 5,825 people had obtained a work permit from the Ministry of Vocational Training and Employment. Figures from the Ministry of Education reveal that for the 2014-2015 academic year, approximately 5,988 students were enrolled in tertiary level institutions, with 75 percent of that number in private institutions. There were 1,839 foreign pupils enrolled in public basic education (primary and lower school), compared to 260 foreign pupils in public

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<sup>10</sup> There are some exceptions for persons granted an "ordinary" residence permit; in other words, one valid for two years, renewable. These are persons who have been temporary residents in the country for the past five years without interruption, foreign women married to Tunisian men and foreigners with Tunisian children.

<sup>11</sup> A draft law on asylum is currently being prepared by the Ministry of Justice, prior to being presented to the Legislative Assembly.

<sup>12</sup> Law No. 1975-40 of May 14, 1975, pertaining to passports and travel documents, modified by the law of November 2, 1998 and that of February 3, 2004.

<sup>13</sup> According to the Census, the population of Tunisia is 10,982,800 inhabitants.

<sup>14</sup> This figure of 53,490 is reportedly disputed by the Ministry of the Interior, which places a higher number of foreign residents in Tunisia. Source: National Institute of Statistics, Chief of the Migration Unit.

secondary schools. According to the HCR, by the end of 2014, it was responsible for 1,135 asylum seekers. Of this number, 231 were awaiting a decision on their case.<sup>15</sup>

### **Sources of data and information on migrants in Tunisia**

Information on the situation of these various groups of migrants is almost inexistent or at least very sketchy. Publicly available data on foreign residents in Tunisia are limited to overall statistics on the number of immigrants and their distribution across the national territory.

Furthermore, the Special Rapporteur on migrants' rights, in his report on Tunisia recommended "the establishment of a complete and transparent national system for the collection, analysis and dissemination of data on policies and practices on immigration, to serve as a basis for developing a migration policy founded on human rights."<sup>16</sup>

Indeed, the report on the human rights of migrants<sup>17</sup> stresses the need for qualitative and quantitative data on the most marginalized migrants and those that are in an irregular situation.

Several data collection systems and sources may be identified<sup>18</sup> and developed to ensure more effective collection of data on migrant populations, their situation and the exercise of their rights.

#### *Sources of surveys*

The National Institute of Statistics, through the RGPH, is an important source for the collection of reliable and exhaustive information<sup>19</sup> on demographic data, living conditions, housing, education and vocational training, economic activity (professions, types of contract) social security coverage, all of which are included under the variable on nationality and residence in Tunisia, in the Census questionnaire. All data collected may be disaggregated according to the migrants' nationality.

The module in the questionnaire on Mobility and Migration contains a category on the main reasons for a change of residence (housing), which, for a foreign resident, could be indicative of migrant status. An analysis of the data from the census could lead to the publication of more detailed information on the demographic, social and professional situation of migrants in Tunisia.

More frequent surveys conducted by the INS (National Statistics Institute) namely, the Population Employment Survey and the Consumption and Living Standards Survey, do not provide data on migrant populations, due to the sampling used. National surveys also fail to provide data on the migrant population for the same reason; viz., the segment of the population sampled. Nationwide surveys that have been conducted over the past few years<sup>20</sup> with a view to determining access to education and health

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<sup>15</sup> UNHCR, Global trends, forced displacement in 2014, annex Table 1, P.47. [www.unhcr.org](http://www.unhcr.org)

<sup>16</sup> Cf., Report of the Special Rapporteur on Human Rights of Migrants, François Crepeau, addendum mission to Tunisia, Op. cit., § 90. The committee for the Elimination of Racial Discrimination, in examining the report presented by Tunisia, notes the lack of concrete information on the exercise of labor rights by migrants from Sub-Saharan Africa, CERD/C/TUN/CO/ March 19-23, 2009.

<sup>17</sup> Report of the Special Rapporteur on the Human Rights of Migrants, op. cit.

<sup>18</sup> CF. Law No. 99-32 of April 13, 1999, on the national system of statistics.

<sup>19</sup> RGPH 2014, [www.ins.nat.tn](http://www.ins.nat.tn).

<sup>20</sup> MICS 1, MICS 2, MICS 3 and MICS 4.

services—for example, the survey on “Monitoring the Situation of Women and Children,” a multiple indicator cluster survey conducted by the Ministry of Development and the NIS with support from UNICEF—have also failed to provide data on migrant populations, due to the sampling methods used. The surveys were developed in order to gain an overall vision and measure the disparities existing among regions and do not allow for an examination of such a specific minority group as migrants. This points to the need for specific, targeted surveys. Given that migrants are a minority group in Tunisia, together with the fact that they are concentrated in areas of the national territory, it is therefore necessary to conduct surveys aimed specifically at that population group using appropriate sampling methods to complement and consolidate the data collected by government sources.

#### *Administrative Sources*

Administrative or government sources currently constitute the mechanism of choice to be developed for producing more specific data on the situation of migrants in Tunisia. The directorates, services, observatories and units within ministries that have responsibility for compiling statistics make up the specialized public statistical structures. They collect, process, analyze and disseminate statistical information on the area of activity of the bodies concerned.

The Ministry of the Interior processes data collected on the basis of visa and residence permit applications, as well as on entry into the country, departures, deaths and births of foreign nationals in Tunisia. The cross-referencing of the different variables and data allows the Ministry to obtain information on the migrant population in Tunisia.

Statistics collected at the border are communicated to the INS, by means of monthly fact sheets.

The systematic collection of data on child migrants in schools by the statistical department of the Ministry of Education, would be enhanced by adding an item on nationality to the questionnaires distributed to these institutions. This would help to ensure that all school statistics could be disaggregated by the nationality of pupils.

Collection of data on migrants’ right to health services is very limited, due to the fact that health facilities do not collect information on nationality during the routine registration of patients’ information. Epidemiological studies and national health reports also fail to take account of the category of migrant. These studies focus on regional disparities and the socio-economic factors of health from a general standpoint.<sup>21</sup>

There are plans to reform the health information system so that data collection by health establishments may be more systematic.

In the Ministry of Vocational Training and Employment (MFPE), the data available and published pertain to the regular employment of migrants, as gleaned from labor contracts approved and documents

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<sup>21</sup> The document on societal dialogue on health, which summarizes data from various sources on the state, conditions and health services in Tunisia, makes no reference to the situation of migrants. CF. Societal dialogue on national policies and plans for the health sector, health services of Tunisia: The facts.

certifying that the holders are exempt from work permit requirements. These data concern the numbers of migrant workers in a regular situation, distributed by sector and by region.

The labor inspectorate is a key source of information on the human rights situation of migrant workers from the standpoint of their labor rights. It carries out a number of functions, including the compilation of data on working conditions and the preparation of quarterly reports on their findings.<sup>22</sup>

#### *Civil society organizations: associations and social partners*

There are two Tunisian associations of lawyers that focus specifically on the rights of migrants in the country. They are: The Tunis Migration and Asylum Center (CeTuMa), and Terre d'Asile. There are other associations that protect human rights of migrants and that serve as sources of information on their rights situation as a vulnerable category. These include the Tunisian Human Rights League (LTDH), the Tunisian Association for the Protection of the Rights of the Child,<sup>23</sup> or the Tunisian Association to Combat Racism, etc...

These sources help to generate factual data on the violation of the rights of migrants and to provide both quantitative and qualitative data on such violations.<sup>24</sup> By shedding the spotlight on incidents of violations or the flouting of the rights of these individuals, this information complements that furnished by Government institutions and reveals shortcomings in the protection of migrants' rights, especially those in an irregular situation.

The Tunisian General Workers' Union (UGTT) can also provide data on the rights situation of workers and actions undertaken to protect migrant workers in Tunisia, as well as the effective exercise by workers of their freedom of association.

Two new trade union organizations were created following the revolution: they are the Tunisian General Labor Confederation (CGTT) and the Union of Workers of Tunisia (UTT).

#### **Presentation of the Project**

Working document No. 5 was developed by the thematic working group on "the rights of migrants and social aspects of migration" (TWG7), by the Global Knowledge Partnership on Migration and Development (KNOMAD). It was developed in response to the need to collect data and information on the rights of migrants, in order to formulate migration policies based on factual data. The working document presents the indicators for the human rights of migrants and their families.<sup>25</sup>

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<sup>22</sup> Art.179 and 180 of the Labor Code.

"the task of the inspectors is to (...) develop all kinds of statistics on the working conditions and employment of the sectors under their supervision." "They must provide detailed quarterly reports on the implementation of the tasks with which they have been entrusted."

<sup>23</sup> In June-July 2015, with the support of UNICEF Tunis, this association conducted a survey on "the acceptance of migrant children in Tunisia" based on a survey carried out among the adult population and a sampling of 327 Libyan and 113 Syrian refugees.

<sup>24</sup> Human rights indicators: A guide for their evaluation and use, N.U., 2012, pg. 57-58.

<sup>25</sup> KNOMAD, Working document No. 5, human rights indicators for migrants and their families, April 2015.

It should be recalled that the discussions within the Office of the High Commissioner for Human Rights (OHCHR) centered around the importance of indicators for determining the observance of human rights and as essential tools for formulating and evaluating policies for implementing international standards.<sup>26</sup> The discussions led to the drafting of a guide for developing the indicators. As a result of the discussions and based on the guide for developing human rights indicators, as well as on its conceptual and methodological framework, the KNOMAD document provides a set of indicators to determine the extent to which migrants enjoy the fundamental rights to education, health and decent work.

The document underlines the importance of “disaggregated” human rights indicators that are specific to migrants, or group of migrants, to be used for assessing the discrimination they face in the exercise of their rights and also for highlighting the obligations of the State towards these groups.<sup>27</sup>

The OHCHR conceptual framework is based on a definition of the characteristics or attributes of each of the human rights recognized by the principal conventions and interpreted or articulated by committees established under such conventions. The structural, methodological and outcome indicators are used to determine the commitment and effort deployed and results obtained in ensuring observance of these human rights. Similarly, the indicators established in the KNOMAD working document, to be used for assessing the extent to which migrants’ labor rights are protected, are based on the prescriptive contents of the State’s obligations under international instruments, as well as the observations of committees established by such instruments.

This report is part of the second phase of the project by the KNOMAD thematic working group (TWG7). In the first phase, a list of human rights indicators for migrants and their families was developed: they are indicators on the right to health, education and decent work.

The aim of the second phase of the project, which is led by the Tunisian National Observatory on Migration, is to assess and evaluate the relevance of these indicators at the national level. This assessment will be based on a national consultation involving all stakeholders: representatives from the government sector, social partners and civil society organizations to discuss the indicators and the challenges and opportunities associated with collecting data on the human rights of migrants in Tunisia.

This report is therefore intended to serve as a basic document for the consultation process. It includes a list of indicators drawn from the KNOMAD working document, which have been defined and adapted to the Tunisian context. It identifies categories of vulnerable migrants and the challenges to be overcome to ensure recognition, respect and observance of their rights. It also proposes systems for collecting available or existing data.

### **Structure of the document**

In keeping with the methodology suggested in the OHCHR guide, indicators are selected on the basis of a study of the national legal framework pertaining to the rights under consideration, as well as on the selection of an institutional framework and programs to ensure the realization of these rights.

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<sup>26</sup> HCDH, Human rights indicators: a guide for their evaluation and use, N.U, 2012, P.iii.

<sup>27</sup> OCHCR, *idem*. pg.49.

Discussions have also been planned with a number of stakeholders involved in collecting data on the realization of rights, with a view to ensuring that they are placed within a context.

On the basis of the KNOMAD working document and its list of indicators, the report focuses on three human rights,<sup>28</sup> each of which is discussed in a separate chapter. They are indicators on the right to health, the right to education and the right to decent work.

A final chapter is planned, for setting out the challenges and proposed recommendations.

**Summary table of the human rights indicators for migrants and their families—rights to education, health and decent work, as proposed by KNOMAD and adapted to the Tunisian context.**

|  |  |
|--|--|
| <b>Indicators for migrants’ right to education</b> |  |
| <b><i>Structural indicators</i></b>                | <ol style="list-style-type: none"> <li>1. Status of ratification of international treaties on the right to education.</li> <li>2. The recognition and enactment in Tunisian law of the right to compulsory education for all, without discrimination on the basis of nationality or migration status.</li> <li>3. System for the collection and publication of periodic data on access to and conditions of education, disaggregated by nationality and migration status (status of parents).</li> </ol> |
| <b><i>Process indicators</i></b>                   | <ol style="list-style-type: none"> <li>4. Percentage of public expenditure dedicated to the promotion of the right to education of child migrants.</li> <li>5. Rate of school enrolment of child migrants in Tunisian educational institutions, by level and type of institution.</li> <li>6. Number of child migrants brought under the care of the School Social Action (PASS) as a percentage of national children.</li> </ol>  |
| <b><i>Outcome indicators</i></b>                   | <ol style="list-style-type: none"> <li>7. Percentage of children of foreign nationals enrolled at the basic and secondary levels and completing the studies for each level.</li> </ol>   |
| <b>Indicators for migrants’ right to health</b>    |  |
| <b><i>Structural indicators</i></b>                | <ol style="list-style-type: none"> <li>1. Status of ratification of the relevant international conventions.</li> <li>2. Recognition of the right to health for all migrants in Tunisian domestic law.</li> </ol>   |

<sup>28</sup> The KNOMAD document also supplies a list of indicator on rights and the cross-cutting principle of non-discrimination.

|   |   |
|---|---|
|   | <ol style="list-style-type: none"> <li>3. Inclusion of migrants as a specific target group in social welfare policies and program on the reduction of inequalities and inequitable treatment in the health sector and the consideration of social determinants of health.</li> <li>4. System for the collection and publication of periodic data of health conditions and services, disaggregated by nationality and migration status.</li> </ol>   |
| <b><i>Process indicators</i></b>              | <ol style="list-style-type: none"> <li>5. Proportion of judicial decisions on the migrants' right to health.</li> <li>6. Number of sensitization training programs for health workers on cultural diversity, international migration flows and human rights.</li> <li>7. Number of information campaigns targeting the migrant population that promote awareness of migrants' right to health.</li> </ol>   |
| <b><i>Outcome indicators</i></b>              | <ol style="list-style-type: none"> <li>8. Rate of access of migrants to each public health facility, compared to nationals.</li> </ol>  |
| <b>Indicators of the right to decent work</b> |   |
| <b><i>Structural indicators</i></b>           | <ol style="list-style-type: none"> <li>1. Status of ratification of the ILO conventions and the 1990 United Nations Convention.</li> <li>2. Extent to which national legislation recognizes the right to work of migrants, by migration status and work relations.</li> <li>3. Protection of the labor rights of migrants in domestic law: principle of equality of treatment and the obligation not to discriminate</li> </ol>   |
| <b><i>Process indicators</i></b>              | <ol style="list-style-type: none"> <li>4. The existence of jurisprudence and the principle of equal protection of the labor rights of migrant workers, by status of worker.</li> <li>5. Existence of specific protection for and a system to monitor the labor conditions and rights of female migrant domestic workers.</li> <li>6. Number of sensitization and information programs for migrants on the subject of their labor rights.</li> <li>7. Number of workplace inspection campaigns targeting employment sectors that use foreign workers and the rate of coverage of such sectors by the labor inspectorate</li> </ol> |

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|                                  | 8. Number of programs to promote the unionization of migrants.  |
| <b><i>Outcome indicators</i></b> | 9. Number of migrant worker as a percentage of the total number of workers whose labor rights have been violated.<br>10. Estimated number of migrant numbers whose status is irregular. |

## 2. Indicators on Migrants' Right to Education

The Millennium Development Goals report 2015<sup>29</sup> underlines the linkage and strong correlation between poverty and social marginalization and low rates of primary school enrolment.

Furthermore, the post-2015 UN program focuses on the link between development and the reduction of and fight against inequalities and exclusion. It provides for follow-up on the implementation of the SDGs, through the setting up of mechanisms that not only evaluate progress at the national and global levels, but more importantly, measure the extent of access to the targeted rights for all marginalized and vulnerable categories, including migrants.

The integration of the SDGs into the Tunisian planning process requires that systematic attention be given to the extent to which migrants have access to education. In addition to measuring the impact of certain social factors on access to education and examining the disparities between regions as well as between rural and urban environments, objective 4 "to ensure access to equitable quality education for all" requires that the data collected be disaggregated to take account of the particular vulnerability of the migrant population in accessing this right.<sup>30</sup>

The vulnerability of certain groups of migrants, particularly migrants in irregular situations and asylum-seekers, means that they live in precarious economic conditions and also encounter other specific hardships. There are many constraints that limit the right of child migrants to education, despite the fact that the 2014 constitution recognizes the universality of this right.

Discriminatory practices against this right may be "indirect" and can result from administrative measures and practices applied by the educational authorities, which have the effect of excluding certain children because of the irregular migration status of their parent. Moreover, linguistic difficulties associated with the use of Arabic or French in the Tunisian educational system, where French is the second language of instruction, as well as difficulties in integrating and adapting culturally to certain school programs can also hinder access and prevent certain child migrants from completing the school year. For this reason, it is key that migrants' access to education and the extent to which teaching is adapted to their needs are measured.

The indicators selected are designed, therefore, to measure compliance with the international obligation to afford the right of education to child migrants. They also take account of the essential characteristics of this right, including accessibility, non-discrimination, availability and cultural acceptance of this right.<sup>31</sup>

The national studies conducted on the conditions of access to education in Tunisia do not highlight the particular situation of child migrants. The studies focus on measuring overall regional and social disparities, but the sample utilized is inadequate to bring out data on the migrant population.

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<sup>29</sup> Millennium Development Goals 2015 report, U.N, 2015, p 26.

<sup>30</sup> The educational authorities in Tunisia (Ministry of Education) have indicated that the failure to take account of migrants in the follow-up to the MDGs is due to the fact that the phenomenon of migration is a relatively recent one in Tunisia and the constraints to the right to education were, until recently, strictly at the national level.

<sup>31</sup> CF. Indicators for the human rights of migrants and their families, KNOMAD, April 2015, pg 21.

In contrast, the statistical office of the Ministry of Education—the Studies Planning and Statistics Directorate—collects exhaustive data on pupils enrolled in various public and private educational institutions. It does so by distributing forms to such institutions at the start of each school year. The specific form for “foreign pupils” allows for capturing data on the distribution of such students by instructional cycle, governorate, institution and nationality. The data could be disaggregated even further along the lines of the information collected on Tunisian students.

The indicators on the enrolment rate of child migrants and the completion rate of the various instructional cycles should be disaggregated even further and informed by current data from the Ministry of the Interior on the overall migrant population in Tunisia, broken down by age and migration status.

Information on the particular difficulties facing child migrants enrolled in schools in Tunisia is not available, even though data on the school environment is collected by the School Life Department of the Ministry of Education and despite the fact that the social protection directorate of the Ministry of Social Affairs captures data on the follow-up to the School Social Action Program. In order to evaluate the effective access of child migrants to education, such data must be disaggregated by nationality and made available for publication on a systematic basis.

Against this background, the following indicators are proposed (annex 3):

Status of ratification of international treaties on the right to education.

- The recognition and enactment in Tunisian law of the right to obligatory education for all, without discrimination on the basis of nationality or migration status.
- System for the collection and publication of periodic data on access to and conditions of education, disaggregated by nationality and migration status (status of parents).
- Percentage of public expenditure dedicated to the promotion of the right to education of child migrants.
- Enrolment rate of child migrants in Tunisian educational institutions, by level and type of institutions.
- Number of child migrants brought under the care of the School Social Action Program (PASS) as a percentage of national children.
- Percentage of children of foreign nationals enrolled at the basic and secondary levels and completing the study requirements for each cycle.

### 3. Indicators on Migrants' Right to Health

The Special Rapporteur on the human rights of migrants recommends that consideration be given to including in the post-2015 agenda the rights of migrants and their families to adequate healthcare,<sup>32</sup> on an equal footing with the rest of the population and independent of their migration status. The objective of universal health coverage should be seen as providing access to the most marginalized population, including migrants, to health services through the establishment of specific indicators.

The International consultation process organized to follow-up on World Health Assembly Resolution 61.17 on the health of migrants has yielded suggestions for a number of priority actions to be undertaken. These include guaranteed health systems that take account of migrants' needs, monitoring of their health and ensuring that health data are standardized and comparable. Efforts should also be made to ensure that the information is duly disaggregated and appropriately consolidated.<sup>33</sup>

There was agreement on the need to strengthen the health information system to enable the collection of data on migrants' health. Such data should also be broken down into the relevant categories, to reflect the most vulnerable. This would make it possible to determine the extent to which migrants' right to health is taken into account.

The indicators proposed by KNOMAD are intended to measure the main characteristics of this right to health<sup>34</sup>, in view of the obstacles and constraints associated with migration; such as the legal status of migrants, economic hardships and language barriers, as well as discriminatory treatment that they may face.

There is practically no information available on the health situation of migrants in Tunisia, or the health services available to them. There are no studies on the health of migrants, whether or not they are in a regular or irregular situation. However, systems for the collection of health data do exist. By adopting the MDGs on the right to health (MDGs 4,5,6,) and integrating these objectives into its planning process, Tunisia has been able to provide quantitative follow-up and evaluation of its national programs and actions, measured by a number of indicators to plot progress towards the stated objectives.<sup>35</sup> However, while the agreed indicators for assessing achievement of health targets increasingly reveal disparities and inequalities, the focus continues to be placed on disparities among regions, with little attention being paid to the needs of migrants. The indicators measure Tunisia's overall performance in respect of the established goals, but provide no information on the commitment, efforts deployed or results achieved vis-a-vis specific groups of people.

In order to monitor the MDGs, it therefore becomes necessary to systematically take into account migrants' access to health services. This implies that data on access to health services must be further

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<sup>32</sup> Report of the Special Rapporteur on the human rights of migrants, A/69/302, August 11, 2014, pg.59.

<sup>33</sup> Global consultation on migrants' health, organized by IOM, WHO and the Ministry of Health and Social Services of the Government of Spain: Health of migrants - The Way Forward, report of a global consultation, Madrid, Spain.

<sup>34</sup> The document further refers to the global nature of the right to health, as well as its determinants and the link to other human rights.

<sup>35</sup> Cf. National Program of Statistics and follow-up of the MDGs, mission summary document, 2006, UNDP, CNS.

broken down to take into consideration the status of migrants. This approach is not without its challenges with regard to the need to improve the means by which such data are collected.

Data from hospitals provide necessary and accurate information on actual access by migrants to various health facilities, as the information gathered from the users of such facilities include details pertaining to migration status, such as nationality and residence status in Tunisia.

The National Family and Population Office and the Department of Primary Healthcare of the Ministry of Health provide data on programs and measures undertaken to glean information and raise awareness of the situation of migrants, as well as to gather and process data on access to the various public health programs that the department oversees.

The ONFP and the National Public Health Institute may also conduct surveys to consolidate the data on migrants' access to health facilities.

The agreed indicators (annex 4) should make it possible to evaluate the accessibility of health-related goods and services to the migrant population, without discrimination and on an equal footing with Tunisians, as well as the accessibility of economic or financial assistance and availability of information on matters pertaining to health.

- Status of ratification of relevant international conventions.
- Recognition of the rights of all migrants under Tunisian domestic law.
- The inclusion of migrants, as a specific target group, in social assistance policies and programs aimed at reducing inequalities and inequitable access to health services and taking into consideration the social determinants of health.
- System for the collection and periodic publication of data on health services, disaggregated according to nationality and migration status.
- Proportion of legal decisions pertaining to migrants' right to health.
- Number of training programs for health workers, to provide instruction on cultural diversity, international migration and human rights.
- Number of campaigns targeted at migrant populations, to raise their awareness of their right to health.
- Rate of access of migrants to each public health facility compared to nationals.

#### **4. Indicators for the right to decent work for all migrants**

The fulfilment of the principles of equality and non-discrimination requires that the protection provided for in the conventions of the International Labor Organization in relation to the rights of workers be applied to all migrant workers<sup>36</sup> (the eight core conventions as well as others).

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<sup>36</sup> Migrant workers are also protected more specifically under ILO conventions on migrant workers (No. 143 and No. 97) as well as by the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. While Tunisia has not ratified these conventions, the national migration strategy makes reference to the objective of "protecting foreign migrants and asylum-seekers in Tunisia" and provides for actions to be taken to "revise the legislative texts (...) in harmony with the international conventions ratified by Tunisia and in keeping with the ILO convention on the protection of the rights of migrants," National Strategy op. cit.

The protection of migrant rights is a concern, given the need to prevent and minimize the risk of exploitation, abuse, and even mistreatment. Affording such protection is even more pressing in relation to migrant workers in an irregular situation.

The KNOMAD document outlines a list of indicators for measuring the right to decent work and the extent to which the right to work for all migrants is protected. These are based on ILO indicators on decent work, which are, in turn, a function of the strategic objectives of the ILO decent work agenda<sup>37</sup> and the general framework for measuring human rights of the Office of the Commissioner for Human Rights.

In Tunisia, the highly restrictive regulations governing work by non-nationals as well as the systematic failure to apply the relevant bilateral conventions (with Maghreb countries in particular) mean, in practice, that access to regular work is closed to a large number of migrants in Tunisia, namely those in an irregular situation. The lack of access to regular work also affects some migrants who hold a residence permit (husband or wife of Tunisians, students, Maghreb nationals) but are not authorized to work under the applicable conditions in the law on work of foreigners.<sup>38</sup> Irregular workers are generally among the categories of migrants most in demand by the informal sectors. However, as they are not covered under the right to work, the risk of exploitation is heightened.

The protection of the rights of “all workers, including migrants, particularly women and those in precarious employment” is provided for specifically in the SDGs. The protection of this right requires the establishment of reliable data on the rights status of these workers, particularly the most vulnerable among them, irregular workers and domestic employees.

Nevertheless, there is very little information on the status of the rights of migrant workers in Tunisia and, particularly of irregular workers.<sup>39</sup> The available estimates are approximate and inconclusive due to the absence of effective systems for collecting data on such workers. Several sources of information should be strengthened and mobilized for data collection in this area: the Labor Inspectorate, the General Directorate for Emigration and Foreign Labor of the Ministry of Vocational Training and Employment, interested civil society partners and associations.

Routine visits and targeted inspection campaigns are valuable mechanisms for data collection on migrant workers. Capacity building in this area needs to be undertaken and the legal framework needs to be revised to place emphasis on the role of the labor inspectorate as an agency that protects all workers.

Based on the foregoing, and taking account of the situation of migrant workers in Tunisia, the following indicators are proposed (see annex 5):

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<sup>37</sup> KNOMAD Working document, Op.cit ., pg.37.

<sup>38</sup> Migrants seeking asylum are now included in this category. The draft law on asylum in Tunisia is still under consideration by the Ministry of Justice. A law is needed to reflect the international commitment of Tunisia, which ratified the 1951 convention on the right of stay and right to work of refugees.

<sup>39</sup> The data available on labor immigration is limited to statistics on regular workers who are admitted to work in Tunisia and are sourced from the records from the Ministry of Vocational Training and Employment relating to the contracts of foreign workers who have been granted visas and the contracts of those who are exempt from the requirement of a work visa.

Cf., Kriaa (M), Information on labor migration in Tunisia, Decade of 2002-2012, IMO.

Status of ratification of ILO conventions and the 1990 United Nations Convention.

- Scope of recognition in national legislation of migrants' right to work, according to migration status and type of labor relations.
- Protection in domestic law of migrants' right to work: principle of equal treatment and obligation not to discriminate.
- Existence of case law recognizing the principle of equality in respect of the protection of rights.
- Existence of specific protection and a system to monitor the work conditions and rights of migrant domestic workers.
- Number of sensitization and information programs for migrants on the subject of their labor rights.
- Number of inspection campaigns that target sectors that employ foreign labor and rate of coverage of such sectors by the labor inspectorate.
- Number of programs designed to promote the unionization of migrants.
- Proportion of migrant workers whose labor rights have been violated, in relation to all workers.
- Estimated number of migrant worker in an irregular situation.

## **5. Challenges and Recommendations**

### **5.1 Gaps and challenges**

The new 2030 development agenda adopted a specific objective on combating and reducing inequalities within countries. Its targets include “empowering all persons and promoting their social and economic integration” without discrimination of any kind, including on the grounds of “their origin or economic or other status.”<sup>40</sup> This requires Tunisia to go beyond the indicators developed under the MDG framework to consider all types of vulnerability, including those linked to migration, in the various information collection schemes.

The institutional mechanisms in place for the collection of the statistical information necessary for implementing indicators on this new objective can be gleaned from the 2016-2020 national statistics program, established under the national development plan.<sup>41</sup> In addition, the national migration observatory has as one of its goals “the development of knowledge on migration.” Such knowledge and information should go beyond the statistics on migration flows, migration stocks and issues of economic development to include the situation of migrants and their access to fundamental rights.

The various stakeholders consulted in the preparation of this report point to the gaps and shortcomings, if not the complete lack of specific data on migrants in Tunisia. This is consistent with the general lack of data on the fulfillment of human rights in Tunisia,<sup>42</sup> but is more acute in relation to migrants as “a rights-

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<sup>40</sup> The new sustainable development agenda [www.undp.org](http://www.undp.org)

<sup>41</sup> Cf. Summary of the concept note of the Strategic Development Plan 2016-2020, September 15, 2015. Source: Ministry of Development.

<sup>42</sup> Cf., the deliberations of the training workshop on indicators to measure the observance of human rights, Tunis, May 19-21, 2015, Touihri Nadia (NIS), data sources, availability and coverage, May 20, 2015, unpublished.

Cf. Also, report of the committee for the elimination of racial discrimination, CERD/C/TUN/CO/ March 19-23 2009.

based approach to migration,” which is in fact a completely new approach for Tunisia.<sup>43</sup> The fact that the issue of protecting migrants’ rights was not regarded as a priority explains the gaps observed in relation to data collection in this area.

Published data on foreign populations capture aggregate figures on the number of immigrants and on the geographical distribution of the various communities of foreign nationals in Tunisia. Data published by various sources<sup>44</sup> and information available from national surveys did not provide a basis for evaluating the human rights situation of migrants in terms of their rights to health and education.

The data published by the national statistics institute (INS) on the basis of the General Census of Population and Housing are both general and summary, despite the exhaustive nature of the data collected on several different variables that were included in the surveys. Moreover, the effectiveness of the Census was constrained by the excessively long period between censuses and by the widely recognized limitations on capturing data on irregular migrants in such a census.

More frequent surveys conducted by the INS, namely the Population Employment Survey and the consumption and standard of living survey (5-yearly) are also inadequate to provide data on the migrant population, given the nature of the sample used. In addition, the national surveys for measuring access to rights to education and health, particularly the “survey on the situation of women,” multi-indicator cluster surveys conducted on a regular basis for a number of years<sup>45</sup> by the Ministry of Development and INS in collaboration with UNICEF, are also inadequate for the collection of data on migrants because of the problem identified above relating to the type of sample utilized. These surveys were designed to measure regional disparities and inequalities on an aggregate basis and are therefore not suited to revealing the particular situation of specific minority groups, such as migrants. This underscores the importance of and the need for targeted surveys. The relatively small size of the migrant population in Tunisia and their geographical distribution and concentration make it necessary to undertake surveys that target this population group using an appropriate sampling technique that will serve to complement and consolidate the data collected from administrative sources.

The availability of administrative data is also quite limited, notwithstanding the fact that the data collection system on the right to education is quite effective. The adoption of indicators on the enrolment rate of child migrants requires, in addition to the data collected by the Ministry of Education, inputs on the number of the school-age migrant population. This information should be communicated and disseminated by the Ministry of the Interior.

Currently, the information collected by this Ministry is not disseminated, even though border statistics are communicated to the INS.

The collection of data on migrants’ right to health is also greatly constrained by the fact that information on nationality is not harvested by health establishment during routine registration by users. At the same

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<sup>43</sup> Cf., ILO study Tunis, 2014, op. cit.

<sup>44</sup> Apart from the statistics on the number of child migrants in public educational institutions in Tunisia published by the Ministry of Education.

<sup>45</sup> MICS 1, MICS 2, MICS 3 and MICS 4.

time, epidemiological studies and national health reports focus on regional disparities and the socio-economic determinants of health from a global perspective<sup>46</sup> and fail to take account of the category of migrants.

It should be recalled that the problem of lack of information on access to health is a general one. This has been brought out in various reports, including that published in 2014 on follow-up to the MDGs in Tunisia.<sup>47</sup>

The reforms to be undertaken on the health information system include the introduction of variables on nationality and residence in Tunisia in the collection of data on users of the health services. These reforms are designed to ensure that data collection by health establishments is conducted on a systematic basis and to enhance the availability of regular disaggregated data on the category of migrants.

The need to strengthen the collection, processing analysis and dissemination of data on migrants at the administrative level is also applicable to the administrative authorities in the employment sector and the Labor Inspectorate.

The role of the labor inspectorate in the collection of data on migrants' work conditions in Tunisia is hampered at present by human resource constraints.<sup>48</sup> It is also limited by the legal requirement for the labor inspector to highlight cases of irregular work observed in the course of an inspection visit and to apply the sanctions provided for in relation to the discovery of an irregular worker,<sup>49</sup> without being empowered to report on the situation of their rights.

## 5.2 Recommendations

The following recommendations are proposed in relation to the adoption of the indicators measuring migrants' rights.

### ***In the short term:***

- Integration of follow-up on the situation of migrants' rights in the National Statistics Program (PNS), covering the period envisaged under the economic and social development plan. In addition, the systematic disaggregation of the data collected should be prescribed under the PNS as one of the priorities and guiding principles in the area of statistics management. This will, in turn, facilitate the integration of the SDGs into the national planning process. The PNS receives data from all public institutions that gather statistics and should, therefore, be in a position to contribute to the improvement in the collection of data on migrants from these public sources.

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<sup>46</sup> The document on social dialogue on health, which summarizes data from various government sources, including on health conditions and services in Tunisia, makes no reference to the situation of migrants. CF. Social Dialogue on National Health Policies and Plans, state of health of Tunisia.

<sup>47</sup> Op. cit.

<sup>48</sup> Source: Directorate General of the Labor Inspection.

<sup>49</sup> The Ministry of Social Affairs/State secretariat for Migration and Social Integration, the International Labor Organization, ILO Tunis and the OHCHR-Tunis office, plan to organize a tri-partite seminar to identify the concrete steps to be taken for the reform of legislation to improve the protection of migrant workers. This includes an examination of the reforms of the powers and role of the Labor Inspectorate in this area.

- Improvements to the collection of data by various ministerial department on access to services:
  - Training and sensitization on indicators for migrants' rights directed at stakeholders involved in data collection and officials in various agencies that have a role in the process.
  - Integration of variables linked to migration in the system for collecting data and access to different services.
  - Improving the level of support for data sources and processing.
  
- Strengthening coordination and the sharing of data among the different public bodies that collect statistics to consolidate the data collected and reconfigure the available information.
  - Harmonization of the definitions and concepts
  - Importance of dissemination of information managed by the Ministry of the Interior on the number of migrants in Tunisia, particularly irregular migrants, estimated by cross-referencing statistics on border entries and departures with those on the number of residence permits granted. The collection of data of the overall migrant population in Tunisia is key to the process of establishing process and outcome indicators, such as the ratios measuring the proportion of migrants with effective access to health and education services.
  
- Strengthening and improving complementary and alternative sources for collecting factual data on migrants' rights:
  - Consideration to be given by trade union structures to the treatment of migrant workers as a specific category and disaggregation of the information collected by the unions on the status of workers' rights, by migration status.
  - Involving civil society as a source of data on the situation of migrants in Tunisia, and strengthening their capacity.
  - Dissemination of the information collected and publication of the activity reports of these bodies.

***Follow-up on the right to health***

- Variables linked to migration, nationality and length of residence should be included in the mechanisms to collect data from the users of health services as well as in the procedures for monitoring the various national health programs. The confidentiality of the data must be guaranteed.
- The systematic publication of information on measures and programs on migrants' access to health.

***Follow-up on the right to education:***

- Improve the systematic collection of data on child migrants by educational institutions, by adding a variable on nationality to the questionnaire distributed to such institutions, in order to ensure that school statistics are disaggregated by nationality.
- Provide for the disaggregation of the data collected by the school social action units to reflect the nationality of the students and the migration status of the parents, and the publication of reports on the school social action plan.

***Follow-up on the right to decent work:***

- Strengthen the role of the Labor Inspectorate as a source of information on migrants' work and work conditions.
- Systematic publication of the reports of the Labor Inspectorate, including the disaggregation of information highlighting the situation of migrant workers from the perspective of their labor rights and an estimate of the number of irregular workers.

***In the medium term:***

- Reforms of the legislative provisions in order to ensure the separation of the labor inspection function from that of regular migration and labor control in order to improve the effectiveness of data collection on the status of the rights of all workers.
- Strengthening of the labor inspection corps to ensure that routine inspection visits are conducted and that surveys on working conditions, by employment sector and status of migrant work, are carried out on a systematic basis.
- Reform of legislative provisions that criminalize and impose an obligation to report irregular migrants; and measures to guarantee separation between health and education services and the immigration authority.

## **Annex 1**

### ***Conventions on the right to education***

- International Covenant on Economic, Social and Cultural rights
- Convention on the Rights of the Child
- Convention against Discrimination in Education, 1960.
- International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)

African Charter on Human and Peoples' rights

### ***Conventions on the right to health***

- International Covenant on Economic, Social and Cultural Rights

### ***Conventions on the right to decent work***

- (No. 87) Freedom of Association and Protection of the Right to Organize Convention, 1948
- (No. 98) Right to Organize and Collective Bargaining Convention, 1949
- (No. 29) Forced Labor Convention, 1930
- (No. 105) Abolition of Forced Labor Convention, 1957
- (No. 100) Equal Remuneration Convention, 1951
- (No. 111) Discrimination (Employment and Occupation) Convention, 1958
- (No. 138) Minimum Age Convention, 1973
- (No. 182) Worst Forms of Child Labor Convention, 1999
- (No. 189) Domestic Workers Convention
- (No. 97) Migration for Employment Convention, (revised), 1949
- (No. 86) Migration for Employment Recommendation (revised), 1949
- (No. 143) Migrant Workers (Supplementary Provisions) Convention, 1975
- (No.151) Migrant Workers Recommendation, 1975
- International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, (1990)

## Annex 2 Migrant Rights Indicators – Education

### a) Structural indicators

Juridical and institutional provisions that enshrine the right of all migrants to education, without discrimination.

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| <b>Indicator proposed by KNOMAD</b>        | <b>Indicator 1</b><br><i>Status of ratification of international treaties on the right to education</i> <sup>50</sup>   |
| <b>Definition</b>                          | <p>This indicator provides information on Tunisia’s commitment at the international level to guaranteeing the universal right to education.</p>   |
| <b>Analysis</b>                            | <p>The indicator measures the extent of Tunisia’s commitment at the national level to the right to education.</p> <p>Ratification of the treaty is an act of international law that demonstrates Tunisia’s commitment at the international level to the implementation of the measures that must be in place for the fulfillment of the recognized right.</p> <p>Of course, the objective is for all instruments that are relevant to the protection of migrants’ rights to be ratified. The indicator allows for special attention to be devoted to the conventions not yet ratified by Tunisia and facilitates full adherence to the relevant international instruments. Ratification is also an act of domestic law, which, in accordance with the 2014 constitution of Tunisia, brings the treaty into the country’s internal juridical order. Once ratified, the treaty becomes a part of Tunisian law and must be applied directly by the courts (art. 67 of the constitution). Nevertheless, the new Tunisian constitution provides for the primacy of duly ratified international instruments only in relation to legislative texts. Such instruments have a value that is lower than that of the constitution (art. 20 of the constitution).</p> |
| <b>Data collection sources and systems</b> | <p>United Nations database on multilateral treaties deposited with the Secretary General.</p> <p>Ratification law published in the Official Gazette of Tunisia JORT.</p>  |
| <b>Calculation method</b>                  | <ul style="list-style-type: none"> <li>- Indication of Tunisia’s status in relation to the treaty: signature-ratification.</li> <li>- Indication of the date of entry into force</li> <li>- Indication of the reservations entered</li> </ul>   |

<sup>50</sup> CF. see list in Annex

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| <p><b>Indicator proposed by KNOMAD</b></p> <p><b>Definition</b></p> | <p><b>Indicator 2</b></p> <p><b><i>Recognition and enactment in Tunisian law of the right to obligatory education for all, without discrimination on the basis of nationality and migration status.</i></b></p> <p>This indicator provides information on the level of commitment of the State to the effective enjoyment of the right to obligatory education for all, as reflected in its internal law, constitution and legislative texts.</p>   |
| <p><b>Analysis</b></p>  | <p>The principle of the right of every human being to education is upheld in the constitution of Tunisia and represents an important guarantee of this value in Tunisia’s juridical order. This is further borne out by new provisions in the constitution concerning the relationship between international and domestic law, and, more particularly, the number of international instruments ratified by Tunisia and brought into the country’s internal juridical order.</p> <p>The establishment of this right for the benefit of all migrants is a guarantee of its defensibility in law and its inviolability from challenge by all powers, including the legislature.</p> <p>Article 47 of the constitution concerning children’s’ rights is the constitutional basis for the right to education of all child migrants. It outlines the obligation of the State to guarantee the right of children to education and instruction: “the State provides every kind of protection to all children without discrimination and in keeping with the best interest of the child.<sup>51</sup>” While it does not speak specifically to the rights of child migrants, without discrimination on the grounds of migration status, the overall interpretation of the article affirms the principle.</p> <p>The legislative texts that address the right to education in Tunisia do not, nevertheless, recognize the right to education for all, without discrimination on the grounds of national origin. The law provides for “the fundamental right of all Tunisians without discrimination on the grounds of gender, social origin, color or religion.”<sup>52</sup></p> <p>The indicator also serves to evaluate the implementing regulations adopted by the authorities in relation to access to institutions of learning so as to determine whether there are any obstacles or indirect discriminatory practices that affect access to such institutions.</p> |

<sup>51</sup> The child protection code defines a child as a person who has not reached the age of 18 years.

<sup>52</sup> Considering that Article 1 of Law No. 2008-9 of February 11, 2008, modifies and completes framework Law No. 2002-80 of July 23, 2002 concerning education and learning, it would be necessary to adapt the legislation to the new constitution, particularly since it is the practice of the administration not to limit enrolment in basic or secondary educational institutions exclusively to Tunisian nationals or to impose any other administrative obstacles thereto.

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|                                  | <p>The right of all to education means that it is not the duty of the administrative authorities (directors of schools, department of the Ministry of Education) to monitor the migration status of foreign children or their parents to ensure compliance with migration legislation, or to limit, directly or indirectly, access to education.</p> <p>In effect, the recognition in principle of the right of all to education can be thwarted in practice as a result of administrative measures that establish a link between authorities responsible for education and those in charge of monitoring migration. The principle can also be derailed by requiring migrants in a regular situation to provide documents that they cannot obtain such as a residence certificate, birth certificate, passport or residence permit.<sup>53</sup></p> <p>In practice and notwithstanding the requirement to produce certain documents to support the enrolment of pupils, such as birth certificates or proof of address, this should not prevent the administration from allowing foreigners from being registered, even where they cannot furnish such documents.<sup>54</sup></p> <p>The codification and publication of such procedures would facilitate the dissemination of information to migrants on their right of access to educational institutions, promote clarity with regard to the procedures and help to identify any practical obstacles to the enjoyment of the right. The lack of published and readily accessible information (administrative guidelines are not made public) on the enrolment procedures, for example, the list of supporting documents that must be submitted and the requirement to consult the regional educational authorities before registering the child of a migrant in school, could contribute to the fear factor and dissuade certain migrants from enrolling their children in school.</p> <p>Access by foreigners to public institutions of higher learning in Tunisia is based on cooperation agreements between Tunisia and the countries of origin and are subject to the agreed quotas. Access to universities is afforded on the basis of the application of the candidate and the authorization of the director general of the institution of higher learning who authorizes the application.</p> |
| <p><b>Calculation method</b></p> | <p>Three elements are identified:</p> <ul style="list-style-type: none"> <li>- Recognition in the constitution of the universal right to education, without discrimination,</li> <li>- Recognition in legislation of the right of access to education by all,</li> </ul>  |

<sup>53</sup> Committee for the protection of the rights of migrant workers, General Comments No. 2, § 19.

<sup>54</sup> Where no documents are available, the presentation of an honor certificate by the parent is sufficient to proceed to registration. Source: Ministry of Education.

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|  | <ul style="list-style-type: none"> <li>- Existence of administrative obstacles that affect access to education by all migrants.</li> </ul>  |
| <b>Data collection sources and systems</b> | <p>Tunisian law sources:</p> <ul style="list-style-type: none"> <li>- 2014 Tunisian Constitution<sup>55</sup></li> <li>- JORT database: <a href="http://www.iort.gov.tn">www.iort.gov.tn</a></li> </ul> |

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| <b>Indicator proposed by KNOMAD</b> | <p><b>Indicator 3</b></p> <p><i>System for the collection and publication of periodic data on access to and conditions of education, disaggregated by nationality and migration status (status of parents).</i></p>   |
| <b>Definition</b>                   | <p>The indicator provides information on the extent to which the situation of migrants and migrants in irregular situation is taken into account in the collection of data on access to education and conditions of education.</p>  |
| <b>Analysis</b>                     | <p>This indicator serves to determine the existence of tools to monitor and evaluate the extent to which all migrants, even those in irregular situation enjoy the right to education.</p> <p>In addition to providing information on the outlook for evaluating the enjoyment of this right, the existence of a system to collect such data can also facilitate better understanding of the challenges that the situation of migrants poses to the national educational system.</p> <p>The Ministry of Education compiles annual statistics<sup>56</sup> and a school census that includes all educational institutions – public and private primary schools, high schools, colleges and secondary schools.<sup>57</sup></p> <p>Data collection is effected on the basis of information forms, a Ministry questionnaire distributed to the directors of educational institutions and updated each year to record changes in the educational system, take account of observations</p> |

<sup>55</sup> The decisions of the constitutional court, once established, will also represent a possible source for evaluating the guarantees in place in relation to the rights of migrants. The law on the organization of the constitutional court is currently being developed by the assembly of people’s representatives. The constitutional court is competent to monitor the constitutionality of draft legislation and that of laws enacted by way of exception (Art. 120 of the constitution).

<sup>56</sup> Cf., circular of the Ministry of Education No. 90-56-2015, on school statistics for school year 2015-2016. Statistics are published and accessible on the Ministry’s website.

<sup>57</sup> Community colleges are not covered by the census. These are private educational institutions with specific programs and study regimes that are designed to prepare for foreign examinations. Cf., the law of February 11, 2008, amending and complementing framework Law No. 2002-80 of July 23, 2002 on education and scholastic instruction, art. 40.

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|  | <p>provided by the users of the statistics and reflect any specific data needs that might be identified by the statistical authorities, particularly the national statistical council.</p> <p>A report on the findings of the scholastic statistics is then prepared each year, with data on the following: access to education and conditions of education for Tunisian children and adolescents at various levels (pre-school, primary, secondary); the change in the number of schools, pupils and teachers; enrolment rate for children of 6 years of age and between 6 and 11 years of age; the complement of teachers and pedagogical inspectors; academic results; rate of school dropout, etc.. The data analyzed are broken down by age, gender, region and locale. (rural/urban).</p> <p>The form for the collection of data on “foreign students” that is also distributed at the start of each school year to all basic educational institutions and public and private secondary schools contains questions on the grade of schools in primary preparatory and secondary schools, and the distribution of pupils by regions (governorate), school and nationality.</p> <p>The mechanism instituted by the Ministry of Education could allow for the exhaustive breakdown of all data gathered from the enrolment forms distributed to the heads of educational institutions. The inclusion of questions on the nationality and migration status of the child could help provide more data on child migrants’ access to education. Currently, the breakdown of information is restricted to nationality and provides no information on the different categories of migrants by migration status, as such information is not required when student records are being registered.</p> <p>For data on the level of public sector schooling of child migrants, the challenge is to determine the migrant population of school age.<sup>58</sup> This, in turn requires that reliable data be available on the total number of foreign students resident in Tunisia (whose parents are in a regular or irregular situation).</p> <p>This data collection system and the public school statistics do not provide qualitative data on the enjoyment by migrants of the right to education or of the particular difficulties that child migrants face, such as challenges with integration, violence, racism, and support and assistance.</p> <p>The school life department of the Ministry of Education has a system for data collection on the school environment. However, such data are neither disaggregated by nationality nor published. The specific studies that have been conducted to evaluate the conditions of access to education in Tunisia,<sup>59</sup> do not provide specific information on the situation of child migrants.</p> |
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<sup>58</sup> Population between the ages of 6 and 16 years in compulsory education.

<sup>59</sup> MICS studies, analysis of the situation of children in Tunisia 2012, UNICEF. National Report on Unschooling Children.

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| <b>Calculation method</b>                  | <ul style="list-style-type: none"> <li>- Evaluation of the existence or not of variables on migration in the data collection forms and questionnaires.</li> <li>- The existence or otherwise of published studies on access to and the conditions of education of child migrants.</li> </ul>   |
| <b>Data collection sources and systems</b> | <p>Examination of the questionnaires utilized for the collection of data on access to education.</p> <p>The report on school statistics published by the general directorate of studies, planning and statistics of the Ministry of Education may be viewed at the following site:</p> <p><a href="http://www.education.gov.tn/article-education/statistiques/stat2014-2015:Livre-stat.pdf">www.education.gov.tn/article-education/statistiques/stat2014-2015:Livre-stat.pdf</a>.</p> <p>Data generated by the school life department of the Ministry of Education.</p> <p>Specific studies conducted and published by the Ministry of Women, international organizations (UNICEF Tunisia), civil society associations (Association for the Protection of the Rights of Children).</p> |
| <b>Periodicity</b>                         | <ul style="list-style-type: none"> <li>- On an annual basis for administrative sources</li> <li>- Ad hoc surveys</li> </ul>  |
| <b>Disaggregation</b>                      | <ul style="list-style-type: none"> <li>- By nationality.</li> <li>- By migration status.</li> </ul>  |

b) Process indicators

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| <b>Indicator proposed by KNOMADD</b> | <b>Indicator 4</b><br><i>Percentage of public expenditure dedicated to the promotion of the right to education of child migrants.</i>  |
| <b>Definition</b>                    | Percentage of allocations in the budgets of the Ministries of higher learning, national education and social services that are earmarked for educational support programs for migrants.  |
| <b>Analysis</b>                      | The indicator reveals the level of resources provided for the realization of the right of access and for the implementation of programs to eliminate obstacles to the effective enjoyment of this right. This includes training programs in Arabic (particularly for child migrants from Sub-Saharan Africa) and French, which is utilized in the Tunisian educational system as a second language, and as the language of instruction for science. The French language can present difficulties for a number of children of migrants (Syrian, Libyan) who would have started their schooling in |

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|                           | <p>their non-francophone countries of origin. The process of adapting teaching programs to the specific concerns and needs of the children of migrants requires an appropriate budget allocation.</p> <p>In addition to the financial commitment of the State to the realization of the objective of effective access to education for this vulnerable group, the indicator also serves to reflect the extent to which the specific needs of this population group as rights-holders are recognized. The indicator can be difficult to calculate, as certain programs are meant to be applied generally for the support of vulnerable groups, such as the program of support for school children. However, while such program also benefits child migrants, they are not identified as a specific line item on migrants in the budget. This underscores the importance for ministries departments to provide detailed data on the financing of these programs.</p> |
| <b>Calculation method</b> | <p>The indicator is calculated by examining the budgets of the Ministry of Education and the Ministry of Social Affairs, and is quantified separately in respect of each Ministry. The indicator is based on the ratio between the total expenditure allocated to education programs for migrants (numerator) and the overall budget of the Ministry.</p>  |

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| <b>Indicator proposed by KNOMAD</b> | <p><b>Indicator 5</b></p> <p><b><i>Enrolment rate of child migrants in Tunisian Educational Institutions, by level and type of institution.</i></b></p>   |
| <b>Definition</b>                   | <p>The indicator measures the proportion of child migrants enrolled in Tunisian education institutions (by type of institutions) compared to the total number of the migrant population of school age.</p>  |
| <b>Analysis</b>                     | <p>The indicator measures the effective access of migrants to the right of education, by determining the ratio between the number of children accessing education and the total number of eligible child migrants and child migrants of school age.</p> <p>The relatively low number of foreign pupils enrolled in Tunisian schools as well as the relatively small size of the migrant community as a whole mean that it is more important and meaningful to measure the enrolment rate of child migrants than to record the proportion of migrants in relation to the total number of children enrolled in Tunisian institutions.</p> |
| <b>Disaggregation</b>               | <p>The disaggregation of the indicator by type of establishment (public, private, community) is key, as it measures the access of migrants to public schools, and by extension their access to free education. This is broken down further to highlight</p>   |

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|  | the most vulnerable category of migrants, namely those in an irregular situation and asylum-seekers.   |
| <b>Calculation method</b>                  | Numerator: the number of child migrants enrolled by type of institution.<br>Denominator: number of child migrants of school age (between 6 and 16 years of age).   |
| <b>Data collection sources and systems</b> | <p>The data provided by the general directorate of studies, planning and statistics of the Ministry of Education and the number of child migrants enrolled in private and public schools is available by instructional cycle but could be disaggregated further by level. Currently, children enrolled in community schools are not included in the data. This should be corrected, especially since these schools require the authorization of the Ministry of Education and are catalogued by the Ministry. Data on the migrant population of school age could be obtained from the general population and housing census. The data could be supplemented and updated by the information in the Civil Registry on children born in Tunisia, since it is a requirement for such births to be systematically declared and registered.</p> <p>In order to adapt and calculate this indicator, it is necessary to use the data of the Ministry of the Interior on entries, departures, deaths, and birth of foreign children for statistical analysis. In the same way, data captured through the system of residence permits must be effectively utilized and data on the migrant population, disaggregated by age and migration status, must be published.</p> <p>The difficulty of applying this indicator or at least the significant margin of error to which it is subject, stems from the difficulty of determining with any certainty the total number of child migrants of school age, whose parents are in an irregular situation in relation to their entry and/or stay in Tunisia.</p> <p>The adoption of the indicator requires that the data in possession of or available to the Ministry of the Interior on the size of the migrant population and its disaggregation by migration status be communicated to other Ministries, in this case, the Ministry of Education. The data should also be published.</p> |

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| <b>Indicator proposed by KNOMAD</b> | <b>Indicator 6</b><br><i>Proportion of child migrants brought under the care of the school social action program (PASS) in relation to national children.</i> |
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| <b>Definition</b>         | The indicator serves to measure the proportion of child migrants that have been taken into care as a result of the interventions effected under the PASS system, compared to national children that received the same type of PASS assistance.   |
| <b>Analysis</b>           | <p>The indicator measures the extent to which there is equity in the efforts deployed to tackle the challenges of social adaptation that child migrants face. It also provides information on the measures put in place to assist students in difficult situations and whether these measures are applied on an equitable basis to child migrants.</p> <p>PASS was designed to promote equity and enhance the quality of the education system by putting in place multi-disciplinary school social action units that would “intervene to tackle the difficulties of social adaptation in schools and (...) to take into care pupils who have difficulty learning and/or are experiencing situations that could hamper or otherwise alter their course of study.”<sup>60</sup></p> <p>Student support units have been set up in schools in 2015 in order to promote coherence among all the structures that play a role in this area.<sup>61</sup></p> <p>A number of factors justify the need for migrants to be particularly targeted under this program. These include the difficulties that child migrants face in adapting, because of linguistic problems or problems of integrating in a foreign environment or coping with social and family challenges. The indicator measures the extent to which such programs target child migrants.</p> <p>The indicator provides information on the proportion of child migrants that are taken into care under the PASS system as a result of the intervention of the support units in schools, compared to Tunisian children.</p> |
| <b>Calculation method</b> | <p>Given the relatively small number of child migrants as a proportion of national children, the ratio (child migrants assisted/total number of children assisted by PASS) is neither relevant nor significant.</p> <p>For this reason, the indicator is calculated on the basis of the ratio between the number of child migrants that are supported under the program and those that were the subject of some kind of intervention; and the number of Tunisian children supported under the program versus the number of Tunisian children who were the subject of intervention.</p>   |

<sup>60</sup> Analysis of the situation of children in Tunisia, 2012, UNICEF report, pg.112.

<sup>61</sup> CF. joint circular note from Ministry of Social Affairs, Ministry of Education and the Ministry of Health on January 22, 2015 on the establishment of student support units in schools.

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| <b>Data collection sources and systems</b> | Data collected by the general school life department of the Ministry of Education and the data available from the Ministry of Social Affairs regarding the number of students who received intervention from the student support units and the number of students who went on to receive coverage under the PASS as a result of such interventions, disaggregated by the nationality of the child. |
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c) Outcome indicators

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| <b>Indicator proposed by KNOMAD</b>        | <b>Indicator 7</b><br><b><i>The percentage of non-national children enrolled in basic and secondary education and completing the studies for each cycle.</i></b>   |
| <b>Definition</b>                          | The indicator provides information on the proportion of child migrants enrolled in primary, college and secondary institutions that have completed the required studies.   |
| <b>Analysis</b>                            | <p>The compulsory education completion rate illustrates the extent to which the obligation to guarantee the right of compulsory elementary education to all is being fulfilled. Compulsory education in Tunisia covers the two levels of the basic instructional cycle. The completion rate for secondary studies measures the implementation of the right to non-compulsory education. The completion rate for the various study cycles is established by the Ministry of Education (ME) for the three instructional cycles. For Tunisian primary schools, the completion rate for Tunisian children is compiled from data collected by the Ministry of Education and broken down into two complementary indicators: completion of the 5<sup>th</sup> year of primary for international comparability, where the cycle is 5 years; and completion of the 6<sup>th</sup> and final year of primary.</p> <p>For the purposes of this indicators, the Ministry of Education records the number of students that have completed years 5 and 6.<sup>62</sup></p> |
| <b>Calculation method</b>                  | The ratio between the number of child migrants who have completed the final years of the 5 and 6-year cycles and who have not repeated versus the number of child migrants registered in the year corresponding to the first year of the cycle.  |
| <b>Data collection sources and systems</b> | Data collected from schools by the Ministry of Education. This indicator could be established by including a section on “nationality” in the various forms distributed to schools for the collection of statistics.  |
| <b>Periodicity</b>                         | Annual   |

<sup>62</sup> National MDG Monitoring Report, 2013, op.cit. pg.66.

### Annex 3 Migrant Rights Indicators – Health

#### a) Structural indicators

Juridical framework that guarantees and protects the right of migrants to health and its field of application.

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| <b>Indicator proposed by KNOMAD</b>        | <b>Indicator 1</b><br><i>Status of ratification of relevant international conventions</i> <sup>63</sup>  |
| <b>Definition</b>                          | This indicator provides information on Tunisia’s commitment, at the international level, to the guarantee of the universal right to health.  |
| <b>Analysis</b>                            | The indicator serves to determine the level of Tunisia’s commitment in the international context to the right to health. The existence of such an international obligation means that the State must adopt the necessary measures in its internal juridical order to make possible the implementation of the international obligation. |
| <b>Calculation method</b>                  | Indication of the status of Tunisia in relation to the treaty: Signature-Ratification<br>Indication of the date of entry into force<br>Indication of the reservations entered.   |
| <b>Data collection sources and systems</b> | United Nations database on multilateral treaties deposited with the secretary general. <a href="http://untreaty.un.org">http://untreaty.un.org</a><br>JORT, <a href="http://www.iort.gov.tn">www.iort.gov.tn</a> , ratification law.   |

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| <b>Indicator proposed by KNOMAD</b> | <b>Indicator 2</b><br><i>Recognition of the right to health for all migrants in Tunisia’s domestic law.</i>  |
| <b>Definition</b>                   | The indicator provides information on the existence of the principle of the right of universal access to health, without discrimination of any kind in domestic law. |

<sup>63</sup> Cf., see list in Annex.

Cf., for the analysis of the indicator, the same considerations as those used for the right to education-indicator 1, are used.

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| <p><b>Analysis</b></p> | <p>The indicator measures the degree of commitment of the State, as reflected in its internal law, to guarantee the right to health of every person on its territory or under its jurisdiction, without discrimination on the grounds of nationality or legal status. This indicator requires that an evaluation be made of the Tunisian constitutional law on the subject.</p> <p>The right to health is recognized as being inherent to each human being. Nevertheless, there are no references to the prohibition of discrimination on the basis of nationality. On the contrary, the definition of the State’s obligation on the subject is quite ambiguous, as it makes reference to the notion of “citizen” as holder of the right.<sup>64</sup> The idea of citizenship is generally associated with nationality. It will be up to the constitutional court, the legal provisions for the organization of which are currently being developed, to remove this ambiguity and to make explicit the right of access of non-nationals to the various forms of healthcare.</p> <p>The affirmation of the right of children to the protection of their health is, on the other hand, more clearly articulated, as the State’s obligation to protect the health of all children, without discrimination, is provided for.</p> <p>The indicator on the existence of constitutional guarantees of the principle is of course an important one, in principle. However, in order to evaluate whether there are juridical obstacles to the enjoyment by different categories of migrants of effective access to health services, one must examine the regulations governing the organization and operation of the health structures and services. The legislative texts that are relevant to this indicator are:</p> <ul style="list-style-type: none"> <li>-Law texts expressly recognizing the right to health of all migrants, regardless of their status.</li> </ul> <p>The absence of such a provision may, in effect, lead to a limitation of effective access to certain forms of healthcare, even in cases where there is no obstacle in law. It is often reported that healthcare workers refuse to perform certain functions out of fear arising from by the absence of a clear legal framework.<sup>65</sup> This underscores the need for a law that specifies the scope of the right of access. This right should not be restricted to emergency care, but should be extended to preventive and curative treatments available in various types of healthcare services. They should be afforded to all migrants, regardless of their juridical status.</p> <ul style="list-style-type: none"> <li>-Provisions on conditions of access as defined in the law on the organization of Tunisian healthcare facilities. There are no specific provisions on migrants in</li> </ul> |
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<sup>64</sup> Article 38 “health is a right for each human being. The State guarantees preventive and curative healthcare for each citizen”

<sup>65</sup> It is the case, for example, that migrants have access to all forms of healthcare on sexual and reproductive health, but not to voluntary termination of pregnancy, source: National Family and Population Office (ONFP).

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|   | <p>Tunisia’s health legislation. Nevertheless, the general legislative text, the law on the organization of healthcare<sup>66</sup> affirms the right of all to health protection and to the services offered by the public and private healthcare and hospital structures and services. The general internal regulations of hospitals, institutions and specialist centers that fall under the Ministry of Public Health<sup>67</sup> prohibit public hospitals and health centers from practicing any form of discrimination in relation to the provision of healthcare to the sick.</p> <p>In the case of emergency care, the right of universal access is upheld in these regulations through provisions that require that care be provided to the sick without the need for the presentation of identification papers or the payment of fees.</p> <ul style="list-style-type: none"> <li>- Texts recognizing the right to health insurance: the existence of the recognition in Tunisian law of the right of migrants to health insurance, without discrimination on the grounds of migration status, can be determined by examining the legislation in this area and by looking at the terms and conditions applicable to beneficiaries of such coverage.</li> </ul> <p>This also allows the financial accessibility of health to be measured, a fundamental aspect of the recognition of the right of access to health.</p> <p>Any legislation that imposes conditions on effective access to health insurance, on the grounds of nationality or the residence status of migrants, is tantamount to unjustified discrimination and disregard for the right of access to health for all. In Tunisia, health insurance is a component of social security (CNSS). This means that only those who are registered with the national social security fund can benefit from health insurance.<sup>68</sup> In order to register with the CNSS, the employer must file a compulsory declaration with the result that coverage is limited to migrant workers in a regular situation and in respect of whom the employer<sup>69</sup> has filed a declaration, as well as to students enrolled in Tunisian institutions. In summary, this represents discrimination against and the limitation of access for a large segment of migrants.</p> |
| <p><b>Data collection sources and systems</b></p> | <p>Tunisian Constitution, January 2014.</p> <p>JORT database: <a href="http://www.iort.gov.tn">www.iort.gov.tn</a></p> <p>Law on organization of the health sector.</p> <p>Legislation on the organization and operational regime for health insurance.</p>  |

<sup>66</sup> Law No. 91-63 of July 29, 1991, art.1, 2, art. 15.

<sup>67</sup> Decree No. 81-1634 of November 30, 1980.

<sup>68</sup> Law No. 81-1634 of December 14, 1960 on the organization of social security schemes, Law No. 2014-71 of August 2, 2004 on the establishment of the health insurance scheme.

<sup>69</sup> The regular status of a foreigner means that he holds a residence permit authorizing him to work.

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| <p><b>Indicator proposed by KNOMAD</b></p> | <p><b>Indicator 3</b><br/> <i>Inclusion of migrants as a special target group in social assistance policies and programs aimed at reducing inequalities and inequitable treatment in the health sector, taking account of the social determinants of health.</i></p>  |
| <p><b>Definition</b></p>                   | <p>The indicator provides information on the extent to which the particular vulnerability of migrants is taken into account in the policies and programs put in place by the Ministry of Social Affairs and the Ministry of Health to address social inequalities and ensure access to healthcare by the most vulnerable.</p>   |
| <p><b>Analysis</b></p>                     | <p>This indicator evaluates whether Tunisia has taken account of migrants in the programs that it implements to address the social determinants of health. Are these programs designed exclusively for Tunisians? Or do they contemplate all the possible situations of exclusion and vulnerability in the population?</p> <p>The aim of universal health coverage is to ensure that the entire population has access to different kinds of healthcare, based on need rather than on financial capacity.</p> <p>Recognition of the right to health means that all cases of vulnerability in the population must be taken into account and the criterion of nationality should not be a factor. In order to establish this indicator, it is necessary to examine the extent to which migrants are included in the different programs being implemented by the Ministry of Social Affairs in coordination with the Ministry of Health, to reduce unequal treatment in access to health:</p> <ul style="list-style-type: none"> <li>-The free medical assistance program for the poorest and most vulnerable population categories. This program provides for a regime of free healthcare (RGS) at public institutions for the poorest population groups and a regime of reduced fees (RTR) for vulnerable, low-income individuals.<sup>70</sup></li> <li>-The program of free healthcare for children born out of wedlock and for those without family support.</li> <li>-The system of free access to certain public health programs: the anonymous HIV testing program, services provided by the National Family and Population Office etc....</li> </ul> |

<sup>70</sup> Decree No. 98-409 of February 18, 1998 establishing the categories of beneficiaries eligible for reduced fees for treatment and hospitalization in public health facilities as well as the terms and conditions of the admission and care and the applicable fee structure, as amended by decree No. 2012-2522 of October 16, 2012.

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| <p><b>Calculation method</b></p>                  | <p>In order to assess the extent to which migrants are included in public health programs aimed at reducing inequalities, one must examine the legal texts that outline the plans in place for vulnerable target groups and the administrative documents that describe social programs and policies on health.</p> <p>In order to establish this indicator, the following points should be examined:</p> <ul style="list-style-type: none"> <li>- Identification of national programs that address inequalities in access to health;</li> <li>- The definition of the scope of application of the program: description of target groups in the operating manuals and whether the nationality is specified as one of the prerequisites for eligibility under the program<sup>71</sup>;</li> <li>- The review of the conditions and procedures for benefitting under the program. The requirement to produce certain documents to complete the administrative process granting access to the assistance program may have the effect of excluding migrants.</li> </ul> |
| <p><b>Data collection sources and systems</b></p> | <p>Ministry of Social Affairs (General directorate of social protection/social welfare department), Ministry of Health (database of the Ministry of Health, which can be consulted at: <a href="http://www.santetunisie.rns.tn">www.santetunisie.rns.tn</a>).</p>   |

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| <p><b>Indicator proposed by KNOMAD</b></p> | <p><b>Indicator 4</b><br/><i>System to collect and publish periodic data on health conditions and services, broken down by nationality and migration status</i></p>   |
| <p><b>Definition</b></p>                   | <p>This indicator provides information on the existence of data collection systems on health conditions and services that take migrant population specifically into account. It entails evaluating the extent to which health data in Tunisia are disaggregated by Nationality or migration status.</p>   |
| <p><b>Analysis</b></p>                     | <p>The fact that certain categories of migrants are highly vulnerable, particularly those in an irregular situation and the precarious situation affecting such categories as a result of the provisions in Tunisian legislation on the right of foreigners to reside and work, means that priority consideration should be accorded to such groups and that they should be taken into account in data collection systems on health</p> |

<sup>71</sup> Reference to Tunisian nationality as an eligible condition to benefit from the program may not be provided for in the constituent text of the assistance scheme, but may be introduced in the implementation texts: For example, the 1998 decree establishing the categories entitled to free healthcare do not make reference to the requirement for Tunisian nationality of beneficiaries, unlike the circular on the implementation of the decree, a joint circular of the Ministry of the Interior/ Ministry of Social Affairs/Ministry of Health.

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|   | <p>conditions and services. The absence of such a mechanism or the failure to disaggregate the data makes it impossible to measure the efforts and achievements of the State in this area and demonstrates that health policies and systems are not aligned<sup>72</sup> with the need to attend to the rights of migrants. The collection of aggregate data can, as a general principle, serve to mask inequalities and discrimination.</p> <p>The existence of such systems does, on the other hand, help government officials and health workers to become aware of and sensitive to the rights of all migrants.</p> <p>The data collected should reflect the degree of access to different health facilities and services, for both preventive and curative treatments. Such data should be collected by health establishments and collated from the surveys conducted on problems in the health sector and the determinants of health. Unlike in the education sector, where exhaustive and regular data collection systems have been put in place, data on health conditions and services are less readily available and their collection is not systematic.<sup>73</sup></p> |
| <p><b>Calculation method</b></p>                  | <p>The value of 1 is assigned in cases where the sources of data on health conditions and services include at least one variable linked to migration (foreign resident, legal status); in the absence of such variables, the value of 0 is applied.</p>   |
| <p><b>Data collection sources and systems</b></p> | <p>In order to establish this indicator, it is necessary to examine the extent to which the different data sources on health conditions and services include variable linked to migration (nationality and residence, migration status); there are several sources from which data can be collected on access to healthcare and on health conditions and services.</p> <p>The main mechanisms are:</p> <ul style="list-style-type: none"> <li>- Data collected by public health facilities representing the three levels of healthcare, as well as data from private health institutions that may be accessed by the department of primary healthcare, department of school and university medicine of the Ministry of Health and the National Family and Population Office (ONFP).</li> <li>- ONFP annual reports</li> <li>- Reports on the state of health in Tunisia and specialized studies.</li> </ul> <p>The inclusion of parameters linked to migration in the collection of information on the users of public and private health services, such as nationality and residence</p>   |

<sup>72</sup> C.F. on health systems that take account of the needs of migrants, Health of Migrants, The Way Forward, WHO, 2010

<sup>73</sup> National Program of Statistics and monitoring of the MDGs, Summary Mission Document, 2006, PNUD, CNS.

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|  | <p>(foreign resident in Tunisia), facilitates the disaggregation of administrative data by nationality. On the other hand, it would perhaps be inappropriate to collect data on migration status from such sources, as this could result in the application of discriminatory practices and deter or limit access by migrants to health service.</p> <p>Furthermore, studies on migrants, with a greater degree of disaggregation by migration status, could be carried out by the National Family and Population Office and the National Public Health Institute.</p> |
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b) Process indicators

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| <b>Indicator proposed by KNOMAD</b>        | <b>Indicator 5</b><br><i>Proportion of judicial decisions on the right of migrants to health.</i>  |
| <b>Definition</b>                          | The indicator provides information on the proportion of judgments relating to the right of migrants to health in comparison with the general number of litigation proceedings on the right to health. It assesses the extent to which migrants have access to legal redress in asserting their right to health.  |
| <b>Analysis</b>                            | Access to effective means of judicial redress is an indispensable condition for the implementation of the recognition of a right. In the fulfillment of fundamental rights, recourse should be available to all without discrimination.  |
| <b>Calculation method</b>                  | The indicator represents the ratio between the number of judicial and administrative judgments handed down by Tunisian courts with respect to migrants' right to health and the total number of legal judgments on the right to health.  |
| <b>Data collection sources and systems</b> | <p>The indicator is based on data collected by the Ministry of Justice from various judicial districts and from the records drawn up by administrative judges on decisions taken by administrative courts.</p> <p>There are a number of difficulties that undermine the capacity of the Ministry of Justice to collect data. This also affects the availability of data. The process currently being used involves the manual collation of data by court offices. However, the process is not implemented on a systematic basis and is limited to general headings.</p> <p>Specific reference to the parameter of "nationality" in the judicial decisions are usually made in relation to certain thematic issues that require close monitoring and follow-up. Such issues are generally linked to topics of national interest (the prevalence of crime in a particular community, clandestine immigration and human</p> |

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|                       | <p>trafficking). The Ministry of Justice is taking steps to reform the information system in place for capturing data on court decisions.<sup>74</sup> Greater awareness of the need to monitor the enjoyment of rights by migrants could lead to the inclusion of certain variables in the classification of court decisions, such as the subject matter of the action, the foreign nationality and residence in Tunisia of the claimant and the status of the plaintiff. This will, in turn, require the allocation of greater human and logistical resources for the implementation of enhanced data collection procedures.</p> <p>The system to collect data on the decisions handed down by administrative judges in relation to public health service can draw on the database that lists the rulings of administrative tribunals. This database is compiled from the reports provided by the judges themselves, but the information and classification criteria are not standardized. The administrative tribunal also issues an annual report that is not published.<sup>75</sup></p> |
| <b>Periodicity</b>    | Data gleaned from annual reports  |
| <b>Disaggregation</b> | It would be useful to disaggregate the indicator by nationality of migrant  |

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| <b>Indicator</b>  | <p><b>Indicator 6</b></p> <p><b><i>Number of training programs for health programs on cultural diversity, international migration and human rights.</i></b></p>   |
| <b>Definition</b> | The indicator provides information on the efforts made to sensitize health workers on the human rights of migrants and more specifically, the right of migrants to health.  |
| <b>Analysis</b>   | It is often the case that the absence of judicial impediments to access the right is not sufficient in itself to ensure effective fulfillment of that right. Discrimination may occur in some cases as a result of the behavior of health workers who are poorly trained or insufficiently aware of the requirement not to discriminate and to respect migrants' human rights. The measurement of the efforts made to impart training regarding the rights of migrants and to ensure that there is greater awareness of and institutionalization of a culture of tolerance and diversity is an important factor for evaluating the implementation by the state of the obligation not to discriminate. Such discrimination often results from certain practices or from "de facto discrimination meted out by individuals, groups or organizations." <sup>76</sup> |

<sup>74</sup> Source: Ministry of Justice, General inspectorate.

<sup>75</sup> Source: magistrate of the administrative tribunal.

<sup>76</sup> CERD observations, Examination of the Tunisia report, 2009, op.cit. §12.

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|  | The achievement of effective access by migrants to health entails not only the negative obligation not to discriminate in terms of conditions of access. It also requires that the concept of equality be respected, by taking action to address instances of stigmatization, to promote greater awareness of the right to equality and non-discrimination of any kind and by being attentive to “the way in which this issue should be dealt with in any practical situation.” <sup>77</sup> |
| <b>Data collection sources and systems</b> | Data available from hospitals and regional health departments on continuing training courses organized.   |

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| <b>Indicator proposed by KNOMAD</b> | <b>Indicator 7</b><br><b><i>Number of campaigns for disseminating information on the right of the migrant population to health</i></b>   |
| <b>Definition</b>                   | It provides information on efforts made to disseminate information to migrants on their right to health and to have recourse to health services.   |
| <b>Analysis</b>                     | <p>The inaccessibility of information may, in practice, be an obstacle to the enjoyment of the right to health. For this reason, it is crucial to evaluate the measures put in place for disseminating this information among migrant populations. It is equally important to take account of the specificity of this community (geographical distribution, tracking the areas of concentration of migrant communities, linguistic specificity) in sensitization campaigns on health and on available health programs.</p> <p>The importance of information on the right to health is recognized in Tunisia. In terms of the way that the administration of health is organized in Tunisia, the primary healthcare<sup>78</sup> department is the entity responsible for implementing this right. It is supposed to do so by organizing and monitoring the implementation of health programs and information as well as by evaluating the impact of these programs on the behavior of the population. The Ministry has also created a support unit for partnership and collaboration with organizations and associations active in the field of health.</p> <p>A number of associations are seized of the importance of disseminating such information in Tunisia and may, therefore, be regarded as sources of data for this indicator.</p> |

<sup>77</sup> Cf., Contribution of the WHO to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, publication series on health and human rights, No. 2, August 2001.

<sup>78</sup> Decree of June 9, 1981 on the organization of the central departments of the Ministry of Health.

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|  | The indicator will serve to elucidate the extent to which migrants are taken into account in general information campaigns on health issues and programs, as well as the degree to which specific campaigns targeting migrants are implemented.   |
| <b>Calculation method</b>                  | Survey of the campaigns on the right to health put in place for the migrant population.   |
| <b>Data collection sources and systems</b> | The outcomes under this indicator may be found by examining the publications of the Ministry of Health: <ul style="list-style-type: none"> <li>- Primary healthcare department: published material to disseminate information and other activities posted on the Ministry’s website,</li> <li>- The ONFP publications and the steps taken by this organization to disseminate information,</li> <li>- Activities of IOM, UNICEF in Tunis.</li> <li>- Associations actively involved in the field of health and/or issues pertaining to migrants.</li> </ul> |
| <b>Disaggregation</b>                      | The indicator may be disaggregated according to the entity organizing the campaign: Ministry of Health, National Family and Population Office, offices of international organizations in Tunis (IOM, UNICEF) or Tunisian associations that take an active interest in health and/or migrants.   |

c) Outcome indicators

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| <b>Indicator proposed by KNOMAD</b> | <b>Indicator 8</b><br><b><i>Rate of access by migrants to each public health establishment, compared to access by nationals.</i></b>   |
| <b>Definition</b>                   | The indicator provides information on the effective access by migrants to public health establishments, in comparison with Tunisians.  |
| <b>Analysis</b>                     | The indicator facilitates the identification of disparities that might exist in terms of access to public health establishments by Tunisian nationals and migrants across the three types of healthcare: 1 <sup>st</sup> level – basic healthcare; 2 <sup>nd</sup> level – diagnostic and specialized treatment; and 3 <sup>rd</sup> level – diagnostic and highly specialized treatment.<br><br>The 1 <sup>st</sup> tier, or basic healthcare services include primary healthcare centers and district hospitals.<br><br>Access to such facilities is a measure of migrants’ access to national public health programs, including programs to fight against infectious diseases, the national maternal and infant health program, including pre-natal consultations, assisted |

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|  | birth, vaccination, family planning and the national program on the fight against sexually transmitted diseases and AIDS.   |
| <b>Calculation method</b>                  | Ratio between the number of migrants admitted to public health services and the total number of migrants, as compared to the rate of access of Tunisians to health establishments.  |
| <b>Data collection sources and systems</b> | Data collected by various departments that have a role in the delivery of basic health care: primary healthcare department, National Family and Population Office, Department of School and University Medicine, Department of Environmental Hygiene and Protection. Information gathered by health establishments is also a data source. Currently, the available data are not disaggregated by nationality. The implementation of an information system within the framework of the health reforms being carried out by the Ministry of Health could facilitate the availability of regular disaggregated data, subject to the inclusion of a parameter on nationality and residence in Tunisia in the procedures for registering patients. |

## Annex 4 Migrant Rights Indicators – Decent Work

### a) Structural Indicators

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| <b>Indicator proposed by KNOMAD</b>        | <b>Indicator 1</b><br><i>Status of ratification of ILO conventions and the 1990 United Nations Convention 1990.</i> <sup>79</sup>  |
| <b>Analysis</b>                            | The ratification of conventions dealing specifically with the rights of migrants is an indication of the commitment of the State to the protection of the rights of migrant workers.<br><br>Furthermore, the principle of equal treatment of national and migrant workers derives from the international framework on the right to work, namely the ILO conventions. |
| <b>Data collection sources and systems</b> | NORMLEX database, <a href="http://www.ilo.org">http://www.ilo.org</a><br>JORT, ratification law.   |

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| <b>Indicator proposed by KNOMAD</b> | <b>Indicator 2</b><br><i>Scope of recognition in domestic law of migrants' right to work, according to migration status and type of labor relations.</i>   |
| <b>Definition</b>                   | The indicator provides information on the scope of application in Tunisian law of the right to work for all foreigners.  |
| <b>Analysis</b>                     | The indicator serves to evaluate the extent to which migrants in Tunisia may have access to regular work.<br><br>There is a positive correlation between the imposition of legal restrictions on migrants' right to work and the risk of exposing such workers to illegal employment, with the resulting negative implications for the protection of workers.<br><br>The scope of recognition of this right does not depend solely on the express exclusion of groups of migrants from the right to work or from the restriction imposed on certain sectors – public service, liberal professions, commerce. It stems also from the conditions under which migrants access work. |

<sup>79</sup> List in Annex

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|                          | The restrictive nature of legislation governing the work of foreigners <sup>80</sup> in Tunisia means that several categories of migrants are employed there on an irregular basis, without a labor contract, without being registered with the Social Security Fund and often, without any guarantees of their minimum labor rights (equal pay, working hours). This affects all migrants in irregular condition and applies also to students, migrants in Tunisia, asylum-seekers, foreign spouses of Tunisian spouses, both unqualified and low-skilled <sup>81</sup> . |
| <b>Data source</b>       | <ul style="list-style-type: none"> <li>- JORT, <a href="http://www.iort.gov.tn">www.iort.gov.tn</a></li> <li>- Labor code</li> </ul>   |
| <b>Disaggregation</b>    | <ul style="list-style-type: none"> <li>- Right to work of migrants in regular situations from the standpoint of the regulations on the stay of foreigners: students/migrant spouses of Tunisian national/spouses of migrant workers/nationals who benefit from bilateral conventions and conventions on the right of establishment (Algeria, Morocco and France).</li> <li>- Right to work of migrants without a residence permit (irregular migrants).</li> <li>- Right to work of asylum-seeker.</li> <li>- Paid work/self-employed work/public service work</li> </ul>  |
| <b>Evaluation method</b> | <ul style="list-style-type: none"> <li>- Right to work is recognized</li> <li>- Right to work is not recognized</li> </ul>   |

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| <b>Indicator proposed by KNOMAD</b> | <b>Indicator 3</b><br><b><i>Protection in domestic law of right to work of migrants: Principle of equal treatment and obligation not to discriminate.</i></b>  |
| <b>Definition</b>                   | The existence of a legal guarantee for migrants on the fundamental rights to work and the obligation not to discriminate.  |
| <b>Analysis</b>                     | <p>This indicator serves to evaluate the extent to which the protection of migrants' right to work is observed and applied. This requires an examination of the provisions of labor legislation, the labor code, and legislative texts on the stay of foreign nationals that have implications for the protection of the minimum rights of migrant workers.</p> <p>In conducting this examination the following elements should be verified:</p> |

<sup>80</sup> Art. 258-3 of the labor code: "any foreign national desiring to undertake remunerated employment (...) must be in possession of a labor contract and residence permit in which the notation of "Authorized to work" is stamped. The labor contract of the foreign national and its renewal must be approved by the Labor Ministry. It is prohibited to recruit foreign nationals for employment for which the necessary skills can be sourced among Tunisian nationals.

<sup>81</sup> CF. ILO study, 2014, op.cit.

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|  | <ul style="list-style-type: none"> <li>- Recognition and sanction of the obligation not to discriminate at the workplace and of the requirement to extend equal treatment to nationals and migrant workers, regardless of their status.</li> </ul> <p>The Tunisian labor law provides for the principle of equality between Tunisian and foreign workers but does not make provision for any sanctions for breaches of the principle. Furthermore, there is no mention of the prohibition from discrimination in relation to core labor rights on the grounds of migration status. It is clear that the overall thrust of the principle of equality in the labor code regulations relates exclusively to foreign workers who are employed in accordance with the provisions of the code, that is, workers in a regular situation.</p> <ul style="list-style-type: none"> <li>- Absence of a link between the period of validity of the residents permit and the type of labor relations.</li> </ul> <p>The aim is to measure the link between the level of dependence of the migrant worker in relation to the employer. In effect, immigration legislation that ties the validity of the residence permit to the existence of labor relations makes the worker dependent on the employer and increases the former's vulnerability to exploitation.</p> <p>Tunisian legislation provides for the withdrawal of the residence permit if the reasons for which it was granted no longer apply.<sup>82</sup> In this context, any termination of the labor relations, on whatever grounds, including unlawful severance, can be used to justify the withdrawal of the residence permit. This places the worker in an extremely precarious position.</p> <ul style="list-style-type: none"> <li>- Delinking of the Labor Inspectorate and immigration control.</li> </ul> <p>The aim is to determine the existence of an effective mechanism to monitor the application of the norms on the protection of migrant workers. Any requirement for the Labor Inspectorate to report migrant worker in irregular condition to the Ministry of the Interior or the Ministry of Justice serves to distort the inspection function as an instrument to guarantee the protection of workers, without discrimination.</p> <ul style="list-style-type: none"> <li>- Absence of criminalization of work and of irregular stay.</li> </ul> |
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<sup>82</sup>1968 law, article 11; 1968 implementing decree, Article 33.

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|                     | The aim is to evaluate the condition of migrant workers in irregular condition and to provide information on the extent of their vulnerability, bearing in mind the possibility of criminal sanction |
| <b>Data sources</b> | JORT database: <a href="http://www.iort.gov.tn">www.iort.gov.tn</a>  |

b) Process indicators

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| <b>Indicator proposed by KNOMAD</b>       | <b>Indicator 4</b><br><i>Existence of case law recognizing the principle of equality in the protection of migrant workers' right to work by status of worker.</i>   |
| <b>Definition</b>                         | The indicator provides information on the application of the principle of equality by Tunisian authorities.   |
| <b>Analysis</b>                           | The indicator serves to monitor the evolution of jurisprudence on the interpretation and determination of the scope of the right of migrant workers to equal treatment.   |
| <b>Calculation method</b>                 | The aim is to examine jurisprudence to determine recognition of the rights to work for foreign nationals to work in Tunisia, by category of worker, regular/irregular.  |
| <b>Data collection sources and system</b> | <ul style="list-style-type: none"> <li>- Labor disputes are adjudicated by two bodies: the labor courts set up in the territorial district of the courts of first instance and the courts of general jurisdiction.</li> </ul> <p>Tunisian courts do not publish case law on a systematic basis.</p> <p>Certain judgments are published on an ad hoc basis in the Tunisian Law Review and the Jurisprudence and Legislation Review.</p> <ul style="list-style-type: none"> <li>- The Bulletin of the Court of Cassation provides information on a systematic basis on the judgments of the court.</li> <li>- It is still possible to have access to the case law of various tribunals, but the law reports are not cataloged by subject matter or according to the nationality of the claimant.</li> </ul> |

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| <b>Indicator proposed by KNOMAD</b> | <b>Indicator 5</b><br><i>Existence of specific protection for and a mechanism to monitor the work conditions and labor rights of migrant domestic workers.</i> |
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| <b>Definition</b>                          | The indicator provides information on the existence of a specific system and legislation that regulate domestic work by migrants and guarantee their rights and protection.  |
| <b>Analysis</b>                            | <p>Specific measures have been put in place at the international level for the protection of migrant domestic workers, in view of the particular conditions in which this activity takes place.<sup>83</sup> The risks of exploitation that are associated with this sector are particularly acute for female migrant workers.</p> <p>The domestic work sector in Tunisia relies increasingly on foreign labor. Foreigners employed in this sector are often in an irregular situation and their work status is extremely precarious.</p> <p>The informal sector is not covered by labor regulations and access to this sector by the Labor Inspectorate is almost impossible, as they are prohibited from entering private homes without the consent of the occupants, unless in possession of a court order.</p> <p>Foreign domestic workers often stay at the home of their employer and their freedom of movement is often severely curtailed.<sup>84</sup> Such workers are particularly vulnerable to the risks of abuse, underlining the need for their conditions of work to be monitored.</p> |
| <b>Calculation method</b>                  | <ul style="list-style-type: none"> <li>- Existence/absence of specific regulations on domestic work.</li> <li>- Existence/absence of a system to monitor the application of the labor rights of domestic workers.</li> </ul>   |
| <b>Data collection sources and systems</b> | <ul style="list-style-type: none"> <li>- This indicator is established by examining the legislation regulating domestic work in Tunisia to determine the existence of specific legal protection for migrants.</li> <li>- Verification of the existence of specific procedures for monitoring the sector by the Labor Inspectorate or the Ministry of Social Affairs.</li> </ul> <p>Sources:</p> <ul style="list-style-type: none"> <li>- JORT database: <a href="http://www.iort.gov.tn">www.iort.gov.tn</a></li> <li>- Activity report of the Ministry of Social Affairs.</li> <li>- Annual report of the Labor Inspectorate.</li> </ul>  |

<sup>83</sup> ILO Convention(n189)

<sup>84</sup> ILO Study, pg.43. It is recalled that a draft law on trafficking in persons was tabled in the Assembly, but as of the date of this report, it has not been adopted.

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| <p><b>Indicator proposed by KNOMAD</b></p>        | <p><b>Indicator 6</b><br/><i>Number of sensitization and information programs for migrants on their labor rights.</i></p>   |
| <p><b>Definition</b></p>                          | <p>The indicator measures the actions taken to provide information to migrants on their labor rights.</p>   |
| <p><b>Analysis</b></p>                            | <p>It is often the case that migrant workers fail to understand the extent of the violations of their rights, due to the lack of information available to them concerning such rights. This is particularly so for the most vulnerable migrants, namely unskilled or low-skilled foreign workers.</p> <p>The application of the regulations governing the work of foreigners, set out in the Tunisian Labor Code, precludes the granting of approval to work to this category of workers. Apart from the Maghreb workers, Moroccan and Algerians, unskilled and low-skilled workers are generally working and living in Tunisia in an irregular situation as they are not authorized to work. Aware of their illegal status and fearing that the repressive regulations on irregular stay and work may be applied to them, such workers often cannot even imagine that they are entitled to certain rights as workers. This is exacerbated by the low level of education of these workers, as well as by the linguistic difficulties and the lack of “unionization.”</p> <p>The information and sensitization programs on the rights of these workers reflect the efforts being made to enable migrant workers to enjoy these rights. The aim of such programs is to overcome obstacles by raising awareness of and disseminating information on the rights of workers but also to counter the stigmatization of migrant workers, particularly those in irregular condition, by spreading and upholding the principle of the right of such workers to the rights relating to decent work.</p> |
| <p><b>Data collection sources and systems</b></p> | <p>Several stakeholders have a role to play in the establishment of this indicator. They are, or should be responsible for, providing information to and sensitizing migrant workers on their labor rights.</p> <ul style="list-style-type: none"> <li>- The Ministry of Social Affairs, through the Labor Inspectorate:<br/>Currently, the labor inspector does intervene to monitor compliance with labor regulations, through routine inspections or targeted visits in response to information on the existence of a breach of the regulations. In this way, the interventions of the labor inspector tend to be <i>a posteriori</i> and are focused on monitoring the enforcement of rules.</li> </ul>   |

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|  | <p>Nevertheless, the general mission of the Labor Inspectorate, as set out in the Labor Code, is to “ensure the application of the legal and regulatory provisions and conventions on work relations” and to provide information to workers on the most effective means of applying work legislation<sup>85</sup>. In this regard, the provision of information on the rights of workers should also be seen as a part of the mission.</p> <ul style="list-style-type: none"> <li>- The Ministry of Vocational Training and Employment (MFPE) also has a role to play. The protection of the labor rights of migrant workers, particularly those in irregular condition, is closely linked to employment policy. Currently, the primary focus of the Ministry of Employment in relation to foreign workers is the authorization of work contracts. However, the only data published by the Ministry of Vocational Training and Employment relate to statistics on the contracts that are authorized and to work contracts that are exempt from the requirement of a work visa.</li> <li>- The General Tunisian Labor Union and all trade union associations</li> <li>- Associations that take an active interest in migration issues.</li> </ul> |
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| <b>Indicator proposed by KNOMAD</b> | <b>Indicator 7</b><br><b><i>Number of labor inspection campaigns targeting foreign worker employment sectors and rate of coverage of such sectors by the labor inspectorate.</i></b>  |
| <b><i>Definition</i></b>            | The indicator provides information on the number of labor inspection visits that monitor respect for the rights of migrant workers, targeting workplaces and sectors where migrant workers are known to concentrate, as well as the percentage of workplaces and sectors using foreign workers that are inspected.  |
| <b><i>Analysis</i></b>              | <p>The labor inspector decides on the schedule of visits either in response to individual claims on working conditions or where certain workers’ rights are being disregarded. The visits are carried out at the discretion of the inspector or on the basis of routine controls.</p> <p>It is important to know the extent to which the inspection plans take account of the concentration of migrants in specific sectors (such as construction, cafes and restaurants for Sub-Saharan Africans, gardening for Moroccans). The existence of specific campaigns to monitor the protection of the rights of migrant workers assumes even greater importance considering the fact that claims and complaints to the labor inspectorate by foreign workers are rare.<sup>86</sup></p> |

<sup>85</sup> Article 170 of the Labor Code.

<sup>86</sup> Source: General directorate of Labor inspection.

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|  | <p>The Indicator makes it possible to evaluate the existence and frequency of inspections of workplaces where migrants concentrate but does not provide information on the scope of the controls implemented for ensuring the protection of workers in regular situation.</p> <p>For the category most exposed to abuse, namely workers in an irregular condition, the significance of the frequency of inspections is limited by the fact that the labor inspectorate is required to monitor compliance with the regulations on work by foreigners.</p>  |
| <b>Calculation method</b>                  | <p>Number of campaigns: Survey of campaigns targeting migrants.</p> <p>Rate of coverage: Ratio between the number of inspections carried out and the number of establishment with a concentration of foreign workers, by zone and sector.</p>   |
| <b>Data collection sources and systems</b> | <ul style="list-style-type: none"> <li>- Annual report of the labor inspectorate: details of the inspection visits conducted as part of specific campaigns are provided in the monthly reports of the Labor Inspectorate branches.</li> <li>- The Labor Inspectorate branches are distributed by geographical location and sector.</li> <li>- The rate of coverage of workplaces and sectors where migrants concentrate is determined on the basis of data on the geographical and sectoral distribution of such workers.</li> <li>- The Ministry of Vocational Training and Employment has access to data on the number and geographical and sectoral distribution of migrant workers in regular situations who have been granted approval to work or who are eligible for “work contract exemption certificates.”</li> <li>- Data on the geographical and sectoral distribution of migrant workers is also collected by the Labor Inspectorate through the procedure of verifying the registration of foreign workers. The relevant registration documents must be held by and presented to the inspector by each employer.<sup>87</sup></li> </ul> |

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| <b>Indicator proposed by KNOMAD</b> | <b>Indicator 8</b><br><b><i>Number of programs directed at promoting the unionization of migrants.</i></b>                             |
| <b>Definition</b>                   | The indicator provides information on the measures put in place to enable and encourage membership by migrant workers in trade unions. |

<sup>87</sup> Article. 261. Labor contract.

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| <b>Analysis</b>                            | <p>The recognition in the constitution of the principle of the right of freedom of association without discrimination and the absence of legislative obstacles to the freedom of association of foreign workers should be accompanied by measures that allow all migrants to exercise this right in practice.<sup>88</sup></p> <p>However, there are several factors that limit the exercise of this right, including the paucity of information on the subject, lack of interest and (above all) the fear of reprisals by the employer, and the fact that trade unions are not made aware at the grassroots level of the right to freedom of association for all migrant workers.<sup>89</sup> These obstacles help explain the low rate of membership of foreign workers in the Tunisian General Trade Union (UGTT) and underlines the need for this area of action to be evaluated as part of the process of measuring efforts to promote the unionization of foreign workers.</p> |
| <b>Calculation method</b>                  | <p>Existence/absence of:</p> <ul style="list-style-type: none"> <li>- Information and sensitization programs directed at the basic trade union structures regarding the right of migrant workers and their right to organize.</li> <li>- Information to migrant workers on the right to organize.</li> <li>- Measures implemented to protect migrant workers from reprisals arising from their unionization</li> </ul>  |
| <b>Data collection sources and systems</b> | <ul style="list-style-type: none"> <li>- UGTT activity report, UGTT publications.</li> <li>- Annual report of the Labor Inspectorate.</li> </ul>  |

c) Outcome indicators

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| <b>Indicator proposed by KNOMAD</b> | <p><b>Indicator 9</b></p> <p><i>Proportion of migrant workers compared to all workers whose labor rights have been violated.</i></p> |
| <b>Definition</b>                   | <p>The indicator measures the incidence of labor rights violations affecting migrants, compared to Tunisian workers.</p>             |

<sup>88</sup> The ILO convention (No. 87) on freedom of association states that “workers (...) without distinction whatsoever, have the right to establish and join these organizations without prior authorization.” The committee on freedom of association has had occasion to confirm the implantation of this right for all migrant workers, irrespective of the regularity of their migration status.

<sup>89</sup> Cf., ILO study, pg.36

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| <b>Analysis</b>                            | The indicator facilitates measurement of the extent of on-the-job protection afforded to migrants, compared to Tunisian workers, and reveals the level of respect for the obligation not to discriminate against migrant workers.   |
| <b>Calculation method</b>                  | The ratio of cases of rights violations affecting migrant workers to the total number of cases of rights violation.   |
| <b>Data collection sources and systems</b> | <ul style="list-style-type: none"> <li>- Data collected by the Labor Inspectorate and published in its monthly inspection reports and as compiled in its annual report.</li> <li>- Unpublished reports</li> </ul>   |
| <b>Disaggregation</b>                      | <p>The indicator should be disaggregated by right:</p> <ul style="list-style-type: none"> <li>- Right to equal pay</li> <li>- Number of hours of work and paid leave</li> <li>- Payment and non-retention of wages</li> <li>- On-the-job security and health</li> <li>- Forced labor</li> <li>- Discrimination at the workplace.</li> </ul> |

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| <b>Indicator proposed by KNOMAD</b>        | <b>Indicator 10</b><br><i>Estimated number of migrant workers in irregular situation.</i>  |
| <b>Definition</b>                          | Statistics on the number of migrant workers in irregular situation.  |
| <b>Analysis</b>                            | The indicator provides information on the effectiveness of employment and immigration policies as well as the level of coherence between such policies. A high rate of migrant workers in an irregular situation reveals that jobs are available to migrants in the labor market, without this necessarily being taken into account in migration and employment policies.  |
| <b>Data collection sources and systems</b> | <p>Several complementary sources should be consulted to establish data on the number of migrant workers, with the necessary cross-referencing to arrive at an estimate of the total number.</p> <ul style="list-style-type: none"> <li>- The General Census of Population and Housing (RGPH): this facilitates collection of data on foreign residents in Tunisia (the criterion used by the RGPH is residence of a foreigner in the country for at least 6 months, or the intention to reside in Tunisia beyond a period of 6 months), including details of employment, place of work, type of work (permanent/temporary), type of contract (fixed term, unlimited term, no contract), type of activity.</li> </ul> |

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|  | <ul style="list-style-type: none"> <li>- The analysis of information collected by RGPH could help to establish data on foreign labor in irregular condition (through the variables: nationality/labor contract).</li> <li>- The effectiveness of this source is nevertheless limited by the excessively long intervals for data collection (10 year periods). The population-employment surveys (quarterly survey on the basis of RGPH sample data) do not include the variable on migration (nationality and residence). The Ministry of vocational training and employment has data on migrant workers whose residence and employment status is regular. The information is collected by the directorate of emigration and foreign labor on the basis of the number of labor contracts approved by the Ministry and the number of migrant workers who are granted exemptions from the requirement of an approved work contract.<sup>90</sup> The Ministry of Vocational Training and Employment does not have a system in place for the collection of data on irregular workers.</li> <li>- The Labor inspectorate could become a key source of data on irregular migrant workers: through labor inspection visits and examination of the foreign workers' registry that employers are required to keep.<sup>91</sup> The effectiveness of this mechanism is, nevertheless, limited by the non-systematic nature of the visits and the fact that they are not exhaustive, owing to resource constraints. Specific surveys are therefore necessary for the collection of data, with the understanding that the confidentiality of the identity of individuals must be guaranteed.</li> </ul> |
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<sup>90</sup> Monitoring of work by foreigners in Tunisia is conducted through these two procedures.

<sup>91</sup> Any employer who has recruited a foreign worker is obliged to register him (...) on a special registry (...) that must be presented to labor inspection agents. Article 261 of the labor code.

