

Cornell Law School

Migration and Human Rights Program



Cornell Law School International Migrants Bill of Rights Initiative

Measuring the Baseline: How States Hosting the Majority of the World's Migrants Protect Rights Implicated in the Global Compact

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Introduction

States have made principled commitments to facilitate migration and protect the human rights of migrants as part of a broader, multilateral reorientation in relation to how States should respond to human mobility. In the Global Compact for Safe, Orderly and Regular Migration (GCM), States expressly noted that “[b]y implementing the Global Compact, [States would] ensure effective respect, protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle.”¹ States committed, in the GCM’s Objective 1, to the collection and use of accurate and disaggregated data as a basis for evidence-based policies.² The most recent version of the draft Progress Declaration to be considered at the International Migration Review Forum (REV4) notes the continued inadequacy of data, particularly disaggregated data on migration; indeed, States are poised to call on the United Nations Secretary-General to develop, “a limited set of indicators . . . to assist Member States, upon their request, in conducting inclusive reviews of progress related to the implementation of the Global Compact.”³ States and institutions contributing to the implementation of the GCM and growth of more coordinated migration governance require a more concrete and complete understanding of the legal landscape as it is applied by member States before they can effectively promote a more orderly, just, and cooperative world system. With such an understanding, national governments will have an evidence base for future policy-making. The MRD contributes rigorous indicators which permit aggregation, disaggregation, and an objective system of benchmarking as States.

To date, there has been little comparative empirical, quantitative research comparing the supranational commitments that states have made with the laws that states have ratified at the national level. The Migrant Rights Database (MRD) of the International Migrants Bill of Rights Initiative is the first comprehensive effort to fill this gap. The MRD evaluates the extent to which a suite of migrant rights is reflected in national statutes and case law, country-by-country. The database applies a novel instrument that permits the objective, cross-national accounting of the laws protecting migrant rights enshrined in the national legal frameworks. The database instrument has been rigorously piloted and recently expanded to cover 36 of the world’s most important migration destination States accounting for approximately 70 percent of the world’s migrant stock in 2019.⁴ These data will be made public later this year. Below, however, to aid States and other stakeholders in finalizing the Progress Declaration and setting out a robust agenda for continued implementation of the GCM, are initial MRD findings most closely aligned with undertakings in the GCM.

¹ UN General Assembly, *Global Compact for Safe, Orderly and Regular Migration*, paragraphs 4, 15, Resolution 73/195, UN Doc. A/RES73/195, 11 January 2019.

² *Id.* at paragraph 17.

³ See Progress Declaration of the International Migration Review Forum. REV4, paragraphs 48, 70 (9 May 2022) (on file with author).

⁴ These countries are: Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Canada, Chile, Denmark, Ethiopia, France, Germany, Greece, India, Indonesia, Ireland, Israel, Italy, Kenya, Lebanon, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Peru, Russia, Saudi Arabia, Singapore, South Africa, Spain, Switzerland, Turkey, United Arab Emirates, United Kingdom, United States. Note: not all States in the MRD have signed the GCM; case selection is primarily driven by seeing to capture the majority of migrant-hosting States.

Methodological Note

The Migrant Rights Database (MRD) indicators contribute a rigorous dimension that permits aggregation, disaggregation, and an objective system of benchmarking—all contained in an efficient coding instrument that can be applied cross-nationally and over time. The database's sixty-five indicators are composed of several features in the interest of methodological rigor. The indicator questions have the following characteristics and measure national law:

1. Binary, with answers ranging from zero (0) to one (1);
2. Standardized for aggregation on scales evaluating the migrants' rights protection by law;
3. Consistently framed and measured across 17 categories of migrant rights;
4. Versatile to accommodate any national context and time period; and,
5. Completed with fields for the citation of statute or case law, for the purposes of establishing objectivity, replicability, and transparency.

The measures permit various means of aggregation. Two highly qualified, independent (nongovernment) attorneys in each relevant country coded the five pilot countries. To mitigate intercoder reliability bias, each attorney coded independently from the others. Any coding discrepancies were then resolved through intermediation. This approach enables the creation of comparable, reliable country reports and profiles, along with a broader database of migrants' rights for use by government, civil society, and individual observers. It is a key tool for benchmarking and the spread of knowledge worldwide and would be useful in the implementation of the GCM.⁵

⁵ For further discussion of this data, see Gest, Wong, Kysel, *Protecting and Benchmarking Migrants' Rights: An Analysis of the Global Compact for Safe, Orderly and Regular Migration* 57 INT'L. MIGRATION 60 (2019).

Selected Findings

Several of the MRD's indicators directly measure national laws' consistency with rights guarantees which are of fundamental relevance to the implementation of the GCM. A selection of these MRD data is presented, ordered by GCM Objective, below. As these findings show, there is widespread protection in national law for key rights implicated by GCM objectives in the 36 UN Member States evaluated in the MRD (which host approximately 70% of the world's migrants).

- The GCM calls on States to register all births of children of migrants; 33 of the 36 States in the MRD already mandated this in national law in 2019. When it comes to migrants and the world of work, the GCM calls on States to ensure migrants have access to several fundamental human rights.
- Of the 36 States evaluated in the MRD in 2019, 26 protected migrants' right to freedom of assembly on par with nationals; 29 protected migrants' right to freedom of association on par with nationals; 28 mandated equal pay for equal work on par with nationals; and 24 mandated equality with nationals with regard to basic conditions of work.
- The GCM recognizes the importance of ensuring legal representation when it comes to migrant access to justice. Of the 36 State evaluated in the MRD, national law in 2019 required government provision of counsel to migrants in 22 of them.
- The GCM calls on States to ensure protection migrants' right to liberty and security of person and the promotion of alternatives to detention. In 2019, national law in 13 of the 36 States evaluated in the MRD prohibited the detention of migrant children on the basis of their states as a migrant; 28 permitted detained migrants to appeal legality, conditions and length of detention; and 30 required an individualized determination before a migrant could be detained.
- The GCM promotes the fair treatment of migrants in many regards, and particularly in relation to access to services. However, in 2019, only 16 of the 36 States evaluated in the MRD prohibited discrimination on the basis of status as a migrant.
- The GCM recognizes the importance of migrant access to healthcare. In 2019, 19 of the 36 States evaluated in the MRD guaranteed equal access to healthcare to migrants.
- The GCM recognizes the importance of exchange of information when it comes to migration. The law of 28 of the 36 States evaluated in the MRD provided migrants with rights to freedom of expression on par with nationals in 2019.
- The GCM recognizes that States have human rights obligations not to return migrants to harm. Of the 36 States evaluated in the MRD in 2019, 30 prohibited a return to torture and 31 prohibited a return to persecution.

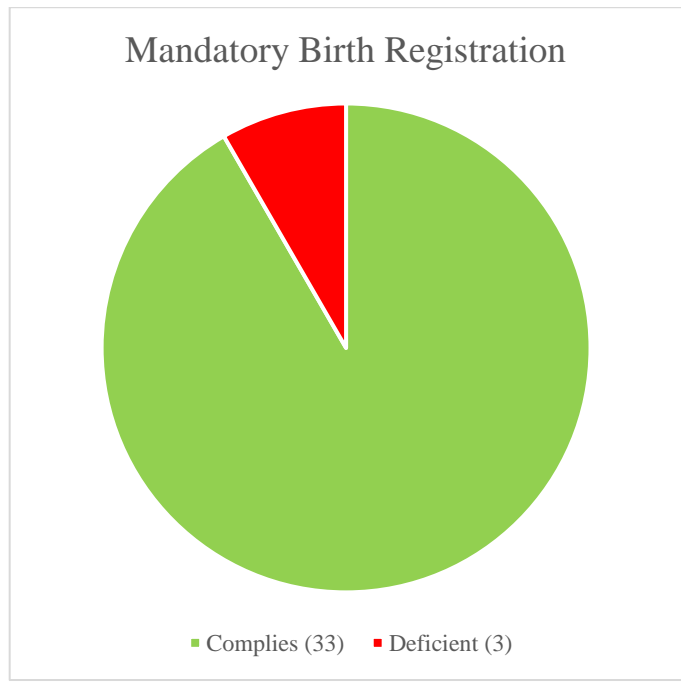
There is much work to be done to ensure uniform protection of these fundamental rights, but the broad reflection of so many core protections should reduce the controversy of reflecting robust and specific commitments to “respecting, protecting and fulfilling the human rights and fundamental freedoms of all migrants” in the progress declaration.⁶

⁶ Progress Declaration of the International Migration Review Forum. REV4, at paragraph 55.

Evaluating Protection of Select Rights Implicated by GCM Objective 4

GCM Objective 4(e): “. . . Strengthen measures to reduce statelessness, including by registering migrants’ births, ensuring that women and men can equally confer their nationality to their children, and providing nationality to children born in another State’s territory, especially in situations where a child would otherwise be stateless, fully respecting the human right to a nationality and in accordance with national legislation.

MRD Indicator (2019): Does the national law require registration of the births of migrant children, regardless of their status?



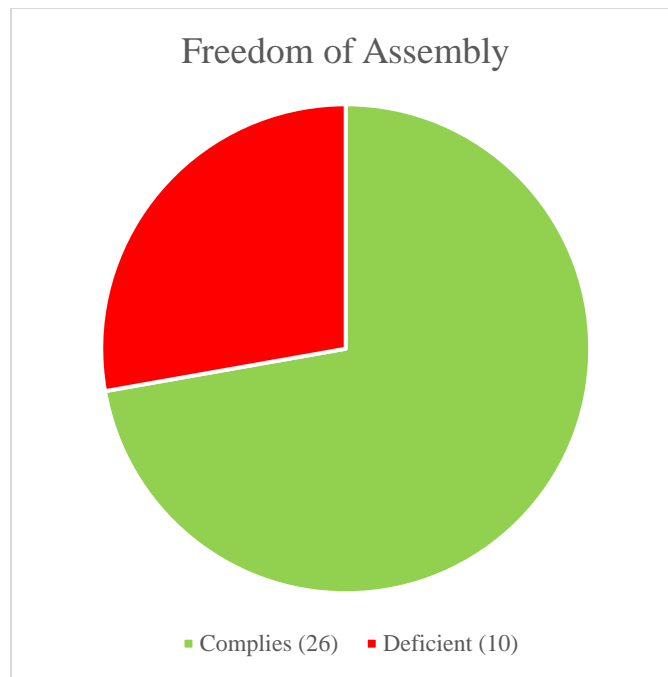
Complies (yes): Argentina, Austria, Bangladesh, Belgium, Brazil, Chile, Denmark, Ethiopia, France, Germany, Greece, India, Indonesia, Ireland, Israel, Italy, Kenya, Lebanon, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Peru, Russia, Saudi Arabia, Singapore, South Africa, Spain, Switzerland, Turkey, United Arab Emirates, United Kingdom

Deficient (no): Australia, Canada, United States

Evaluating Protection of Select Rights Implicated by GCM Objective 6

GCM Objective 6(i): “. . . Provide migrant workers engaged in remunerated and contractual labor with the same labor rights and protections extended to all workers in the respective sector, such as the rights to just and favorable conditions of work, to equal pay for work of equal value, to freedom of peaceful assembly and association, and to the highest attainable standard of physical and mental health, including through wage protection mechanisms, social dialogue and membership in trade unions.”

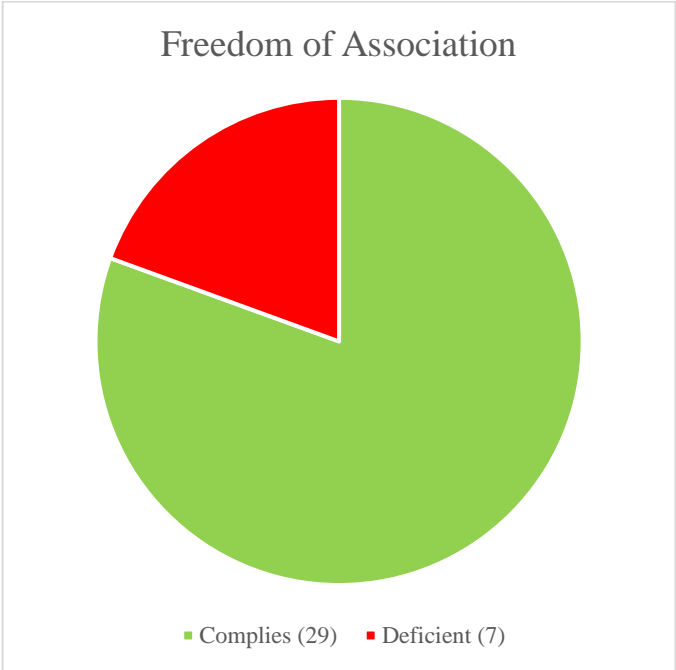
MRD Indicator (2019): “Does the national law recognize and protect the right of freedom of assembly commensurate with that afforded to citizens?”



Complies (yes): Argentina, Austria, Belgium, Brazil, Canada, Chile, Denmark, Ethiopia, France, Greece, Israel, Italy, Kenya, Lebanon, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Peru, South Africa, Spain, Switzerland, United Arab Emirates, United Kingdom, United States

Deficient (no): Australia, Bangladesh, Germany, India, Indonesia, Ireland, Russia, Saudi Arabia, Singapore, Turkey

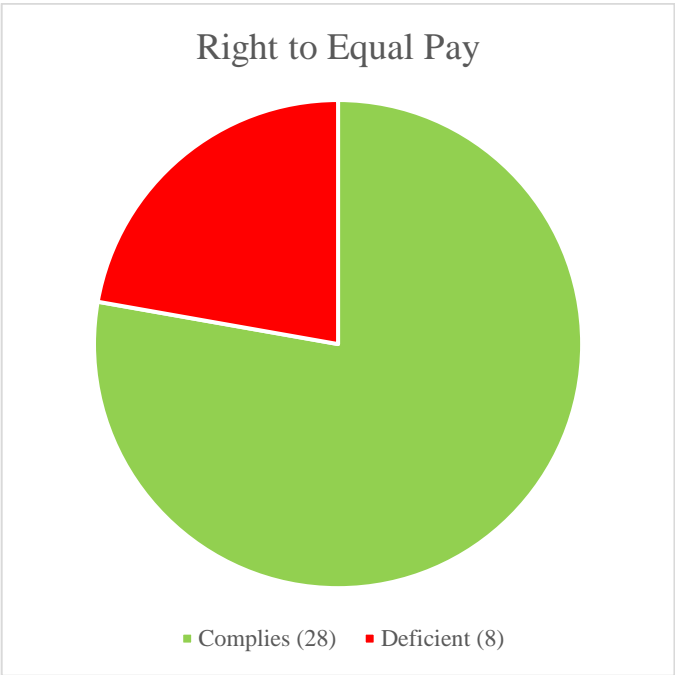
MRD Indicator (2019): Do migrant workers have the right to form trade unions and other associations?



Complies (yes): Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Denmark, Ethiopia, France, Greece, Israel, Italy, Kenya, Lebanon, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Peru, Russia, South Africa, Spain, Switzerland, Turkey, United Arab Emirates, United Kingdom, United States

Deficient (no): Bangladesh, Germany, India, Indonesia, Ireland, Saudi Arabia, Singapore

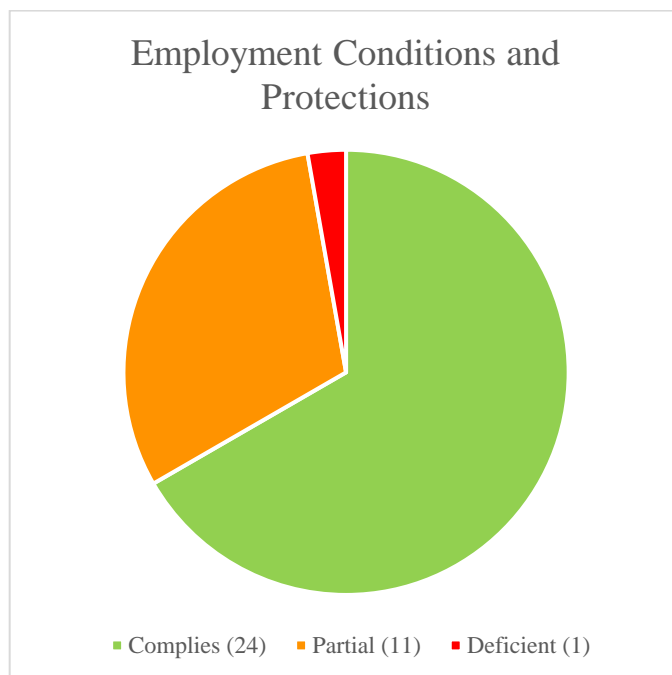
MRD Indicator (2019): Do migrant workers have the right to equal pay to that received by the local workers doing the same work?



Complies (yes): Argentina, Austria, Belgium, Brazil, Canada, Chile, Denmark, Ethiopia, France, Greece, Indonesia, Israel, Italy, Kenya, Lebanon, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Peru, Russia, South Africa, Spain, Switzerland, Turkey, United Kingdom, United States

Deficient (no): Australia, Bangladesh, Germany, India, Ireland, Saudi Arabia, Singapore, United Arab Emirates

MRD Indicator (2019): Beyond the issue of equal pay, do migrant workers have the same rights to equal employment conditions and protections (e.g., overtime, hours of work, weekly rest, paid holidays, sick pay, health and safety at work, protection against dismissal) as local workers?



Complies (migrants have a right to same employment conditions and protections as citizens): Argentina, Austria, Belgium, Brazil, Chile, Denmark, Ethiopia, France, Greece, India, Italy, Kenya, Lebanon, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Peru, Spain, Switzerland, Turkey, United Kingdom, United States

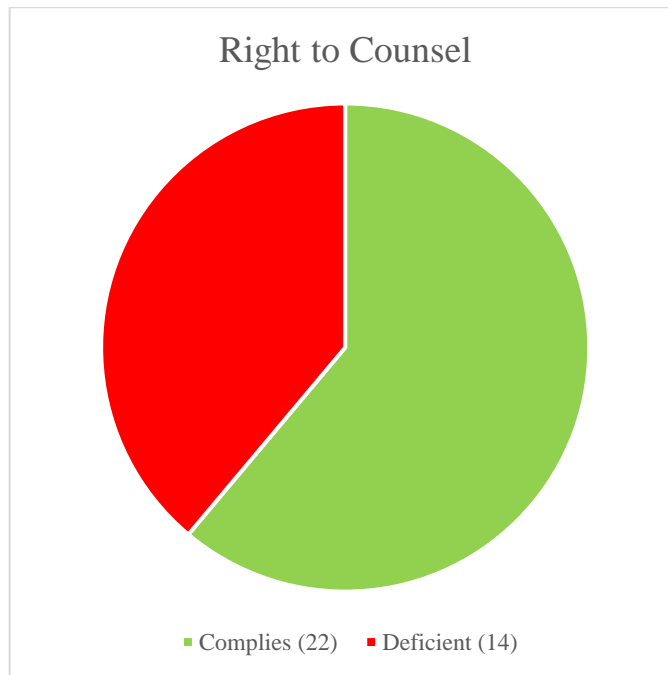
Partially Deficient (migrants have right to most of the same employment conditions and protections as citizens): Australia, Canada, Germany, Indonesia, Ireland, Israel, Russia, Saudi Arabia, Singapore, South Africa, United Arab Emirates

Deficient (migrant workers have significantly fewer legal rights than citizens): Bangladesh

Evaluating Protection of Select Rights Implicated by GCM Objective 7

GCM Objective 7(g): “. . . Ensure migrants have access to public or affordable independent legal assistance and representation in legal proceedings that affect them, including during any related judicial or administrative hearing, in order to safeguard that all migrants, everywhere, are recognized as persons before the law and that the delivery of justice is impartial and non-discriminatory.”

MRD Indicator (2019): Do migrants have a right to counsel at government expense in proceedings related to their legal status as a migrant?



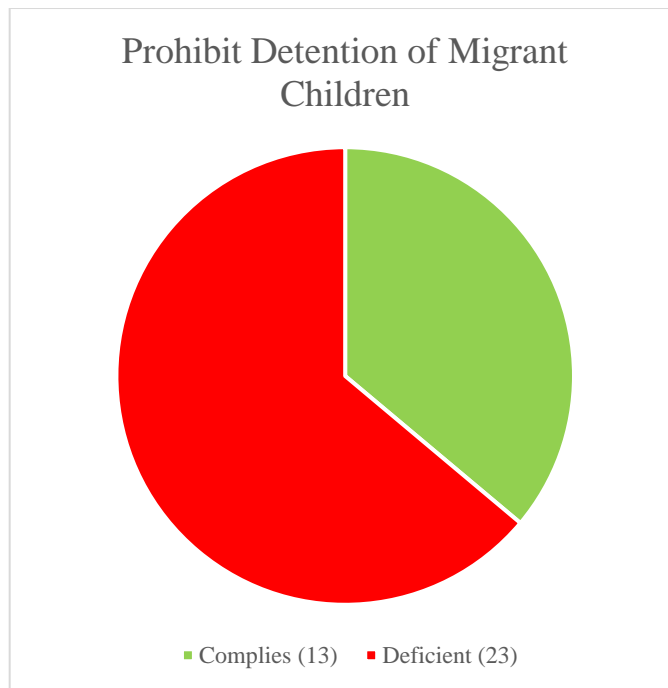
Complies (yes): Argentina, Austria, Bangladesh, Belgium, Brazil, Canada, Ethiopia, France, Germany, Greece, Ireland, Italy, Kenya, Lebanon, Morocco, Netherlands, New Zealand, Nigeria, Russia, Spain, Switzerland, Turkey

Deficient (no): Australia, Chile, Denmark, India, Indonesia, Israel, Mexico, Peru, Saudi Arabia, Singapore, South Africa, United Arab Emirates, United Kingdom, United States

Evaluating Protection of Select Rights Implicated by GCM Objective 13

GCM Objective 13 (h): “. . . Protect and respect the rights and best interests of the child at all times, regardless of their migration status, by ensuring availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements, that ensure access to education and healthcare, and respect their right to family life and family unity, and by working to end the practice of child detention in the context of international migration.”

MRD Indicator (2019): Does the national law prohibit the detention of children on the basis of their status as a migrant?



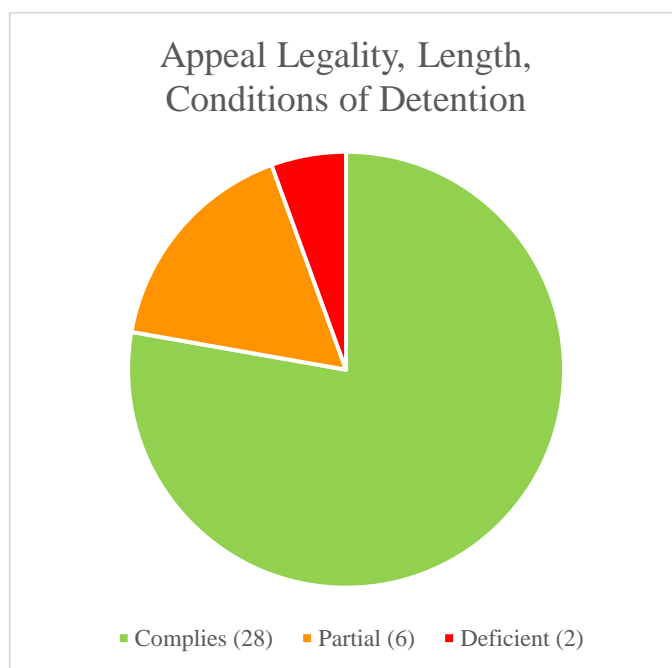
Complies (yes): Bangladesh, Brazil, Denmark, Ethiopia, France, Ireland, Italy, Kenya, Mexico, Morocco, Nigeria, Peru, Spain

Deficient (no): Argentina, Australia, Austria, Belgium, Canada, Chile, Germany, Greece, India, Indonesia, Israel, Lebanon, Netherlands, New Zealand, Russia, Saudi Arabia, Singapore, South Africa, Switzerland, Turkey, United Arab Emirates, United Kingdom, United States

GCM Objective 13(d): “. . . Provide access to justice for all migrants in countries of transit and destination that are or may be subject to detention, including by facilitating access to free or affordable legal advice and assistance of a qualified and independent lawyer, as well as access to information and the right to regular review of a detention order.”

GCM Objective 13(f): “. . . Reduce the negative and potentially lasting effects of detention on migrants by guaranteeing due process and proportionality, that it is for the shortest period of time, safeguards physical and mental integrity, and that, as a minimum, access to food, basic healthcare, legal orientation and assistance, information and communication, as well as adequate accommodation is granted, in accordance with international human rights law.”

MRD Indicator (2019): Does the national law allow migrants to appeal legality, conditions, or length of detention?



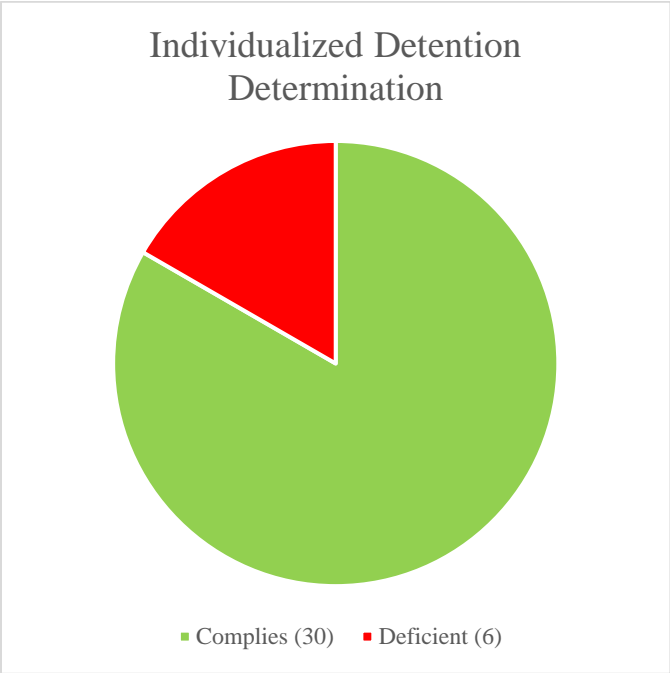
Complies (yes): Argentina, Austria, Belgium, Brazil, Canada, Chile, Denmark, France, Germany, Greece, India, Ireland, Israel, Italy, Kenya, Lebanon, Mexico, Morocco, Netherlands, New Zealand, Peru, Russia, Singapore, South Africa, Spain, Switzerland, United Kingdom, United States

Partially Deficient (not all three): Australia (legality and conditions only), Bangladesh (legality and length only), Ethiopia (legality and length only), Indonesia (legality only), Nigeria (legality only), Turkey (legality only)

Deficient (no): Saudi Arabia, United Arab Emirates

GCM Objective 13(c): “. . . Review and revise relevant legislation, policies and practices related to immigration detention to ensure that migrants are not detained arbitrarily, that decisions to detain are based on law, are proportionate, have a legitimate purpose, and are taken on an individual basis, in full compliance with due process and procedural safeguards.”

MRD Indicator (2019): Does the national law require an individualized determination for the detention of a migrant?



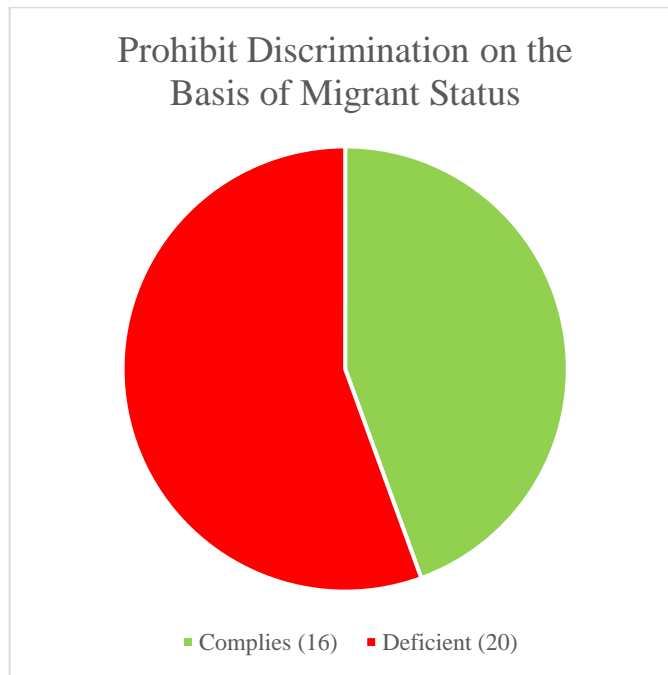
Complies (yes): Argentina, Austria, Bangladesh, Belgium, Brazil, Canada, Chile, Denmark, Ethiopia, France, Germany, Greece, Indonesia, Ireland, Israel, Italy, Kenya, Morocco, Netherlands, Nigeria, Russia, Saudi Arabia, Singapore, South Africa, Spain, Switzerland, Turkey, United Arab Emirates, United Kingdom, United States

Deficient (no): Australia, India, Lebanon, Mexico, New Zealand, Peru

Evaluating Protection of Select Rights Implicated by GCM Objective 15

GCM Objective 15(a): “. . . Enact laws and take measures to ensure that service delivery does not amount to discrimination against migrants on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other grounds irrespective of cases where differential provision of services based on migration status might apply.

MRD Indicator (2019): Does the national law prohibit discrimination against migrants on the ground of migration status?

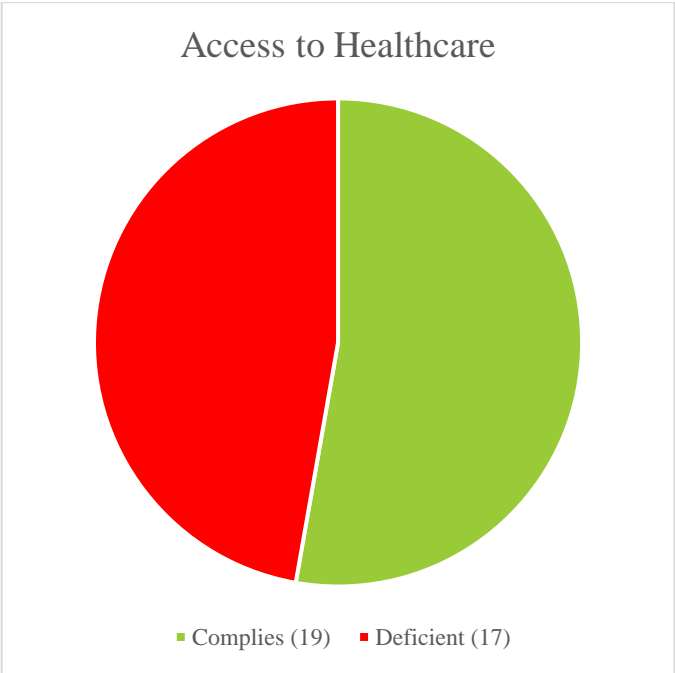


Complies (yes): Argentina, Austria, Brazil, Ethiopia, France, Germany, Greece, Indonesia, Italy, Lebanon, Mexico, Morocco, Nigeria, Russia, Spain, United States

Deficient (no): Australia, Bangladesh, Belgium, Canada, Chile, Denmark, India, Ireland, Israel, Kenya, Netherlands, New Zealand, Peru, Saudi Arabia, Singapore, South Africa, Switzerland, Turkey, United Arab Emirates, United Kingdom

GCM Objective 15(e): “. . . Incorporate the health needs of migrants in national and local health care policies and plans, such as by strengthening capacities for service provision, facilitating affordable and non-discriminatory access, reducing communication barriers, and training health care providers on culturally-sensitive service delivery, in order to promote physical and mental health of migrants and communities overall, including by taking into consideration relevant recommendations from the WHO Framework of Priorities and Guiding Principles to Promote the Health of Refugees and Migrants.”

MRD Indicator: Does the national law guarantee access to health care services on an equal basis with citizens?



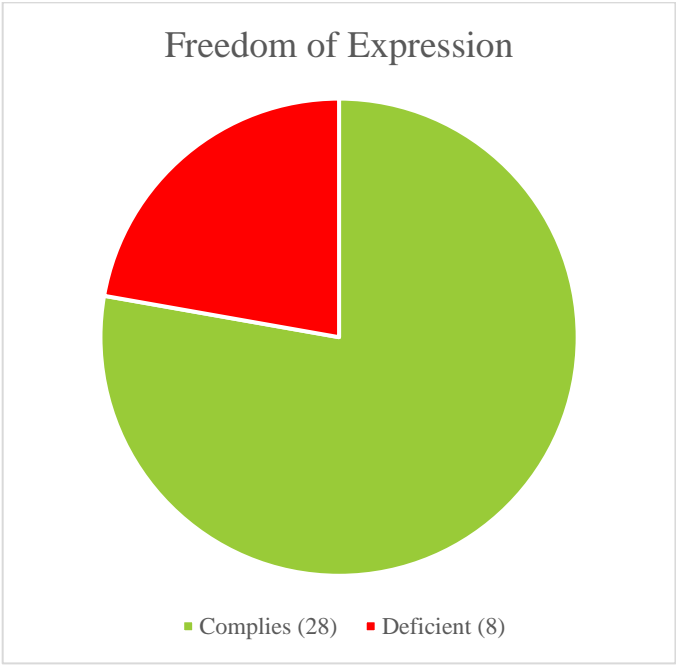
Complies (yes): Argentina, Austria, Belgium, Brazil, Chile, Denmark, Ethiopia, France, Germany, Greece, India, Indonesia, Italy, Kenya, Mexico, Morocco, Netherlands, Spain, Switzerland

Deficient (no): Australia, Bangladesh, Canada, Ireland, Israel, Lebanon, New Zealand, Nigeria, Peru, Russia, Saudi Arabia, Singapore, South Africa, Turkey, United Arab Emirates, United Kingdom, United States

Evaluating Protection of Select Rights Implicated by GCM Objective 17

GCM Objective 17: “. . . We also commit to protect freedom of expression in accordance with international law, recognizing that an open and free debate contributes to a comprehensive understanding of all aspects of migration.

MRD Indicator (2019): Does the national law provide migrants with full freedom of expression commensurate with that afforded to citizens?



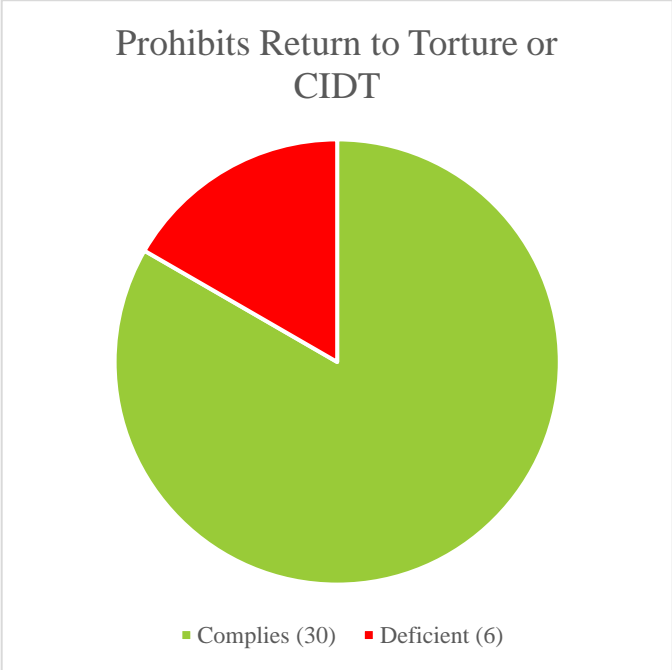
Complies (yes): Argentina, Austria, Belgium, Brazil, Canada, Denmark, Ethiopia, France, Germany, Greece, Israel, Italy, Kenya, Lebanon, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Peru, Russia, South Africa, Spain, Switzerland, Turkey, United Arab Emirates, United Kingdom, United States

Deficient (no): Australia, Bangladesh, Chile, India, Indonesia, Ireland, Saudi Arabia, Singapore

Evaluating Protection of Select Rights Implicated by GCM Objective 21

GCM Objective 21: “. . . We commit to facilitate and cooperate for safe and dignified return and to guarantee due process, individual assessment and effective remedy, by upholding the prohibition of collective expulsion and of returning migrants when there is a real and foreseeable risk of death, torture, and other cruel, inhuman, and degrading treatment or punishment, or other irreparable harm, in accordance with our obligations under international human rights law.

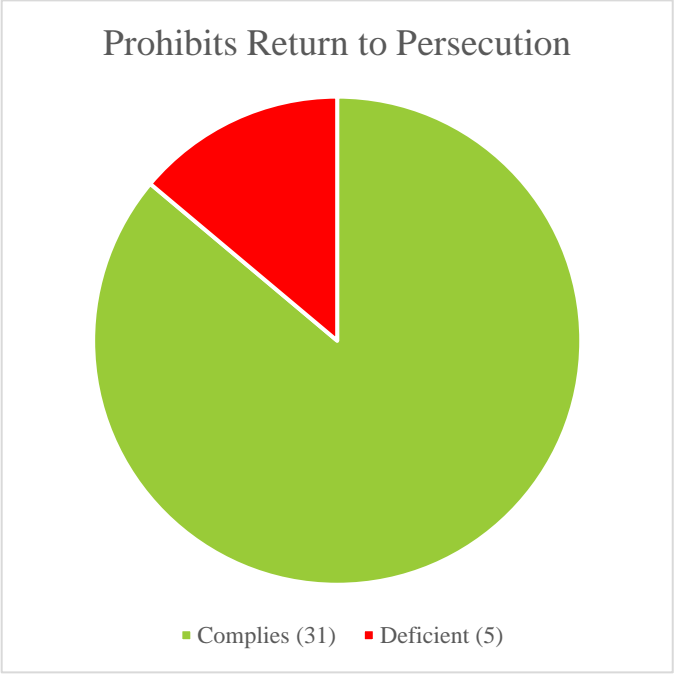
MRD Indicator: Does the national law ban refoulement on the basis of a risk of return to torture or cruel, inhuman or degrading treatment or punishment?



Complies (yes): Argentina, Austria, Bangladesh, Belgium, Brazil, Canada, Chile, Denmark, Ethiopia, France, Germany, Greece, Ireland, Israel, Italy, Kenya, Lebanon, Mexico, Morocco, Netherlands, New Zealand, Peru, Russia, Singapore, South Africa, Spain, Switzerland, Turkey, United Kingdom, United States

Deficient (no): Australia, India, Indonesia, Nigeria, Saudi Arabia, United Arab Emirates

MRD Indicator: Does the national law ban refoulement on the basis of a risk of return to persecution on the basis of race, religion, nationality, membership of a particular social group, or political opinion?



Complies (yes): Argentina, Austria, Bangladesh, Belgium, Brazil, Canada, Chile, Denmark, Ethiopia, France, Germany, Greece, Ireland, Israel, Italy, Kenya, Lebanon, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Peru, Russia, Singapore, South Africa, Spain, Switzerland, Turkey, United Kingdom, United States

Deficient (no): Australia, India, Indonesia, Saudi Arabia, United Arab Emirates,

Conclusion

As States finalize negotiation of the Progress Declaration and plot a course for implementing the GCM in the coming years, robust data benchmarking how States already protect a key set of migrants' rights – as well as how these protections evolve over time – will be of vital utility.

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About the Initiative: The International Migrants Bill of Rights (IMBR) Initiative conducts cutting-edge, interdisciplinary research on the human rights of migrants and then fosters opportunities for action and innovation to reshape the way governments treat people who cross international borders.

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