



IOM • OIM

Migration & the Right to Health

Korea, November 2011



Tackling poverty & Achieving Development

Sick people are more likely to become poor. And the poor are more vulnerable to disease and disability.

Good health is central to creating the capabilities that the poor need to escape from poverty. In other words, good **health is** not just an outcome of development – it is a **way of achieving development.**

The right to health has a vital role to play in tackling poverty and achieving development – it lies at the heart of our struggle for a fairer, more humane world.

Paul Hunt



Presentation Objectives

1. Migration Health
2. The Right to Health: Legal Framework
3. Obstacles to the Enjoyment of the Right to Health and Way Forward



1. Migration Health

- From Aristotle to the preamble of the WHO Constitution, health has been understood as a highly-prized personal asset.
- The WHO Constitution defines health as a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.



1. Migration Health

- Migration Health addresses the physical, mental and social well-being of those who migrate and the public health needs of host communities.
- It is a necessary precondition to full realization of the benefits of migration for the migrating person and for both countries of origin and destination.



1. Migrants

- Are, first of all, human beings who have inalienable rights that states have an obligation to uphold.
- Secondly, those who are socially integrated and gainfully employed contribute more to society than those who are exploited and socially excluded.



Does Migration Affect Health?

- Migration is in and of itself is not a risk-factor to health
- The circumstances surrounding the migration process can pose risks to health





Does Migration Affect Health?

- All phases of the migration process can affect communicable and infectious diseases in migrants. Similarly, non-infectious diseases and illnesses may be inequitably distributed among migrants.
- Mental and psychosocial illness is a health concern for many migrants.
- Gender-specific challenges also confront migrants.
- Migrants are often placed at increased risk of work- or occupation-related illness, injury or even death.
- The process of migration can pose particularly severe health risks for certain groups of migrating persons.



Does Migration Affect Health?

- Several migration-related economic and social factors, including aspects of migrant behaviour, and many health-related influences associated with migration can persist long after permanent residence or nationality is attained.
- Also, some biological and genetic determinants of health, as well as certain behaviourally influenced determinants, may extend over generations.



2. The Right to Health: Legal Framework

- Legal instruments
- Accountability mechanisms and effective remedies
- What is meant by the Right to Health?



What is the relationship between Health & Human Rights?

“Health will finally be seen not as a blessing to be wished for but as a human right to be fought for”.

Kofi Annan



What is the relationship between Health & Human Rights?

The Right to Health is a fundamental Human Right

Sources:

1. International Level
 - A. General International Instruments
 - B. Specific International Instruments
2. Regional Level
3. National Level



International Level

A. General International Instruments

- WHO Constitution (1946)
- Universal Declaration of Human Rights (1948)
Article 25
- International Convention on the Elimination of all Forms of Racial Discrimination (1965)
- International Covenant on Economic, Social and Cultural Rights (1966)
Article 12
- Declaration of Alma-Ata (1978)
- WHA61.17 Resolution 'Health of migrants' (2008)



International Level

B. Specific International Instruments

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and ILO Conventions No. 97 and 143
- Convention relating to the Status of Refugees (1951)
- Guiding Principles on Internal Displacement (1998)
- Trafficking and Smuggling Protocols, Supplementing the UN Convention against Transnational Organized Crime (2000)
- Specific legal instruments dealing with women, children, elderly persons, persons with disabilities, detainees, stateless persons



International Level Accountability Mechanisms

JUDICIAL

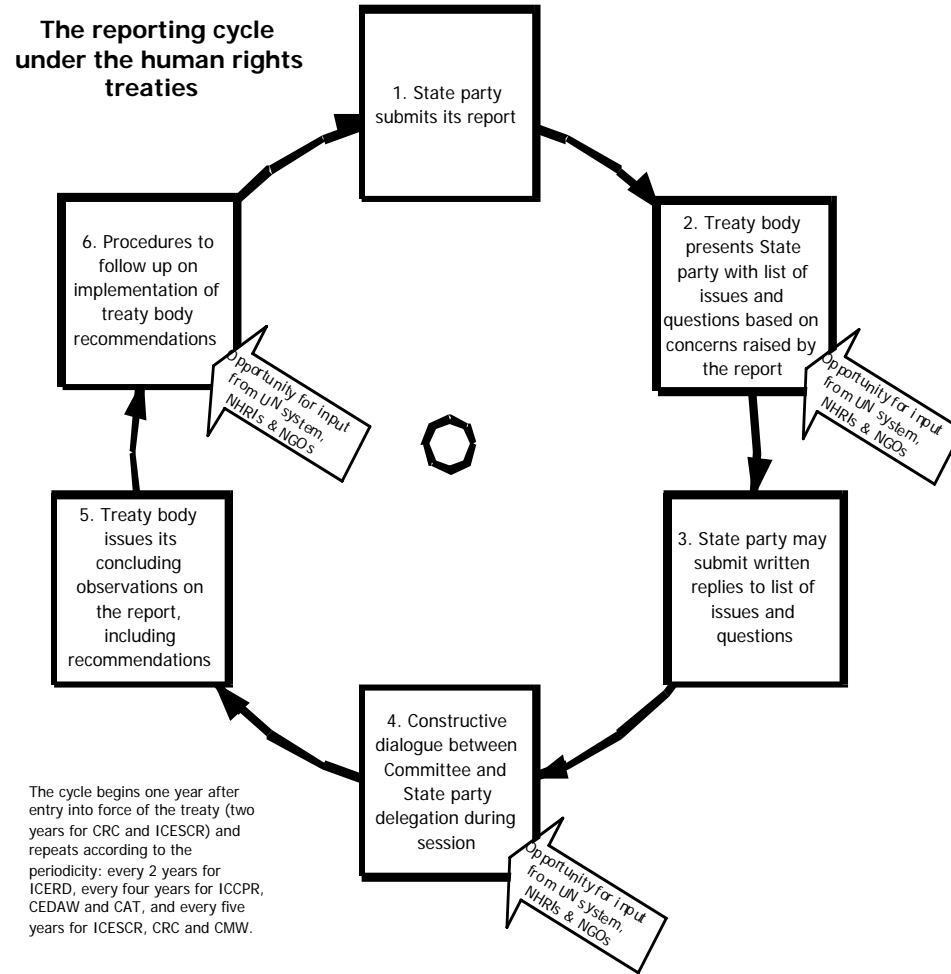
- The International Criminal Court (ICC)
- The International Court of Justice (ICJ)

QUASI-JUDICIAL

- United Nations Treaty Bodies
- Special Procedures, including the UN Special Rapporteur on the right to health and the UN Special Rapporteur on the human rights of migrants



International Level QUASI-JUDICIAL Accountability Mechanisms





The Special Rapporteur on the human rights of migrants

- Is responsible for requesting and receiving information from migrants and members of their families on violations of their human rights as well as issuing recommendations;
- Reports to the Human Rights Council about the global state of protection of migrants' human rights (see his report A/HRC/14/30 of 2010);
- Conducts country visits upon the invitation of the Government.



The Special Rapporteur on the right to health

- Monitors the situation of the right to health throughout the world. He/she identifies general trends related to the right to health and undertakes country visits which provide the Special Rapporteur with a firsthand account on the situation concerning the right to health in a specific country (See Country visits);
- Presents annual reports to the Human Rights Council and to the General Assembly on the activities and studies undertaken in the view of the implementation of the mandate;
- Communicates with States and other concerned parties with regard to alleged cases of violations of the right to health and other issues related to his/her mandate;
- Promotes the full realization of the right to health through dialogue with relevant actors by participating in seminars, conferences, expert meetings.



Regional Level

- The African Charter on Human and Peoples' Rights (1981)
Article 16
- The African Charter on the Rights and Welfare of the Child (1990)
Article 14
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988)
Article 10
- The European Social Charter of 1961 (revised in 1996)
Articles 11 and 13
- ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers of 2007



Regional Level Accountability Mechanisms

JUDICIAL

- The African Court of Human and Peoples' Rights
- The European Court of Human Rights
- The Inter-American Court of Human Rights

QUASI-JUDICIAL

- The African Commission on Human and Peoples' Rights
- The European Committee of Social Rights
- The Inter-American Commission on Human Rights

POLITICAL

- Inter-governmental organizations and parliamentary assemblies, e.g. the Parliamentary Assembly of the Council of Europe



National Level

- Constitution of Ecuador (2008)
Section 7, Article 32 Health
- Constitution of India (1950, as modified in 2007)
Part IV —Directive Principles of State Policy, Article 47
- Constitution of the Italian Republic (1947)
Article 32
- Constitution of South Africa (1996)
Chapter II, Section 27 Health care, food, water and social security



National Level: Korea

“The health of all citizens shall be protected by the State.”

Source: S. KOREA CONST. ch. II, art. 36(3), translated & reprinted in 10 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: REPUBLIC OF KOREA 30 (Albert P. Blaustein & Gisbert H. Flanz eds., 1987).



National Level Accountability Mechanisms

JUDICIAL

QUASI-JUDICIAL

ADMINISTRATIVE

POLITICAL

PARLIAMENTARY COMMITTEES

HEALTH COUNCILS

FREE AND FAIR ELECTIONS

SOCIAL & MEDIA



Effective Remedies

RESTITUTION

COMPENSATION

REHABILITATION

SATISFACTION, AND GUARANTEES OF NON-REPETITION



What is meant by the Right to Health?

The right to health is the right to:

- **Underlying preconditions for Health**
food and nutrition,
housing, access to safe and
potable water and
adequate sanitation,
safe and healthy
working conditions, and
a healthy environment

**Health facilities, goods and services
AAAQ**



General Comment No. 14 of the Committee on Economic, Social and Cultural Rights



Core content of the right to health

- (a) Freedom from discrimination in ensuring access;
- (b) Essential food, basic shelter, housing and sanitation, & safe and potable water;
- (c) Essential drugs as defined under the WHO Action Programme on Essential Drugs;
- (d) Equitable distribution of all health facilities, goods and services;
- (e) A national public health strategy and plan of action

General Comment No. 14 of the Committee on Economic, Social and Cultural Rights



The Right to Health

General legal obligations

- Respect
- Protect
- Fulfill (facilitate, provide, promote)

- Principle of progressive realization

General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, 2000



Progressive realization

- The States with insufficient resources are under an obligation of progressive realization of the right to health through the taking of concrete steps intended to fully implement the right to health, while guaranteeing that the right will be exercised without discrimination.



Human Rights Responsibility

- The right to the health has national and international dimensions. It places duties on States in relation to individuals within their jurisdictions.
- Second, those in a position to assist have a human rights responsibility of international assistance and cooperation in health. In other words, high-income countries have a human rights responsibility to provide international assistance and cooperation in health to developing countries.

Paul Hunt



The right to health

Specific legal obligations

- **“States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services (...).”**

CESCR General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, 2000

CERD General Recommendation XXX on Discrimination Against Non Citizens, 2004



Some Health Related Rights

- The right to life, survival, and development
- The right to equality and freedom from discrimination
- Freedom of movement
- The right to bodily integrity and security of the person
- The right to an identity
- The right to privacy
- Freedom to seek, receive & impart information
- The right to food
- The right to housing
- The right to social security
- Freedom from torture & inhuman & degrading treatment
- The right to association
- The right to the benefits of scientific progress
- The right to education



3. Do persons involved in migration enjoy the right to health?

The right to health apply to **every human being** regardless his/her legal status

However, worldwide, obstacles to the enjoyment of the right to health for persons involved in migration exist





3. Do persons involved in migration enjoy the right to health?

- Lack of information
- Ambiguously or imprecisely defined entitlements
- Legal provisions are being followed by inappropriate implementation measures and by insufficient funding
- Time-consuming administrative reimbursement procedures
- Any requirement on health service providers to report to the authorities the presence of irregular migrants
- Illiteracy, language problems or lack of time to complete the application process to obtain regular access to health care
- User charges and other costs of accessing publicly funded health care



Regular Migrants





Regular Migrants





Irregular Migrants





Victims of Trafficking in Persons





Summary

- Migrants are human beings who have inalienable rights that states have an obligation to uphold;
- The right to health has a vital role to play in tackling poverty and achieving development;
- There are measures promoting respect for the right to health and to prevent its violation as well as accountability mechanisms and effective remedies in case violations occur.



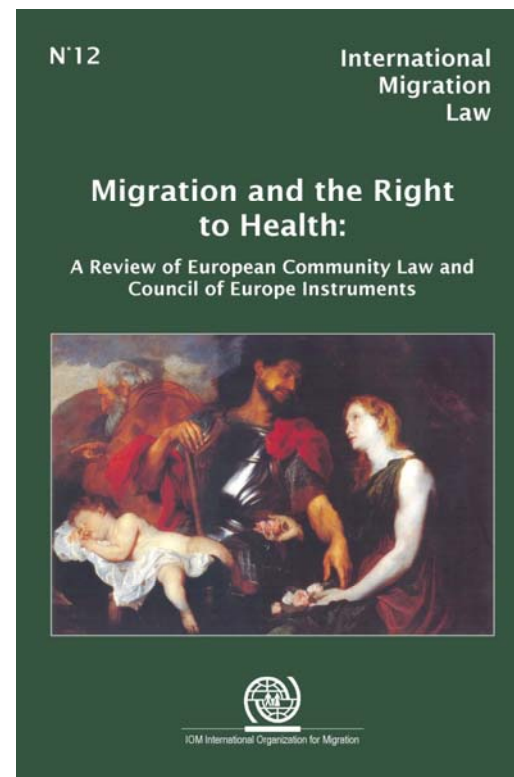
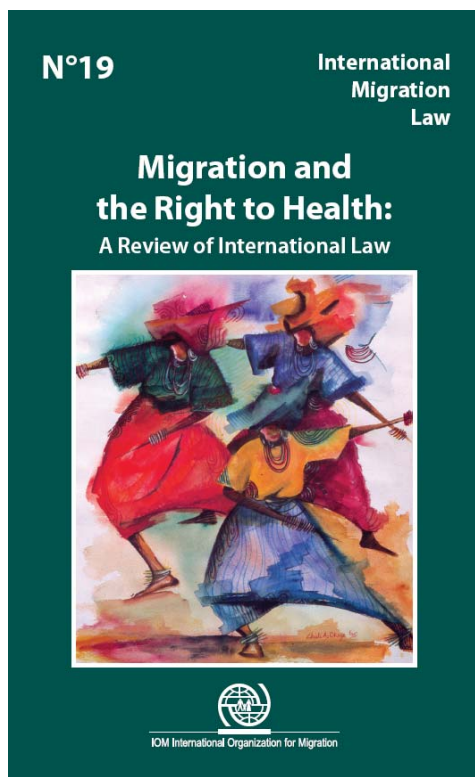
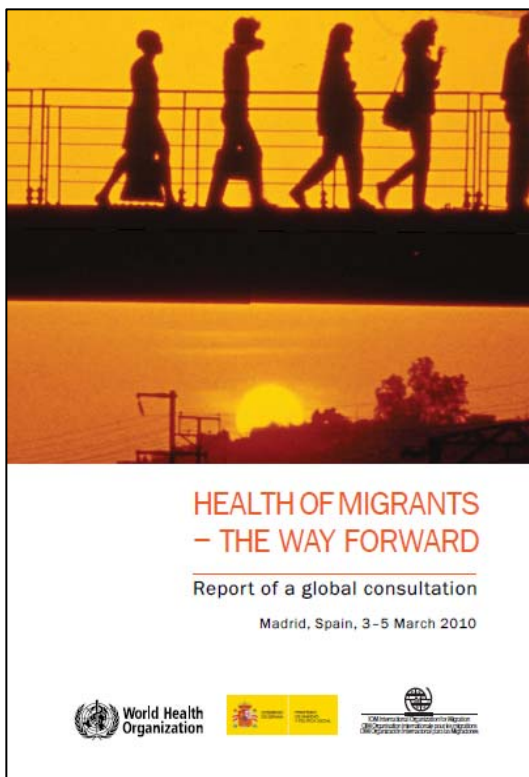
The Way Forward

Policymakers can take a number of steps to improve access of migrants to health services. These include:

- clearly defining entitlements by law,
- publicizing them to migrants and health care providers,
- ensuring appropriate implementation measures,
- reducing unnecessary and burdensome bureaucratic procedures,
- not conditioning health care to a person's immigration status,
- and providing protection and assistance to victims of trafficking regardless of whether they cooperate with law enforcement services.



IML Publications





Addressing the health needs of migrants effectively can improve health status and outcomes, facilitate integration, prevent long-term health and social costs, contribute to social and economic development, and most importantly protect public health and human rights.





Exercise

What is the Role of Health Professionals in the Realization of the Right to Health for Migrants?



The World Medical Association's Declaration of Geneva

The World Medical Association's Declaration of Geneva, the modern version of the Hippocratic Oath, opens with a pledge "to consecrate my life to the service of humanity;" it continues with commitments to use one's skills "with conscience and dignity;" not to allow "considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient;" and "not to use my medical knowledge to violate human rights and civil liberties, even under threat".



The International Code of Medical Ethics

Requires physicians to “strive to use health care resources in the best way to benefit patients and their communities”.

Although not expressed in the same language, these values are consistent with those found in the Universal Declaration of Human Rights.



Health professional's role

Health professionals engagement in advancing the right to health can begin with awareness of how violations of human rights affect their own ability to offer the quality treatment they aspire to give.

This foundation in inquiry and self-reflection can, in turn, lead to a transformation in the way health professionals, including physicians, see themselves, not simply as service providers but rather as agents and advocates, along with patients and communities, in realizing the right to health.

Collective action is needed.

Source: Leonard S. Rubenstein, « Physicians and the Right to Health” in Andrew Clapham and Mary Robinson, Realizing the Right to Health, Swiss Human Rights Book Vol. 3, 2009.



Thank you!

