

Human Rights and Right to Health Framework: Legal, Institutional

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1946 Constitution of the World Health Organization (WHO) preamble:

Health is “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.

The preamble further states that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.”

The 1948 Universal Declaration of Human Rights also mentioned health as part of the right to an adequate standard of living (art. 25).

The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights.

The international human rights standards include:

The right to the highest attainable standard of health; non-discrimination and equality before the law; human rights of women; human rights of children; right to marry and found a family; right to privacy; right to education; freedom of expression and information; freedom of assembly and association; right to work; the right to enjoy the benefits of scientific progress and its applications; the right to freedom of movement; right to an adequate standard of living and social security; the right to participation in political and cultural life; the right to seek and enjoy asylum; the right to liberty and security of person; freedom from cruel, inhuman or degrading treatment or punishment.

The right to health in international human rights law is enshrined in a number of articles. The most important ones of those are:

- European Social Charter (1961, in force 1965)
- International Covenant on Economic, Social and Cultural Rights, article 12 (1966)
- Declaration of Alma-Ata (1978)
- Declaration of Commitment on HIV/AIDS (UNGASS 2001)
- UNAIDS/UN OHCHR International Guidelines on HIV/AIDS and Human Rights
- International human rights treaties recognising the right to health

International human rights treaties recognizing the right to health

- The 1965 International Convention on the Elimination of All Forms of Racial Discrimination: art. 5 (e) (iv)
- The 1966 International Covenant on Economic, Social and Cultural Rights: art. 12
- The 1979 Convention on the Elimination of All Forms of Discrimination against Women: arts. 11 (1) (f), 12 and 14 (2) (b)
- The 1989 Convention on the Rights of the Child: art. 24
- The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: arts. 28, 43 (e) and 45 (c)
- The 2006 Convention on the Rights of Persons with Disabilities: art. 25.

From a legal perspective the right to health is an inclusive right.

It includes a wide range of factors that can help us lead a healthy Life ('underlying factors'):

- Safe drinking water and adequate sanitation
- Safe food
- Adequate nutrition and housing
- Healthy working and environmental conditions
- Health-related education and information
- Gender equality

(Committee on Economic, Social and Cultural Rights)

The right to health contains freedoms:

The right to be free from non-consensual medical treatment (such as medical experiments and research or forced sterilization)

The right to be free from torture and other cruel, inhuman or degrading treatment or punishment

The right to health contains entitlements:

- the right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health
- the right to prevention, treatment and control of diseases
- access to essential medicines
- maternal, child and reproductive health
- equal and timely access to basic health services
- the provision of health-related education and information
- participation of the population in health-related decisionmaking at the national and community levels

Ideally, health services, healthcare goods and facilities must be equally and equitably available, accessible and of the best attainable quality.

All services, goods and facilities must be available, accessible, acceptable and of good quality.

There are common misconceptions about the right to health though.

The right to health is not the same as the right to be healthy and is not a programmatic goal to be attained in the undefined future. The right to health is a right of the 'here and now'.

States must make every possible effort, within available resources, to realize the right to health and to take steps in that direction without delay.

Specific groups of PLWHIV are covered in international agreements and laws. These are:

1. Children and adolescents
2. Migrants
3. Injecting drug users
4. Women
5. Sex workers
6. Men who have sex with men (MSM)

Major difficulties faced by migrants—particularly undocumented migrants—with respect to their right to health:²¹

- Migrants are generally inadequately covered by State health systems and are often unable to afford health insurance. Migrant sex workers and undocumented migrants in particular have little access to health and social services;
- Migrants have difficulties accessing information on health matters and available services. Often the information is not provided adequately by the State;
- Undocumented migrants dare not access health care for fear that health providers may denounce them to immigration authorities;

- Female domestic workers are particularly vulnerable to sexual abuse and violence;
- Migrant workers often work in unsafe and unhealthy conditions;
- Migrant workers may be more prone to risky sexual behaviour owing to their vulnerable situation, far away from their families and their exclusion from major prevention and care programmes on sexually transmitted diseases and HIV/AIDS. Their situation is therefore conducive to the rapid spread of these diseases;
- Conditions in the centres where undocumented migrants are detained may also be conducive to the spread of diseases;
- Trafficked persons are subject to physical violence and abuse, and face formidable hurdles related to their right to reproductive health (sexually transmitted diseases, including infection with HIV/AIDS, unwanted pregnancies, unsafe abortions).

Taking steps to realize the right to health

- adoption of legislative measures, incorporate right to health in state legislation
- setting up a national strategy (including measurements like benchmarks, monitoring)
- implement complementary administrative and political mechanisms

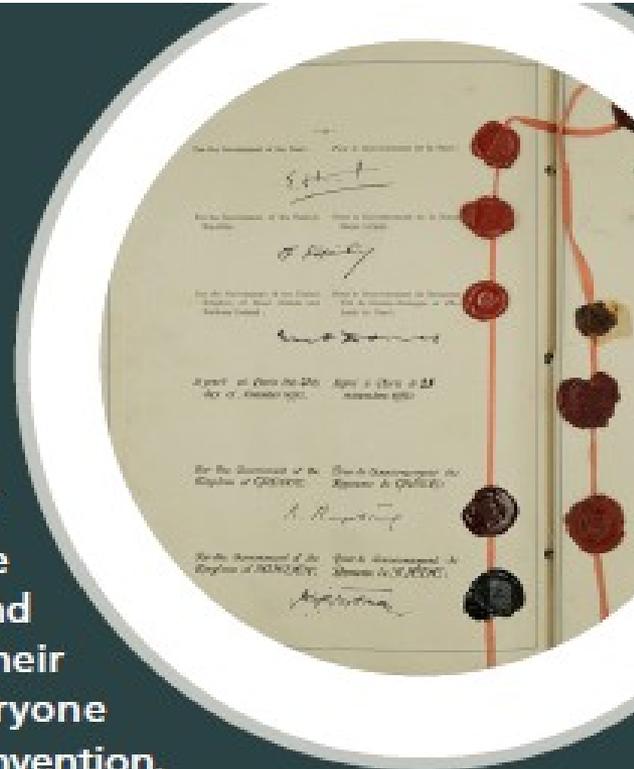
European Convention on Human Rights

- 1950, in force in 1953
- does not mention the right to health explicitly

European Social Charter (1961, in force 1965; revised 1996)

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights is an international treaty under which the member States of the Council of Europe promise to secure fundamental civil and political rights, not only to their own citizens but also to everyone within their jurisdiction. The Convention, which was signed on 4 November 1950 in Rome, entered into force in 1953.





THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights.

Since 1998 it has sat as a full-time court and individuals can apply to it directly.



The Commissioner for Human Rights

Reports, Visits
Recommendations

European Commission against Racism and Intolerance, 1993

Visits, Reports
Recommendations

European Convention on Human Rights, 1950

European Social Charter (1961)
(Revised, 1996)

Framework Convention for the Protection of Natural Minorities, 1995

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)

Convention on Action against Trafficking of Human Beings, 2005

European Court of Human Rights

European Committee of Social Rights

Advisory Committee

Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Group of Experts on Action against Trafficking of Human Beings (GRETA)

Judgments

Conclusions and Decisions

Opinions

Reports

Reports

Committee of Ministers (execution of judgments)

Committee of Ministers (Follow-up of conclusions and decisions)

Committee of Ministers (Recommendations)

Committee of Parties (Recommendations)



Applications (inter-State or individual)

Collective complaints



National reports

Reports, Country visits
Other information

Visits

Official replies to questionnaires
Country visits

Certain organisations are entitled to lodge complaints with the ECSR (a special list of NGOs has been established, made up of NGOs enjoying participatory status with the Council of Europe).

The ECSR examines the complaint and, if the formal requirements have been met, declares it admissible. The State Party may then respond in writing, and a hearing may be requested by either party to the procedure. Finally, the Committee comes to a decision on the merits.