THE RIGHT TO HEALTH FOR UNDOCUMENTED MIGRANTS

PICUM
PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

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This publication was made possible with kind support from:

Co-funded by the European Union

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or European Union Programme for Employment and Social Innovation "EaSI" (2021-2027). Neither the European Union nor the granting authority can be held responsible for them.

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INTRODUCTION

The right of every person to the highest attainable standard of health is a universal right not dependent on status of any kind. It is enshrined in numerous international and regional human rights treaties, national constitutions as well as in different policy frameworks. The ratification of these instruments legally binds states to guarantee the right to health of any person, without discrimination, within their jurisdiction. The right to health is one of the most basic and essential preconditions to enjoying a dignified life and for the exercise of other human rights.

Despite these universal provisions, undocumented migrants experience difficulty exercising their right to health in Europe[1] and elsewhere. Impediments to the full enjoyment of the right to health not only negatively affect the treatment and diagnosis of existing conditions, but also exclude people with irregular migration status from information that affects their health and their ability to promote positive health and prevent illnesses, directly and indirectly affecting their physical and mental health. Not only is their well-being at risk when they are prevented from accessing health services, the exclusion of undocumented migrants from the healthcare system negatively affects overall national health goals and programs.[2]

This factsheet presents a non-exhaustive overview of the international legal framework that establishes the right to health, which encompasses the underlying conditions for health as well as access to healthcare, and states' obligations to protect and assure this right to everyone, including undocumented migrants.

1 For more information on this, see: PICUM (2022), *Insecure Residence Status, Mental Health and Resilience;* and PICUM (2017), *Cities of Rights: Ensuring Health Care for Undocumented Residents*

2 For more information on how undocumented people experience difficulties accessing national health programmes, see *PICUM's coverage of the impact of the COVID-19 in Europe*

1. THE RIGHT TO HEALTH UNDER INTERNATIONAL LAW

1.1 UN Treaties

The human right to health first appeared at the international level in the Constitution of the World Health Organisation (WHO in 1946 and was later included in article 25 of the Universal Declaration of Human Rights in 1948. It has since been embedded in different legally binding treaties, with the most comprehensive provision of the right to health enshrined in the 1966 United Nations (UN) International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 of the Covenant states that:

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
   (b) The improvement of all aspects of environmental and industrial hygiene;
   (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
   (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The UN Committee on Economic, Social and Cultural Rights (CESCR), the body that oversees the Covenant's implementations, has published a General Comment interpreting the right to health under Article 12.

The right to health (including formulated negatively as the right *not* to be harmed in certain ways) has been further elaborated and included in different international human rights treaties and its implications for specific groups and individuals (see Table 1).[3]

3 See Annex for a more comprehensive overview of how the right to health is included in international law.

TABLE 1. International human rights conventions with provisions on the right to health.

Year	Convention
1965	**International Convention on the Elimination of all Forms of Racial Discrimination** (CERD) on eliminating racial discrimination and guaranteeing "the right to public health, medical care, social security and social services" (Article 5 (iv)) to everyone
1979	**Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW) on eliminating discrimination against women in the workplace by, among others, ensuring "the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction" (Article 11)
1984	**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (UNCAT) on the obligation to "not expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in person of being subjected to torture" (Article 3) and "the right to victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible" (Article 14)
1989	**Convention on the Rights of the Child** (CRC) on the "right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health", as well as the specific measures for the realisation of the right to health (Article 24)
1990	**International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families** (CMW) on the rights of migrants workers to, regarding employment, enjoy equal treatment on, among others, health; and on the right for migrant workers and members of their families to receive emergency medical care (Articles 25 and 28)
2006	**Convention on the Rights of Persons with Disabilities** (CRPD) on "the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability" and the steps needed to the realisation of this right (Articles 25, 26)

BOX 1 • The right to health under EU law

The importance of health is recognised in the Treaty on the Functioning of the European Union in Article 168, according to which "a high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities".

Health is an area of shared competence between the EU and member states, with member states having primary responsibility for the organisation of health systems. EU health policy aims to address public health in various ways, including improving rapid response to health threats and developing soft law on cross-cutting issues or priorities, such as mental health and cancer. The EU also provides funding for initiatives on health and health inequalities. The EU Charter on Fundamental Rights specifically recognises the right of everyone to access preventive health care and the right to benefit from medical treatment under the member states' national laws (Article 35). This provision should be read together with Article 24, which reiterates that children shall have the right to such protection and care as are necessary; and Article 31, which establishes the right to healthy and safe working conditions. Notably, however, the EU Charter only applies to institutions and bodies of the EU and to national authorities *when they are implementing EU law*.

BOX 2 • European Social Charter and Council of Europe recommendations

The European Social Charter is a Council of Europe treaty that has been ratified by all member states of the European Union (EU) (either in its original version of 1961 or its revised form of 1996). States have committed to "effectively realise" the rights and principles of the Charter. The treaty's preamble asserts that "anyone without adequate resources has the right to social and medical assistance" and reiterates this in Article 3 on the right to healthy and safe working conditions, and in Article 11, on the right to protection of health.

Even though the Appendix to the European Social Charter establishes that these rights are only applied to people "lawfully resident" or to regular workers, in a landmark Collective Complaint from 2003[4], the European Committee on Social Rights, which monitors compliance with the Charter, stipulated that the exclusion of undocumented children from medical assistance because of their status was in violation of their right to social, legal and economic protection. In 2008, the Committee again upheld the right of undocumented children to housing and to appropriate social, legal and economic protection[5]. The Committee has also issued recommendations[6] in its country conclusions about providing health care to undocumented migrants. In the context of a breach of the right to social and medical assistance, the Committee has ruled that undocumented people have the right to access to emergency shelters[7,8] (upheld in 2016[9] and in 2017[10]).

The Parliamentary Assembly of the Council of Europe (PACE), has adopted resolutions[11] calling on member states to provide equal access to health care services for undocumented migrants in the context of fighting AIDS and has recommended that Member States "guarantee the right to health care" for undocumented children.

The Council of Europe's Committee of Ministers has recommended that Member States put in place mechanisms to ensure that all migrants – including those with irregular status – are guaranteed access to health care[12]. The Committee of Ministers also recommended that health authorities do not transfer personal data of undocumented migrants to the immigration authorities, and that undocumented migrants would not be denounced when seeking health care.

4 European Committee on Social Rights, 2003, *Collective Complaint 14/2003 International Federation for Human Rights (FIDH) v. France*

5 European Committee on Social Rights, 2008, *Defence for Children International (DCI) v. the Netherlands*

6 Most notably in its country conclusions for Spain in 2014: The European Committee on Social Rights, 2014, *Conclusions XXII, Spain*, *Article 13 -Right to social and medical assistance (para. 4)*; *Article 13 -Right to social and medical assistance (para. 1)*

7 European Committee on Social Rights, 2012. Processed Complaint No. 86/2012. *European Federation of National Organisations working with the Homeless (FEANTSA) v The Netherlands*

8 European Committee on Social Rights, 2013. Processed Complaint No. 90/2013. *Conference of European Churches (CEC) v. The Netherlands*

9 European Committee on Social Rights, 2016, *Assessment of the follow-up: Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013*

10 European Committee on Social Rights, 2017, *2nd assessment of the follow-up (2017): European Federation of National Organisations Working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012*

11 PACE, 2011, *Undocumented migrant children in an irregular situation* and PACE, 2014, *Equal access to health care and Migrants and refugees and the fight against Aids*

12 European Committee on Social Rights, 2011, *Recommendation CM/Rec(2011)13 of the Committee of Ministers to member states on mobility, migration and access to health care*

2. STATES' OBLIGATIONS TO PROTECT THE RIGHT TO HEALTH

Under International human rights law,[13] the ratification of the UN conventions creates three kinds of obligations on states: the obligations to **respect, to protect and to fulfil** human rights.

With respect to the right to health, the Committee on Economic, Social and Cultural Rights (CESCR), has stipulated in its General Comment No. 14 (paras. 30-33) that the **obligation to respect** binds states to refrain from obstructing the realisation of the right to health; the **obligation to protect** obliges states to take steps to prevent external actors from interfering with the Article 12 guarantees; and the **obligation to fulfil** requires states to introduce appropriate actions towards the full realisation of the right to health.

Therefore, states must take specific measures to fulfil and protect the right to health as well as the underlying conditions of health. They also have the obligation to refrain from "interfering directly or indirectly with the enjoyment of the right to health". The CESCR provides numerous examples of states' obligations to refrain from doing things that would interfere with the enjoyment of the right to health, known as negative rights. They included the duty to refrain from denying or limiting equal access for everyone, including undocumented migrants, to (but not limited to):

> "preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women's health status".[14]

Similarly, the Committee on the Elimination of Racial Discrimination (CERD), in its General Comment No. 30, reminded states parties to respect the right to health of non-citizens "by refraining from denying or limiting their access to preventive, curative and palliative health services" (par. 36).

The Committee on Migrant Workers (CMW) in its General Comment No. 5 has stipulated that states should avoid detaining migrants with specific needs, especially people with physical or mental health needs.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), in its Article 3, also includes states' obligation to not "expel, return or extradite someone to another State if there are risks that a person would be subject to torture"; and in its General Comment No. 4 that victims of torture or other inhuman treatment should not be deported to another country where medical treatment and services would not be granted (para. 22).

2.1 Progressive realization

Human rights treaties ratified by states are legally binding, requiring states to protect, promote and guarantee these rights. However, international treaty bodies acknowledge that states may lack capacity and resources and that the full implementation of the treaties' provisions will happen over time. Therefore, some provisions of the treaties are subject to "progressive realisation", including the right to health.[15]

13 OHCHR, *International Human Rights Law*

14 CESCR, 2000, *General comment No. 14 The Right to the Highest Attainable Standard of Health (Art. 12)* (par. 34)

15 UN Office of the High Commissioner for Human Rights (OHCHR), 2008, *Factsheet 31. The Right to Health*

According to the UN Office for the High Commissioner on Human Rights, progressive realisation "is the obligation to take appropriate measures towards the full realisation of economic, social and cultural rights to the maximum of their available resources".[16]

However, states' financial constraints do not exempt them from taking steps to guarantee the right to health or justify postponing indefinitely the realisation of the right to health. Countries are required to ensure the right to health to the maximum of their capacity, adapting and evolving to their socioeconomic context. Moreover, the principle of non-discrimination is subject to neither progressive realization nor resource availability.

2.2 Principle of non-discrimination and the right to health for undocumented migrants

The right to health, as any other human right, is universal and based on the principle of non-discrimination, which obliges implementation in a manner that treats every person equally, "on the ground of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status."[17] International human rights treaties have reiterated this principle, specifically in Articles 1(2) and 1(3) of the CERD; Article 2(2) and preamble of the ICESCR; Articles 2(1) and 2(2) of the CRC; Article 7 of the CMW; and Articles 3 and 5 of the CRPD.

Expert bodies that monitor states' compliance with international human rights treaties have clarified on several occasions that the principle of non-discrimination includes migrants, including those who are undocumented.

In General Comment No. 30 on discrimination against non-citizens, the Committee on the Elimination of Racial Discrimination stipulates that states must remove the obstacles that prevent non-citizens from enjoying the right to health (para. 29).

Similarly, the Committee on Economic, Social and Cultural Rights (CESCR) has clarified several times in its general comments (No. 14 (para. 34), 19 (para. 37), 20 (para. 30) and 23 (para. 5,)) that all persons, including migrants, have an equal right to access preventive, curative, and palliative health services, regardless of their residence status and documentation. In a 2017 statement, the CESCR, invoking its previous general comments, emphasised the vulnerability of undocumented migrants to unhealthy and dangerous working conditions and criticised the exclusion of this population from health care systems.

The CAT, in its General Comment No. 3 (para. 15, 32), has stated that everyone regardless of status has the right to access rehabilitation services.

The Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017), has clarified that all migrant children "should have access to health care equal to that of nationals, regardless of their migration status" (para. 55).

16 For instance, Article 2(1) of the ICESCR expressly states that each state that joins the Convention "undertakes to take steps … to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

17 *Committee on Economic, Social and Cultural rights, 2009*

3. UNDERLYING CONDITIONS OF HEALTH

The human right to health can only be realised if other human rights are respected. The right to health therefore encompasses a right to health care, as well as to the socio-economic factors that influence a person's ability to lead a healthy life – that is, to the underlying preconditions for health. As noted in General Comment No 14, the underlying determinants of health are:

> "Safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including with regard to sexual and reproductive health" (par. 11).

3.1 The right to housing

The right to adequate housing is a right recognised in human rights law and is an indispensable[18] aspect for the full realisation of the right to health. The ICESCR in Article 11 imbeds the right to housing within a broader right to an adequate standard of living:

> "The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions"

The CESCR has defined the right to adequate housing as "the right to live somewhere in security, peace and dignity"[19]. In its General Comments No. 4 (para. 8(b)(d) No. 7 and No. 16, the CESCR has stipulated that the right to adequate housing is directly related to the right to health and the underlying conditions of health, as it encompasses "security of tenure",[20] access to safe drinking water, adequate hygiene, energy for heating and cooking and guarantees physical safety and protection from health threats. Moreover, lack of housing or proof of residence can create barriers to accessing healthcare services.

18 For more information on how the lack of access to housing impacts undocumented people's health, please see PICUM, March 2021, *Navigating Irregularity: the Impact of Growing Undocumented in Europe*

19 UN Office of the High Commissioner for Human Rights (OHCHR), 2009, *Factsheet 21. The Right to Adequate Housing*

20 Security of tenure is a key principle on the access to adequate housing, which relates to housing and land, allowing people to "live in one's home in security, peace and dignity". For more information on this, please see: UNGA, 2013, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*

The right to housing has been established in other UN human rights treaties as well:

1965	International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)	Article 5 (e)(iii)
1966	International Covenant on Economic, Civil and Political Rights (ICCPR)	Article 17
1979	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Article 14 (2), Article 15 (2)
1989	Convention on the Rights of the Child (CRC)	Article 16 (1), 27 (3)
1990	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)	Article 43 (1) (d)
2006	Convention on the Rights of Persons with Disabilities (CRPD)	Articles 9, 28

Article 16 of the European Social Charter on the right of the family to social, legal and economic protection includes the right of the family to social, legal and economic protection, including the provision of family housing. The 1996 Revised Version of the Social Charter includes a more explicit provision of the right to housing in Article 31,[21] aiming:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

3.2 Healthy and safe working conditions

One of the underlying determinants of health is the enjoyment of just and favourable conditions of work. The right to safe and healthy working conditions is covered under Article 7(b) of the ICESCR; Article 11(1)(f) of CEDAW, which emphasises the protection of the function of reproduction within the work environment; Article 25 of the CMW; Article 32 of the CRC on the protection of children from any work that can affect their health; Article 27 of the Convention on the Rights of Persons with Disabilities (CRPD) on the obligation to protect safe working conditions for people with disabilities; and Articles 3 and 8 from the European Social Charter.

General Comment N. 23 of the CESCR further clarifies that the enjoyment of the right to just and favourable conditions of work is linked to the enjoyment of other Covenant rights, with special emphasis on the right to physical and mental health, by avoiding occupational accidents and disease, and ensuring an adequate standard of living through decent remuneration. The Committee highlights that concrete measures should be applied to all sectors, including the irregular labour market (paras. 25 and 26). National programmes should be implemented to prevent work-related accidents and to ensure a safe environment (including access to safe drinking water and adequate sanitation facilities), with effective monitoring mechanisms. When relevant, workers should have access to remedies and adequate compensation. The Committee also underlines that laws and policies need to ensure that migrant workers enjoy treatment that is no less favorable than that of national workers in relation to remuneration and conditions of work.

21 Even though most EU Member States have ratified the 1966 revised version of the European Social Charter, article 31 on the right to housing has only been ratified by Finland, France, Italy, Lithuania, the Netherlands, Portugal, Slovenia, and Sweden. For more information on the right to housing in Europe, please see Housing Rights Watch

4. ACCESS TO SERVICES

Undocumented migrants are often only granted emergency or "necessary" care and cannot access primary health care and services in many countries in the EU. However, the Committee on Economic, Social and Cultural Rights in its General Comment No. 14 (para. 12) notes that state parties should provide health facilities, services and goods and that they must be available in sufficient quantity, be accessible (also in terms of information and physical accessibility) and affordable to everyone, be culturally acceptable (respectful of medical ethics and sensitive to gender and culture) and be of good quality – without discrimination based on any status. The CESCR clarifies (para. 17) that services encompassed within Article 12.2(d) include:

- "the provision of equal and timely access to basic preventive, curative, rehabilitative health services and health education;
- regular screening programmes;
- appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, preferably at community level;
- the provision of essential drugs;
- and appropriate mental health treatment and care".

Under international human rights law, states should ensure access to essential health services for children and their family, including pre- and post-natal care for mothers. The CEDAW Committee, in its General Recommendation No. 24, has said that states parties must ensure women have appropriate services in connection with pregnancy, childbirth and the post-natal period, including family planning and emergency obstetric care.

The CMW and CRC, in their Joint General Comment No. 4 (2017) and No. 23 (2017), reminded how migration status can influence children's mental health, and specify that they should be able to "access to specific care and psychological support" (para. 54). Furthermore, the Committees further clarified that migrant children should be able to access all health services.

Regarding access to support services, the committees overseeing the different international human rights law treaties have asserted on multiple occasions that people who have suffered violence, abuse and inhumane treatment should also be granted access to healthcare services.

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has recalled in several of its general comments state obligations to provide support services for women and girls who have experienced any kind of violence. In its General Comments No. 28, No. 30, No. 33, No. 35, the CEDAW Committee has stated that victims and survivors of gender-based violence should have access to reparation, which includes access to sexual, reproductive, and mental health services. General Comments No. 24 and No. 37 further emphasise that women and girls who are victims of human trafficking should have access to safe, free and confidential access to health care and trauma treatment (para. 38).

The 2014 Joint General Recommendation No. 31 of the CEDAW Committee and No. 18 of the CRC Committee stipulates to provide guidance on prevention, protection, support and follow-up services and assistance for victims, including towards physical and psychological recovery and social reintegration.

The CAT states in its General Comment No. 4 that victims of torture or other inhuman treatment should have access to specialised rehabilitation services (par. 22).

5. THE RIGHT TO HEALTH FOR (UNDOCUMENTED) MIGRANTS WITH DISABILITIES

The principle of non-discrimination enshrined in human rights law equally applies to persons with disabilities in the enjoyment of human rights. "The right to the highest attainable standard of health without discrimination on the basis of disability" is explicitly included in Article 25 of the 2006 Convention on the Rights of Persons with Disabilities (CRPD) which further outlines the following obligations for States to:

(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;

(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;

(c) Provide these health services as close as possible to people's own communities, including in rural areas;

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

In a 2017 joint statement, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), and the Committee on the Rights of Persons with Disabilities (CRPD) noted that people with disabilities represent an important minority within the migrant population, but also noted the lack of available data on this group. There are difficulties in identifying migrants with disabilities and the barriers they experience in accessing services. As noted by the CESCR Committee in its General Comment No.5 (1994), the exclusion of people with disabilities from the healthcare system can lead to overlooking their needs, negatively impact their assessment and hinder prevention.

The CRPD Committee has recognised on several occasions the need to guarantee people with disabilities' consent to treatment, which is included in article 25 of the Convention. In its General Comments No. 1 (para.8), No. 3 (para. 32), and No. 5 (para.60) the CRPD Committee emphasised the lack of consent women with disabilities often have (but not limited to) regarding sexual and reproductive health and family planning. The Committee has reminded states of their duty to ensure that all professionals working with people with disabilities inform individuals and receive consent prior to administering any treatment. States must also refrain from introducing provisions that encourage forced treatment for people with disabilities. People's consent and control over their lives and decisions are indispensable for an independent life.

The right to health for people with disabilities directly affects their right to education. As noted in General Comment No. 4 (para. 54-55) by the CRPD, health, hygiene and nutrition programmes should be available in the educational system, and efforts should be taken to provide rehabilitation services such as occupational, physical, social and counselling services.

6. INTERNATIONAL MECHANISMS OF ACCOUNTABILITY ON THE RIGHT TO HEALTH

In order to monitor states' obligations regarding the right to health, there are different mechanisms of accountability including via state structures, civil society, regional and international treaty bodies. Treaty Bodies are groups of experts that monitor states' compliance with the human rights treaties. State parties have a duty to submit periodic reports to the relevant overseeing body on how those rights are being implemented. The relevant treaty body then examines the report - along with the information provided by civil society organisations - in the presence of a state party's delegation. Based on this constructive dialogue, the Committee issues its concerns and recommendations, known as 'concluding observations'.[22]

The right to health has been mainly monitored by the Committee on the Elimination of Racial Discrimination (CERD), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC) and – regarding the health of detained persons and victims of torture - the Committee against Torture (CAT).

In addition to the review process, individuals can present complaints with a Committee against a State. Any individual who claims that their rights under the treaty have been violated by a State Party to that treaty may bring a communication before the relevant committee, which will then consider it and make recommendations to the state party. In order to do so, the State Party must have ratified (or through accession) an Optional Protocol (in the case of CEDAW, CRPD, ICESCR and CRC) or has accepted the individual complaints mechanisms under a specific article of the Convention (in the case of CERD, CAT, and CMW). The CESCR, CAT, CEDAW, CRPD, and CRC can also start country inquiries if they receive reliable information of serious violations of the conventions in a State party.

The United Nations Human Rights Treaty Bodies Database shows the different type of documents (concluding observations, List of Issues prior to reporting (LoIPR), follow up reports, State Party reports) by year, region, country and treaty. The calendar of the expected date of consideration shows when the different Committees will hold their sessions.

Lastly, the Universal Periodic Review (UPR) is State-to-State peer review mechanism of the UN Human Rights Council to analyse the human rights record – including the right to health - of the UN Member States.

22 For more information on the review mechanisms of UN bodies, please see OHCHR, 2012, *Fact Sheet No. 30 (Rev. 1): The United Nations Human Rights Treaty System*

ANNEX: INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK ON THE RIGHT TO HEALTH

The tables below appear in chronological order.

International legal framework

ARTICLES	CLARIFICATIONS
International Convention on the Elimination of All Forms of Racial Discrimination | CERD | 1965	
Article 5 (e) (iv): (...) States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (e) Economic, social and cultural rights, in particular: (iv) The right to public health, medical care, social security and social services	General recommendation No. 30 (2005) on discrimination against non-citizens Par. 29, and 36.
International Covenant on Economic, Social and Cultural Rights | ICESCR | 1966	
Article 7: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (b) safe and healthy working conditions **Article 10:** 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law. **Article 12:** 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.	General Comment No. 5 (1994) on Persons with Disabilities General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health (Art. 12) General Comment No. 19 (2007) on the right to social security (art. 9) General Comment No. 20 (2009) on Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the ICESCR) General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the ICESCR) General Comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the ICESCR)

ARTICLES	CLARIFICATIONS
Convention on the Elimination of All Forms of Discrimination against Women | CEDAW | 1979	
Article 10: States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning. **Article 11:** 1. States shall take measures to eliminate discrimination against women in the field of employment in order to ensure the same rights including: (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction	General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration General Recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change General Recommendation No. 36 (2017) on the right of girls and women to education Joint General Recommendation/General Comment No. 31 (2014) of the Committee on the Elimination of Discrimination against Women and No. 18 (2014) of the Committee on the Rights of the Child on harmful practices
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | UNCAT | 1984	
Article 3 1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in person of being subjected to torture. **Article 14** 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible (...).	General Comment No. 3 (2012) on the Implementation of article 14 by States parties General Comment No. 4 (2017) on the Implementation of article 3 of the Convention in the context of article 22

ARTICLES	CLARIFICATIONS
Convention on the Rights of the Child | CRC | 1989	
Article 24: 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) To diminish infant and child mortality; (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; (d) To ensure appropriate pre-natal and post-natal health care for mothers; (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents; (f) To develop preventive health care, guidance for parents and family planning education and services. 3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. 4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries. **Article 25:** States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement. **Article 32:** 1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. **Article 39:** States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.	General Comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child General Comment No. 3 (2003) on HIV/AIDS and the rights of the child General Comment No. 4 (2003) Adolescent health and development General Comment No. 7 (2006) on early childhood General Comment No. 9 (2007) on the rights of children with disabilities General Comment No. 13 (2011) Freedom from violence General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (Article. 24)

ARTICLES	CLARIFICATIONS
International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families | CMW | 1990	
Article 25 1. Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and: (a) Other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms **Article 28** Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment. **Article 43** 1. Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: (e) Access to social and health services, provided that the requirements for participation in the respective schemes are met; **Article 45** 1. Members of the families of migrant workers shall, in the State of employment, enjoy equality of treatment with nationals of that State in relation to: (c) Access to social and health services, provided that requirements for participation in the respective schemes are met;	Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return. General Comment No. 5 (2021) on migrants' rights to liberty, freedom from arbitrary detention and their connection with other human rights

ARTICLES	CLARIFICATIONS
Convention on the Rights of Persons with Disabilities | CRPD | 2006	
Article 16 - Freedom from exploitation, violence and abuse 4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs. **Article 22** - Respect for privacy 2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others. **Article 25** - Health States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall: a. Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes; b. Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons; c. Provide these health services as close as possible to people's own communities, including in rural areas; d. Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care; e. Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner; f. Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability. **Article 26 - Habilitation and rehabilitation** 1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services (...) **Article 27** - **Work and employment** 1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia: b. Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;	General Comment No. 1 (2014) on Article 12: Equal recognition before the law General Comment No. 2 (2014) on Article 9: Accessibility General Comment No. 3 (2016) on women and girls with disabilities General Comment No. 4 (2016) on the right to inclusive education General Comment No. 5 (2017) on living independently and being included in the community General Comment No. 6 (2018) on equality and non-discrimination General Comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention

European legal framework

ARTICLES	CLARIFICATIONS
European Social Charter	
Article 3 – The right to safe and healthy working conditions With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake: 1. to issue safety and health regulations; 2. to provide for the enforcement of such regulations by measures of supervision; 3. to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health. **Article 8** – The right of employed women to protection With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake: 4 b to prohibit the employment of women workers in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature. **Article 11** – The right to protection of health With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia: 1. to remove as far as possible the causes of ill health; 2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health; 3. to prevent as far as possible epidemic, endemic and other diseases.	Recommendation on mobility, migration and access to health care (2013) PACE: Equal access to health care and Migrants and refugees and the fight against Aids. PACE: Undocumented migrant children in an irregular situation The European Committee on Social Rights, responding to Collective Complaint 14/2003 International Federation for Human Rights (FIDH) v. France The European Committee on Social Rights, 2014, Conclusions XXII, Spain, Article 13 -Right to social and medical assistance (para. 4); Article 13 -Right to social and medical assistance (para. 1) The European Committee on Social Rights, 2008, *Defence for Children International (DCI) v. the Netherlands, and Assessment of the follow-up, 2016* European Committee on Social Rights, 2012. European Federation of National Organisations working with the Homeless (FEANTSA) v The NetherlandsAnd *2nd assessment of the follow-up, 2017.* European Committee on Social Rights, 2013, *Conference of European Churches (CEC) v. The Netherlands.* And *Assessment of the follow-up, 2016*
EU Charter of Fundamental Rights	
Article 35 – Healthcare Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.	

ADDITIONAL RESOURCES:

Burns, N., 2017, *The human right to health: exploring disability, migration and health*

European Union Agency for Fundamental Rights, 2013, *Inequalities and Multiple Discrimination in Access to and Quality of Healthcare*

European Union Agency for Fundamental Rights, 2016, *Thematic Focus: Migrants with Disabilities*

FEANTSA and Fondation Abbé Pierre, 2016, *Housing-related Binding Obligations on States from European and International Case Law*

IOM, 2009, *Migration and the Right to Health: A Review of International Law. International Migration Law No. 19*

PICUM, 2016, *The Sexual and Reproductive Health Rights of Undocumented Migrants. Narrowing the Gap Between their Rights and the Reality in the EU*

PICUM, 2017, *Cities of Rights: Ensuring Health Care for Undocumented Residents*

PICUM, 2022, *Insecure Residence Status, Mental Health and Resilience*

UN Human Rights Regional Office for Europe, 2019, *Promising local practices for the enjoyment of the right to health by migrants*

UN Office of the High Commissioner for Human Rights (OHCHR), 2008, *Factsheet 31. The Right to Health*

UN Office of the High Commissioner for Human Rights (OHCHR), 2009, *Factsheet 21. The Right to Adequate Housing*

World Health Organization (WHO), 1989, *Health principles of housing*

World Health Organization (WHO), 2010, *Health of migrants: the way forward*

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

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