

Access to Justice

Training Materials on Access to Justice for Migrants



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® **Fair Asylum Procedures and Effective Remedy** - Training Materials on Access to Justice for Migrants

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Training Materials on Access to Justice for Migrants

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Training materials on access to justice for migrants

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This 0. training module introduces a five-part series of training materials¹ relevant to protecting the rights of migrants and refugees and provides a short introduction on access to justice for migrants.

The materials to follow will then proceed in detail to cover:

- I. Fair asylum procedures and effective remedy
- II. Access to justice in detention
- III. Access to justice for economic, social and cultural rights
- IV. Access to justice in the protection of migrant's right to family life
- V. Access to justice for migrant children

1. Introduction: Access to justice for migrants and refugees

Migrants² are rights holders. They are entitled to fair procedures, to claim their rights and to obtain a remedy if their rights under national and international law have been violated. Because the rights of migrants are often violated, it is important that lawyers and judges are aware of the law and procedures applicable to migrants in order to have their rights respected.

Under international law, migrants are entitled to a broad range of rights and safeguards. The reality, however, is that rights are illusory if there is no mechanism in place to claim their implementation.

Migrants and migrant children experience an array of barriers to their access to justice, from being unaware of their rights to not knowing where and how to seek advice and assistance. The justice system can be intimidating and migrants can often lack the financial means in order to access justice.

A national legal system that can provide effective access to justice and remedies for violations of human rights is therefore essential. The whole apparatus of legal standards, lawyers, judges, prosecutors, legal practitioners and activists must operate effectively to provide migrants with legal remedies for violations of their human rights.

These training materials cover the most relevant international and EU legal standards on the rights of migrants, applicable in EU Member States. The standards cited in these materials differ in their legal status. Some are provisions of treaties are legally binding on the States that are parties to the treaty. Others are provisions of non-treaty instruments. While non-treaty instruments are not in themselves binding, they represent the consensus of the international community on standards to which States should conform.

¹ These training materials on access to justice for migrant children were developed as part of the FAIR (Fostering Access to Immigrant's Rights) PLUS project.

² For the purposes of shorthand the following text will refer to "migrants". However, the protective points are equally applicable to refugees, a category of persons to whom additional protective regime under refugee law is also applicable.

Report of the Special Rapporteur on the human rights of migrants, A/73/178/Rev.1 (2018)

7. Effective access to justice means that everyone, without discrimination, has the right to access the system provided for conflict resolution and the restoration of rights. Access to justice has a dual role, as a fundamental right inherent to every person and as a principle that establishes obligations for States, particularly to ensure that anyone can approach the courts to seek protection of their rights. States, under international human rights law, have an obligation to guarantee the human rights of all individuals under their jurisdiction, regardless of their nationality or migration status, including the right to access to justice and due process.
71. Under international law, States have a duty to protect migrants at all stages of the migratory process and to provide them with access to justice to obtain redress for any discriminatory treatment or human rights violations that they experience. Effective access to justice includes as guarantees of due process the right to legal aid and legal representation, the right to information and to an interpreter, the right to consular assistance, and access to remedies and redress. In addition, firewall protections are essential mechanisms that allow migrants to exercise their human rights without fear of being reported to the immigration authorities.
72. In practice, however, migrants face a multitude of barriers that restrict or impede their effective access to justice. This is due in large part to the fact that migration laws, policies and practices are focused on security and the deterrence and criminalization of irregular migration, which has a negative impact on the human rights of migrants. The worrying trend of detaining immigrants as a border management tool is a clear example of a practice that hinders their effective access to justice.

Declaration of the high-level meeting of the UN General Assembly on the rule of law at the national and international levels, UN General Assembly Resolution 67/1, [UN Doc. on A/RES/67/1 (24 September 2012)]

- [...] 14. We emphasize the right of equal access to justice for all, including members of vulnerable groups, and the importance of awareness-raising concerning legal rights, and in this regard we commit to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.
- [...] 17. We recognize the importance of the rule of law for the protection of the rights of the child, including legal protection from discrimination, violence, abuse and exploitation, ensuring the best interests of the child in all actions, and recommit to the full implementation of the rights of the child.

UN Global Compact for Safe, Orderly and Regular Migration (2018)

14. (d) Rule of law and due process. The Global Compact recognizes that respect for the rule of law, due process and access to justice are fundamental to all aspects of migration governance. This means that the State, public and private institutions and entities, as well as persons themselves, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and are consistent with international law;
19. (d) Provide newly arrived migrants with targeted, gender-responsive, child sensitive, accessible and comprehensive information and legal guidance on their rights and obligations, including on compliance with national and local laws, obtaining of work and resident permits, status adjustments, registration with authorities, access to justice to file complaints about rights violations, as well as access to basic services;
23. (g) Ensure that 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;
29. (d) Provide access to justice for all migrants in countries of transit and destination who 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;

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection**Article 20 (3)**

Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered. 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;

Inter-American Court of Human Rights, Advisory Opinion on Juridical Condition and Rights of the Undocumented Migrants, 17 September 2003

109. This general obligation to respect and ensure the exercise of rights has an erga omnes character. The obligation is imposed on States to benefit the persons under their respective jurisdictions, irrespective of the migratory status of the protected persons. This obligation encompasses all the rights included in the American Convention and the International Covenant on Civil and Political Rights, including the right to judicial guarantees. In this way, the right of access to justice for all persons is preserved, understood as the right to effective jurisdictional protection.

Report of the UN High Commissioner for Human Rights on Access to justice for children, UN Doc. A/HRC/25/35), (16 December 2013)

8. Human rights norms and standards relevant to ensuring access to justice for children are set out in a series of legally binding and non-binding international and regional human rights instruments. [...] Elements of access to justice for children in particular include the rights to relevant information, an effective remedy, a fair trial, to be heard, as well as to enjoy these rights without discrimination. In addition, the responsibility of States Parties to realize the rights of all children requires structural and proactive interventions to enable access to justice.

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