

How the Framework Convention on Global Health (FCGH) should address the rights and health of migrants

Submitted July 10, 2013, by the Health Migration Division of the International Organization for Migration

1. General considerations on migrants' health within the FCGH

Based on the considerations that follow, the Migration Health Division (MHD) of the International Organization for Migration (IOM) supports the inclusion of the following in the FCGH:

1. In accordance the Universal Declaration of Human Rights (article 25), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (article 12), explicitly recognize *de jure et de facto* that all those in a territory, including non-nationals regardless of their migration status, are entitled to the recognition of their equitable right to health;
2. Ensure health care environments are responsive to today's diverse societies and provide migrant-friendly health services (e.g., accessibility in terms of language, non-discriminatory and respectful quality care, culturally and gender sensitive, health workers drawn from marginalized populations).
3. Have active health promotion and outreach to vulnerable and marginalized populations (including migrants) who may underutilize health system (an effective approach is the involvement of members from marginalized communities such as migrants' associations or migrant populations as peers to facilitate migrants' access to health services).
4. Take the necessary steps to address underlying determinants of health, that are created by factors outside the health sector, such as the working and living conditions of vulnerable populations, including internal and international migrants. Therefore, it is critical that horizontal multi and inter-sectoral collaboration and cooperation mechanisms are established between relevant spheres of government and other stakeholders including, but not limited to sectors dealing with health, immigration, labour, and foreign affairs at international, national and sub-national level.
5. Ensure that all workers, including migrant workers (who are often employed in 3 D-jobs --dangerous, dirty, and demeaning) -- with or without legal status -- and those working in the informal sector have access to social protection in health including access to health care services and health insurance, as well as working conditions that are healthy and safe, in compliance with internationally agreed occupational health and safety standards. This includes the need to establish systems and policies to encourage and enable all employees to seek realization of these rights to social protections in health (including so that migrants are aware that these protections apply to them, and to minimize fear that reporting on violations may lead to negative consequences such as detention and/or deportation).
6. Recall the International Health Regulations (2005) -- particularly Article 23 -- concerning traveler health measures on arrival and departure envision: "*non-invasive medical examination which is the least intrusive examination that would achieve the public health objective*", and Article 32 on the "treatment of travelers", which states that "*travelers shall be treated with respect for their dignity, human rights and fundamental freedoms*" and that "*gender, socio-cultural, ethnic or religious concerns*" shall be taken into consideration.

2. International law – what are the key international instruments on migrants’ right to health?

While several human rights treaties refer to the right to health, **Article 12 of the ICESCR** provides the most comprehensive articulation by recognizing “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” A key aspect of the right to health is that it contains both ‘freedoms’ and ‘entitlements.’

- **Freedoms** include, for instance, the right to be free from non-consensual and uninformed medical treatment, medical experimentation or forced HIV testing. Freedom from torture and other forms of cruel, inhumane and degrading treatment is another important component of the realization and protection of the right to health.
- **Entitlements** result from the obligation of the state to provide adequate health services necessary for the realization of the highest attainable standard of health. Entitlements include the right to a system of protection (i.e. a system of prevention, treatment and control of diseases) on an equal basis for all and access to information and education about health (particularly that surrounding unhealthy or risky behaviour), essential medicines and sexual and reproductive health-care services.

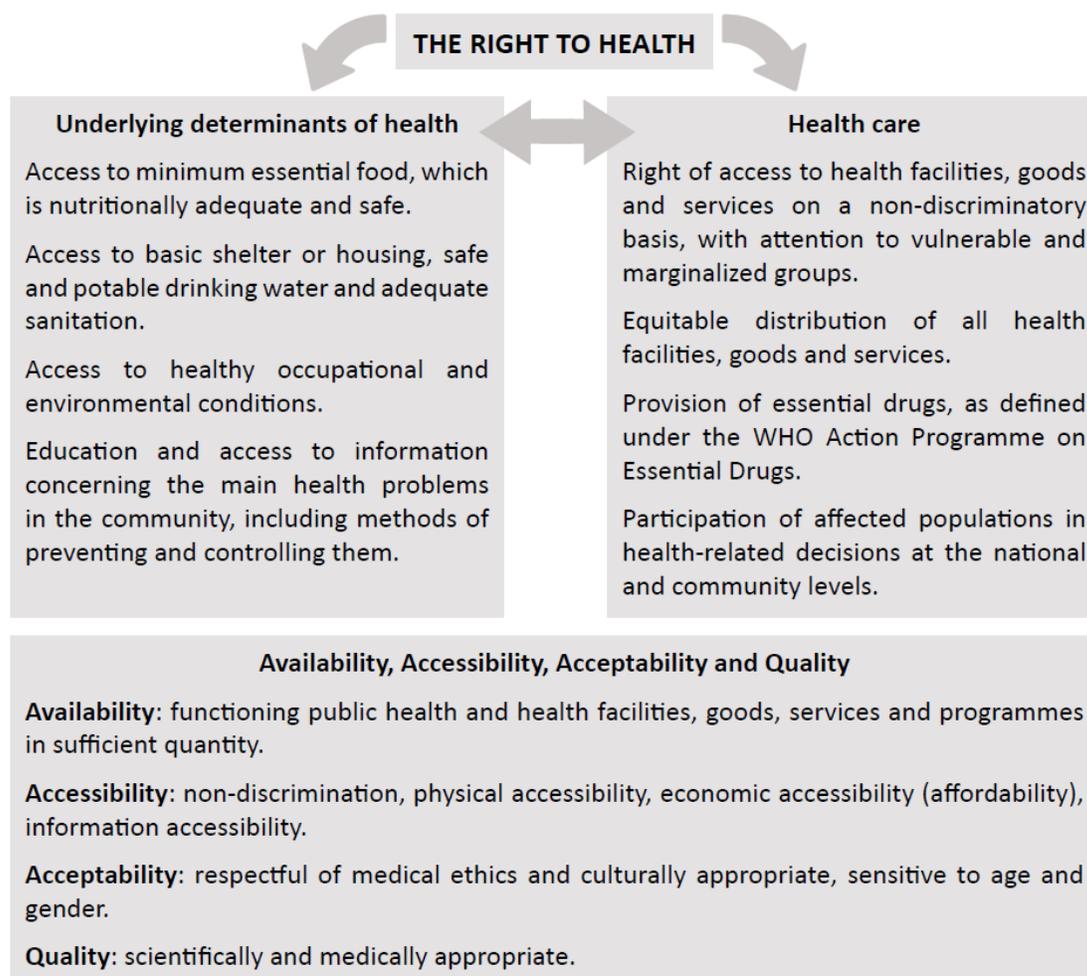
The **CESCR, in its General Comment No. 14**, interpreted the content of the right to health. Accordingly, in order to comply with the above-mentioned entitlements and freedoms, states must make sure that health facilities, goods and services are available, accessible, acceptable, of good quality and applicable to all sectors of the population, **including migrants**.

- **Availability.** Functioning public health and health-care facilities, goods and services must be available in sufficient quantities within a state and in a timely manner. The availability component of the right to health obligates states to ensure general supplies, as well as to avoid stock shortage. Specific essential medicines and vaccinations, for example, should be ordered in sufficient quantities to cover the needs of all, including migrants and their families. Further, the principle requires states to enlist and cater for specific essential medicines and goods that are particularly relevant to migrant populations.
- **Accessibility.** The concept of accessibility includes several aspects that are related to the principle of non-discrimination, as follows:
 - Non-discrimination ensures that health facilities, goods and services must be accessible to all sections of the population, including the most vulnerable and marginalized groups, in law and in practice, without discrimination on any ground. Some countries define their health obligations towards non-nationals in terms only of ‘essential care’ or ‘emergency health care.’ Consequently, migrants are generally inadequately covered by the host state’s health system and are, thus, often unable to afford health insurance, treatment or essential medicines.
Non-inclusive health policies contravene the principle of non-discrimination set in the core human rights instruments. State governments should realize that by denying migrants access to primary health interventions, states are exposed to greater financial costs and public health risks, as medical conditions could become chronic and more expensive to treat if not dealt with early on. As stated by the Special Rapporteur on the human rights of migrants, “mere commitment to emergency care is unjustified not only

from a human rights perspective, but also from a public health standpoint, as a failure to receive any type of preventive and primary care can create health risks for both migrants and their host community.” It is therefore important to stress that the right to the highest attainable standard of physical and mental health also applies to migrants in an irregular situation.

- Physical accessibility refers to the provision of safe access for all sectors of the population – children, women, the elderly, persons with disabilities, adolescents, migrants and any other individual or group – without discrimination. Migrants often live and work in areas where services tend to be physically unavailable, as is the case of those performing domestic work in private households. In addition, migrant workers may – for a variety of reasons – be less able to request time off from their work to seek health care during the day. The location and opening hours of health facilities may, thus, constitute a barrier for migrants’ access to services.
 - Access to information implies the right to seek, receive and impart health-related information in an accessible format, such as tailor-made campaigns and plain-language messages that speak to different groups of society. Migrants often face difficulties accessing information on health matters and available services, particularly if such information is not provided adequately by the state.
 - Affordability (financial accessibility) guarantees that every person, regardless of their nationality or legal status, would have access to health goods and services, notwithstanding economic constraints. In order for health goods and services to be financially accessible, states should adopt special measures for persons in financial difficulties or in need of special assistance. These measures include the affordability of essential medicines and health insurance
- **Acceptability.** Health facilities, goods and services must be acceptable, meaning gender-sensitive, culturally appropriate and respectful of medical ethics. Migrant-sensitive health services may include interpretation, translated written materials and ‘cultural mediation’ in hospitals and health centres. Introducing these services can assist in tackling language and cultural barriers – both of which can have negative effects on care and prevention services, treatment plans and appropriate follow-ups – as well as avoid misunderstandings (e.g. when a patient relates his or her symptoms) or mistranslations, which may result in delayed care, clinically significant medical errors, or, as a worst-case scenario, death.
 - **Quality.** Health facilities, goods and services must be scientifically and medically appropriate and of good quality. There should be, among other things, trained health professionals at all levels, scientifically approved drugs, trustworthy laboratories, appropriate hospital equipment, adequate sanitation and safe drinking water.

Figure 3. The scope and content of the right to health according to CESCR General Comment No. 14²³



Where is international law weak or has gaps?

In light of the above, it is IOM's assessment that there are no major gaps in International Law with regard to migrants' right to health. Where it is weak is in its implementation at national level.

National laws - Where is national law weak or has gaps?

- 1) **Lack of explicit mention of migrants' right to health in national laws:** Many countries do not explicitly indicate migrants' right to health in their national laws. Even if national constitutions often stipulate laws on anti-discrimination, in practice, migrants – both regular and irregular – can be discriminated including in accessing health services.

A notable exception is Argentina that hosts many of South America's migrant populations; the majority coming from neighbouring countries such as Paraguay, Bolivia, Chile, Uruguay and Brazil. In January 2004 it enacted the Argentine immigration law 25.871, which represents a major step forward for the rights of migrants in Argentina. Law 25.871 extends protection to all

immigrants within the country, regardless of their legal status. It guarantees immigrants the rights to equal treatment, non-discrimination, and access to educational, **medical, and social services**. The law recognizes that “in no case should access to the right to health, social assistance or sanitary care be denied or restricted to any foreigner who requires it **regardless of his/her immigration status**”, and “the authorities of health care institutions must offer orientation and information about the necessary steps to solve the irregular migration status”.

- 2) **Laws/policies should focus on primary health care and not on emergency health care only:** Even though not explicitly stipulated in national laws, many countries (through employers or national health systems) provide access to health services for regular and irregular migrants, although very seldom do irregular migrants get full access to primary, secondary and tertiary care. In most cases irregular migrants get access to emergency care, although many times they still have to pay for this emergency health care. Preventing migrants from accessing health services timely, i.e. through outreach health promotion and/or by accessing primary health care services, exacerbates health conditions that could have been prevented, often at reduced costs, if services had been available. Promoting the usage of cost effective primary health care as opposed to leaving migrant’s health to be managed at the level of costly emergency care also avoids loss of productivity and is in line with public health and human rights law.

What would IOM like to see as part of the Framework Convention on Global Health?

From the perspective of migrants, what are the most important things that the FCGH should address and accomplish?

The FCGH should include a definition of what is meant by a country’s population. As we know, many vulnerable migrant and mobile populations have health needs but fall through the cracks of national health systems, especially if they are in an irregular situation. The FCGH should clearly define what is meant with universal access and universal coverage and it should be clear that this includes the whole population, in other words, all people residing in the country, regardless of legal status.

In addition, in line with the **World Health Assembly (WHA) Resolution 61.17 on the Health of Migrants** (May 2008), IOM would like to see an explicit mention in the Framework Convention of this important instrument and a recommendation that the WHA resolution is the main guiding instrument for governments and other stakeholders to ensure the health of migrants. The following are the priority four main pillars of the resolution:¹

- a) **Monitoring migrants’ health** - Accurate and current data and information on the health of migrants, including on health status, outcomes, determinants and access to health services, are an essential prerequisite for developing evidence-based migrant-inclusive policies and providing acceptable and accessible migrant-friendly health services. Migrants’ health remains poorly understood, as migrants are often not included in national data. Lack of standardization in definitions and health indicators, as well as disaggregation based on nationality and migration status, across countries makes it difficult to compare the health situation of migrants. When monitoring migrant health, confidentiality of data is critical for the protection of migrants, and

¹ More information is available at:

<https://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/health/promotion/Health-of-Migrants.pdf>

data on migrants' health needs to be presented in a way that does not lead to the increased discrimination of migrants.

- b) **Policy and legal frameworks** - National laws and policies relating to migrants' access to health-care services differ widely with many preventing migrants from accessing national health-care programmes and social services. Migrants, both documented and undocumented, are too often omitted from laws and policies providing social protection measures, such as health insurance, pensions, and benefits. Furthermore, in many countries there continues to be a lack of coherence across policies in various sectors, including immigration, labour, trade, education, and health, which can negatively affect migrants' access and use of health-care services. Social protection for migrants should be consistently applied throughout the entire migration cycle, in the country of origin prior to departure, during transit, in destination settings, and after eventual return.
- c) **Migrant-inclusive health systems** - Migrant-inclusive health systems intentionally and systematically incorporate the needs of migrants into planning, policy development, implementation, financing, and evaluation. To effectively include migrants, services need to be tailored, culturally appropriate with information in appropriate languages, and with facilitators and community health workers (including from migrant communities) who do outreach to migrant communities. National health systems should be sensitive to the health needs of migrants and be available, accessible, and acceptable to and of high quality for migrants.
- d) **Networks, partnerships and multi country frameworks** - As the migration process itself can be a determinant of health for both migrants and migrant-hosting communities, it is increasingly important to combine resources to bring together the strengths of different organizations and sectors of government to ensure effective migration health efforts. To address the expanding regional and global role of migration, countries have become increasingly active in cross-border initiatives, regional and inter-regional collaboration, and Regional Consultative Process. Governments should include inter-sectoral and regional collaboration on migrant health concerns as part of the protection and the promotion of the rights of migrants, and seek partnerships with NGOs, CSOs, including migrants' associations and academic institutions. Bilateral, regional, and global collaboration as well as consultative processes, networks and partnerships should be promoted to comprehensively address the health of migrants.