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EDITORIAL

Promises (Un)fulfilled: Navigating the Gap Between Law, Policy, and Practice to Secure Migrants' Health Rights

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Good health is fundamental for human thriving, a key linchpin of individual, family, and community well-being.[1] Recognizing this, the architects of our current edifice of international human rights law, an edifice erected to secure future human well-being following the devastating inhumanity of World War II, included from the outset a universal right to health, linked to health care and social well-being.[2] Article 12(1) of the 1966 International Covenant on Economic, Social and Cultural Rights notes, "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."[3] Eligibility is, thus, unqualified: neither citizenship nor legal immigration status nor long-term residency are prerequisites for the right to health.

It follows that the roughly 281 million contemporary international migrants and refugees, 3.6% of the global population, people who no longer live in the country of their birth, have the same right to enjoyment of "the highest attainable standard" of health as their non-migrant counterparts. Among this population are long-term residents, short-term visitors, work-permit holders, international students and business-people, and others who chose to migrate for family, work, or leisure. But this population also includes "distress migrants"—people forced to leave home because life there was intolerable, whether because of political persecution, violence, unbearable heat, the prospect of interminable destitution, or other factors rendering their life not worth living.[4] This category includes over 43 million refugees worldwide, people who have been granted a legal status because they are held to qualify for international protection due to their "well-founded fear of persecution."[5] But it also includes uncounted millions of others whose suffering may not be officially recognized as a basis for legal protection—people fleeing intolerable poverty, people

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fleeing state breakdown and violence, people fleeing extreme climate events.

All these distress migrants are, thanks to the capacious terms of article 12(1), entitled to the right to health, even though their legal status may be irregular. But despite this simple rule, the evolution of international human rights law has resulted in a fragmented tapestry of normative standards. While some states guarantee universal and equal health rights for both nationals and migrants, others carve out subsets of health-related entitlements tied to legal status—granting equal rights to regular or legal migrants but excluding irregular migrants and asylum seekers, though the latter enjoy somewhat more favorable protections than the former.[6]

To what extent does the reality on the ground reflect these normative standards? According to a 2024 study conducted by the International Organization for Migration, of 100 countries surveyed, only half afford all migrants the same access to government-funded health services as they afford their own nationals. A fuller answer is more complex, as international and domestic laws, bureaucratic practice, and official prejudice intersect to create a multilayered and inconsistent reality. This special section of the journal is an effort to engage with part of this reality, where the harsh conditions that distress migrants face—before, during, and after migration—are key determinants of their health and generate profound threats to their dignity and human rights.[7] The special section offers an evidence-based scrutiny of a range of situations in which distress migrants are denied the access to health care that international human rights law promises them, situations in which the challenges of displacement and loss are compounded by the struggle to maintain a safe and healthy life.

The papers selected cover a range of geographic settings—South Africa, Colombia, Greece, Ecuador, and the United States. Despite the very disparate contexts, with enormous differences in the relevant socioeconomic environments, some common themes related to distress migrants' inadequate access to the right to health emerge. Central among them is the pervasive impact of discrimination, a factor in some cases embedded in national policy, in others manifested in the way that decision-making discretion is exercised. Another is the troubling gap between legal entitlement and actual implementation, between rhetoric and rights in practice—in many contexts, the absence of robust monitoring or supervisory capacity, despite laudable court judgments in some cases, enables rights-violating practices, including the denial or deferral of needed care and the failure to appropriately protect vulnerable populations from predictable medical problems. Finally, all the papers point to the need for greater attention to preventative care, structural and social determinants, and the adoption of nondiscriminatory and equitable standards to further the fundamental goal of securing a universal right to health for all.

The opening piece in this special section is a viewpoint by Rebecca Walker and Jo Vearey entitled "Punishment over Protection: A Reflection on Distress Migrants, Health, and a State of (Un)care in South Africa." South Africa is a useful place to start the inquiry into distress migrants' access to the right to health. It has a progressive and inclusive legal framework, which enshrines the principles of international human rights law. The authors start by making the important point that, despite this legal entitlement and despite their small numbers, "distress migrants are targeted by the government's deliberate and public strategy of scapegoating them for its failures to deliver on post-apartheid promises." This weaponization of the "other" as a tool for political expediency is a pervasive contemporary phenomenon.[8] Much more than resource scarcity or unreasonable migrant demand, it explains the willful exposure of distress migrants to what the authors evocatively call "(un)care in the very spaces where they seek support." The key takeaway is that despite legislative inclusion, the willful absence of "migration awareness" in South Africa's national health strategies undermine distress migrants' access to care. Addressing linguistic, emotional, and economic challenges is essential for an inclusive, rights-based health service. The authors reveal how excluding migrant perspectives and adopting punitive over protective approaches nullifies the powerful

rights enshrined in South Africa's Constitution.

The second paper shifts the focus from the Global South to the Global North, from South Africa to Greece. Here too a significant gap emerges between distress migrants' right to health in theory and in practice, in part because of similar failures to include appropriate awareness of the distinctive health and other socioeconomic needs of this population in the services offered, but in part also because of failures in the national health system that affect nationals too. Faye Ververidou and Tamara Hervey examine, in "Securing the Right to Health of Asylum Seekers: A Small-Scale Qualitative Case Study in Thessaloniki, Greece," how shortcomings in the structure of the Greek health service combine with poor-quality public health measures to negatively impact some health outcomes for distress migrants. Even though, as in South Africa, robust formal commitments to ensure the right to health for all have been adopted in Greece, and even though—unlike in South Africa—state actors accept that inclusive human rights entitlements apply equally to distress migrants, this paper finds inconsistent and sometimes inadequate care. Service failures and a lack of attention to key health determinants (such as housing quality and sanitation) combined in some of the cases studied to produce negative health outcomes. In short, the authors find that even where legislative guarantees are in place and service provider attitudes are inclusive and well-intentioned, fulfilling the right to health requires targeted attention to broader, contextual social determinants that disproportionately impact distress migrants.

Two studies from Latin America follow, both careful analyses of the interplay between the legal framework governing the health rights of distress migrants and the reality of health care delivery on the ground. A comparison between the two studies is generative, because whereas one country, Colombia, has a fragmented legal framework with incomplete access to care, the other, Ecuador, formally guarantees equitable access to health care for all, including distress migrants. In "A Primary Health Care-Anchored Migrant Right to Health: Insights from a Qualitative Study in Colombia," Stefano Angeleri—through an analysis of Colombia's legal, humanitarian, and community-based responses to Venezuelan migration—argues that primary health care as a core state obligation, along with promoting legal literacy of rights frameworks, could lay the foundation for a more equitable and robust framework to advocate for and implement measures targeting distress migrants' health. In advancing this point, we see a strong resonance with the point made, in the Greek context, by Ververidou and Hervey that attention to a broader canvas of health determinants are essential prerequisites of migrant health. In both Colombia and Greece, a flawed intersectoral implementation rather than overt discrimination, as in other contexts, is the target of the scholars' critique.

The second Latin American paper, by Mariana Pinto-Alvarez, Irene Torres, and Daniel López-Cevallos, entitled "Protecting Distressed Migrants' Right to Health in Ecuador: Are Legal Commitments Being Fulfilled?," broadens the discussion from health providers and other national and humanitarian institutions to the Ecuadorian Constitutional Court as a contributor to the realization of distress migrants' right to health. The authors describe Ecuador's inclusive legal framework—one that recalls the generous provisions offered by the South African Constitution—and show how, despite this robust legal backdrop, practical obstacles stymie the implementation of health rights in practice. They analyze a landmark Constitutional Court decision that engages with the translation of distress migrants' legal entitlement to health care into practical reality. The decision details particular obligations of state and local authorities and instructs these actors to revise their practices in line with the court judgment. This judicial level of intervention could, together with other sectoral interventions—in many jurisdictions, including neighboring Colombia—incentivize the "migration awareness" that is crucial to eliminating discrimination in practice.[9]

It is poignant to conclude this special section with papers focusing on the United States, which is now facing a new administration intent on targeting migrants and denying their human

rights entitlements. The final two papers focus on a particular subset of the distress migrant population—migrant children—an important and, until recently, neglected constituency with distinctive and sometimes acute health needs. The first, Lars Lindgren and Karla Fredricks's "A Multi-Level Approach to Promoting the Health Rights of Immigrant Children in the United States," analyzes the broad institutional framework that governs distress migrants' right to health. Given the severe fragmentation within the US system, and the often dysfunctional communication efforts between different agencies at both the federal and state level, this viewpoint reviews the scope for multi-level integration to advance distress migrant children's best interests overall. So does the special section's final paper by Marina Plesons, Haley Hullfish, Priyashma Joshi, Stephen Symes, and Anjali Saxena entitled "Characteristics and Guardianship Status of Children Undergoing Forensic Medical and Psychological Evaluation for Asylum in Miami." The paper describes the profiles of a cohort of migrant children served by the Miami Human Rights Clinic over a period of 11 years. It highlights the complex, often daunting challenges faced by distress child migrants. It considers the vital role of forensic examinations and guardianship in improving the quality of asylum determinations and enhancing health protection measures for this vulnerable group, whose best interests should be recognized as primary concerns by adjudicators. Nowhere, in our view, is this perspective more crucial than in the wealthiest country on earth, where despite immense resources, basic human rights—including the health rights of distress migrants—will soon be targeted for draconian cutbacks, whatever the human cost.

We face a world where many countries, on all continents, embrace xenophobic and anti-migrant leaders who shore up their popularity by weaponizing racialized hatred and the fear of outsiders. The political space to advance egalitarian health rights is shrinking, eroded not only by exclusionary ideologies but also by policies that prioritize market efficiencies over equity and dismantle public spending on social services.[10] These dynamics exacerbate inequalities and undermine the infrastructure needed to uphold indivisible human rights for all. At this historical moment, as we prepare for 2025, we would do well to remember what motivated the framers of our current international human rights laws 75 years ago: the recognition that unspeakable cruelty could be inflicted by states unless people everywhere insisted on the nondiscriminatory implementation of basic human rights for all, including socioeconomic rights.

References

1. M. C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Belknap Press, 2011), p. 33.
2. Universal Declaration of Human Rights, G.A. Res. 217A (III) (1948), art. 25; American Declaration of the Rights and Duties of Man (1948), art. XI.
3. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966), art. 12.
4. J. Bhabha, *Can We Solve the Migration Crisis?* (Polity Press, 2018), p. 65.
5. United Nations Refugee Agency, "UNHCR Global Trends 2023" (June 12, 2024), https://www.unhcr.org/global-trends; Convention Relating to the Status of Refugees, 189 UNTS 137 (1951), art. 1(A).
6. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158 (1990), arts. 28, 43; European Social Charter (Revised), European Treaty Series No. 163 (1996), arts. 11, 13, appendix; Inter-American Commission on Human Rights, Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, Res. 04/19 (2019), principle 35.
7. H. Castañeda, S. M. Holmes, D. S. Madrigal, et al., "Immigration as a Social Determinant of Health," *Annual Review of Public Health* 36 (2015).
8. F. Fanon, *Black Skin, White Masks* (Grove Press, 2008).
9. S. Angeleri, L. Ramírez Bolívar, and L. Arroyave Velásquez, *Derecho a la atención en salud para las personas migrantes en situación irregular en Colombia: Entre estándares normativos y barreras prácticas* (Dejusticia, 2024), pp. 29–46.
10. A. E. Yamin, *When Misfortune Becomes Injustice* (Stanford University Press, 2023), p. 6; H. de Hass, *How Migration Really Works* (Penguin, 2024), pp. 145–159.