



Migrants'

Rights to Health

A Legislative and Policy Review
for Southern Africa

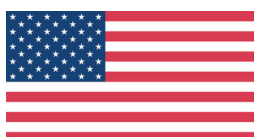
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Front cover photo: A Mozambican migrant mineworker waits for a health assessment, at the Occupational Health Unit in Ressano Garcia border crossing. Credit: Moayad Zaghdani/IOM 2022

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EXECUTIVE SUMMARY

Health is a fundamental human right indispensable for the exercise of other human rights. *Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.* The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organization (WHO), or the adoption of specific legal instruments. Moreover, the right to health includes certain components which are legally enforceable.¹

The Committee on Economic Social and Cultural Rights (CESCR) General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) (2000)²

This report presents the findings of a desk review undertaken in August 2022 to **determine the rights of migrants to access healthcare services³** - including in relation to occupational health and the health of migrant workers - in the 16 Southern African Development Community (SADC) Member States⁴. Building on a previous review of migrants' rights to health in Southern

Africa (2009)⁵ this report offers a comprehensive resource outlining the extent to which SADC Member States provide migrants with the right to access public (government) healthcare in their constitution, legislation, policies and associated frameworks. The report, and its detailed country appendices and summaries, can be used as a reference tool for SADC Member States to support efforts to ensure the rights of migrants to access healthcare.

Acknowledging the diversity of migrant populations within SADC, in this report '**migrant**' is applied to refer to **international migrants**, or **any non-citizen**, including individuals holding various temporary and permanent residency permits, migrant workers, asylum seekers, refugees, and undocumented migrants. Where relevant, specific nomenclature is used to define which migrant groups are afforded specific rights to access healthcare. In this report, '**healthcare services**' refers specifically to government (public) provided services. Member States have distinctive public healthcare systems and cost-sharing (fee) structures in place, resulting in varied processes for accessing different types of services that apply to both citizen and migrant populations.

¹ For example, the principle of non-discrimination in relation to health facilities, goods and services is legally enforceable in numerous national jurisdictions.

² OHCHR, "CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)" (Office of the High Commissioner for Human Rights, 2000) Art. 12.1.

³ In this report, 'healthcare services' refers to government (public) provided services. Member States have different healthcare systems and fee structures in place, including requirements for both citizens and migrants to make copayments for certain services..

⁴ Angola, Botswana, Comoros, Democratic Republic of Congo (DRC), Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe

⁵ IOM, "Migrants' Right to Health in Southern Africa," 2009, at <https://www.migration.org.za/wp-content/uploads/2017/08/Migrants-Right-to-Health-in-Southern-Africa.pdf>.

Efforts are currently underway across the SADC region to achieve the **Sustainable Development Goal (SDG)** target of **Universal Health Coverage (UHC)**⁶, an approach that requires states to provide 'financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.'⁷ The ambitions of UHC are reflected in the **African Charter on Human and People's Rights**⁸ and in international declarations that outline obligations of States to address the right to health, as determined by the **Committee on Economic, Social and Cultural Rights' General Comment No. 14 on Article 12 of the Covenant**⁹, including the obligation to ensure access to health facilities, goods and services to everyone, including migrants.

The **Global Compacts** on (1) **Safe Orderly and Regular Migration**¹⁰ and (2) **Refugees**¹¹ outline the importance of addressing the health needs of all migrants. This is articulated in two **World Health Assembly (WHA) Resolutions**¹², the resultant **Global Action Plan (GAP) for the Health of Refugees and Migrants**¹³ and is recognised in the **Political Declaration of the High-Level Meeting on Universal Health Coverage**, which emphasises the need to progressively include migrants in advances towards achieving UHC¹⁴.

To explore the rights of migrants to access healthcare in SADC, this review involved assessing the extent to which constitutional, legislative and policy documents engage with (1) the sixteen indicators for **Universal Health Coverage (UHC)**¹⁵; (2) the health of **migrant workers**, including in relation to occupational health; and – crucially – (3) the extent to which migrants have the **right to access public healthcare services**.

In addition to reviewing the **right to access public healthcare** for different international migrant, non-citizen, groups, the study involved identifying and assessing relevant constitutional, legislative and policy documents, including any associated frameworks, to determine whether health-related constitutional, legislative and policy provisions are **migration-aware**: a whole-system response whereby population movement is embedded as a central concern in the design of health-related interventions, policy, and research¹⁶. By definition, **migration-aware** responses encompass the rights of migrants to access public healthcare services but, *in addition*, they will engage with the broader social and structural determinants of the health of migrants, and recognise that these change over time and place. By acknowledging that migrants are not – by definition – a static population, effective migration-aware legislation and policy will be multi-sectoral, multi-level and formulated to develop cross-border, multi-country strategies to address the health of migrants.

The review and associated assessment shows that **the majority of SADC Member States offer limited access to healthcare for migrants as stipulated in national constitutions, legislation and policies. Whilst there is a trend towards increasingly migration-aware legislation and policy across the region, the rights of migrants to access healthcare services remain limited when compared to the rights of citizens.**

It is important to note that this assessment was designed to review the constitutional, legislative, and policy ambitions of each country, not their implementation. To this end, the findings presented in this report do not necessarily reflect what is happening in practice.¹⁷

⁶ United Nations, "Transforming Our World: The 2030 Agenda for Sustainable Development. A/RES/70/1." (United Nations, 2015).

⁷ UHC2030, *Healthy Systems for Universal Health Coverage: A Joint Vision for Healthy Lives* (Geneva: World Health Organization and the World Bank, 2018); UHC 2030, "Global Compact for Progress towards Universal Health Coverage" (UHC2030, 2017).

⁸ African Union, "African Charter on Human and People's Rights" (African Union, 1981).

⁹ OHCHR, "CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)," 14.

¹⁰ United Nations, "Global Compact for Safe, Orderly and Regular Migration - A/RES/73/195" (United Nations, 2018).

¹¹ United Nations, "Global Compact on Refugees - A/73/12" (United Nations, 2018).

¹² World Health Assembly, "World Health Assembly Resolution 61.17: Health of Migrants" (WHA, 2008); W. H. Assembly, *WHA Resolution 70.15 Promoting the Health of Refugees and Migrants* (WHA, 2017).

¹³ WHO, "Promoting the Health of Refugees and Migrants. Draft Global Action Plan, 2019–2023. A72/25 Rev.1." (World Health Organization, 2019).

¹⁴ United Nations, "Political Declaration of the High-Level Meeting on Universal Health Coverage" "Universal Health Coverage: Moving Together to Build a Healthier World" (United Nations, 2019).

¹⁵ UHC2030, *Healthy Systems for Universal Health Coverage; UHC 2030, "Global Compact for Progress towards Universal Health Coverage."*

¹⁶ J. Vearey, M. Modisenyane, and J. Hunter-Adams, "Towards a Migration-Aware Health System in South Africa: A Strategic Opportunity to Address Health Inequity," *South African Health Review*, 2017, 10.

¹⁷ Future research will explore how these ambitions are translated in practice.

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ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AHRLR	African Human Rights Law Reports
AIDS	Acquired Immunodeficiency Syndrome
ART	Antiretroviral treatment
ARV	Antiretroviral
AU	African Union
CAP	Common African Position
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic Social and Cultural Rights
CRC	Convention on the Rights of the Child
DRC	The Democratic Republic of Congo
EHSP	Essential Health Services Package
FYDP	Five Year Development Plan
GCM	Global Compact on Safe, Orderly and Regular Migration
GCR	Global Compact on Refugees
HiAP	Health in All Policies
HIV	Human Immunodeficiency Virus
HRC	United Nations Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Discrimination Against Women
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IFRC	International Federation of Red Cross and Red Crescent Societies
IHR	International Health Regulations
IHSP	Integrated Health Service Plan
IOM	International Organization for Migration
NCD	Non-Communicable Disease
NDP	National Development Plan
NGO	Non-governmental Organisation
NHDP	National Health Development Plan
NHI	National Health Insurance
NHP	National Health Plan
NHS	National Health System
NSP	National Strategic Plan
NSPS	National Social Protection Strategy
OAU	Organisation of African Unity

PNDS	National Plan for Health and Development
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
SRHR	Sexual and Reproductive Health and Rights
SSSH	Strategy for Strengthening the System of Health
TB	Tuberculosis
UDHR	Universal Declaration of Human Rights
UHC	Universal Health Coverage
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDESA	United Nations Department of Economic and Social Affairs
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
WHA	World Health Assembly
WHO	World Health Organization

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1. INTRODUCTION

THE RIGHT TO HEALTH

The **Committee on Economic Social and Cultural Rights (CESCR) General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)** (2000)¹⁸ clearly articulates the right to health:

'The human right to health is recognized in numerous international instruments. Article 25.1 of the **Universal Declaration of Human Rights (UDHR)**¹⁹ affirms: "Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services".

The International Covenant on **Economic, Social and Cultural Rights (ICESCR)**²⁰ provides the most comprehensive article on the right to health in international human rights law. In accordance with article 12.1 of the Covenant, States parties recognize "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health", while article 12.2 enumerates, by way of illustration, a number of "steps to be taken by the States parties ... to achieve the full realization of this right".

Additionally, the right to health is recognized, inter alia, in article 5 (e) (iv) of the **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**²¹ of 1965, in articles 11.1 (f) and 12 of the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**²² of 1979 and in article 24 of the **Convention on the Rights of the Child (CRC)**²³ of 1989.

Several regional human rights instruments also recognize the right to health [including] the **African Charter on Human and Peoples' Rights**²⁴ of 1981 (art. 16). Similarly, the right to health has been proclaimed by the **Commission on Human Rights**²⁵, as well as in the **Vienna Declaration and Programme of Action**²⁶ of 1993 and other international instruments²⁷

CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) (2000)²⁸

Importantly, '[t]he right to the highest attainable standard of health, also known as the right to health, is not only the right to healthcare, but the right to underlying determinants of health including safe drinking water, adequate sanitation and housing, education, and health related information'²⁹. Core obligations of the right to health, as determined by the **Committee on Economic, Social and Cultural Rights' General Comment No. 14 on Article 12 of the Covenant**³⁰, include the obligation to ensure access to health facilities, good and services to everyone,

¹⁸ OHCHR, "CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)."

¹⁹ United Nations, "Universal Declaration of Human Rights" (United Nations, 1948).

²⁰ United Nations, "International Covenant on Economic, Social and Cultural Rights (ICESCR), United Nations General Assembly Res. 2200A (XXI)" (United Nations, 1966).

²¹ United Nations, "International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). United Nations General Assembly Resolution 2106 (XX)" (United Nations, 1965).

²² United Nations, "Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). United Nations General Assembly Resolution 34/180" (United Nations, 1979).

²³ "Convention on the Rights of the Child (CRC). United Nations General Assembly Resolution 44/25."

²⁴ African Union, "African Charter on Human and People's Rights."

²⁵ In its resolution 1989/11

²⁶ United Nations, "Vienna Declaration and Programme of Action. Adopted by the World Conference on Human Rights, Vienna." (United Nations, 1993).

²⁷ The Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care adopted by the United Nations General Assembly in 1991 (resolution 46/119) and the Committee's general comment No. 5 on persons with disabilities apply to persons with mental illness; the Programme of Action of the International Conference on Population and Development held at Cairo in 1994, as well as the Declaration and Programme for Action of the Fourth World Conference on Women held in Beijing in 1995 contain definitions of reproductive health and women's health, respectively.

²⁸ OHCHR, "CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)."

²⁹ UNOHCHR and WHO, "The Right to Health. Fact Sheet No 31" (United Nations Office of the High Commissioner for Human Rights (UNOHCHR) and the World Health Organization (WHO), 2008).

³⁰ OHCHR, "CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)," 14.

including migrants. Health services should be available in sufficient quantity, accessible (physical, economic and information accessibility) to everyone without discrimination, acceptable (respectful of medical ethics and cultural appropriateness), scientifically and medically appropriate and of good quality.

With regard to access to health services for migrants without discrimination, the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)**³¹ is unequivocal. The Convention provides for the right to equal treatment regarding access to social and health services for regular migrant workers and members of their family and nationals. Further, Article 28 recognizes the right to emergency medical treatment for all migrant workers and members of their families even if their stay or employment is irregular. In recognising only necessary emergency medical treatment, the Convention fails to guarantee access to preventive medical treatment, such as early diagnosis and medical follow-up as well as to palliative health services. Emergency health care represents, nevertheless, a minimum standard for those migrants in an irregular situation.. Additionally, there are examples of States that comply with their obligation to ensure equitable access to preventive, curative and palliative health services of appropriate quality for all those residing in their territory.³²

The **1951 Convention Relating to the Status of Refugees**³³ has been ratified, or acceded to, by all SADC member states apart from Mauritius. However, for some states, domestication of the terms of the Convention is still required in order for the Convention to be fully realised in law in that specific country. The Convention contains important international standards and norms that apply to refugees, and it obliges state parties not to discriminate against refugees on the basis of religion, race or country of origin. Linked to this, the **Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa**³⁴ which has also been ratified by all SADC member states apart from Madagascar and Mauritius, similarly calls on state parties to apply the provisions of the Convention without discrimination.

A summary of the state of ratifications of these key international human rights instruments by SADC Member States is found in Figure 1 below.



Traders at the border between Democratic Republic of Congo and Rwanda, Goma.
Credit: IOM/Muse Mohammed

³¹ United Nations, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). Adopted by General Assembly Resolution 45/158" (United Nations, 1990).

³² IOM, "Migration and the Right to Health: A Review of International Law," International Migration Law (Geneva: International Organization for Migration, 2009).

³³ United Nations, "The Refugee Convention 1951" (United Nations, 1951).

³⁴ African Union, "OAU Convention: Governing the Specific Aspects of Refugee Problems in Africa," 1969.

³⁵ Signed the Africa Refugee Convention on 10/09/1969 but not yet ratified

Figure 1: Status of Ratifications of International Human Rights Instruments by SADC Member States

	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Intl Covenant on Civil and Political Rights (ICCPR)	Intl Covenant on Economic Social and Cultural Rights (ICESCR)	Intl Convention on the Protection of the Rights of All Migrant Workers and members of their families (CMW)	Convention on the Rights of Persons with Disabilities (CRPD)	1951 Convention relating to the Status of Refugees and its 1967 Protocol	African Charter on Human and Peoples' Rights (ACHPR)
Angola	Signed (2013), Ratified (2019)	Acceded (1992)	Acceded (1992)		Acceded (1981)	Acceded (1981)	Signed (1986), Ratified (1987)
Botswana	Acceded 1974	Signed, 2000, Ratified 2000			Acceded 2021	Acceded (1969)	Ratified (1986)
Comoros	Signed 2000, Ratified 2004	Signed 2008	Signed 2008	Signed 2000	Signed 2007 Ratified 2016		Signed (2004), Ratified (1986)
DRC	Acceded 1976	Acceded 1976	Acceded 1976		Acceded 2015	Acceded (1975)	Signed (1987), Ratified (1987)
Eswatini	Acceded 1969	Acceded 2004	Acceded 2004		Signed 2007, Ratified 2012	Acceded (2000)	Signed (1991), Ratified (1995)
Lesotho	Acceded 1971	Acceded 1992	Acceded 1992	Signed 2004, Ratified 2005	Acceded 2008	Acceded (1981)	Signed (1984), Ratified (1992)
Madagascar	Signed 1967, Ratified 1969	Signed 1969, Ratified 1971	Signed 1970, Ratified 1971	Signed 2014, Ratified 2015	Signed 2007, Ratified 2015	Acceded (1967) (1951 convention only)	Ratified (1992)
Malawi	Acceded 1996	Acceded 1993	Acceded 1993		Signed 2007 Ratified 2009	Acceded (1987)	Signed (1990), Ratified (1989)
Mauritius	Acceded 1972	Acceded 1973	Acceded 1973		Signed 2007 Ratified 2010		Signed (1992), Ratified (1992)
Mozambique	Acceded 1983	Acceded 1993		Signed 2012, Ratified 2013	Signed 2007 Ratified 2012	Acceded (1989)	Ratified (1989)
Namibia	Acceded 1982	Acceded 1994	Acceded 1994		Signed 2007 Ratified 2007	Acceded (1995)	Ratified (1992)
Seychelles	Acceded 1978	Acceded 1992	Acceded 1992	Acceded 1994	Signed 2007 Ratified 2009	Acceded (1980)	Signed (1992)
South Africa	Signed 1994, Ratified 1998	Signed 1994, Ratified 1998	Signed 1994, Ratified 2015		Signed 2007, Ratified 2007	Acceded (2006)	Signed (1996), Ratified (1996)
Tanzania	Acceded 1972	Acceded 1976	Acceded 1976		Signed 2007, Ratified 2009		Signed (1982), Ratified (1984)
Zambia	Signed 1994, Ratified 1972	Acceded 1984	Acceded 1984		Signed 2008 Ratified 2010	Succession (1969)	Signed (1983), Ratified (1984)
Zimbabwe	Acceded 1991	Acceded 1991	Acceded 1991		Acceded 2013	Acceded (1981)	Signed (1986), Ratified (1986)

UNIVERSAL HEALTH COVERAGE (UHC)

The **Sustainable Development Goals (SDGs)**³⁶ – which aim to ‘leave no-one behind’ and promote broad human rights-based approaches to development – recognise the importance of addressing the right to access healthcare services for all. Goal 3 of the SDGs aims to “ensure healthy lives and promote well-being for all at all ages” and, through Goal 3.8, calls on states to “Achieve **universal health coverage**, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all.”³⁷ The need to address vulnerabilities and needs particular to migrants have been further articulated in the subsequent **Political Declaration of the High-Level Meeting on Universal Health Coverage**, which emphasises the need to progressively include migrants in advances towards achieving UHC³⁸.

³⁶ United Nations, “Transforming Our World: The 2030 Agenda for Sustainable Development. A/RES/70/1.” 04/08/2022 08:03:00

³⁷ United Nations, “Transforming Our World: The 2030 Agenda for Sustainable Development. A/RES/70/1.” 04/08/2022 08:03:00

³⁸ United Nations, “Political Declaration of the High-Level Meeting on Universal Health Coverage ‘Universal Health Coverage: Moving Together to Build a Healthier World.’”

Principles guiding the global compact for progress towards Universal Health Coverage (UHC)³⁹.

"In our efforts to strengthen health systems and achieve UHC, we collectively subscribe to the following key principles to guide our action:

- Leaving no one behind: a commitment to equity, non-discrimination and a rights-based approach
- Transparency and accountability for results
- Evidence-based national health strategies and leadership, with government stewardship to ensure availability, accessibility, acceptability and quality of service delivery
- Making health systems everybody's business – with engagement of citizens, communities, civil society and private sector
- International cooperation based on mutual learning across countries regardless of development status and progress in achieving and sustaining UHC, and development effectiveness principles."

THE GLOBAL GOVERNANCE OF MIGRATION AND HEALTH

Increasing recognition of the need to improve responses to migration and health – including ensuring access to healthcare services - is evidenced through a growing global governance movement which is linked to three intersecting agendas, as illustrated in Figure 2⁴⁰ and detailed in Appendix 1:

- (1) **Migration Governance** – notably the **Global Compacts** on (1) **Safe Orderly and Regular Migration**⁴¹ and (2) **Refugees**⁴² which outline the importance of *addressing the health needs of all migrants*.
- (2) **Development** – **Sustainable Development Goals (SDGs)**⁴³ and the target of achieving **universal health coverage**⁴⁴.
- (3) **Global Health** – including ensuring the right to health for all migrants is articulated in two **World Health Assembly (WHA) Resolutions**⁴⁵ and the resultant 2019 **Global Action Plan (GAP)** for the Health of Refugees and Migrants that encompasses six objectives that aim to address the health of refugees and migrants, these are outlined below⁴⁷.

The six objectives of the Global Action Plan⁴⁸

1. Promote the health of refugees and migrants through a mix of short-term and long-term public health interventions.
2. Promote continuity and quality of essential health care, while developing, reinforcing and implementing occupational health and safety measures.
3. Advocate the mainstreaming of refugee and migrant health into global, regional and country agendas and the promotion of refugee-sensitive and migrant-sensitive health policies and legal and social protection; the health and well-being of refugee and migrant women, children and adolescents; gender equality and empowerment of refugee and migrant women and girls; and partnerships and intersectoral, intercountry and interagency coordination and collaboration mechanisms.

³⁹ UHC2030, Healthy Systems for Universal Health Coverage; UHC 2030, "Global Compact for Progress towards Universal Health Coverage."

⁴⁰ J. Vearey, C. Hui, and K. Wickramage, "Migration and Health: Current Issues, Governance and Knowledge Gaps," WORLD MIGRATION REPORT, 2020, 38.

⁴¹ United Nations, "Global Compact for Safe, Orderly and Regular Migration - A/RES/73/195."

⁴² United Nations, "Global Compact on Refugees - A/73/12."

⁴³ United Nations, "Transforming Our World: The 2030 Agenda for Sustainable Development. A/RES/70/1." 04/08/2022 08:03:00

⁴⁴ United Nations, "Transforming Our World: The 2030 Agenda for Sustainable Development. A/RES/70/1." 04/08/2022 08:03:00

⁴⁵ World Health Assembly, "WHA61.17," 2008; Assembly, WHA Resolution 70.15 Promoting the Health of Refugees and Migrants.

⁴⁶ WHO, "Promoting the Health of Refugees and Migrants. Draft Global Action Plan, 2019–2023. A72/25 Rev.1."

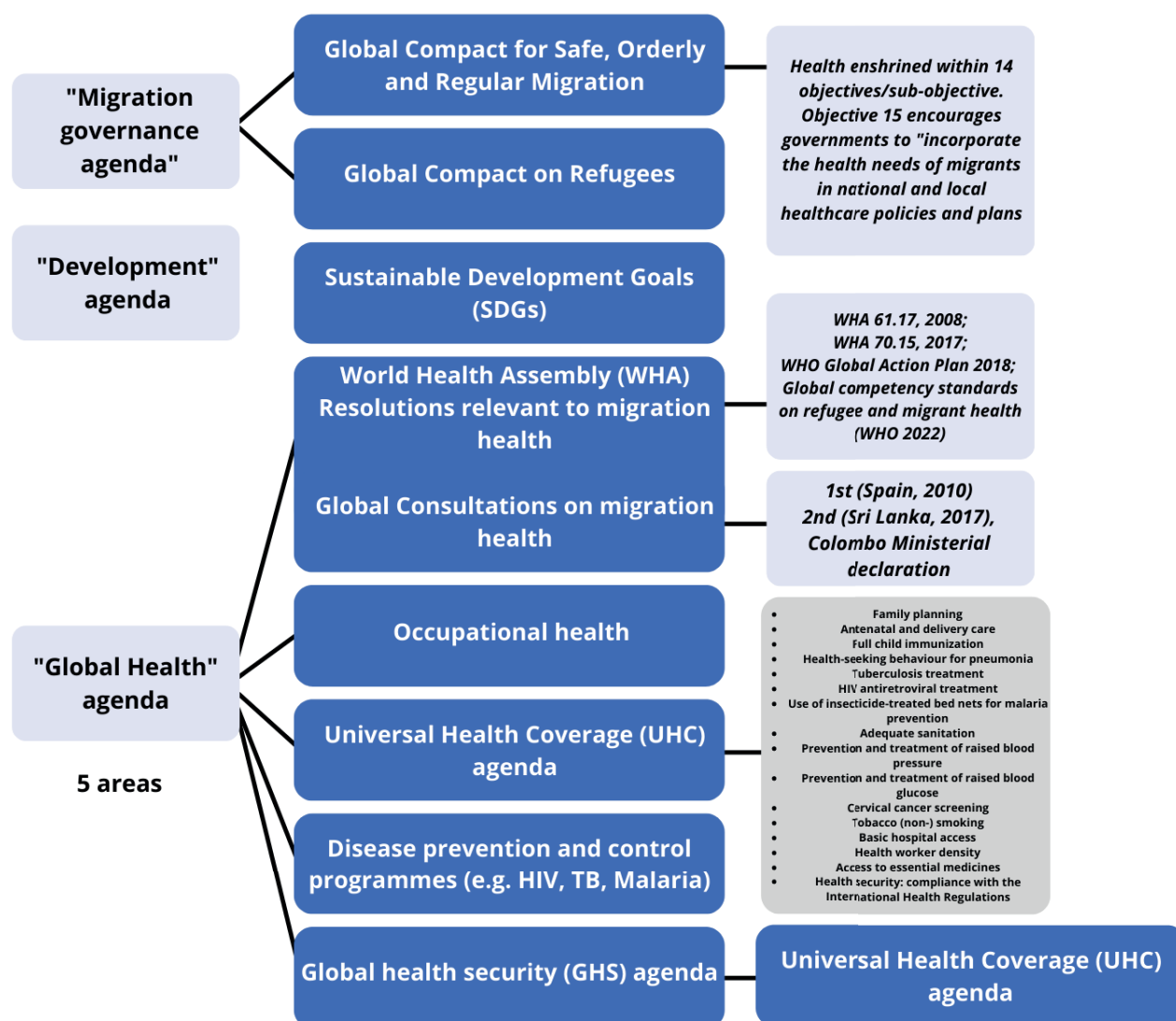
⁴⁷ WHO, "Promoting the Health of Refugees and Migrants. Draft Global Action Plan, 2019–2023. A72/25 Rev.1."

⁴⁸ WHO, "Promoting the Health of Refugees and Migrants. Draft Global Action Plan, 2019–2023. A72/25 Rev.1."

4. Enhance capacity to tackle the social determinants of health and to accelerate progress towards achieving the Sustainable Development Goals, including universal health coverage.
5. Strengthen health monitoring and health information systems.
6. Support measures to improve evidence-based health communication and to counter misperceptions about migrant and refugee health.

With clear links to broader ambitions surrounding the right to health, these global governance processes offer important strategic opportunities for supporting States in ensuring the rights of migrants to access healthcare services and that policies more broadly are increasingly migration-aware.

Figure 2: Key Global Migration and Health Governance Processes Supporting Migrants' Right to Health⁴⁹



⁴⁹ Adapted from Vearey, Hui, and Wickramage, "Migration and Health: Current Issues, Governance and Knowledge Gaps."

THE REGIONAL GOVERNANCE OF MIGRATION AND HEALTH

The African Union (AU)'s **Agenda 2063**⁵⁰, which is focused on inclusive growth and sustainable development, highlights the need to invest in health. Article 16 of the **1981 African Charter on Human and People's Rights**⁵¹ indicates that "every individual shall have the right to enjoy the best attainable state of physical and mental health". The **1990 African Charter on the Rights and Welfare of the Child (ACRWC)**⁵² echoes the international **Convention on the Rights of the Child (CRC)**⁵³ by according all children, including migrant children, the right to health. Article 14 of the **ACRWC** provides that "every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health". The **Africa Health Strategy 2016 - 2030**⁵⁴ specifically includes migrants, refugees and internally displaced persons in their definition of 'vulnerable groups', and Article 13 of the Common African Position (Cap) on **The Global Compact For Safe, Orderly and Regular Migration (2017)**⁵⁵ "Commit to ensure that all migrants have adequate, appropriate and affordable access to health care and other social services including social security and access to legal services". The **Maputo Plan of Action 2016-2030 on Universal Access to Comprehensive Sexual and Reproductive Health Services in Africa**⁵⁶, a strategic long-term planning instrument, advocates for the inclusion and empowerment of all people, specifically referring to migrants and refugees. The African Union Commission's **Migration Policy Framework for Africa and Plan of Action (2018 - 2030)**⁵⁷ recognises migration and health as a cross-cutting issue, highlighting that States should:

- Ensure that migrants have adequate access to health care services by granting access to national healthcare systems and programmes ensuring that cultural and/or linguistic barriers do not prevent migrants from seeking and/or obtaining care, especially in relation to pregnancies, communicable diseases such as Sexually Transmitted Infections (STIs), tuberculosis and HIV and hepatitis.
- Ensure the minimal healthcare service package for refugees and displaced persons, including prevention, treatment and health education, with special regard for the needs of vulnerable groups, and mobilise resources needed, by inter alia enhancing collaboration with UNHCR, IOM, WHO, ICRC, IFRC, UNFPA, UNAIDS, and other relevant agencies.
- Advocate for the inclusion of migrants and mobile population health issues into national and regional health programmes and strategies.
- Support the implementation of continental and regional policies, particularly the Abuja Declaration and Plan of Action on HIV/AIDS, Tuberculosis, Malaria and other related infectious diseases ; the Abuja Call for Accelerated Actions towards Universal Access to HIV and AIDS, TB and Malaria Services ; and the Catalytic Framework to End HIV and AIDS, TB and Malaria in Africa by 2030⁶⁰

⁵⁰ African Union and Commission, Agenda 2063: The Africa We Want., 2015.

⁵¹ African Union, "African Charter on Human and People's Rights."

⁵² African Union, "African Charter on the Rights and Welfare of the Child. Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU Addis Ababa, Ethiopia - July 1990. Entered into Force on 29 November, 1999" (African Union, 1990).

⁵³ "Convention on the Rights of the Child (CRC). United Nations General Assembly Resolution 44/25."

⁵⁴ African Union, "Africa Health Strategy 2016 - 2030" (Addis Ababa: African Union, 2016).

⁵⁵ African Union, "COMMON AFRICAN POSITION (CAP) ON THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION. AU/STC/MRIDP/4(II)" (African Union, 2017).

⁵⁶ African Union, "Maputo Plan of Action 2016-2030 Universal Access to Comprehensive Sexual and Reproductive Health Services in Africa" (African Union, 2016).

⁵⁷ African Union Commission, "Migration Policy Framework for Africa and Plan of Action (2018 - 2030)" (Addis Ababa: African Union Commission, 2018).

⁵⁸ Organisation of African Unity (OAU), "Abuja Declaration and Plan of Action on HIV/AIDS, Tuberculosis, Malaria and Other Related Infectious Diseases. OAU/SPS/ABUJA/3" (Organisation of African Unity (OAU), 2001).

⁵⁹ African Union, "Abuja Call for Accelerated Actions towards Universal Access to HIV and AIDS, TB and Malaria Services. Sp/Assembly/ATM/2 (1) Rev.3" (African Union, 2006).

⁶⁰ African Union, "Catalytic Framework to End HIV and AIDS, TB and Malaria in Africa by 2030" (African Union, 2016).



2. THE RIGHT TO HEALTH IN SADC

As outlined in the previous section relating to international and regional treaties - many of which SADC member states are bound to adhere by virtue of having ratified them (see Figure 1)⁶¹ - it is arguable that migrants who are resident in SADC states have the right to health. Ratification of international and regional treaties by states invites certain obligations, even if they have not been domesticated by national law.⁶²

CONSTITUTIONAL RIGHTS RELEVANT TO MIGRANTS' RIGHT TO HEALTH

In all SADC Member States, the Constitution is the supreme law of the land. Accordingly, a brief analysis of some of the cross cutting constitutional rights that apply to all the countries is necessary in order to avoid repetition in each of the states under review. This is also an imperative given the fact that while in some countries the right to health is constitutionally enshrined, in others it is not. Where a direct link to the right to health is not found, the alternative is to rely on a progressive interpretation of other related provisions of the respective constitutions.

Even where a constitution enshrines the right to health, it does not automatically guarantee access to health services; the onus of such an exercise often lies in the hands of courts and, importantly, in submissions by claimants to these rights. The right to life and the equality and non-discrimination provisions enshrined in constitutions may indirectly provide the basis for migrants' protection of the right to health. International jurisprudence emanating from interpretation of international standards that most of the countries under review have ratified links the right to life to the right to health.⁶³

⁶¹ It is also important to note that three SADC member states (DRC, Madagascar and Mozambique) have adopted the monist approach to international treaties they have ratified. That means that international treaties they have ratified become part of national law and can automatically be invoked in court as a source of domestic law. The rest of the SADC countries have adopted a dualist approach to international treaties they have ratified. Under that system treaties ratified by the state do not form part of domestic law directly. Accordingly they do not have automatic force of law and cannot be enforced in a court of law until an appropriate national legislation has been enacted giving them such effect.

⁶² See the Botswana case of Attorney General v Dow 1964 6 BCLR 1 Per Ammisah JP at p 27-30 and Aguda JA at p 43- 47; Communication 147/95 and 149/96, Sir Dawda K Jawara v the Gambia, 13th Annual Activity Report: 1999-2000, para 46; Communication 137/94, 139/94, 154/96 and 161/97, International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro Wiwa and Civil Liberties Organisation v Nigeria 12th Annual Activity Report 1998-1999(Ken Saro Wiwa case) para 113; See also Dugard J. 1992. International Law a South African Perspective. Capetown: Juta. p 266; See also Harris D.J. 1991. Cases and Materials on International Law. London: Sweet and Maxwell. p 747.

⁶³ See for example Human Rights Committee, General Comment 6: The right to life, 30 April 1982, para. 5, U.N. Document HRI/GEN/1/Rev. 6 of 12 May 2003, p. 128; see art 6 ICCPR; see also at the African Commission on Human and Peoples Rights in Social and Economics Rights Action Centre (SERAC) and another v Nigeria (2001) AHRLR 60 (ACHPR 2001), 260 para 67; para 70 (SERAC case).

Non-discrimination is, in fact, among the obligations of immediate effect the right to health imposes. Core obligations are subject to neither progressive realisation nor resource availability. The right to health is overall subject to progressive realisation and resource availability. Nonetheless, governments must take deliberate, concrete and targeted steps to ensure the progressive realisation of the right. If there is no progress, the government of that country has to provide a rational and objective explanation of the reasons why there has been no progress.

When a State does not expressly recognise the right to health, the duty of the State to ensure an adequate access to essential care can be deducted by its obligation towards the right to life. When the State recognises it, general and specific obligations come directly from the right to health to health.

Equally, comparable domestic jurisprudence also point to the need to uphold the right to life which demands that states adopt positive obligations for all its inhabitants in a bid to respect and promote the fundamental human rights of all.⁶⁴ Furthermore, on the basis of equality provisions, states are called upon to treat all who live within their borders, without discrimination.

RIGHT TO LIFE PROVISIONS

The right to life is “the most fundamental of all human rights, the supreme human right”.⁶⁵ Although the protection of the right to life in five SADC states’ constitutions - Botswana, Mauritius, Swaziland, Zambia and Zimbabwe - is formulated as a negative obligation⁶⁶, comparable jurisprudence from the region, notably South Africa, have held that to uphold the right to life the state is also obliged to take positive measures to guarantee that right.⁶⁷ Such positive measures include provision of socio-economic rights that are crucial for human survival, which inevitably include access to healthcare services.

Some of the international and regional human rights monitoring mechanisms of treaties ratified by member states have called upon member states to interpret the right to life positively.⁶⁸ The Human Rights Committee (HRC) has, for instance, noted that “the right to life has been too often narrowly interpreted ... [T]he expression ‘inherent right to life’ cannot properly be understood in a restrictive manner, and the protection of this right requires that states adopt positive measures.”⁶⁹ The African Commission on Human and Peoples’ Rights has also found a link between socio economic rights, the rights to life and dignity, which are protected in the **African Charter on Human and Peoples Rights**.⁷⁰

It is important to note that general access to healthcare services for migrants as is the case with realisation of most other socio economic rights by nationals is dependent on available resources. In other words, states are only obliged to progressively realise these rights.⁷¹ However, in emergency situations and/ or in circumstances where the failure to protect the right to access health services would violate the right to life, states have an obligation to respect and

⁶⁴ See for instance the cases of *Paschim Banga Khet Mazdoor Samity v State of West Bengal* AIR 1996 SC 2426 (India); *Olga Tellis. Bombay Municipal Corporation* 1985, 3 SCC 545 (India); *Khosa & 2 others v Minister of Social Development & 2 others* 2004(6) SA 505 (CC) para 41, 44, 52, 80, and 82 (South Africa); *S v Makwanyane* 1995 (3) SA 391 (CC) para 217 (South Africa); *Ain O Salish Kendro (ASK) & others v Government of Bangladesh & Others*, Writ Petition No 3034 of 1999 (1999) 2 CHRLD (Bangladesh); *Kerajan Negori Johor & Another v Adong bin Kuwau & Others* [1998] 2 MLJ 158 (1998) 2 CHRLD 281 (Malaysia)

⁶⁵ See *S v Makwanyane* 1995 (3) SA 391 (CC) para 217; see also Yoram D 1981. The right to life, physical integrity and liberty in Louis H (ed) *The International Bill of Rights: The Covenant on Civil and Political Rights*. New York: Columbia University Press. p 114

⁶⁶ The wording of the provision on the right to life in the following SADC countries is in the form of a negative obligation not to take someone's life, beyond established parameters of the law. See for example the Constitutions of Botswana (sec 4); Mauritius (sec 4); Swaziland (sec 15); Zambia (sec 12); and Zimbabwe (sec 12).

⁶⁷ *S v Makwanyane* paras 117; 353.

⁶⁸ All the SADC member states are parties to at least two of these instruments, namely the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights.

⁶⁹ Human Rights Committee, General Comment 6: The right to life, 30 April 1982, para. 5, U.N. Document HRI/GEN/1/Rev. 6 of 12 May 2003, p. 128; see art 6 ICCPR

⁷⁰ See Social and Economics Rights Action Centre (SERAC) and another v Nigeria (2001) AHRLR 60 (ACHPR 2001), 260 para 64- 66; arts 4 and 5 African Charter on Human and Peoples’ Rights (African Charter) adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5 (1981).

⁷¹ On states duties to realize the right to health see Ngweni C & Cook R. 2005. Right concerning health in Brand D & Heyns C (eds) *Socio economic rights in South Africa*. Pretoria: Pretoria University Press. p 107-125; Generally on positive state duties relative to socio economic rights see SERAC case above para 44-47; see discussion of implementation socio-economic rights under the African Charter on Human and Peoples’ Rights in Odinkalu CA. 2002. *Implementing economic, social and cultural rights under the African Charter on Human and Peoples’ Rights* in Evans M & Murray R (eds) *The African Charter on Human and Peoples’ Rights: The System in Practice, 1986-2000*. Cambridge: Cambridge Press. p 178-209; For a detailed discussion on socio economic rights especially in the South African context see Liebenberg S. 2003. *The interpretation of socio economic rights in Woolman S et al (eds) Constitutional Law of South Africa*: Cape Town: Juta & Co. 33:1-66; see also the South African Court jurisprudence in *Government of the Republic of South Africa v Grootboom* 2001(1) SA 46 (CC); *Soobramoney v Minister of Health, Kwa Zulu Natal* 1998 (1) SA 765 (CC), 1997 (12) BCLR 1696 (CC).

protect the rights of all who live in their territory without discrimination.⁷² Furthermore, as discussed previously, non-discrimination is among the obligations of immediate effect when it relates to right to life. A positive interpretation of the right to life includes the right to adequate basic healthcare which is necessary to better and prolong the lives all human beings. Accordingly, denying access to necessary medical care to anyone, including migrants, suffering from a disease, shortens their life-span and ultimately deprives them of their right to life.⁷³

EQUALITY AND NON-DISCRIMINATION PROVISIONS

Equality and non-discrimination provisions enshrined in all the SADC countries' constitutions provide, at least in theory, a constitutional basis for migrants to assert their right to access health services that are available to citizens of their countries of residence. However, the language of the constitutions of Angola⁷⁴, Madagascar⁷⁵, and Mozambique⁷⁶ restrict the application of the non-discrimination provisions to citizens only. Non-discrimination and equality provisions in the rest of the SADC Member States apply to all who live in the country, regardless of nationality/citizenship. Although the constitutions of Mauritius, Zambia and Zimbabwe, prohibit discrimination of everyone, they also legitimize laws that makes certain exemptions to non-citizens.⁷⁷ However, it is instructive that relative to the right to access health services, there is no express law in these three states that validates discrimination of migrants to access health services.⁷⁸

The **African Charter on Human and Peoples' Rights** similarly prohibits discrimination on the basis of various grounds, including race, ethnic origin, language, social status and other status.⁷⁹ Of significant importance to migrants' rights to health in SADC member states, is the fact that all the countries under review have ratified this treaty. Article 16 of the **African Charter** provides that:

- (1) Every individual shall have the right to enjoy the best attainable state of physical and mental health.
- (2). States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

MIGRATION AND THE PROMOTION OF HEALTH

In SADC, policies and frameworks have increasingly been developed and expanded to address migration and health, with a recent review⁸⁰ highlighting that SADC has comprehensive policies and frameworks which are increasingly aware of migration and the importance of engaging with migrants. However, migration and health related provisions tend to focus on refugees and migrants as 'vulnerable groups', particularly in relation to HIV/AIDS and TB.

The **SADC Protocol on Health**⁸¹ calls on Member States to promote health care for all through better access to health services and to develop regional policies and plans to address HIV and STIs. Whilst not explicitly referring to migrants, this can be interpreted as an inclusive response, particularly in relation to acknowledging responses to communicable diseases as requiring a coordinated regional response.

⁷² See the Committee on Economic, Social and Cultural Rights, The nature of States parties obligations (Article 2, para. 1), 14/12/90. CESCR General Comment 3, 5th Session 1990, para. 12; See also Brand D. 2005. Textual basis: The rights and related provisions in Brand D and Heyns C (eds) supra note 14. p 4.

⁷³ Aids and Human Rights Research Unit. 2007. Southern African Country Reports on HIV/AIDS and the Law. Pretoria: Pretoria University Law Press. p 362.

⁷⁴ The Republic of Angola, "Constitution of Angola," 2010 sec 18.

⁷⁵ Republic of Madagascar, "Madagascar's Constitution of 2010" (Republic of Madagascar, 2010) sec 8.

⁷⁶ The Republic of Mozambique, "The Constitution of the Republic of Mozambique, 1990," 1990 sec 66.

⁷⁷ Please note however that the prohibition of discrimination does not preclude any differentiated treatment and measures being taken to address the specific needs of (particular) migrating persons. Differentiated treatment and measures may indeed not only be justified but required. The principle of non-discrimination does, however, require that any differentiation in treatment must be based on objective and reasonable criteria intended to rectify an imbalance within society. "Migration and the Right to Health: A Review of International Law," International Migration Law (Geneva: International Organization for Migration, 2009).

⁷⁸ Zimbabwe however expressly mentions in its constitution sec 23(3) (c) that restriction of access to public services to persons who are non citizens or permanent residents.

⁷⁹ African Union, "African Charter on Human and People's Rights."

⁸⁰ Sonke Gender Justice and ACMS, Wits, "It Is Just Because I Am a Foreigner' Making Sexual and Reproductive Health and Rights a Reality for Migrants, Refugees and Asylum Seekers in South Africa" (Johannesburg: Sonke Gender Justice & African Centre for Migration & Society, Wits University, forthcoming).

⁸¹ SADC, "Protocol on Health in the Southern African Development Community" (Gaboronne: SADC, 1999).

In 2009, the SADC Secretariat developed a **Policy Framework for Population Mobility and Communicable Diseases in the SADC region**⁸². This calls for the development of a co-ordinated regional response to migration and health, including cross-border referral systems and financing mechanisms. The policy framework outlines the measures needed to address key gaps relating to the regional response to migration and health, including those specific to HIV/AIDS, tuberculosis and malaria, three major health challenges facing the region. Importantly, the policy framework makes reference to the principles endorsed in the **Declaration and Treaty of SADC**⁸³ which, under article 6, emphasises non-discrimination; the **African Charter on Human and Peoples' Rights** which stresses the right to health and the principles of equality and inalienability of rights; and the 2008 **Resolution 61.17 of the 61st World Health Assembly**⁸⁴ which calls on Member States to promote equitable access to health promotion, disease prevention and care for migrants. In 2015, the SADC Secretariat produced a framework for its implementation, including a costing model (unpublished). However, in 2022, the framework remains in draft form.

The **SADC HIV and AIDS Strategic Framework, 2009 - 2015**⁸⁵, highlighted the need to ensure that migrant and mobile populations are considered in regional responses to HIV.

OCCUPATIONAL HEALTH AND SAFETY FOR MIGRANT WORKERS

Only five SADC Member States have signed or ratified the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)**⁸⁶: Comoros – signed in 2000; Lesotho – signed in 2004 and ratified 2005; Madagascar – signed 2014 and ratified 2015; Mozambique – signed in 2012 and ratified 2013; and the Seychelles who acceded 1994.

The **SADC Protocol on Health** recognises the cross-sectoral nature of occupational health, and outlines that Member States shall assist each other in the development and delivery of integrated occupational health services and co-operate in reducing the prevalence of occupational injuries and diseases.

The 2012 **SADC Declaration on Tuberculosis in the Mining Sector**⁸⁷, and its associated 2015 **Code of Conduct on Tuberculosis in the Mining Sector**⁸⁸ which clearly outlines the need for improved, co-ordinated regional responses to the migrant labour systems associated with Southern African mines, and HIV and TB. This Declaration calls on Member States to improve responses to TB (with a focus on multi- and extremely drug-resistant TB) within the mining industry and holds mining companies accountable for associated health care costs;

*'According to the declaration, the main challenges facing miners, ex-miners, and their communities in the region are: a lack of access to basic health and social services; the absence of effective cross-border medical referral systems; non-harmonised treatment regimens; inadequate or no legal protection for mineworkers including occupational disease compensation for tuberculosis, silicosis, and other respiratory diseases; a lack of surveillance and post-employment follow-up; and a lack of information about stakeholders' rights and responsibilities'*⁸⁹

⁷⁹ African Union, "African Charter on Human and People's Rights."

⁸⁰ Sonke Gender Justice and ACMS, Wits, "It Is Just Because I Am a Foreigner' Making Sexual and Reproductive Health and Rights a Reality for Migrants, Refugees and Asylum Seekers in South Africa" (Johannesburg: Sonke Gender Justice & African Centre for Migration & Society, Wits University, forthcoming).

⁸¹ SADC, "Protocol on Health in the Southern African Development Community" (Gaboronne: SADC, 1999).

⁸² SADC Directorate for Social and Human Development and Special Programs, "SADC Policy Framework for Population Mobility and Communicable Diseases in the SADC Region: Final Draft April 2009," http://www.arasa.info/files/pub_sadc%20Policy_Framework_FINAL.Pdf, 2009.

⁸³ African Union, "African Charter on Human and People's Rights." SADC, "Declaration and Treaty of the Southern African Development Community (SADC)" (SADC, 1992).

⁸⁴ World Health Assembly, "World Health Assembly Resolution 61.17: Health of Migrants" (WHA, 2008).

⁸⁵ SADC, "SADC HIV and AIDS Strategic Framework" (Gaboronne: SADC, 2009).

⁸⁶ United Nations, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). Adopted by General Assembly Resolution 45/158."

⁸⁷ SADC, "SADC Declaration on Tuberculosis in the Mining Sector" (SADC, 2012).

⁸⁸ SADC, "Code of Conduct on Tuberculosis in the Mining Sector" (SADC, 2015).

⁸⁹ A. Baleta, "Southern African Declaration Targets TB in Mining Sector," *The Lancet* 380, no. 9849 (2012): 1217–18.

3. ASSESSING THE RIGHT TO HEALTH IN SOUTHERN AFRICA

3.1. METHODOLOGY




A desk review was undertaken in August 2022 to identify relevant constitutional, legislative and policy documents, including associated frameworks, pertaining health – including occupational health and immigration governance from the sixteen SADC Member States. Documents were collected through a desk review involving an internet search and review of relevant reports and through requests made to IOM country offices in the Southern Africa region⁹⁰. Relevant documents from the African Union, SADC and the sixteen Member States were identified and reviewed alongside international instruments. Country-level reviews were undertaken to determine (1) whether the health related responses in national legislation, policies and related frameworks were **migration-aware** and (2) what rights are provided to migrants in accessing public healthcare services.

This involved assessing the extent to which each of the documents reviewed engages with :

- **Migration-aware health responses**, meaning that health-related interventions, policies and systems frame migrants and/or migration as a central concern in their design
- **Universal Health Coverage (UHC)**, and, the health of **migrant workers/occupational health** for migrant workers
- The **right to access public healthcare services**

This was achieved by completing a detailed mapping matrix for each document and using this to answer four questions, as outlined in Figure 1. Based on the assessment, a heat map was generated for each document reviewed to illustrate how effectively it does – or does not – engage with the health of migrants and/or migration. As shown in Figure 1, the darker the shading, the more successful the constitution, legislation, policy or framework is at addressing the health of migrants and/or migration. It is important to note that this assessment was reviewing the constitutional, legislative and policy ambitions of each country, not the implementation of these policies and legislation. To this end, the findings presented in this report do not necessarily reflect what is happening in practice, or the lived experiences of migrants trying to access healthcare in any of these countries.⁹¹

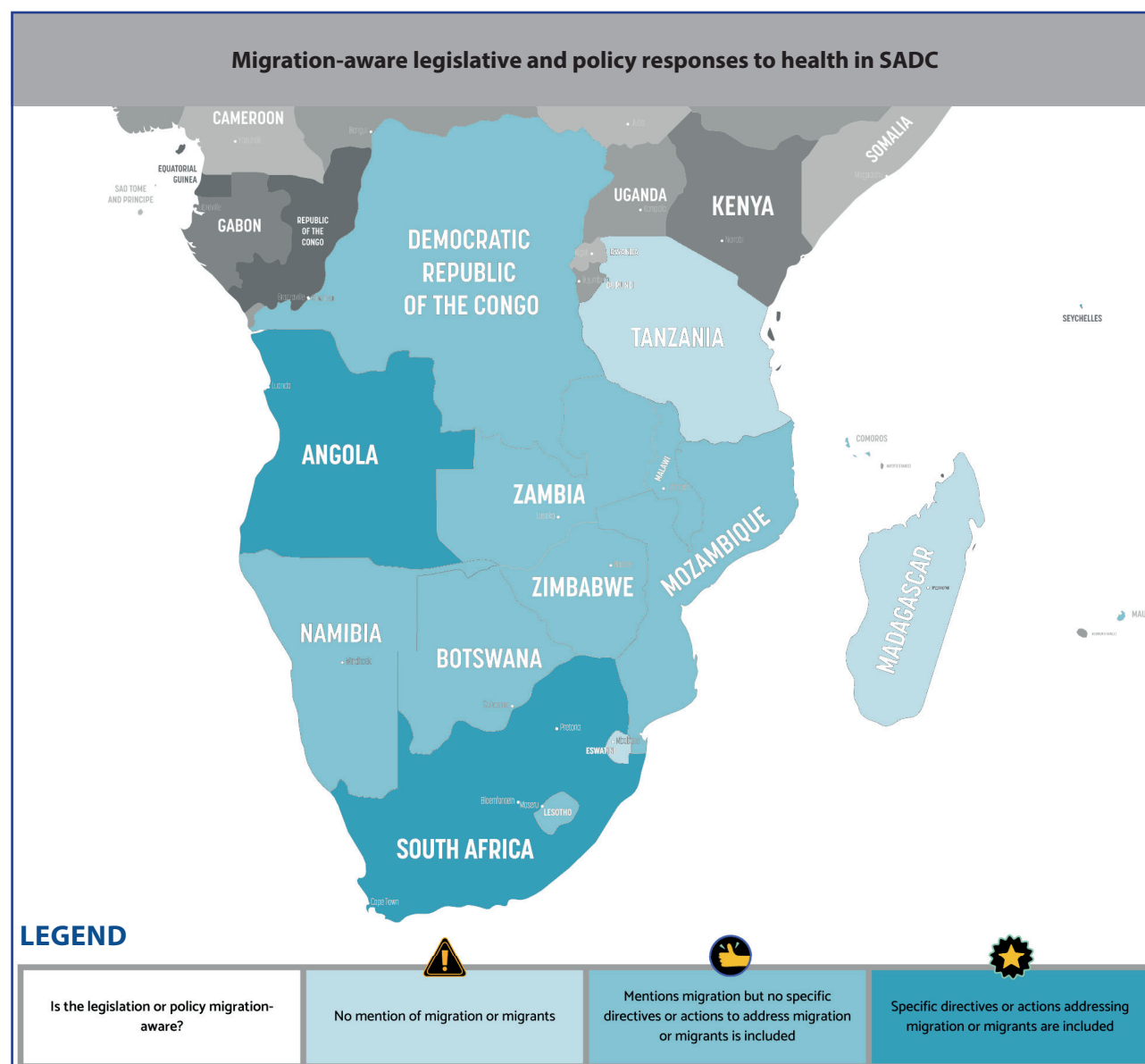
Figure 3: Assessment Framework

			
Is the legislation or policy migration-aware?	No mention of migration or migrants	Mentions migration but no specific directives or actions to address migration or migrants is included	Specific directives or actions addressing migration or migrants are included
Does the legislation or policy adopt UHC principles and if so, does it consider migrants or migration?	No mention of UHC	Mentions UHC but no specific directives or actions are made to incorporate the needs or inclusion of migrants	Mentions UHC and specific directives or actions are made to incorporate the needs or inclusion of migrants
Does the legislation or policy consider the health of migrant workers and/or occupational health?	No mention of the health of migrant workers or occupational health	Mentions the health of migrant workers and/or occupational health but no specific directives or actions to address migration or migrants is included	Mentions the health of migrants workers and/or occupational health and specific directives or actions addressing migration or migrants are included
Do international migrants have the right to access public healthcare services?	NO ACCESS International migrants have no access	SELECTED/RESTRICTED ACCESS Specific international migrant groups have access to specific services	FULL ACCESS Everyone in the country has the same rights to access public healthcare services, including international migrants, regardless of migration status.

3.2. REGIONAL OVERVIEW

The assessment of the 16 SADC Member States presented in this report indicates that whilst there is a trend towards increasingly migration-aware legislation and policy across the region, the rights of migrants to access healthcare services remains limited when compared to the rights of citizens (see Figure 2 below). This finding is supported by previous research evaluating responses to migration and health across the region⁹² and has implications for achieving the ambitions of Universal Health Coverage (UHC) across SADC; until everyone has guaranteed access to healthcare, it will not be possible to achieve the UHC2030 targets.

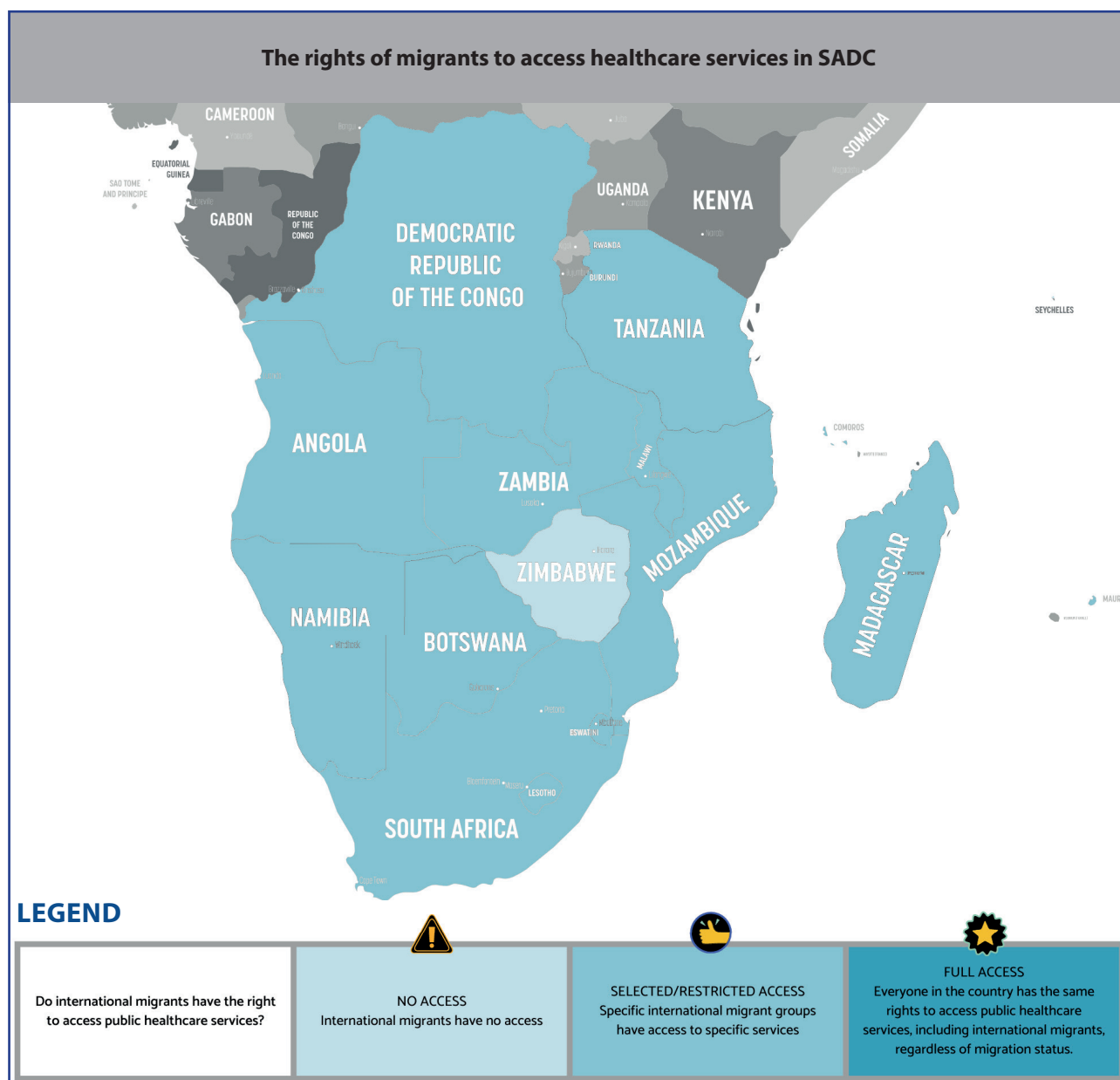
Figure 4: An assessment of migration-aware legislative and policy responses to health and the rights of migrants to access healthcare services in SADC



⁹⁰ E. Govere, Vearey, J., and R. Walker, "They Are Too Quiet about Migration: A Scoping Exercise Exploring Migration and Disability in South Africa" (Geneva: International Organization for Migration (IOM), August 10, 2021); J. Vearey et al., "The Future of Global Health Security: Towards Migration-Aware Responses in SADC," in *Migration in Southern Africa* (Pretoria: IOM, forthcoming); Sonke Gender Justice, "Gender, Migration and Health in SADC: A Focus on Women and Girls" (Johannesburg: Sonke Gender Justice, 2019); Sonke Gender Justice and ACMS, "It Is Just Because I Am a Foreigner: Making Sexual and Reproductive Health and Rights a Reality for Migrants, Refugees and Asylum Seekers in South Africa."

⁹¹ Future research will explore how these ambitions are translated in practice.

⁹² SARW, "Mapping of Mineworkers and the Portability of Social Benefits in the SADC Region" (Johannesburg: Southern Africa Resource Watch, 2022).



3.3. COUNTRY ASSESSMENTS

3.3.1. ANGOLA



Angola: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitution

Angola's laws, policies, and guidelines provide a rights-based framework for access and availability of health care services and recognise a fundamental right to health. Article 77 of the **Constitution of Angola**⁹³ places an obligation on the state to ensure certain socio-economic rights and affirms the right to health. The state is obligated to develop and ensure operational health services throughout Angola, and this right is not limited to availability of resources or progressive realisation. The right to health is also specifically extended to non-citizens via Article 25 which provides that non-citizens and stateless persons are entitled to the same rights, freedoms, guarantees, and protections of the state as Angolan citizens. Further, Article 23 prohibits discrimination on grounds of ethnicity and place of birth among others. While the language of universality is generally applied, certain socio-economic protections within the **Constitution** are specifically limited to citizens, such as the rights of persons living with a disability in Article 83 and right to housing and quality of life in Article 85. The **Constitution** of Angola sets a strong foundation for realising equitable and universal access to health care services for all, including migrants.

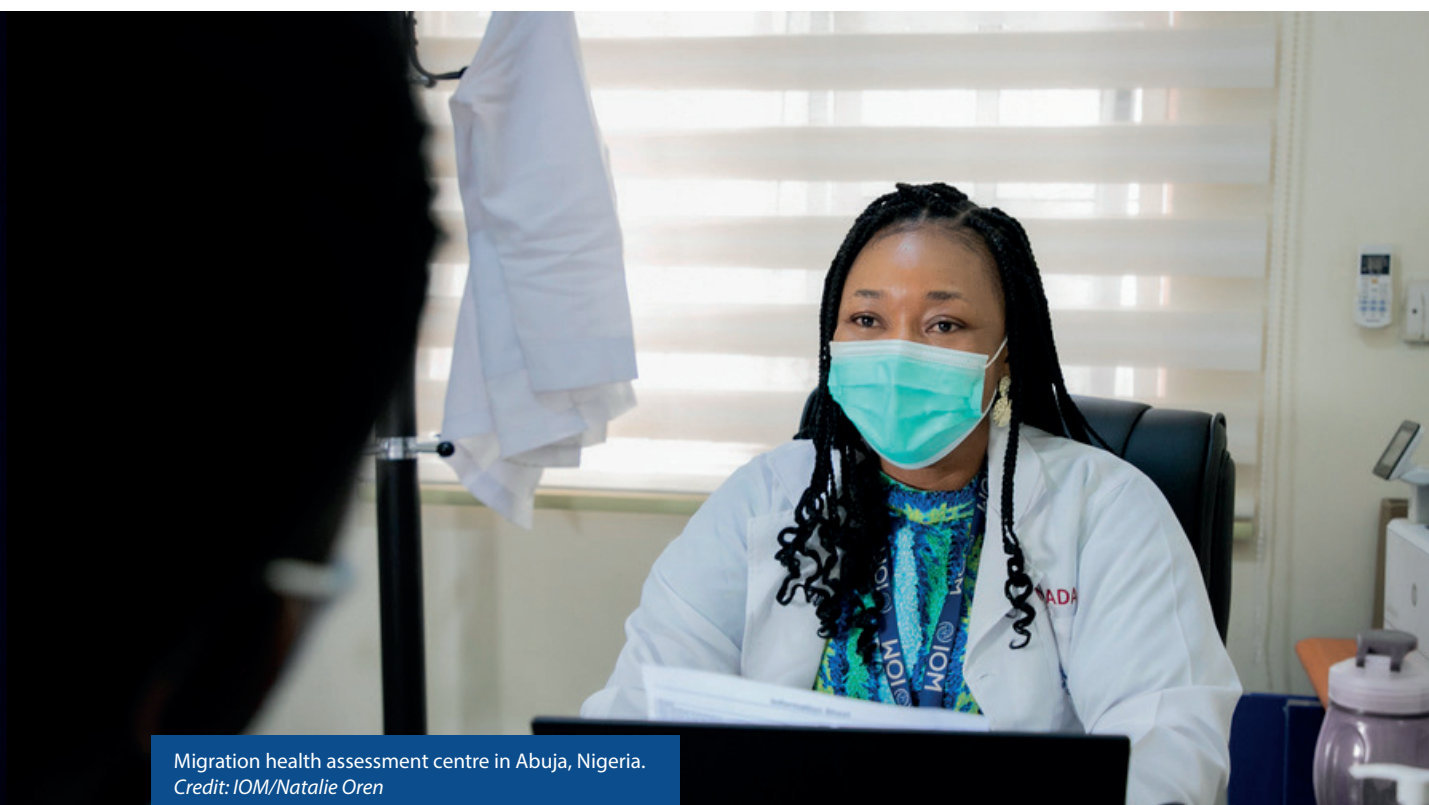
⁹³ The Republic of Angola, "Constitution of Angola."

Legislation

Although the **Basic Law of the National Health System (NHS)**⁹⁴ was adopted prior to the 2010 Constitution, it affirms the right to health and places obligations on the state to promote and guarantee access to health care services. Unlike the **Constitution**, which provides an immediately realisable right to health, the Basic Law of the NHS limits this right to the availability of resources. Although the **Basic Law of the NHS** adopts language suggesting that health care access is only available to citizens of Angola, the Law specifically lists foreign residents and stateless persons as beneficiaries. The **Law on HIV and AIDS**⁹⁵ and the **National Plan for Health and Development (PNDS) 2012-2015 Volume 1**⁹⁶ and **2**⁹⁷ use language of universal applicability and do not distinguish between citizens and non-citizens. Notably excluded from legislation providing for migrants to access healthcare services are undocumented migrants, and it is unclear if they are included in universal health coverage initiatives. The right to health is also affirmed for asylum-seekers and refugees in the **Law on the Right of Asylum and the Refugee Status**⁹⁸ which provides that they are entitled to medical care and medicines under the same conditions as nationals.

Policies and Frameworks

The **National Plan for Health Development (PNDS) 2012-2015 Volume 1**⁹⁹ and **2**¹⁰⁰ sets out a comprehensive framework for the Ministry of Health to fulfil the right to health enshrined in the **Constitution**, and promotes universal health coverage, equitable access and care, improved funding, and preventative health measures. The stated goals of the **PNDS** align with the Universal Health Coverage (UHC) indicators towards equitable coverage. The **PNDS** only engages with migration insofar as its cause or impact in the case of a disaster scenario. Where migration is considered, however, there is no clarity on how migrants and/or migration should be included in healthcare planning including in the delivery of healthcare services. of migration on healthcare services or how migrants should be included into health care planning is absent.



Migration health assessment centre in Abuja, Nigeria.
Credit: IOM/Natalie Oren

⁹³ The Republic of Angola, "Constitution of Angola"

⁹⁴ The Republic of Angola, "Law No. 21-B/92 of August 28, Basic Law of the National Health System," 1992.

⁹⁵ The Republic of Angola, "Law 8/04 on HIV and AIDS," 2004.

⁹⁶ Ministry of Health, "National Plan for Health Development (PNDS) 2012-2015 Volume 1," 2012.

















⁹⁷ Ministry of Health, "National Plan for Health Development (PNDS) 2012-2015 Volume 2," 2012.

⁹⁸ The Republic of Angola, "Law No. 10/15, Law on the Right of Asylum and the Refugee Status," 2015.

⁹⁹ Ministry of Health, "National Plan for Health Development (PNDS) 2012-2015 Volume 1."

¹⁰⁰ Ministry of Health, "National Plan for Health Development (PNDS) 2012-2015 Volume 2."

Figure 5: Angola - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution of Angola	2010	Approved and implemented		Specific protection for foreigners and stateless persons under Article 25, which protects fundamental rights, freedoms, and guaranteed and protection of the state.		Right to health given in Article 77 and specific provisions for the State to realise such right.
Legislation						
Law No. 21-B/92 of August 28, Basic Law of the National Health System	1992	Approved and implemented		Migrants (citizens, foreign residents, and stateless persons) are listed as beneficiaries of the National Health Service under Article 24. The law does not clarify if undocumented persons would also have access.		Migrants (citizens, foreign residents, and stateless persons) are listed as beneficiaries of the National Health Service under Article 24. The law does not clarify if undocumented persons would also have access.
National Health Policy	2010	Approved and implemented		Does not engage with migration.		Promotion of universal health coverage, however no migrant access specified.
Law No. 8/04 on HIV and AIDS	2004	Approved and implemented		Does not engage with migration.		Declares universal right to access health care, does not distinguish between citizens and non-citizens
Law No. 38/29 Approving the Penal Code of Angola	2020	Approved and implemented		Article 68 of the Penal Code which outlines the conditions for expulsion or deportation from Angola provides protection for refugees against refoulement.		N/A
Law No. 10 of 2015, Law on the Right of Asylum and the Refugee Status	2015	Approved		Aligns with Constitution, Article 71 on the right to asylum.		Article 26 provides for the right to health for asylum-seekers and refugees, including for their families, and states that they are entitled to "the right to medical care and medicines under the same conditions as nationals." Special provisions are made for vulnerable people.
Decree No. 53/05, Legal Regime of Accidents at Work and Occupational Diseases	2005	Approved and implemented		Does not engage with migration specifically. The Decree is applicable to all workers, including Angolan workers abroad unless protected by the legislation of another country and foreign workers in Angola. The Decree provides that foreign workers may also be protected by applicable international conventions; however, these are not specified. Other classes of migrants are not mentioned, though the Decree is framed in terms of universal applicability.		No right to health.
Strategic Plans and Frameworks						
National Plan for Health Development (PNDS) 2012-2015 (Volume 1 and 2)	2012	Approved		Does not engage specifically with migration, however, mentions population displacement and refugees in the context of disaster.		Offers a framework of UHC. Whilst the language used implies general access to services, no mention is made to the specific inclusion of migrant groups.

3.3.2. BOTSWANA

Botswana: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitutional

The **Constitution of Botswana**¹⁰¹ does not provide any socio-economic rights nor a right to health for citizens or non-citizens (migrants). The **Constitution** does not provide any specific rights or protections towards children in terms of health, nutrition, shelter, or social services. Section 15 of the **Constitution** does establish that no law shall make any provision that is discriminatory, however Section (4)(b) specifically excludes non-citizens (migrants) from this protection, suggesting that barring migrants from accessing health care would not be prohibited as per the constitution. Section 5, which establishes the protection of right to personal liberty to all, specifically excluded such protections in instances where the state must prevent the spread of infectious disease, for individuals of 'unsound mind' or living with addiction to drugs or alcohol, and for individuals who have entered Botswana irregularly or who may be facing deportation or extradition. Despite the lack of constitutional protection for the right to health, Botswana is moving towards Universal Health Coverage (UHC). Some attention has been given to the inclusion of migrants in national healthcare strategic planning, however most services remain restricted to citizens. A Commission of Inquiry has been established to review and make recommendations for more comprehensive constitutional reforms, so amendments may be forthcoming.

¹⁰¹ Republic of Botswana, "Constitution of Botswana 1966 (Rev. 2016)" (Republic of Botswana, 1966).

Legislation

Botswana's foundational legislation regarding public health and access to health care services generally adopts a procedural rather than a rights-based framework. The **Public Health Act**¹⁰² does not engage with migration; however, it is phrased in terms of general application and does not specifically exclude migrants. Botswana places certain obligations on the Ministry of Health and Wellness to ensure the availability of basic healthcare services, although ensured access is generally limited to citizens. While some policies identify refugees as vulnerable groups in need of specialized services, other classes of migrants (including undocumented migrants) are absent from most policy documents relating to healthcare. Specific guidelines and frameworks for managing specialised services to refugees are also lacking, and the level of access (including potential cost) to basic health care services for non-citizens who would fall outside of the Essential Health Services Package (EHSP) mandate is unclear. In addition, the **Immigration Act**¹⁰³ specifically prohibits migrants with certain diseases from entering or remaining in Botswana. Although Botswana has ratified both the 1951 Refugees Convention and the OAU Convention, the **Refugees Act**¹⁰⁴ has not been amended since doing so. As a result, the expanded definition of a refugee as per the OAU Convention is not included in the **Refugees Act**. The **Refugees Act** also does not provide for any guaranteed socioeconomic rights for refugees or asylum seekers.

Policies and Frameworks

Botswana's goal of achieving UHC is reflected in the implementation of policies and strategic frameworks which aim to meet the objectives of the World Health Organization (WHO)'s 16 indicators. However, the implementation of the **Essential Health Services Package (EHSP)** and **Integrated Health Service Plan (IHSP)** specifically exclude non-citizens (migrants) from receiving basic healthcare services free of charge, hindering the realisation UHC. The notable exception to this exclusion is Botswana's HIV/AIDS and TB related policies and plans, which have taken on a significantly more rights-based approach in comparison to other health-related policies. Botswana has also adopted an inclusive and fully universal strategy to combat these diseases, allowing all persons living with HIV to access free anti-retroviral treatment (ART) regardless of documentation status. While this is a welcome development towards more migration-aware health responses and UHC, most health policies are yet to factor in the impact of migration on health, migrants' access to health care, and how migrants should be included in strategic healthcare planning going ahead.












Migration health assessment centre in Abuja, Nigeria.
Credit: IOM/Natalie Oren

¹⁰² Republic of Botswana, "The Public Health Act (Act No. 11, 2013)," 2013.

¹⁰³ Republic of Botswana, "Botswana Immigration Act (Act No. 3 of 2011)" (Republic of Botswana, 2011).

¹⁰⁴ Republic of Botswana, "Refugees (Recognition and Control) Act of 1968," 1968.

Figure 6: Botswana - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution of Botswana	1966 (Rev. 2016)	Approved and implemented		Does not engage with migration, although framed in general applicability, Section 15(4)(b) makes provisions for discriminatory laws to be permitted in respect to non-citizens.		No socioeconomic rights or right to health.
Legislation						
The Public Health Act (Act No. 11, 2013)	2013	Approved and implemented		Does not engage with migration, framed in general applicability.		No explicit right to health provided, however certain obligations placed on the Ministry of Health and Wellness to ensure availability of basic health services.
National Health Policy	2011	Approved and implemented		Does not engage with migration, specific stipulations that the Essential Health Services Package (EHSP) is available free of charge to citizens only.		Policy aims to ensure universal health coverage for essential health services (as part of the EHSP), however this is only provided free of charge to citizens.
National Policy on Mental Health	2003	Approved and implemented		Policy engages with migration and makes note of the need for specialised care for vulnerable groups, including refugees. Policy does not mention other classes of migrants.		Policy provides that mental health care be included as part of basic healthcare services, however this is generally limited to citizens. The policy does include a provision for refugees to receive specialised services, but does not include other classes of migrants.
The Mental Disorders Act 1969	1969	Approved and implemented		This policy does not engage with migration.		This policy does not provide for a right to health.
Malaria Policy 2011	2011	Approved and implemented		Does not engage with migration, framed in general applicability.		Policy aims for universal coverage of malaria interventions.
Botswana National Policy on HIV/AIDS	1998	Approved and implemented		Does not engage with migration, framed in general applicability.		This policy does not provide for a right to health
Botswana Immigration Act (Act No. 3 of 2011) and Regulations	2011	Approved and implemented		The Act engages with migration, however it does not distinguish between various classes of migrants, only "immigrants" and "non-citizens".		This policy does not provide for a right to health and specifically prohibits immigrants with certain diseases from entering.
Botswana Refugees (Recognition and Control) Act of 1968	1968	Approved and implemented		This policy sets out the conditions for refugee recognition and protection in Botswana.		This policy does not provide for a right to health.
Employment of Visitors Act 1968	1968	Approved and implemented		This policy sets out the conditions under which non-citizens (migrants) may be employed in Botswana.		This policy does not provide for a right to health.
Factories Act (Act No. 31, 1973)	1973	Approved and implemented		Does not engage with migration, framed in general applicability.		This policy does not provide for a right to health.
Employment Act (Act No. 6, 2008)	2008	Approved and implemented		Does not engage with migration, framed in general applicability.		This policy does not provide for a right to health.
Mines, Quarries, Works and Machinery Act (Act No. 15, 1995)	1995	Approved and implemented		Does not engage with migration, framed in general applicability.		This policy does not provide for a right to health.
National Policy on Disaster Management	1996	Approved and implemented		Refugee influxes are identified as a disaster scenario, however no specific guidelines are given on management or treatment of refugees in such instances.		This policy does not provide for a right to health
Strategic Plans and Frameworks						
National Disaster Risk Management Plan	2009	Approved and implemented		The policy notes its humanitarian obligations under the 1951 Refugee Convention and the 1969 OAU Convention to protect asylum seekers and refugees in cases of disaster		This policy does not provide for a right to health, however it does reference the need to ensure urgent medical services in the event of a disaster.
Integrated Health Service Plan: A Strategy for Changing the Health Sector for Healthy Botswana 2010-2020	2010	Approved		Services under the Integrated Health Service Plan (IHSP) are limited to citizens only.		The IHSP aims to provide universal coverage, however it is limited to citizens. The Policy does identify the need to ensure services for vulnerable groups, however vulnerable groups are not defined.
National Strategic Plan to Reduce Human Rights-Related Barriers to HIV and TB Services 2020-2025	2020	Approved		Policy engages with all classes of migrants and recognizes the barriers in terms of accessing care, as well as promotes an inclusive approach with special consideration given to the potential vulnerability of migrants to HIV and TB.		Policy promotes universal health coverage for HIV and TB treatment, inclusive of all classes of migrants.

3.3.3. COMOROS



Comoros: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitutional

The **Constitution**¹⁰⁵ of Comoros protects the right to health under Article 42 and places obligations on the State to ensure a national health service that is general and hierarchical, as well as to encourage the participation of the community in different levels of health services. Although Article 42 uses the language of "citizens" in guaranteeing a right to health, Articles 8 and 18 affirm that non-citizens (migrants) should enjoy equal right to health care. Article 8 provides that the State must guarantee to all the respect for human rights and rights not exclusive to Comorian citizens, including for foreigners (migrants) residing "in a permanent or temporary manner in the Comoros, or in transit". Article 18 states that non-citizens (migrants) in Comoros enjoy all the same rights, freedoms, guarantees, and duties as citizens save political rights or others reserves strictly for Comorian citizens. The right to health provided for in the Constitution is reiterated in other health policies, as Comoros works towards Universal Health Coverage (UHC). Although the **Constitution** of Comoros sets an obligation for the State to provide a national health service, the Union of the Comoros continues to struggle with procuring adequate funding and human resources to fully implement UHC, so the right to health as provided for in the Constitution is still in the process of being fully realised.

Legislation

¹⁰⁵ The Union of the Comoros, "Constitution of the Comoros," 2018.

Health legislation in Comoros consistently reiterates the goal of achieving UHC while noting the barriers that make realising this goal challenging. The **Code of Public Health and Social Action for the Well-Being of the Population**¹⁰⁶, adopted in 1995, provides a comprehensive set of rules for ensuring active management of public health and provision of health care services. However, implementation of certain clauses may be poor. For example, the **Code** provides for special protections and procedures for individuals with mental illness. The **National Health Policy (2005)**¹⁰⁷ specifically references a complete lack of data and available treatment for mental health in Comoros. While the **National Health Policy 2015-2024**¹⁰⁸ begins to include figures on the prevalence of mental illness in the country, it also acknowledges that mental health services and reliable data is lacking. The **National Health Policy 2015-2024** recognises that human resources and funding remain the greatest challenges to achieving UHC in Comoros. The **National Health Policy 2015-2024** aims to introduce universal coverage for childbirth and caesarean sections as an immediate goal and reiterates the long-term aims to establish full UHC. Although policies do not specifically engage with migration, most are framed in terms of universal accessibility, and as per the Article 18 of the **Constitution**, migrants' right to health is implied. The Union of the Comoros does not offer any migration-specific health services strategies, and the impact of migration on health is not examined. The right of access to healthcare for undocumented migrants is also unclear.

Policies and Frameworks

Towards the Union of the Comoros' goal of achieving UHC, a **Joint Declaration** was signed in 2018 between France and Comoros (**Towards a Renewed Partnership Between the French Republic and the Union of the Comoros**)¹⁰⁹. This framework provides for mutual assistance between the two countries to establish a general health insurance plan in Comoros, as well as manage 'uncontrolled' migration movements in the island areas around the Comoros and the French territory of Mayotte. The agreement places an obligation on Comoros to prevent irregular migration from and nearby its territory towards France. In exchange, France offers funding towards a general health insurance plan, an integral step towards achieving UHC in Comoros.



Small scale trader at the border between Zambia and Malawi.
Credit: IOM Zambia

¹⁰⁶ The Union of the Comoros, "The Code of Public Health and Social Action for The Well-Being of The Population (Law No. 95-013/A/F)," 1995, at <https://wipo.lex.wipo.int/en/text/580937>.

¹⁰⁷ The Union of the Comoros, "National Health Policy," 2005.

¹⁰⁸ The Union of the Comoros, "National Health Policy 2015-2024," 2014.

¹⁰⁹ The Union of the Comoros, "Towards A Renewed Partnership Between the French Republic and the Union of the Comoros," 2019.

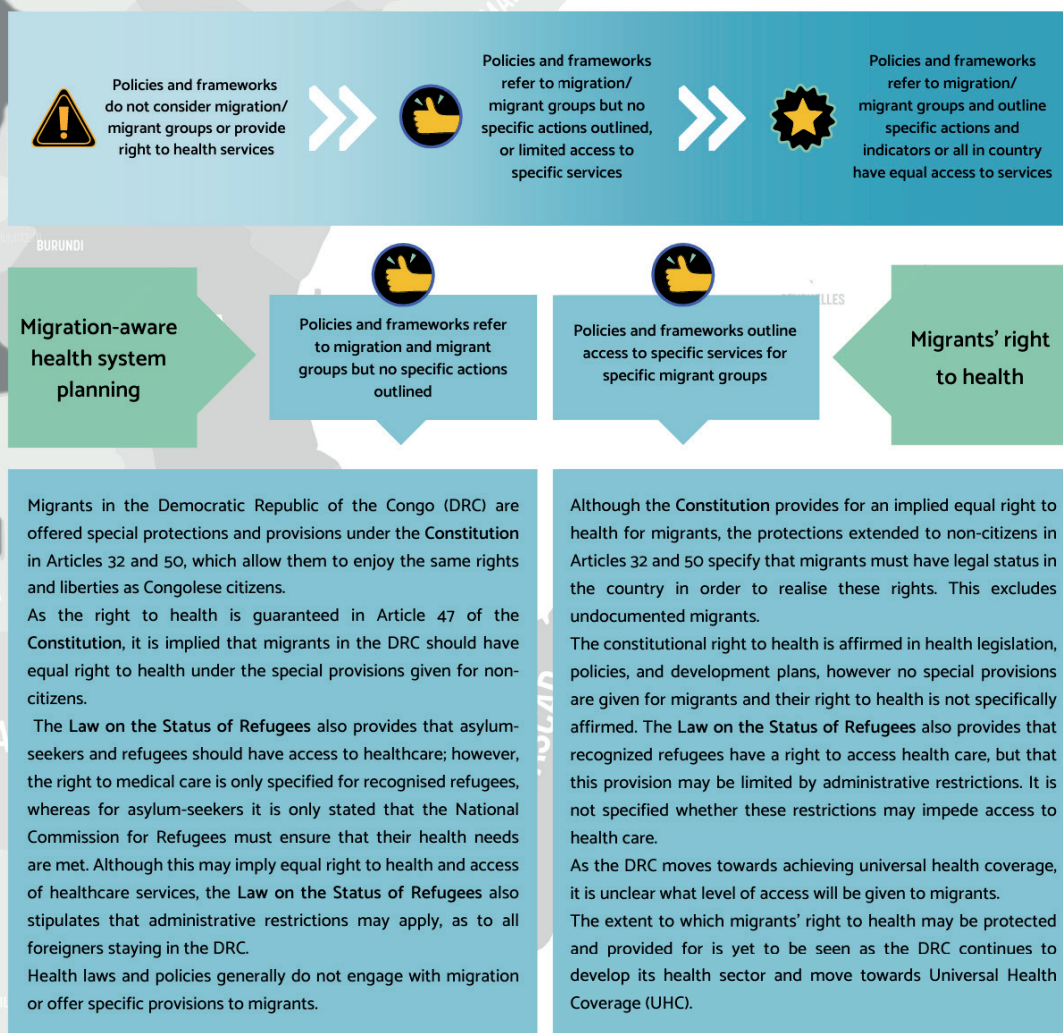
Figure 7: Comoros - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution of the Comoros	2018	Approved and implemented		Specific protection for non-citizens under Article 18 and Article 8.		Right to health is given in Article 42, however it is specified only for citizens. Article 18 implies that migrants should also have access to this right, however specific right to health for migrants is not mentioned.
Legislation						
The Code of Public Health and Social Action for the Well-Being of the Population (Law No. 95-013/A/F)	1995	Approved and implemented		This policy does not engage with migration.		The Code of Public Health references a general right to health, however no specific provisions are given for migrants. The Code is framed in terms of general applicability.
National Health Policy	2005	Approved		This policy does not engage with migration.		No right to health for migrants is given, however community right to health is mentioned, and migrant access may be implied as per the Constitution.
National Health Policy 2015-2024	2014	Approved		This policy does not engage with migration.		Declares universal right to access health care, does not distinguish between citizens and non-citizens
National Solidarity Policy	2012	Approved		Article 68 of the Penal Code which outlines the conditions for expulsion or deportation from Angola provides protection for refugees against refoulement.		Right to health for "everyone", however no specific provisions for migrants.
Conditions of Entry and Stay for Foreigners (Law No. 88-025)	1988	Approved and implemented		The Law applies to non-citizens and stateless persons and sets out the conditions of entry and stay in the Comoros for non-nationals. The Law does not offer any specific protections to asylum-seekers or refugees.		No right to health is offered.
Comoros Labour Code (Law No. 84-108)	1984	Approved and implemented		Article 139 states that the provisions of the Code "extend automatically to foreign workers".		No right to health is offered.
Strategic Plans and Frameworks						
Towards a Renewed Partnership Between the French Republic and the Union of the Comoros	2019	Approved		The agreement provides for specific directives towards managing migration in the island areas surrounding the Comoros and French territories (particularly Mayotte). The agreement offered renewed visa strategies, however no mention of asylum-seekers or refugees is made.		Does not offer a specific right to health, however this concept is implied by the implementation plan for a general health insurance to realise free universal access to health care.

3.3.4. DEMOCRATIC REPUBLIC OF CONGO



Democratic Republic of the Congo: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitutional

The **Constitution**¹¹⁰ of the Democratic Republic of the Congo (DRC) provides for a right to health and food security under Article 47. The State is given the responsibility for promulgating the rules of organisation for public health and food security. This is reiterated in Article 202 which instructs that "the health sector must be provided with a law establishing the fundamental principles and organizational rules for public health and food safety, as well as a law on pharmaceutical trade." However, the relevant laws have not yet been promulgated.¹ Legislation on health financing, needed to realise Universal Health Coverage (UHC), has also not been passed. Expanding on the right to health, decent housing, drinking water, and electric energy are also guaranteed under Article 48, although realisation of these rights also remains challenging. The **Constitution** guarantees a right to asylum, and non-citizens are offered specific protections under Articles 32 and 50, which state that foreigners legally in the DRC enjoy protections under the conditions defined by treaties and laws and may enjoy the same rights and liberties as Congolese citizens. The right to health for migrants is implied by Article 50, however the level of inclusion into the public healthcare system and planning for UHC is unclear. Undocumented migrants are not protected under Articles 32 and 50. Although the **Constitution** guarantees a right to health, this right has not yet been fully realised through legislation and policies and full implementation of Universal Health Coverage has yet to be achieved.

¹¹⁰ Democratic Republic of the Congo, "The Constitution of the Democratic Republic of the Congo," 2005.

Legislation

Decades of socio-political unrest leading to a disintegration of the health system in the DRC have resulted in serious challenges regarding the implementation of policies aimed at improving the health care system and realising UHC. The constitutional right to health is affirmed in the **Public Health Law**¹¹², however no specific provisions are given for migrants with regard to accessing public healthcare. The impact of migration on health and special needs of migrant communities is also not considered. The inclusion of migrants in public health initiatives and services is implied by Article 50 of the **Constitution**, however the extent of their inclusion is not clarified. Undocumented migrants are not mentioned in the **Public Health Law**, and as per Article 50 may not have a right to health. The **Law on the Status of Refugees**¹¹³ obligates the National Commission for Refugees to ensure that the health needs of asylum-seekers and refugees are met and provides that *recognized refugees* have equal access to medical care. Although this implies an equal right to access public healthcare services, as the provision of equal access is stipulated for *recognized refugees*, the status of asylum-seekers is unclear. The **Law on the Status of Refugees** also stipulates that administrative restrictions “applicable to foreigners staying in the DRC” may apply.

Policies and Frameworks

The DRC recognises that significant barriers remain towards achieving UHC. As per the **Strategy for Strengthening the System of Health (SSSH)**¹¹⁴ and its implementation plan, the **National Health Development Plan 2019-2022 (NHDP): Towards Universal Coverage**¹¹⁵, these include limited financing, lack of community participation, poorly demarcated and regulated health zones, insufficient resources, and absence of Ministry leadership. The **NHDP** aims to achieve UHC by the year 2030 by gradually increasing coverage area, financing, human resources, the supply of essential medicines, as well as improving the health information system and promoting the decentralisation of the health sector. The **NHDP** also calls for legislative action to realise the organisation of the public health service and health financing. Both the **SSSH** and **NHDP** are founded on the goal of realising the constitutional right to health under Article 47. Neither the **SSSH** nor the **NHDP** engage with migration or offer any specific provisions towards the inclusion of migrants in health planning. Overall, the **SSSH** and **NHDP** provide concrete steps towards UHC, however it remains to be seen if these plans will include migrants.



Health screening point between Butembo and Goma, in the Democratic Republic of the Congo's.
Credit: IOM/Muse Mohammed

¹¹¹ Ministry of Public Health. 2006. "Strategy for Strengthening the System of Health." http://planificationfamiliale-rdc.net/docs/2_StrategieDeRenforcementDuSystemeDeSante_SRSS_Juin2006.pdf.





















¹¹² Democratic Republic of the Congo, "Law No. 18/035 of December 13, 2018, Fixing the Fundamental Principles Relating to the Organization of Public Health," 2018.

¹¹³ Democratic Republic of the Congo, "Law No. 021/2002 Of October 16, 2002 On the Status of Refugees in Democratic Republic of Congo," 2002.

¹¹⁴ Ministry of Public Health, "Strategy for Strengthening the System of Health," 2006.

¹¹⁵ Ministry of Public Health, "National Health Development Plan 2019-2022: Towards Universal Health Coverage," 2019.

Figure 8: Democratic Republic of the Congo - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
The Constitution of the Democratic Republic of the Congo	2005	Approved and implemented		The right to health and food security is ensured in Article 47. The right to asylum and protection against refoulement is recognized under Article 33. Articles 32 and 50 offers specific protections to non-citizens to enjoy equal rights to citizens.		The right to health and food security is ensured in Article 47.
Legislation						
Law No. 18/035 of December 13, 2018, Fixing the Fundamental Principles Relating to the Organization of Public Health	2018	Approved		This policy does not engage with migration.		The right to health is affirmed, however no specific right of access to migrants. This may, however, be implied by Article 50 of the Constitution.
Law No. 021/2002 Of October 16, 2002, On the Status of Refugees in Democratic Republic of Congo	2002	Approved and implemented		The law sets the conditions and rights for asylum-seekers and refugees in the DRC.		The Law provides that recognized refugees have equal access to medical care, however notes that this is subject to any administrative restrictions "applicable to foreigners staying in the DRC". Potential conditions or restrictions are not specified. While the National Commission for Refugees is tasked with ensuring that the health needs of asylum-seekers are met, the specific level of access for asylum-seekers is not clarified.
Ordinance-Law 83-033 Relating to the Foreigners Police	1983	Approved and implemented		The Law sets the conditions for the entry and stay of non-citizens in the DRC, including for asylum-seekers and refugees.		The Law does not provide a right to health.
Ordinance 87-281 Relating to Measures for the Execution of Ordinance-Law 83-033 of September 12, 1983, Relating to the Foreigners Police	1987	Approved and implemented		The Law expands on Ordinance Law 83-033, specifically to impose additional restrictions and requirements on the entry and stay of foreigners in the DRC.		The Law does not provide a right to health.
Law on the Labour Code	2002	Approved and implemented		The Code is inclusive to all workers, regardless of nationality, however it sets certain limitations on the employment of foreign workers, such as visa requirements and the stipulation that no more than 15% of a workforce may be comprised of foreign nationals		The Law does not provide a right to health.
Law Amending and Completing Law N° 015-2002 On the Labor Code	2016	Approved and implemented		Offers non-citizens the ability to manage unions under certain stringent conditions, however no further engagement with migration		The Law does not provide a right to health.
Congolese Penal Code	2004	Approved and implemented		Does not engage with migration.		The Law does not provide a right to health.
Strategic Plans and Frameworks						
Strategy for Strengthening the System of Health	2006	Approved		Does not engage with migration.		The Strategy does not provide a right to health.
National Health Development Plan 2019-2022: Towards Universal Health Coverage	2019	Approved		Does not engage with migration.		Right to health is affirmed, however no specific provisions for migrants.

3.3.5. ESWATINI



Eswatini: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitution

The **Constitution**¹¹⁶ of the Kingdom of Eswatini does not directly provide for a right to health, however Section 60 places an obligation on the State to ensure the provision of basic health care services to the population. Although the right to access health is not explicitly guaranteed, Section 60 may be interpreted as an implied, albeit limited, right to health. The right to health in Section 60 is classified as a non-justiciable directive principle of state policy, so it cannot be enforced by the courts. Fundamental rights and freedoms are protected and extended to every person place of origin, and these rights are enforceable by the courts. Persons with disabilities enjoy special protections against discrimination and towards inclusion, and no stipulation is given that only citizens with disabilities are protected. The **Constitution** does not provide any specific provisions or inclusions for non-citizens, many rights, protections, and guarantees are directed towards 'the population'. It is not clear if migrants are included in these rights as members of the population, or if they are limited to citizens.

¹¹⁶ The Kingdom of Eswatini, "The Constitution of the Kingdom of Eswatini," 2005.

Legislation

Legislation in Eswatini shows a gradual move towards the implementation of Universal Health Coverage (UHC) however this has not yet been realised. The most recent foundational document for health planning is the **National Health Policy of 2006 (NHP)**¹¹⁷, which provides limited strategies for improving universal health coverage. The **NHP** indicates that some services may even become commercialized in order to increase revenue for health services. The **NHP** stipulates that essential health services are only available for citizens. Asylum-seekers and refugees are offered specific protections under the Refugees Act, including the provision that the Minister must ensure the health and well-being of refugees in encampments. Despite this provision, there is no clear mandate for level of access to health care for asylum-seekers and refugees within or outside of the camps. Health legislation does not otherwise provide for a right or guarantee to health, and most legislation specifically limits the availability of services to citizens only.

Policies and Frameworks

Policies and frameworks aiming to advance the health care system and expand universal health access and coverage generally only include citizens of Eswatini. The impact of migration on health is acknowledged in the **National Multisectoral HIV and AIDS Strategic Framework 2018-2023**¹¹⁸, which identified migrants as a key population vulnerable to HIV/AIDS, however they are not explicitly included in any proposed strategies or interventions and their level of access to care and treatment is not made clear. The negative impact of outward migration on health worker density is examined in the **Human Resources for Health Strategic Plan 2012-2017**¹¹⁹, however the effects of inbound migration are not evaluated. The **National Health Sector Strategic Plan 2008-2013**¹²⁰ aims to move Eswatini towards full implementation of universal health coverage, including an inclusive and equitable delivery of services that target vulnerable populations, however this is limited to citizens. Policies for the future of development in the health sector generally do not engage with migration. The impact of migration on health is not considered, and no specific provisions are given to how migrants should be incorporated into health care planning. Should universal health coverage be fully implemented in Eswatini, it is unclear what level of access will be provided to migrants.



Participants of the titiky ritual in the commune of Ambalaso, Madagascar.
Credit: IOM/Edino Jean Noelson




¹¹⁷ Ministry of Health, "National Health Policy," 2006.

¹¹⁸ The Government of the Kingdom of Eswatini, "The National Multisectoral HIV and AIDS Strategic Framework (NSF) 2018-2023," 2018.

¹¹⁹ Ministry of Health, "Human Resources for Health Strategic Plan 2012-2017," 2012.

¹²⁰ Ministry of Health, "National Health Sector Strategic Plan 2008-2013," 2008.

Figure 9: Eswatini - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
The Constitution of the Kingdom of Eswatini	2005	Approved and implemented		No specific provisions given for non-citizens		Right to health is not explicitly guaranteed, but it is implied in Section 60 - however not specifically extended to migrants
Legislation						
The Public Health Act	1969	Approved and implemented		The Public Health Act does not engage with migration.		The Public Health Act does not provide for a specific right to health.
The Mental Health Order	1978	Approved and implemented		The Order does not engage with migration and no distinction is made between citizens and non-citizens.		No right to health is guaranteed in the Order.
The Persons with Disabilities Act	2018	Approved and implemented		The Act does not engage with migration and no distinction is made between citizens and non-citizens.		Access to health is addressed in Section 33, which provides that "persons with disabilities have the right to the enjoyment of health on an equal basis with persons without disabilities." The Council, the private sector, and non-governmental organisations are responsible for ensuring access to health services, including health related and gender sensitive rehabilitation. Although the right to health is established, access to universal health coverage is not affirmed. No right to health confirmed for non-citizens.
National Health Policy	2006	Approved and implemented		The National Health Policy does not engage with migration and access to essential healthcare services is limited to citizens.		No right to health is given, however the policy provides for free and/or affordable access for essential health services. This is reserved for citizens.
Occupational Health and Safety Act	2001	Approved and implemented		The Occupational Safety and Health Act does not engage with migration, and no distinction is made between citizens and non-citizens.		No right to health is offered.
The Employment Act	1980	Approved and implemented		The Employment Act does not engage with migration, and no distinction is made between citizens and non-citizens.		The Immigration Act does not offer a right to health or offer provisions for accessing medical care.
The Immigration Act	1982	Approved and implemented		The Immigration Act sets the conditions of entry and stay in the Kingdom of Eswatini. Does not mention asylum-seekers or refugees.		The Law does not provide a right to health.
The Refugees Act	2017	Approved and implemented		The Refugees Act sets out the rules and conditions for the recognition, protection, assistance, and control of refugees in Eswatini.		The Act does not provide a specific right to health; however the Act suggests that health services may be available in refugee reception centres and camps.
Strategic Plans and Frameworks						
Resettlement Policy Framework: Strengthening the Health Systems and Nutrition for Human Development in Eswatini Project	2020	Approved		The RPF makes specific provisions for internally displaced persons as a result of forced resettlement due to land acquisitions, however the RPF does not include external migrants in its evaluation or planning.		Although the RPF aims to improve and expand health services, no right to health is guaranteed and no provisions are made for universal health coverage.
Human Resources for Health Strategic Plan 2012-2017	2012	Approved		The HRH Plan does not engage with inward migration, aside from noting the impacts of outward migration of healthcare workers from Eswatini.		No right to health or provisions for universal health coverage are given.
National Health Sector Strategic Plan 2008-2013	2008	Approved		The NHSS does not engage with migration, and the stated vision for the Plan stipulates that only citizens are included.		Promotes universal health coverage and access to health services, however this is provided only for citizens.
The National Multisectoral HIV and AIDS Strategic Framework (NSF) 2018-2023	2018	Approved		Migrants are identified as a key population, however they are not specifically included in strategic planning. It is unclear what level of access they have to services.		Universal access to services is affirmed, however no specific inclusion of migrants.

3.3.6. LESOTHO

Lesotho: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitutional

The **Constitution**¹²¹ of Lesotho provides for a limited right to health under Section 27 which provides that the State shall adopt policies aimed at ensuring the highest standard of health. This provision is a non-justiciable principle of state policy, meaning it cannot be enforced in the courts. Further, this right is only applicable to citizens and is subject to the economic capacity and development of the State. The **Constitution** also provides for ensuring safe and healthy working conditions as well as protection of the environment to assure health and well-being, however these provisions are also non-justiciable principles of State policy and therefore cannot be enforced. The **Constitution** does not provide any specific inclusion of migrants, the fundamental rights provided for in the Bill of Rights (right to life, right to equality before the law, and equal protection of the law) apply to all persons in Lesotho regardless of citizenship.

¹²¹ The Kingdom of Lesotho, "Constitution of Lesotho," 1993.

Legislation

Foundational legislation regarding health care in Lesotho is primarily procedural and does not affirm a right to health, nor does it tend to engage with migration or offer specific provisions for migrants. Lesotho has adopted separate legislation for refugees, the **Refugees Act 1983**¹²², which provides for the right to family unification and decriminalises irregular entry for asylum claimants. Neither the **Aliens Control Act of 1966**¹²³ nor the **Refugees Act** provide a right to health or specific provisions regarding access to medical care for migrants. The **Human Rights Act 1983**¹²⁴ promotes non-discrimination and equal enjoyment of fundamental rights and freedoms regardless of national and social origin, however the right to freedom of movement and place of residence is subject to having legal status in Lesotho. The **Labour Code Order 1992**¹²⁵ also prohibits discrimination based on nationality in terms of employment, although specific restrictions are imposed on the employment of foreign workers, such as the requirement to be in possession of a valid work visa. Abortion, save for in specific instances where the health of the mother or child is at risk, is criminalised in Lesotho under Part III of the **Penal Code Act of 2012**¹²⁶. Failure to disclose HIV status or the intentional transmission of a sexually transmitted infection (STI), including HIV, is also criminalised.

Policies and Frameworks

Strategic planning and policy frameworks in Lesotho aim to implement Universal Health Coverage (UHC) in adherence with the constitutional promotion of health as a principle of state policy. The **National Health Policy (2011)**¹²⁷ lays the foundation for providing essential health services and introducing a health insurance system; however, these provisions are limited to citizens. HIV/AIDS is recognised across all health policy initiatives as the most important priority for health planning given its high prevalence rates in the country. As a result, Lesotho has adopted an aggressive and comprehensive approach to managing the epidemic. The **National HIV & AIDS Policy and National HIV & AIDS Strategic Plan (2006-2011)**¹²⁸ provide specific guidelines for the inclusion of migrants and other vulnerable groups in HIV/AIDS interventions. The **National HIV & AIDS Strategic Plan** also advocates for the development of specific services and policies aimed at migrants in HIV/AIDS prevention and treatment plans and pushes for their full inclusion in planning and development. Although the **National Health Policy** and its implementing strategic frameworks stipulate that current initiatives towards UHC are limited to citizens, HIV/AIDS policies in Lesotho adopt a free, accessible, and universal approach to HIV prevention and treatment programmes for all persons in the country regardless of immigration status.



A woman prepares to return home after collecting medication for her infant daughter.
Credit: IOM/Mpho Seleka

¹²² Government of Lesotho, "The Refugees Act 1983," 1983.

¹²³ Government of Lesotho, "Aliens Control Act 1966," 1966.

¹²⁴ Government of Lesotho, "Human Rights Act 1983 (Act No. 24 of 1983)," 1983.































¹²⁵ Government of Lesotho, "Labour Code Order 1992," 1992.

¹²⁶ Government of Lesotho, "Penal Code Act (Act No. 6 of 2012)," 2012, at <https://lesotholii.org/ls/legislation/num-act/6>.

¹²⁷ Government of Lesotho, "National Health Policy - 2011," 2011.

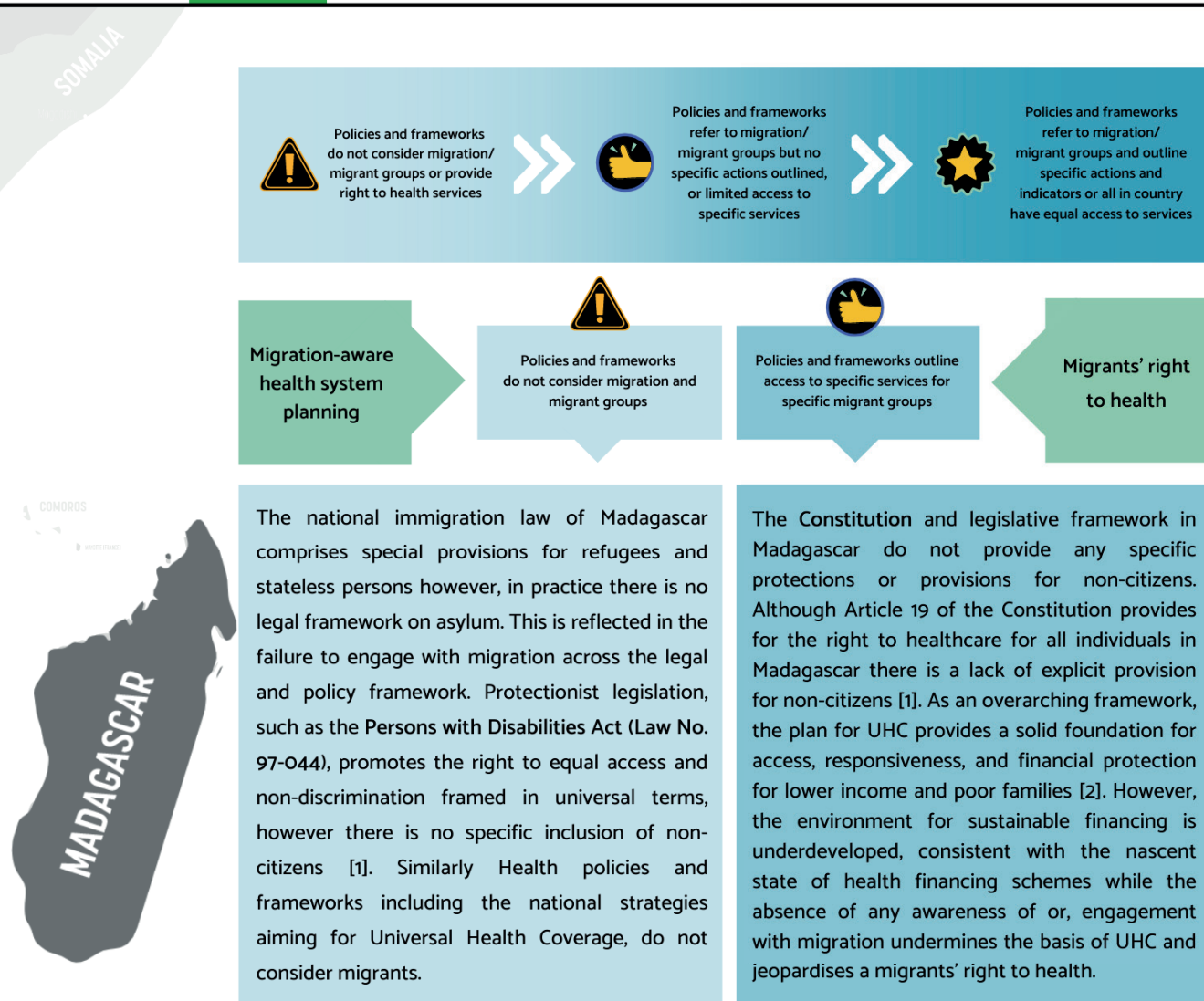
¹²⁸ Government of Lesotho, "NATIONAL HIV & AIDS STRATEGIC PLAN (2006-2011)," 2006.

Figure 10: Lesotho - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution of Lesotho	1993	Approved and implemented		No specific provisions given for non-citizens		Right to health is provided for in Section 27, however this is a non-justiciable right subject to State capacity and is reserved for citizens.
Legislation						
Public Health Order 1970	1970	Approved and implemented		The Order does not engage with migration.		The Order does not provide for a specific right to health.
Mental Health Law (No. 7 of 1964)	1964	Approved and implemented		The Law does not engage with migration		The Law does not provide for a specific right to health.
Lesotho Health Policy	2011	Approved		Migrants are identified as a vulnerable and given priority for receiving immunizations against communicable diseases, however provisions for achieving Universal Health Coverage (UHC) are limited to citizens.		Promotion of UHC, however provisions are limited to citizens.
National HIV & AIDS Policy: Ending AIDS by 2030	2019	Approved		The National Health Policy does not engage with migration and access to essential healthcare services is limited to citizens.		No right to health is given, however the policy provides for free and/or affordable access for essential health services. This is reserved for citizens.
Aliens Control Act 1966	1966	Approved and implemented		The Act sets out the rules and conditions for entry and stay of non-citizens in Lesotho.		No right to health is given.
The Refugees Act 1983	1983	Approved and implemented		The Act sets the conditions for recognition, treatment, and control of refugees.		No right to health is given.
Anti-Trafficking in Persons Act 2011	2011	Approved and implemented		The Immigration Act sets the conditions of entry and stay in the Kingdom of Eswatini. Does not mention asylum-seekers or refugees.		The Law does not provide a right to health.
Human Rights Act 1983 (Act No. 24 of 1983)	1983	Approved and implemented		The Act does not engage with migration.		Sections 14 and 16 provide that every person has the right to enjoy the best attainable state of physical and mental health and obligates the State to take necessary measures to protect the health of the people and ensure that they receive medical attention when they are sick. Further, the elderly and persons living with a disability are provided with special measures of protection to ensure their physical needs. The Act does not distinguish between citizens and non-citizens and the rights within are afforded to all persons.
Labour Code Order 1992	1992	Approved and implemented		Provisions made regarding the employment of non-citizens; however no specific provisions made for migrant workers themselves.		No right to health is given in this policy.
Penal Code Act (Act No. 6 of 2012)	2012	Approved and implemented		Does not engage with migration.		Does not offer a right to health.
Strategic Plans and Frameworks						
Health Sector Strategic Plan 2012/13-2016/17	2013	Approved and implemented		The HSSP does not engage with migration.		Right to health as per the Constitution is provided for along with provisions to implement UHC, however UHC services are limited to citizens.
National Multi-Sectoral Integrated Strategic Plan for the Prevention and Control of Non-Communicable Diseases (NCDs): 2014-2020	2014	Approved		This Plan does not engage with migration.		Constitutional provision to access health care is affirmed, however essential services and universal health coverage provisions are limited to citizens.
National Health Strategic Plan 2017-2022	2017	Approved		As per the National Health Policy, migrants are identified as a vulnerable group and given priority for receiving immunizations, however provisions for provisions for achieving UHC are limited to citizens.		Constitutional provision to access health care is affirmed, however essential services and provisions for achieving UHC are limited to citizens
National HIV & AIDS Strategic Plan (2006-2011)	2006	Approved		Migrants are identified as a vulnerable group and are included in proposed universal access to HIV and AIDS information and services as well as legal protection. The HIV & AIDS Plan aims to develop and implement specific HIV and AIDS policies and special services for vulnerable population groups, including migrants. Further, the HIV & AIDS Plan advocates for their participation in planning and development and promotes the improvement of access to information for migrant and other vulnerable groups.		Migrants are identified as a vulnerable group and are included in proposed universal access to HIV and AIDS information and services as well as legal protection. HIV/AIDS treatment is to be universal for everyone.

3.3.7. MADAGASCAR

Madagascar: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitutional

Article 19 of the **Constitution of Madagascar**¹²⁹ provides for the right to health. The language of that provision does not limit the enjoyment of that right to citizens and as such would equally apply to migrants. Such an interpretation can be inferred from the fact that certain rights, especially political rights, are expressly limited to citizens, which is not the case for the right to health. The **Constitution** of Madagascar does not have an express provision for the right to life but this could be implied from the protection of the integrity and dignity of the person. Ironically, Article 8 on the right to non-discrimination only expressly mentions nationals as being equal under the law, contradicting Article 7 which provides for equal application of the law for all. Without the express provision for the right of migrants to access healthcare in the **Constitution** and other foundational legislation rights to access are implicit and can be subject to interpretation.

¹²⁹ The Government of the republic of Madagascar, "Constitution of Madagascar_2010," 2010; The Government of the Republic of Madagascar, "CONSTITUTIONAL LAW N°2007 - 001 OF APRIL 27, 2007," 2007.

Legislation

The national **Immigration Law (Law No. 95-020)**¹³⁰ of Madagascar comprises special provisions for refugees and stateless persons however, in practice, there is no concrete asylum system in place. Madagascar has a comparatively small number of asylum-seekers and refugees, yet the absence of a functioning legal framework on asylum and lack of explicit provision of protective and supportive rights mean that the position of migrants is precarious. Legislative texts make no clear reference to permanent residency for example and in order to transfer from one job to another, foreigners must declare their change of status to the Ministry of Labour, Employment, Public Services and Social Legislation for validation. Legislation concerning health indicates that migrants, regardless of their migratory status, have the same access to government-funded health care as Malagasy citizens. However, this is not explicitly stated and there is no consideration of the specific health needs and challenges of migrants. Similarly, migrant workers have the same access as citizens to social protection according to the Law on the **Labour Code (Law No. 2003-004)**¹³² yet this remains implied. Protectionist legislation, such as the **Persons with Disabilities Act (Law No. 97-044)**¹³³, also provide the right to equal access and non-discrimination framed in universal terms, yet does not state that this excludes or, importantly, includes migrants. Finally, Madagascar does not have a strategy to combat discrimination against migrants, which means that while the country does not expressly prevent migrants from accessing healthcare and other services, migrants face weak protection and an ambiguous provision of rights.

Policies and Frameworks

Health policies and frameworks including the national strategies aiming for Universal Health Coverage (UHC) in Madagascar, do not consider migrants. As with the legislation, there is no explicit exclusion of migrants. As part of the implementation of UHC, Madagascar developed the **UHC National Strategy**¹³⁴, and adopted the decree on the creation, organization, and operation of the **National Solidarity Fund for Health**. However, there is no reference to migration or migrants. The **National Policy of Community Health, 2017**¹³⁵ and the **National Social Protection Strategy (NSPS) for 2019-2023**¹³⁶ both focus on addressing poverty and vulnerability as central to meeting the relevant SDGs and achieving UHC. With a commitment to “optimize equitable access to healthcare for the entire Malagasy population”, the reinforcing of a right to health for all, which includes non-citizens is evident but yet, remains implicit.

Furthermore, it is unclear how UHC will be achieved with the current financial barriers as well increasing levels of poverty in the country. The **National Social Protection Strategy 2019-2023**¹³⁷, for example, was originally approved with the commitment to expand UHC in the country to reach half a million poor families. Madagascar's policies and frameworks suggest the presence of an enabling policy environment for achieving UHC and the right to health for migrants. However, the absence of explicit provision in the legislative framework of the country of the rights of migrants and for protection against discrimination combined with the nascent state of health financing schemes, means the ambitions of UHC are undermined.

¹³⁰ The Government of the republic of Madagascar, “Law No. 95-020 of July 24, 1995 Amending Law No. 62-006 of June 6, 1962 Establishing the Organization and Control of Immigration,” 1995.

¹³¹ Government of the Republic of Madagascar, “Law No. 2003-044 on the Labour Code,” 2003; Government of the Republic of Madagascar, “Law No. 62-006 of June 6, 1962 Establishing the Organization and Control of Immigration,” 1962.

¹³² Government of the Republic of Madagascar, “Law No. 2003-044 on the Labour Code,”

¹³³ Ministry of Population and Social Affairs, “LAW N° 97-044. Persons with Disabilities,” 1997.

¹³⁴ Government for the Republic of Madagascar, “NATIONAL STRATEGY ON UNIVERSAL HEALTH COVERAGE December 2015,” 2015.

¹³⁵ Government for the Republic of Madagascar, “Politique Nationale de Sante Communautaire a Madagascar,” 2017.

¹³⁶ Ministries of Population, of Social Protection and Promotion of Women, “The National Social Protection Policy (PNPS),” 2015.

¹³⁷ Ministries of Population, of Social Protection and Promotion of Women, “National Social Protection Strategy (SNPS) 2019-2023,” 2019.

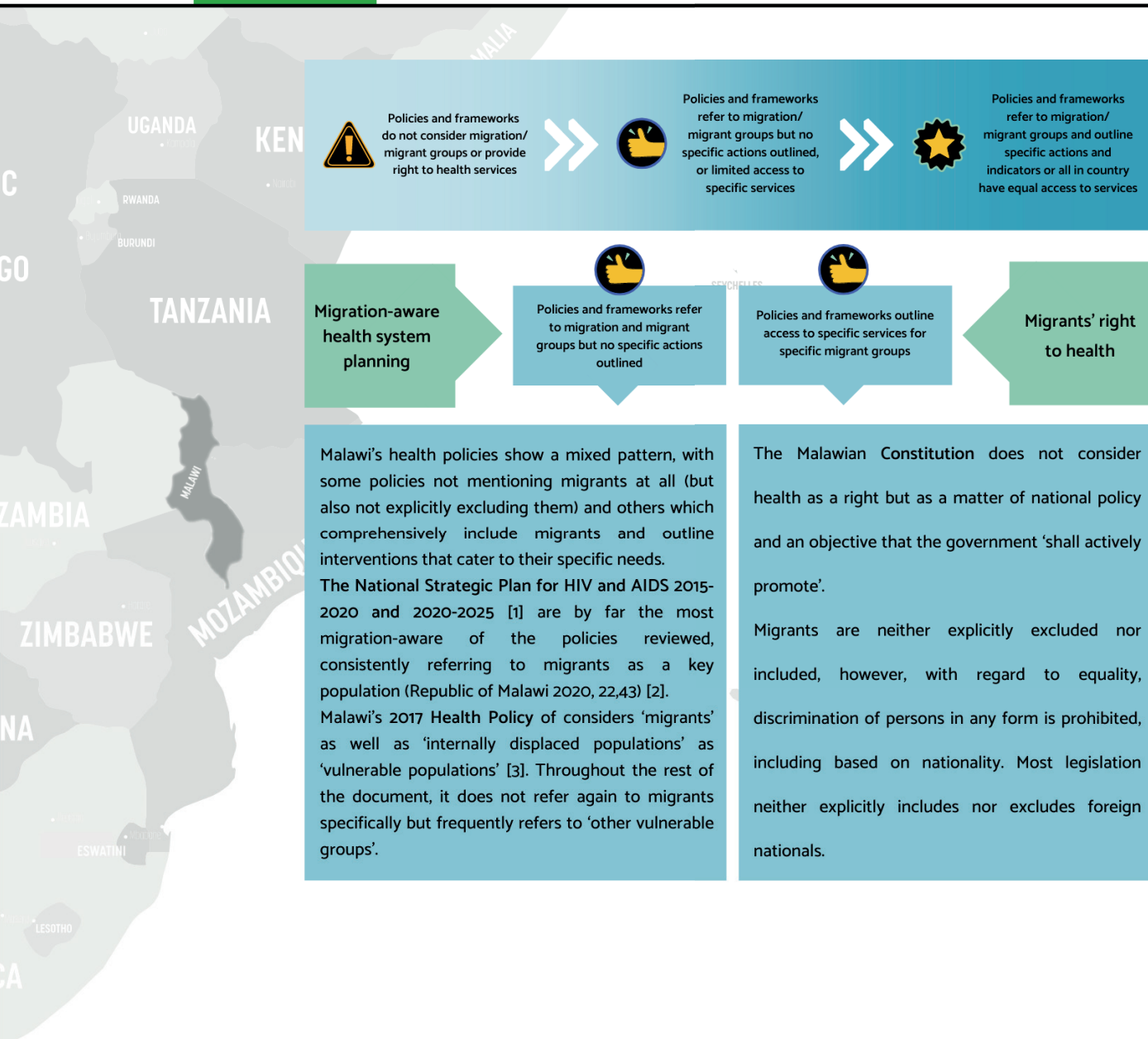
Figure 11: Madagascar - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution 1992 amended by Law No. 2007-001 of April 27, 2007	1992/2017	Approved and implemented	⚠️	No mention of migration.	👉	Not expressed explicitly but states every individual has a right to health.
Constitution of 2010	2010	Approved and implemented	⚠️	No mention of migration.	👉	Refers to free public health care for all but is not explicit about migrants' rights.
Legislation						
Law No. 95-020 of July 24, 1995 amending Law No. 62-006 of June 6, 1962 Establishing the Organization and Control of Immigration	1995	Approved and implemented	👉	Engaged with migration in terms of setting regulations and protection but this is limited. No mention of refoulement and no explicit reference to refugees.	⚠️	No reference to the right to health.
Law 97-044 on Persons with Disability	1997	Approved and implemented	⚠️	No reference to migration or migrants.	👉	Provides for the right to health care for all people with a disability but does not explicitly address migrants or migration.
Law 2005-040 on the Fight against HIV/AIDS and the Protection of Rights of People Living with HIV (2005)	2005	Approved and implemented	👉	No direct engagement with migration and no mention of migrants or refugees.	👉	Mentions no discrimination on grounds of nationality or "legal status". Migrants would be equally entitled to protection of the law as stipulated in article 7 of the Constitution and enjoys similar rights as citizens, such as access to health.
National Health Policy, August 2016	2016	Approved and implemented	⚠️	No mention or engagement with migration.	👉	Refers to UHC, No specific exclusion or specific inclusion of any migrant groups indicated.
Law No. 2017-043, Reproductive Health and Family Planning (RH/FP Law)	2017	Approved and implemented	⚠️	No mention or engagement with migration.	👉	Outlines universal right to access services without discrimination but provides no specific exclusion or specific inclusion of any migrant groups indicated.
Law No. 2003-004 On the Labour Code	2003	Approved and implemented	👉	Does not clearly engage with migration but state law applies to all "whatever his sex and his nationality".	👉	Based on the applicability of the law to all people in Madagascar it can be assumed that migrant women can access the same support – although this is not explicitly stated.
Strategic Plans and Frameworks						
Madagascar Action Plan (MAP) 2007-2012	2007	Implemented	⚠️	No reference to migration or migrants.	👉	Universal health coverage for all – "those living in Madagascar", However, no specific exclusion or specific inclusion of any migrant groups indicated.
National Strategy Document on Health Coverage UNIVERASAL ISN-CSU) 2015	2015	Approved and implemented	⚠️	No reference to migration or migrants.	👉	Universal health coverage for all. However, no specific exclusion or specific inclusion of any migrant groups indicated.
National Social Protection Policy of September, 2015	2015	Approved	⚠️	No reference to migration or migrants.	👉	Universal health coverage for all. However, no specific exclusion or specific inclusion of any migrant groups indicated.
Decree 2017-0601 October 3, 2017, The National Health Solidarity Fund	2017	Implemented (trial stage)	⚠️	No reference to migration or migrants.	👉	Universal health coverage for all. However, no specific exclusion or specific inclusion of any migrant groups indicated.
National Policy of Community Health July 2017	2017	Implemented and approved	⚠️	No reference to migration or migrants	👉	Universal health coverage for all. However, no specific exclusion or specific inclusion of any migrant groups indicated.
National Social Protection Strategy (NSPS) for 2019-2023	2019	Implemented	⚠️	No reference to migration or migrants	👉	No specific exclusion or specific inclusion of any migrant groups indicated.

3.3.8. MALAWI



Malawi: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



¹³⁸ Republic of Malawi, "National Strategic Plan for HIV and AIDS 2020-2025," 2020, at <http://www.aidsmalawi.org.mw/view-resource/National%20Strategic%20Plan%20for%20HIV%20and%20AIDS%202020-25%20Final.pdf>; Republic of Malawi, "National Strategic Plan for HIV and AIDS 2015-2020," 2015.

¹³⁹ Republic of Malawi, "National Strategic Plan for HIV and AIDS 2015-2020," 123.

¹⁴⁰ Republic of Malawi, "National Health Policy," 2017, at 12.

Constitution

The Malawian **Constitution**¹⁴¹ does not consider health as a right but as a matter of national policy and an objective that the government 'shall actively promote'. Migrants are neither explicitly excluded nor included. However, regarding equality and non-discrimination provisions, discrimination against persons in any form is prohibited, including based on nationality.

Legislation

Most legislation neither explicitly includes nor excludes foreign nationals. In its 'fundamental principles', the **2000 Employment Act**¹⁴² states at Section 5/1 that "no person shall discriminate against any employee or prospective employee on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship". It can, therefore, be assumed that health-related sections of the Act ought to be applied to migrants in the same way as to citizens. In a 2016 audit of Malawian immigration law and the **2015 Prisons Act**¹⁴³, it was found that "no exceptions or exclusions are made for the treatment of migrant detainees, budgetary and resource allocations must by law be extended to include migrant detainees on the same basis as all other prisoners held in a particular facility"¹⁴⁴.

Section 4(e) of the **1964 Immigration Act** and subsequent amendments¹⁴⁵ prohibits entry into Malawi of "any person who is infected, afflicted with or suffering from a prescribed disease, unless he is in possession of a permit issued by the Minister, or any person authorized by the Minister, to enter and remain in Malawi issued upon prescribed conditions and complies with such conditions". Malawi's **1998 Refugee Act**¹⁴⁶ outlines an encampment policy.

Policies and Frameworks

Malawi's **health policies** show a mixed pattern, with some policies not mentioning migrants at all (but also not explicitly excluding them) and others which comprehensively include mobile populations as well as including interventions catering to the specific needs and vulnerabilities of mobile populations. The **National Strategic Plan for HIV and AIDS 2015-2020**¹⁴⁷ and **2020-2025**¹⁴⁸ are by far the most migration-aware of the policies reviewed, consistently referring to migrants as a key population. Malawi's **Health Policy of 2017**¹⁴⁹ outlines that the rights of healthcare users and their families, providers, and support staff shall be respected and protected. Principle 2.5.1 refers to a 'Human Rights and Equity Based Approach', ensuring respect for human rights and fundamental freedoms including the right to life, human dignity, equality, and freedom from any form of discrimination. Therefore, all the people of Malawi shall have access to health services without distinction of ethnicity, gender, age, disability, sexual orientation, mental and health status, religion, political belief, economic, socio-cultural condition or geographical location. Importantly, the **Health Policy of 2017** considers 'migrants' as well as 'internally displaced populations' as 'vulnerable populations'; whilst again not specifically referring to migrants, the policy frequently refers to 'other vulnerable groups', recognising the importance of addressing their needs. The **National Sexual and Reproductive Health and Rights (SRHR) Policy 2017-2022**¹⁵⁰ refers generally to 'persons', with no specific mention of migrants.

¹⁴¹ Republic of Malawi, Constitution of the Republic of Malawi 1994 (Amended 2017), 2017.

¹⁴² Republic of Malawi, Malawi - Employment Act No 20 of 2000, 2000.

¹⁴³ Republic of Malawi, "Prisons Act," revised and consolidated 2015 1956, at <https://www.malawilii.org/akn/mw/act/1955/9/eng@2014-12-31>.

¹⁴⁴ SALC, "Malawi Immigration Law Audit," at 14, 2016, at https://www.southernafricallitigationcentre.org/wp-content/uploads/2017/08/Malawi-Immigration-Audit_FINAL_20-05-16.pdf.

¹⁴⁵ Republic of Malawi, Immigration Act 1964 (with Amendments till 1988), 1964.

¹⁴⁶ Republic of Malawi, "Refugee Act," 1998, at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86510/97721/F1504548531/MW186510.pdf>.
























¹⁴⁷ Republic of Malawi, "National Strategic Plan for HIV and AIDS 2015-2020."

¹⁴⁸ Republic of Malawi, "National Strategic Plan for HIV and AIDS 2020-2025."

¹⁴⁹ Republic of Malawi, "National Health Policy," 12.

¹⁵⁰ Republic of Malawi, "National Sexual and Reproductive Health and Rights (Srhr) Policy 2017-2022," 2017, at <https://malawi.unfpa.org/sites/default/files/pub-pdf/SRHR%20POLICY%20FINAL.pdf>.

Figure 12: Malawi - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution of Malawi	1994 (with amendments through 2017)	Approved and implemented		Migrants are neither explicitly excluded nor included in the Constitution, however, with regard to equality, discrimination of persons in any form is prohibited, including based on nationality.		Health is not an enforceable right but a matter of 'national policy'.
Legislation						
Prisons Act 1956	1956	Approved and implemented		Does not refer to migration or mobile populations.		According to a 2016 audit, 'the Prisons Act sets out in depth the healthcare requirements of those in detention...and that in the Prison's Act 'no exceptions or exclusions are made for the treatment of migrant detainees, budgetary and resource allocations must by law be extended to include migrant detainees on the same basis as all other prisoners held in a particular facility' [14].
Immigration Act 1964	1964 (last amended 1988)	Approved and implemented		The Act regulates the entry of persons into Malawi, to prohibit the entry into Malawi of undesirable persons, to make provision for the deportation from Malawi of undesirable persons and to provide for matters incidental to the foregoing.		Does not reference right to health.
Labour Relations Act of 1996	1996	Approved and implemented		Does not refer to migration or mobile populations.		Does not reference right to health.
Occupational Safety, Health and Welfare Act No. 21 (1997)	1997	Approved and implemented		The language throughout refers to "employer" and "employee" - there is no mention of citizen or non-citizen or to a foreign migrant worker or otherwise.		Based on the provisions for access to medical care including a clinic on site, the Act implies the right to health for all without any exclusions. However, this is not explicitly stated.
The Mines and Minerals Act, 2018 (MMA)	2018			Does not refer to migration or mobile populations.		The Act outlines its aim to 'protect and improve the welfare of citizens of Malawi.
HIV and AIDS (Prevention and Management) Act (2018)	2018	Approved and implemented		Does not refer to migration or mobile populations.		This act only speaks about 'persons' and neither explicitly includes nor excludes foreign nationals.
National Employment Act of 2000 (Republic of Malawi 2020a)	2020	Approved and implemented		Does not refer to migration or mobile populations.		The Act refers to the provisions of the Occupational Safety, Health and Welfare Act No 21 (1997) in terms of protecting the health of an employee. Specific attention is paid to maternity leave for women and additional leave in the event of medical problems relating to pregnancy. The definition of an employee is based on "any person" with no mention of citizen or non-citizen or to a foreign migrant worker or otherwise throughout the Act.
Employment Act No 20 of 2000 (2000)	2000	Approved and implemented		Does not refer to migration or mobile populations.		Does not reference right to health.
The Workers Compensation Act No. 7 of 2000 [15]	2002	Approved and implemented		Does not refer to migration or mobile populations.		The Act refers to the liability of the employer to pay for 'reasonable medical expenses incurred by a worker within Malawi'. There is no reference to migrant workers or labourers or non-citizens. However, there is also not explicit limitations of the Act to citizens alone.
The Employment Amendment Act No. 17 of 2021	2021	Approved and implemented		The Act extends the grounds for non-discrimination and refers to persons working in mines which could include migrants. Provisions are extended to all employees with no specific focus on citizens.		The Act introduces paternity care and conditions for pregnant or breast feeding women. Provisions are extended to all employees with no specific focus on citizens.
Disaster Preparedness and Relief Act 1992, revised and consolidated in 2015 with amendments published up to 31 December 2017	1992	Approved and implemented		Disaster' means an occurrence (whether natural, accidental or otherwise) on a large scale which has caused or is causing or is threatening to cause... (d)influx of refugees into or out of Malawi. [16]		Does not reference right to health.
Strategic Plans and Frameworks						
Malawi National HIV/AIDS Policy 2003	2003	Approved and implemented		The Policy engages with 'mobile groups' and refugees, and acknowledges the need for a regional response.		The policy refers to refugees and 'mobile groups' but it is not clear if migrants are included. The rights of refugees are to be 'respected, protected and fulfilled, including their rights in respect of HIV prevention, treatment, care and support'.

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
National Health Policy 2017 (Draft)	2017	Draft		The policy considers migrants and IDPs as vulnerable groups and refers frequently to the importance of delivering essential health care to vulnerable groups.		'Human Rights-Based Approach and Equity: All the people of Malawi shall have the right to good health, and equitable access to health services without any form of discrimination, whether be it based on ethnicity, gender, age, disability, religion, political belief, geographical location, or economic and/or other social conditions.'
National Sexual and Reproductive Health and Rights (SRHR) Policy 2017-2022 (Republic of Malawi 2017)	2017	Approved and implemented		Does not refer to migration or mobile populations.		In general, the policy speaks about 'persons'.
National Strategic Plan for HIV and AIDS 2015-2020	2015	Approved and implemented		The Strategic mentions 'refugees' and internally displaced populations as well as 'targeted testing in prison and confined settings (refugee camps)' [17]. The document includes 'migrant labourers' as a key and vulnerable population. It also includes to 'build the capacity of law enforcers (police, prison officials, immigration, magistrates and judges) on HIV and human rights with a focus on PLHIVs and key populations.'		Migrant populations are considered a 'key population'.
National Strategic Plan for HIV and AIDS 2020-2025	2020	Approved and implemented		Migrants are considered a 'key population', with specific mention made of mobile populations who will also be reached through hotspot testing', including "border traders", 'highly mobile groups (truckers, fish buyers, sellers) as target populations. Displaced populations are also recognised.		Migrant populations are considered a 'key population'. Specific mention is made of mobile populations who will also be reached through hotspot testing', including "border traders", 'highly mobile groups (truckers, fish buyers, sellers) as target populations.
National Community Health Strategy 2017	2017	Approved and implemented		Does not refer to migration or mobile populations.		The vision of the NCHS is to improve the livelihoods of <u>all people</u> in Malawi (emphasis in the original).
Health Sector Strategic Plan II (2017-2022)	2017	Approved and implemented		Does not refer to migration or mobile populations.		States that 'the UHC package in Malawi is the basic health package which Government and its development partners will endeavour to make accessible to <u>every Malawian</u> free at the point of care' [18].
Health Sector Resource Mapping 2017-2020	2017	N/A		Considers migrants a target population for HIV/STIs and TB activities but gives no details as to the nature of interventions.		Given that programmatic activities include accessing healthcare services for testing and treatment, migrants are provided access to HIV/STIs and TB services. However, this is not explicitly stated.

3.3.9. MAURITIUS



Mauritius: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitutional

The **Constitution**¹⁵¹ of Mauritius does not stipulate an explicit right to health. The Mauritian government's **Voluntary Review of the Global Compact for Safe, Orderly and Regular Migration (GCM) of 2021**¹⁵² confirms that in relation to Universal Health Coverage (UHC) "migrants working in Mauritius are treated on equal footing as regards to their Mauritian counterparts."¹⁵³ However, this applies only to documented migrants, not to those who either arrived without documentation or have arrived regularly but subsequently become undocumented. Moreover, without the clear provision for migrants' rights to health in the Constitution or any protective legislation the confirmation in the voluntary review is not strong enough.

¹⁵¹ Republic of Mauritius, "Constitution of Mauritius," 2016, at https://www.constituteproject.org/constitution/Mauritius_2016.pdf?lang=en.

¹⁵² Republic of Mauritius, "National Voluntary Review of the Republic of Mauritius Implementation of the Global Compact for Safe, Orderly and Regular Migration (GCM) August 2021," 2021, at <https://migrationnetwork.un.org/system/files/docs/Mauritius%20-%20National%20voluntary%20GCM%20review%20%28August%202021%29.pdf>.

¹⁵³ Republic of Mauritius, "National Voluntary Review of the Republic of Mauritius Implementation of the Global Compact for Safe, Orderly and Regular Migration (GCM) August 2021," 15, 16.

Legislation

Legislation in Mauritius tends to engage with migration and the rights of migrants only in terms of health risks and regulating the entry of migrants. The **Immigration Act**,¹⁵⁴ for example while revised as recently as 2020 continues to include travel restrictions in the country including stay and residence restrictions for people living with HIV. While the Government has committed to revising this when considered alongside the **HIV and AIDS Act 2006**¹⁵⁵ as well as the **Occupational Safety and Health Act, 2005**¹⁵⁶ there are serious gaps in respect of protecting and promoting the right of migrants to health. The **Mental Health Act**¹⁵⁷ provides for access to specific services for migrants, but does not address the lack of rights afforded to migrants in law. Overall, some of these pieces of legislation typically refer to 'persons' and 'patients' rather than specifically stating whether they apply to citizens and/or non-citizens. However, the omission of migrants' rights to health in general is a significant gap.

Policies and Frameworks

Similar to the country's legislative approach, policies and frameworks in Mauritius do not explicitly engage with migrants' rights to health and instead rely on implicit references to 'health for all'. The **Health Sector Strategic Plan 2020-2024**¹⁵⁸ for example is based on the goal of UHC and provides specific directives in terms of incorporating the needs of migrants yet does not capture this in terms of a right to health. The **National Occupational Safety and Health Policy 2015**¹⁵⁹ meanwhile states that "the legislative framework shall give adequate coverage to migrant workers, disabled persons and ageing workers." This is supported by the country's **Voluntary Review of the Global Compact for Migration (GCM) for 2021 and update for 2022**¹⁶⁰, which affirms the equal treatment of migrants working in Mauritius. However neither of these documents address the issue of undocumented migration and a right to health. The **Migration and Development Policy of 2018** provides a core focus on the challenges and opportunities posed by the further integration of migration into development and yet also does not explicitly provide for migrants' rights to health. Overall, policies reviewed here rarely consider the specific health needs and vulnerabilities of migrants or those of particular sub-categories of migrants.



Trader at Mwami border post in Zambia.
Credit: IOM Zambia 2021

¹⁵⁴ Republic of Mauritius, The Immigration Act, 2022. Republic of Mauritius, The Immigration Act, 2022.

¹⁵⁵ Republic of Mauritius, HIV and Aids Act 2006, 2006.

¹⁵⁶ Republic of Mauritius, "National Occupational Safety and Health Policy Mauritius," 2015.

¹⁵⁷ Republic of Mauritius, Mental Health Care (Amendment) Act 2019, 2019.

¹⁵⁸ Republic of Mauritius, "Health Sector Strategic Plan 2020-2024," 2020, at <https://health.govmu.org/Communique/HSSP%20Final%2015%20September%202020.pdf>.

¹⁵⁹ Republic of Mauritius, "National Occupational Safety and Health Policy Mauritius."

¹⁶⁰ Republic of Mauritius, "National Voluntary Review of the Republic of Mauritius Implementation of the Global Compact for Safe, Orderly and Regular Migration (GCM) August 2021."

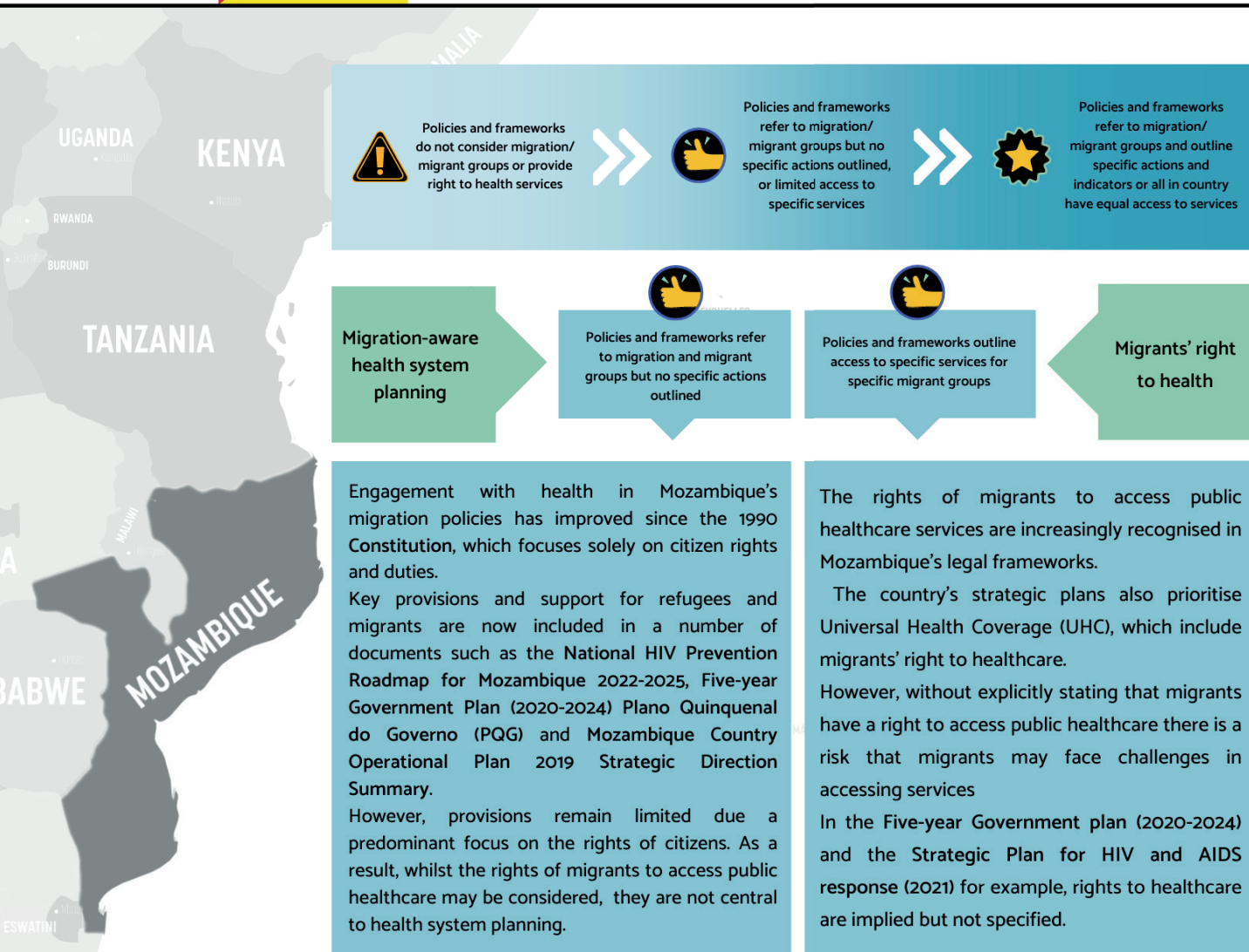
Figure 13: Mauritius - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution of Mauritius	1968	Approved and implemented	⚠️	Does not engage with migration or refer to migrants.	⚠️	The Constitution of Mauritius does not stipulate an explicit right to health.
Legislation						
Immigration Act	2022	Approved	⚙️	Governs entry, exit, and stay	⚠️	Does not reference right to health.
HIV and AIDS Act	2006	Approved and implemented	⚠️	Does not engage with migration or refer to migrants.	⚠️	No reference to right to health for non-citizens.
Mental Health Care (amendment) Act	2019	Approved and implemented	⚠️	Does not refer to migration or mobile populations.	👍	Right to health is unclear as language is not limited to citizens but no specific provision for non-citizens.
The Occupational Safety and Health Act 2005	2007	Approved and implemented	👍	Includes some provisions for 'guest employees' (foreign workers).	⚠️	No engagement with rights or access to health for citizens or non-citizens.
Deportation Act	1968	Approved and implemented	⚙️	Governs deportation and detention.	⚠️	Does not reference right to health.
Strategic Plans and Frameworks						
The National Sexual & Reproductive Health Strategy and Plan of Action 2009-2015	2008	Approved and implemented	⚠️	Does not refer to migration or mobile populations.	👍	Frequently refers to 'Mauritians' only but also provides for citizens and residents.
National Occupational Safety and Health Policy Mauritius 2015	2015	Approved and implemented	👍	Includes migrant workers.	👍	'The legislative framework shall give adequate coverage to migrant workers, disabled persons and ageing workers' [Section n] Republic of Mauritius, "National Occupational Safety and Health Policy Mauritius," 2015.
Migration and Development Policy of 2018	2018	Approved and implemented	⚠️	Focus is migration.	👍	Promotes universal respect and observance of human rights and freedom for all but not sure if any specific rights to health.
Health Sector Strategic Plan 2020-2024	2020	Approved and implemented	⚠️	Does not refer to migration or mobile populations.	👍	Does not refer to an explicit right but states that every citizen and resident has 'access' to all levels of public healthcare.
The National Sexual & Reproductive Health Strategy and Plan of Action 2009-2015	2009	Approved and implemented	⚠️	Does not refer to migration or mobile populations.	⚠️	Only focus on rights for citizens.
HIV National Action Plan 2017-2021	2017	Approved and implemented	👍	Focus on citizens and migrants.	👍	Rights to stigma and discrimination free treatment - no fully clear on overall rights.
Voluntary Review of GCM report	2021	N/A	⚙️	Review of migration governance in Mauritius in relation to GCM	👍	No explicit right but 'migrants working in Mauritius are treated on equal footing as regards to their Mauritian counterparts...in line with the Sustainable Development Goal Target 3.c in providing "Universal Coverage to All" (Republic of Mauritius 2021, 15,16) in 'public hospitals and care centers' (Republic of Mauritius 2021,16).

3.3.10. MOZAMBIQUE



Mozambique: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitutional

The **Constitution** of Mozambique¹⁶¹ focuses on the rights of citizens to access public healthcare with no mention of migrant groups.

Legislation

Despite the limitations set by the **Constitution**¹⁶² in terms of access to health for migrants, key provisions and support for refugees and migrants have increased including through the implementation of national development strategies, which recognise migration as a key driver of development. This also reflects the Government of Mozambique's active participation in regional, continental and global migration cooperation and consultative mechanisms.

¹⁶¹ The Republic of Mozambique, "Mozambique Constitution 2004 (Rev 2007)."















¹⁶² The Republic of Mozambique, "Mozambique Constitution 2004 (Rev 2007)."

The national legal framework for refugee protection in Mozambique – the **Refugee Act No. 21/ 1991** and the ensuing **Decree 33/2007**¹⁶³ – fails to explicitly state a right to access public healthcare for refugees. However, given that the determination of refugee status is in line with the provisions of the 1951 Refugee Convention and the **1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention)** access to public healthcare is implied. Other legislation sets out the rights and freedoms of citizens in terms of political, social, cultural and economic realities, including through revisions to the **Penal Code under Law No. 35 of 2014**¹⁶⁴, and can also be taken to refer to non-citizens and refugees. However, although legislative limitations do not explicitly deny the right to healthcare for migrants there are restrictions on the freedom of movement and choice of residence for refugees and asylum seekers.

Policies and Frameworks

The Government of Mozambique has an increasingly comprehensive evidence-based approach to migration governance, largely promoting a whole-of government and whole-of-society approach. The rights of migrants to access healthcare are routinely acknowledged in strategic plans and frameworks where the provision of healthcare for all is identified as priority. The **National Health Sector Strategic Plan**¹⁶⁵ sets out a vision for Universal Health Coverage (UHC) as dependant on the provision of quality healthcare for all. However, the **Five-year Government plan (2020-2024)**¹⁶⁶ and the **Strategic Plan for HIV and AIDS response (2021)**¹⁶⁷ do not explicit state the right to health and like much of the legislation this is implied rather than explicit.

Figure 14: Mozambique - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution of the Republic of Mozambique 1990	1990	Approved and implemented		Focuses solely on citizens.		Rights reserved solely for citizens. The right to life is equally limited to citizens as is the non-discrimination clause.
Constitution of the Republic of Mozambique 2004 and Amendments 2007	2004/2007	Approved and implemented		Focuses on rights for all citizens exclusively; the rights to life, health and education remain limited to citizens. Article 65 provides for the granting of asylum to foreigners persecuted for "their fight for peace, democracy, national and social liberation, or their defence of human rights"		No details on rights to health for non-citizens and asylum seekers included.
Legislation						
Directive on General Principles to be Observed in According Refugee Status of 4 December 1986	1986	Approved and implemented		Key provisions made in terms of Mozambique's protection and granting of asylum and refugee status.		Article 32 sets out the Functions of the Centre for Assistance to Refugees and Liberation Movements, which includes assistance in obtaining asylum and to maintain good relations with authorities concerned with the social and economic well-being of refugees, including health.
Act No. 21/91 of 31st December 1991 (Refugee Act) and the subsequent Decree 33/2007 on the Regulation on the determination of refugee status	1991	Approved and implemented		Act and regulations direct the procedural mechanisms in terms of the applications for refugee status as well as rights and duties of asylum seekers and refugees.		Article 5 provides for refugee rights and duties. Rights to access healthcare implied but not specified.
Law No. 26/91 of 1991. Health Care Reform	1991	Approved and implemented		Law forbids discrimination based on gender, race, ethnic group, religion, and place of birth. There is no mention of nationality or legal status.		Does not reference right to health.
Law No. 5/93 of 1993 (aliens)	1993	Approved and implemented		Establishes juridical regime for migrants and deals with rights and duties of migrants.		Where local integration opportunities exist, refugees and asylum seekers have access to basic healthcare.
Law 19/2014: Penal Code Revision Act	2014	Approved and implemented		No mention or engagement with migration.		Indicates abortion services are available to all women with their written consent. Does not specify citizens only.




















¹⁶³ U. N. H. C. for The Ministry of Home Affairs, "Mozambique: Act No. 21/91 of 31 December 1991 (Refugee Act)" (Government of Mozambique, 1991), at 199.

¹⁶⁴ Republic of Mozambique, "Law No. 35/2014," 2014, at 35.

¹⁶⁵ The Ministry of Health Mozambique, "National Health Sector Strategic Plan (PESS, 2014-2019)," 2014.

¹⁶⁶ Republic of Mozambique, "Five-Year Government Plan (2020-2024) Plano Quinquenal Do Governo (PQG)," 2020.

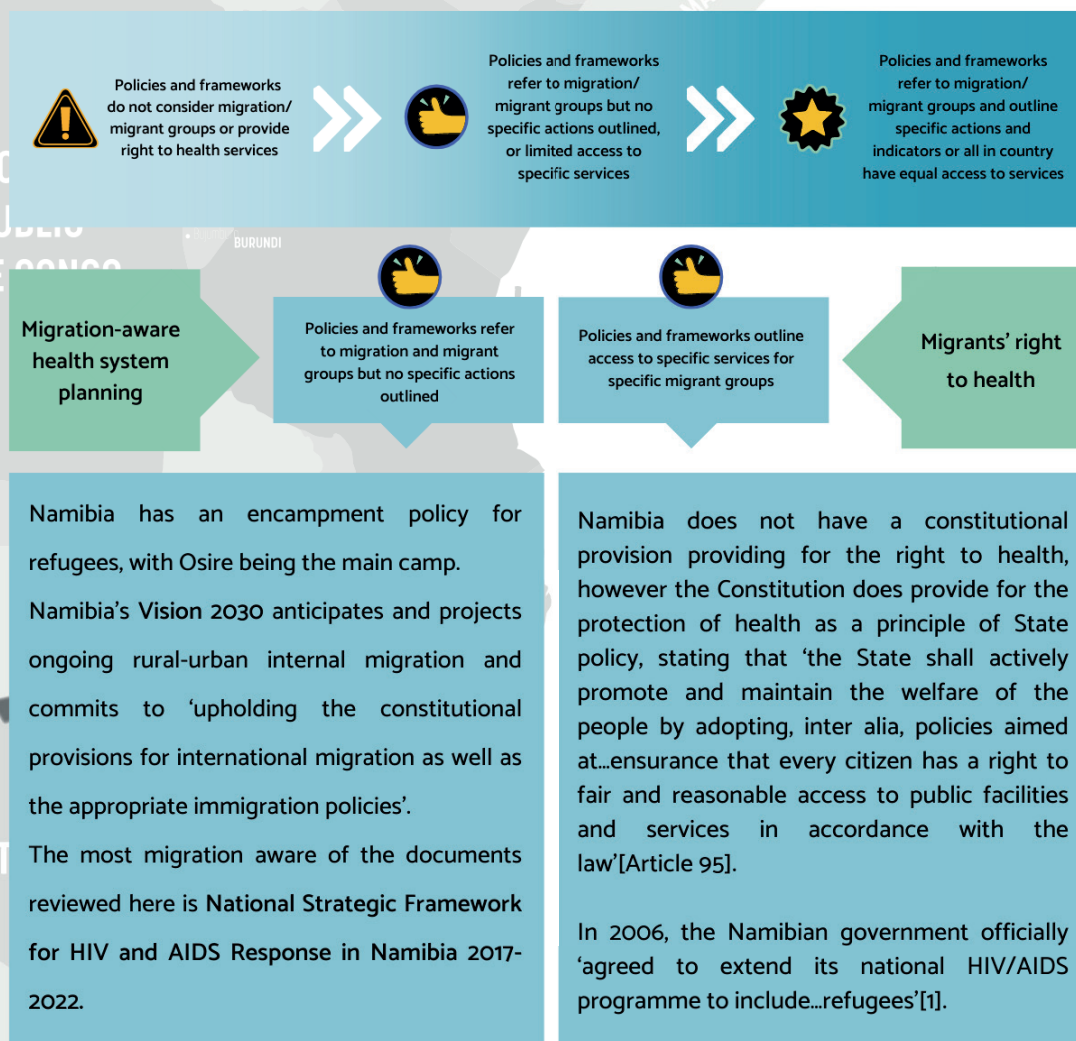
¹⁶⁷ Ministry for Health Mozambique, "VERSAO-APROVADA_Componente-Estrategica-Do-PEN-V.Pdf," 2021.

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Article 166 (abortion) Under Penal Code Revision Act	2014	Approved and implemented		No mention or engagement with migration.		Indicates abortion services are available to all women with their written consent. Does not specify citizens only.
Law 35/2014 Under Penal Code Revision Act	2014	Approved and implemented		Articles 147-420 deal with non-citizens and illegal immigrants; sets out punishment for assisting and sheltering illegal foreigners; provides protection for foreign citizens from inhuman conditions.		Does not reference right to health.
Law No. 1/75 of 29 July 1975 (Health policy)	1975	Approved and implemented		Law provides for a unified and centralised national health system (NHS) to cover citizens.		Does not reference right to health.
Strategic Plans and Frameworks						
National Health Sector Strategic Plan (PESS, 2014-2019)	2014-2019	Approved and implemented		Vision for access to health for all but no direct engagement with asylum seekers, refugees or migrants.		Implied but no direct reference to right to health for asylum seekers, refugees or migrants.
The Government's Five-Year Plan (2015-2019) - Plano Quinquenal do Governo (PGG)	2015	Implemented		Objective 4 – engages Mozambicans in the diaspora and highlights the need to support refugees and asylum seekers.		Right to health implied through support but not specified.
Five-year Government Plan (2020-2024) Plano Quinquenal do Governo (PGG)	2020-2024	Implemented		Focuses on better health services and integrates migration.		Does not reference right to health.
Mozambique. Country Operational Plan 2019 Strategic Direction Summary	2019	Implemented		Coordinated approach that works with key populations including migrants, with a focus on displaced populations.		Migrant and mobile populations are recognised as a priority but there is no explicit focus on health needs and access to healthcare.
The Policy and Strategy for Internal Displacement Management No.42/2021 (PSIDM)	2021	Implemented		Deals with management of Internally Displaced Populations (IDPs) and internal migration.		Access and rights to health assured for displaced citizens.
Fifth National Strategic Plan for HIV and AIDS Response 2021-2025 (PEN V)	2021	Implemented		Emphasis is placed on community-led programmes. Key populations are likely to include migrant and mobile populations, however they are not specifically mentioned under KPs.		Key populations are likely to include migrant and mobile populations, however they are not specifically mentioned under KPs.
National HIV Prevention Roadmap for Mozambique 2022-2025. Mutual Accountability for Ending New Infections	2022	Implemented		Focus on internally displaced populations as a priority population. Only mention of migrants is in terms of migrant workers in the Gaza region.		Implied but not stated specifically; focus is on IDPs, not migrants

3.3.11. NAMIBIA



Namibia: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitutional

Namibia does not have a constitutional provision providing for the right to health, however the **Constitution**¹⁶⁸ does provide for the protection of health as a principle of state policy, stating at Article 95 that "the State shall actively promote and maintain the welfare of the people by adopting, inter alia, "policies aimed at...ensurance [sic] that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law".

¹⁶⁸ Republic of Namibia, "Namibia's Constitution of 1990 with Amendments through 2010," 2010, at https://www.constituteproject.org/constitution/Namibia_2010.pdf.

Legislation

The **2015 National Health Act**¹⁶⁹ states that “the Minister must, within the limits of available resources (a) provide efficient, cost effective, appropriate and comprehensive quality health services at different levels of care”. It further states at Section 40.1. (a) and (b) that “every person in Namibia has access to a state hospital or a state health service and is entitled, subject to this Act and to such hospital rules as may be made as contemplated in section 34(2)(b), to (a) receive treatment or other medical care; and (b) benefit from any of the health services established under this Act”. The Act also makes provisions for treatment in public hospitals for “a person who is not a Namibian citizen or who has not lawfully been admitted to Namibia for permanent residence”. While this does not explicitly include persons who may have entered Namibia irregularly or who may have become irregular once in Namibia, it also does not explicitly exclude such persons.

The **Refugee Control and Recognition Act**¹⁷⁰ stipulates at Section 19 that refugees must reside in designated areas¹⁷¹. The Act states that recognized refugees and protected persons, subject to the provisions of the Act “(a) shall be entitled to the rights conferred, and be subject to the duties imposed, by - (i) the provisions of the UN Convention on Refugees, 1951, which are set out in Part I of the Schedule to this Act; and (ii) the provisions of the OAU Convention on Refugees, 1969, which are set out in Part II of the Schedule to this Act”.¹⁷² However, the Act’s Schedule excludes Article 23 of the UN Convention on Refugees (according to which “refugees are entitled to the same treatment as nationals of their host State as regards public relief, which includes health care”).¹⁷³

The **1993 Immigration Control Act**¹⁷⁴ through Section 39.2 prohibits entry into Namibia where “such person is likely to become a public charge by reason of infirmity of mind or body, or because [...] such person is a mentally ill or physically afflicted person, unless in any such case the person concerned or the person accompanying him or her or any other person gives security to the satisfaction of the Minister for the permanent support in Namibia of such mentally ill or afflicted person or for such person’s removal from Namibia when so authorized by a tribunal under this Part; (e) such person is infected or afflicted with a contagious disease or is a carrier of such a virus or disease, as may be prescribed”. However, as IOM Southern Africa notes, “in practice migrants are not required to provide test results of their affliction to these diseases including HIV/AIDS and there has not been a reported incidence of migrants being barred from entering Namibia on the basis of their health status”¹⁷⁵.

Policies and Frameworks

Health Policies tend to be relatively migration-aware in as far as they not only mention migrants and mobile populations as key or vulnerable populations but also the need for interventions and services adapted to mobility. However, in the policies reviewed here there is not a high level of detail about what such services should look like.

¹⁶⁹ Republic of Namibia, “National Health Act 2 of 2015,” 2015.

¹⁷⁰ Republic of Namibia, “Namibia Refugees (Recognition and Control) Act, 1999 (Act 2 of 1999) | Namibia Legal Information Institute,” 1999, at https://namiblii.org/akn/na/act/1999/2/eng@1999-03-19#sec_18.

¹⁷¹ Republic of Namibia, “Namibia Refugees (Recognition and Control) Act, 1999 (Act 2 of 1999) | Namibia Legal Information Institute.”

















¹⁷² Republic of Namibia, “Namibia Refugees (Recognition and Control) Act, 1999 (Act 2 of 1999) | Namibia Legal Information Institute.”

¹⁷³ <https://www.unicef.org/eca/sites/unicef.org.eca/files/UNICEF%20Advocacy%20Brief%20Health.pdf>

¹⁷⁴ Republic of Namibia, Immigration Control Act, 1993.

¹⁷⁵ IOM, “Migrants’ Right to Health in Southern Africa,” 18.

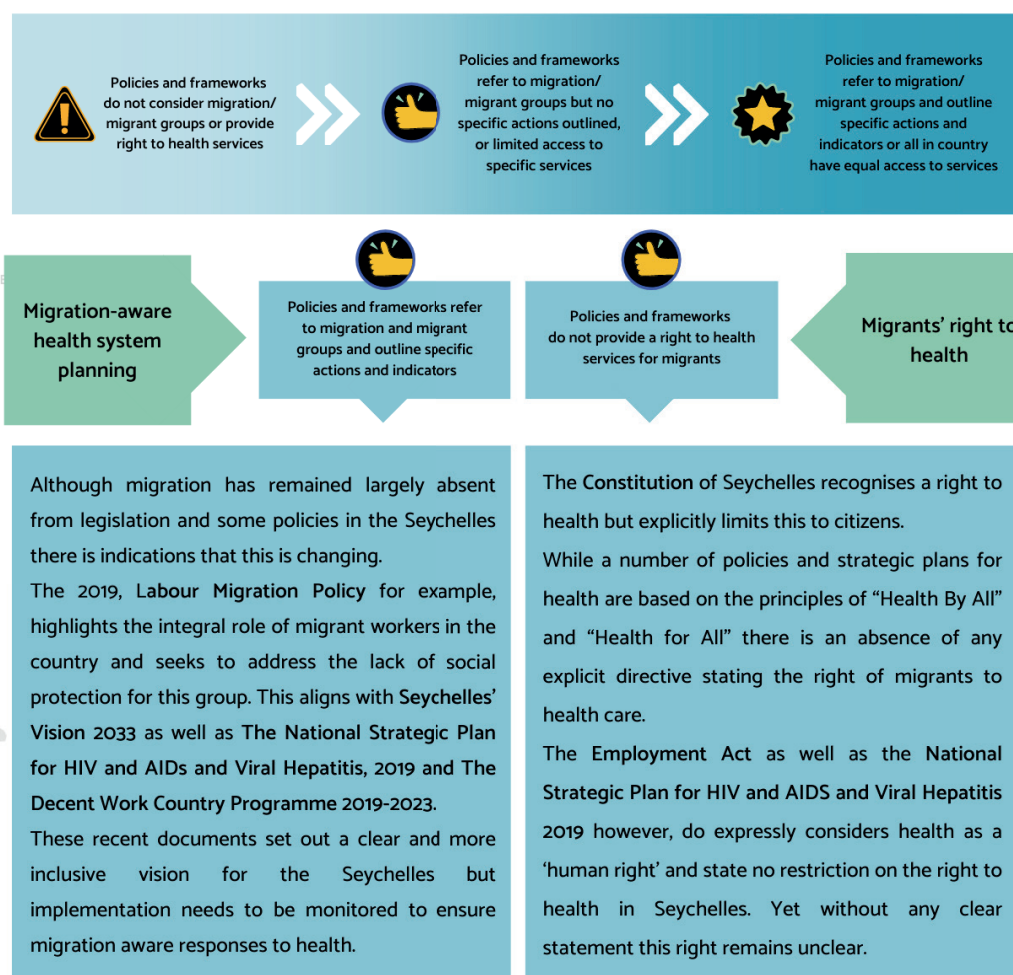
Figure 15: Namibia - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution of Namibia	1990	Approved and implemented		Does not engage with migration or refer to migrants.		Namibia does not have a constitutional provision providing for the right to health, however the Constitution does provide for the protection of health as a principle of State policy, stating that 'the State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at...ensuring that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law'(Article 95).
Legislation						
Immigration Control Act	1993	Approved and implemented		Governs the conditions of entry, exit and stay.		Does not reference right to health.
Health Act	2015	Approved and implemented		Does not refer to migration or mobile populations.		'The Minister must, within the limits of available resources (a) provide efficient, cost effective, appropriate and comprehensive quality health services at different levels of care; (Republic of Namibia, 2015, p. 7)
Namibia Refugees (Recognition and Control) Act, 1999	1999	Approved and implemented		'To make provision for the recognition and control of refugees in Namibia; to give effect to certain provisions of the United Nations Convention Relating to the Status of Refugees of 28 July 1951, the Protocol Relating to the Status of Refugees of 31 January 1967 and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969; and to provide for matters incidental thereto.'		The Act states that recognized refugees and protected persons, subject to the provisions of the Act '(a)shall be entitled to the rights conferred, and be subject to the duties imposed, by - (i) the provisions of the UN Convention on Refugees, 1951, which are set out in Part I of the Schedule to this Act; and(ii)the provisions of the OAU Convention on Refugees, 1969, which are set out in Part II of the Schedule to this Act.' [1] However, the Act's schedule excludes Article 23 of the UN Convention on Refugees (according to which 'refugees are entitled to the same treatment as nationals of their host State as regards public relief, which includes health care'[2]
National Occupational Safety & Health Policy 2021	2021	Approved and implemented		Intends to 'strengthen inspection and enforcement system including provision of advisory services to employers and workers particularly those in SMEs, high risk sectors, vulnerable workers including the informal economy and migrant and young workers' (Ministry of Labour, Industrial Relations and Employment Creation 2021, 15).		No reference to health.
Strategic Plans and Frameworks						
Vision 2030	2004	Approved		Namibia's vision 2030 anticipates and projects ongoing rural-urban internal migration and commits to 'upholding the constitutional provisions for international migration as well as the appropriate immigration policies' (Republic of Namibia 2004, 50).		Provides for specific health initiatives, including HIV/AIDS; to revive the population policy and implement it effectively; to make health services adolescent/youth friendly and accessible to all; to make anti-retroviral drugs available to and affordable the public' and 'to intensify population information, education and communication (IEC) through appropriate means taking, into account people with disability.
Ministry of Health Strategic Plan 2017-2022	2017	Approved		Mentions 'urban migration and cross border movement' as one of the factors 'critically important in the identification of the strategic issues' (Ministry of Health and Social Services, 2017, p. 7).		'The mandate of the Ministry of Health and Social Services is derived from the Namibian Constitution, Article 95 that calls upon the State to ensure that citizens have got the rights to fair and reasonable access to public health facilities and services in accordance with the law. These rights are further derived from various government policies and legislations with regards to the protection of the health and welfare of the people of Namibia. The mandate of the Ministry of Health and Social Services is therefore "To oversee and regulate public, private and non-governmental sectors in the provision of quality health and social services, ensuring equity, accessibility, affordability and sustainability'(Ministry of Health and Social Services, 2017, 5).
National Strategic Framework for HIV and AIDS Response in Namibia 2017/18 to 2021/22	2017	Approved		The framework considers 'migrants and mobile populations' as one of the groups 'that are at higher risk or vulnerable to HIV infections' (Republic of Namibia 2017,23, 24, 59) . The framework plans to 'strengthen provision of mobile health (in particular HIV) care services targeting mobile populations' (Republic of Namibia, 2017, p. 64).		Provides specific health initiatives for HIV/AIDS treatment; however, no specific right to health given.

3.3.12. SEYCHELLES



Seychelles: overall country assessment towards migration-aware health responses



Constitution

The **Constitution of the Republic of the Seychelles**¹⁷⁶ recognises a right to health but explicitly limits this to citizens. The predominant use of the language of 'citizens' and/or 'Seychellois' means that even though the Constitution provides for the equal rights and protection from 'all types of discrimination' and Section 15.1 states that "everyone has a right to life and no one shall be deprived of life intentionally" it cannot be assumed to support a migrants' right to health.

Legislation

The legislative framework of the Republic of Seychelles indicates that there is very limited engagement with migration and where migrants are considered this is either in terms of a threat to public health or in terms of their role as migrant workers. The **Immigration Decree**¹⁷⁷, for example refers to "prohibited immigrants" – being non-citizens who may be carrying a contagious disease and would pose a risk to citizens of Seychelles. Article 26 of the **Public Health Act of 2015**¹⁷⁸ similarly provides for the medical examination (with or without consent), detention and quarantine of persons entering the Seychelles who may be carrying an infectious disease. In contrast, the protective legislation

¹⁷⁶ Republic of Seychelles, "Constitution of Seychelles" (Republic of Seychelles, 1993).

¹⁷⁷ Republic of Seychelles, Immigration Decree, 1981.

¹⁷⁸ Republic of Seychelles, "Public Health Act, 13 of 2015," 2015.

of the **Employment Act of 1995**¹⁷⁹ establishes the principle of equality of treatment through providing for migrant workers under the same terms and conditions of employment as Seychellois workers. This implies that all labour laws apply equally to migrant workers. Overall, legislation is shaped by a view to securitising migration. To ensure that migrants are able to access their rights to life and be protected from discrimination as provided in the Constitution there needs to be a stronger focus in the legislative framework on migrants rights – as stated rather than implied.

Policy & Frameworks

Although migration has remained largely absent from legislation and some policies there are indications that this is changing, particularly with the increasing focus on achieving Universal Health Coverage and the SDGs. The 2019, **Labour Migration Policy**¹⁸⁰ for example, highlights the integral role of migrant workers in the country and seeks to address the lack of social protection for this group recognising the importance of access to healthcare for all. Both economic and social aspects of migration governance are also integral components of Seychelles' **Vision 2033**¹⁸¹, which addresses the social impact of migration on the country both in terms of opportunities and current challenges. The challenges in terms of concerns around the regulation of migrant labour as well as the opportunities for the development of Seychelles reflect the current situation in the country in terms of how policy engages with migration. On the one hand, Vision 2033 along with The **National Strategic Plan for HIV and AIDS and Viral Hepatitis 2019**¹⁸² and The **Decent Work Country Programme 2019-2023**¹⁸³ programme mainstream migration into planning for health and work initiatives. On the other however, there is a lack of clear directives in terms of migrants' rights to health and a specific focus on how these rights can be realised as a part of UHC. This means that there is still a way to go to ensure access to health for all.



Client is screened for TB at the occupational health unit at Ressano Garcia border crossing.
Credit: IOM/Moayad Zaghdanci

¹⁷⁹ Republic of Seychelles, "Employment Act of 1995" (Republic of Seychelles, 1995).

¹⁸⁰ MEICS, "National Labour Migration Policy" (Republic of Seychelles, 2019).

¹⁸¹ Republic of Seychelles, "Vision 2033," 2019, at http://www.finance.gov.sc/uploads/files/Vision_2033.pdf.

¹⁸² Republic of Seychelles, "National Strategic Plan for HIV, AIDS and Viral Hepatitis 2019-2023. Seychelles" (National AIDS Council, Republic of Seychelles, 2019).

¹⁸³ Republic of Seychelles, "Seychelles Decent Work Country Programme 2019-2023," 2018.

Figure 16: Seychelles - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution of Seychelles	1993	Approved and implemented	⚠️	Does not engage with migration or refer to migrants.	👍	The Constitution of Seychelles recognises a right to health but limits this to citizens.
Legislation						
Immigration Decree (1979) and Immigration Regulations of 1981	1979/1981	Approved and implemented	👍	Migration aware but strict regulations and viewings migrants as threats.	⚠️	Does not reference right to health.
Public Health Act	2015	Approved and implemented	⚠️	Does not refer to migration or mobile populations other than as a threat for disease.	⚠️	No mention of right to health. Medical examinations can be done without consent.
Mental Health Care Act	2020	Approved	⚠️	Does not refer to migration or mobile populations.	👍	The Act refers to rights of "all persons" to access treatment for mental health. The fact that it does not limit access to citizens therefore could suggest migrants have the right to access mental health care. However, the Act also does not explicitly include non-citizens.
Employment Act 1995	1995	Approved and implemented	⚙️	Implies that all labour laws apply equally to migrant workers. Protection of all workers.	👍	Implied but not specific. Thus, as the Ministry of Employment, Immigration and Civil Status argues, the Act "establishes the principle of equality of treatment, specifying that migrant workers are protected by the same terms and conditions of employment as Seychellois workers"
Social Security Act 2010	2010	Approved and implemented	⚠️	Does not refer to migration or mobile populations.	⚠️	Right to health only for citizens.
Occupational Safety and Health Decree 2012	2012	Approved and implemented	⚠️	Does not refer to migration or mobile populations.	👍	Provides for protection for health and safety of all employees – does not specify citizen or non-citizen 2012 updates provides for ensuring health of workers.
The National Health Policy 2016	2016	Implemented	⚠️	Only mention is migrant workers and HIV.	👍	The Policy refers to both the rights of all individuals generally and citizens, more specifically
Labour Migration Policy	2019	Approved	⚙️	Focus is migrant labour.	👍	The policy describes current lack of access and specifically argues for the need to review migrant workers' access to social protection, in particular health protection (p. 28) including the need for research on this topic (p. 23)
Public Health (Infectious Diseases) Regulations Orders, 2021	2021	Approved	👍	Closure of borders to prevent spread of pandemic	⚠️	Does not reference right to health.
Strategic Plans and Frameworks						
Vision 2033	2019	Approved	⚙️	Engages with migration – recognises both opportunities and challenges.	👍	Therefore, while the focus is primarily the right to health for citizens, the emphasis here on "Health for all, Health by all and Health in all" could be taken to imply the right to health for migrants – though it is not explicitly stated.
Decent Work Country Programme 2019-2023	2019	Approved	⚙️	Foreign workers identified as vulnerable group and key priority is to address this	👍	While the vulnerabilities of migrant workers are central to the DWCP and there is clear intention to better understand the context and develop protective legislation the Programme itself does not address a right to health for migrant workers specifically.
National Strategic Plan for HIV and AIDS and Viral Hepatitis 2019	2019	Approved	⚙️	Migrants considered alongside citizens in terms of rights and access.	👍	The Strategic plan considers the right to health a human right and 'service beneficiaries' as 'rights holders'. Emphasis will also be laid on ensuring that rights holders (service beneficiaries) are able to access health services without fear of being stigmatised or discriminated against' (National Aids Council 2019,70).
National Health Strategic Plan 2022-2026	2022	Approved and implemented	⚠️	Does not refer to migration or mobile populations.	👍	Commits to UHC and healthcare for all -No specific rights for migrants stated -but is implied. Also mentions 'The right to health enshrined in the Constitution obligates the state to provide for free primary health care in all its institutions.

3.3.13. SOUTH AFRICA



South Africa: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitution

In line with the internationally recognised right to access health services, South Africa's laws, policies and guidelines provide a rights-based framework for delivery of health care services. As enshrined in the **Bill of Rights** in the South African **Constitution**¹⁸⁴, all persons – including migrants – in the country have equal rights to life, dignity, freedom, security and health care. Section 27 of the **Constitution** guarantees everyone the right to access basic health care affirming that “everyone has the right to have access to health care services, including reproductive health care” and that “no one may be refused emergency medical treatment”. It obliges the “state to take reasonable legislative and other measures within its available resources, to achieve the progressive realization of each of these rights” (Republic of South Africa 1996: 220).

¹⁸⁴ Republic of South Africa, “Constitution of the Republic of South Africa [No. 108 of 1996],” 1996.

Legislation

The right to access healthcare services for all in South Africa has been given effect to through legislation and has been further interpreted through judgments from the South African courts, including the Constitutional Court. In terms of South African law and jurisprudence, all people in South Africa – including migrants – are entitled to access basic healthcare services and migrants without a South African identity document should not be prohibited from accessing antiretroviral treatment (ART) at any public health facility. This has been clarified by the National Department of Health (NDoH) in a series of memos and directives¹⁸⁵. The Constitutional right to health for all is given effect through the **National Health Act**¹⁸⁶, which acknowledges the particular health needs of vulnerable groups, including women, and provides for free healthcare for all pregnant and lactating women and children under the age of six. This right is also echoed in the **Refugee Act (130 of 1998)**¹⁸⁷ which affords refugees the same legal entitlements (except political rights) as South Africans and, the **Promotion of Equality and Prevention of Unfair Discrimination Act (4 of 2000)**¹⁸⁸, which prohibits “unfairly denying or refusing persons access to health care facilities” on any listed ground (such as sex, social origin etc.)¹⁸⁹. However, the development of rights-based and migrant-aware frameworks, policies and laws in South Africa are matched by an increasingly restrictive and securitised approach to migration and migrant’s rights – including to healthcare. This includes the **Refugee Amendment Act of (11 of 2017)**¹⁹⁰ and associated **regulations (2018)**¹⁹¹ both of which came into effect on 1 January 2020, as¹⁹² **White Paper on International Migration (2017)**¹⁹³, which repeal rights previously afforded to refugees and migrants and increases the challenges migrants face in managing/accessing a regular migration status and, in turn, reducing access to basic services including health. The amendments also pave the way for a possible encampment policy in South Africa, which garnered support at the August 2022 ruling party (African National Congress) policy conference. The introduction of major health reforms including through the^{194 195}, will also impact all aspects of healthcare access, including those associated with the HIV and TB response, and excludes the majority of migrants from coverage¹⁹⁶. This is evident, for example, in Chapter 2 (4.2), which states: “An asylum seeker or illegal foreigner is only entitled to (a) emergency medical services; and (b) services for notifiable conditions of public health concern”¹⁹⁷ and Clause 6.4.2 which states “This clause also provides that an asylum seeker or illegal foreigner is only entitled to emergency medical services and service for notifiable candidates of public health concern”¹⁹⁸. These clauses have been met with criticism from civil society groups at the Bill’s parliamentary public consultation process. It, therefore, remains to be seen what the final piece of legislation will include in relation to access to health for migrants and asylum seekers.

¹⁸⁵ The National Department of Health, “Revenue Directive- Refugees/Asylum-Seekers with or without a Permit,” 2007.

¹⁸⁶ National Department of Health, Republic of South Africa, “National Health Act, 2004. No. 61 of 2003:” (Pretoria: National Department of Health, Republic of South Africa, 2003).

¹⁸⁷ The Republic of South Africa, “The Refugees Act No. 130 of 1998” (The Government Gazette, 1998).

¹⁸⁸ The Republic of South Africa, “Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000,” 2000.

¹⁸⁹ The Republic of South Africa, “Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000”; The Republic of South Africa, “The Refugees Act No. 130 of 1998.”

¹⁹⁰ National Department of Home Affairs, “Act No. 11 of 2017: Refugees Amendment Act, 2017,” 2017.

¹⁹¹ Government of the Republic of South Africa, “Constitution Seventeenth Amendment Act,” 2013; The National Department of Health, “Revenue Directive 2007 Circular.”

¹⁹² Department of Home Affairs, “White Paper on International Migration for South Africa,” 2017.

¹⁹³ The Republic of South Africa, “The Refugees Amendment Act of 2017,” 2017; Department of Home Affairs, “White Paper on International Migration for South Africa”; Government of the Republic of South Africa, “REFUGEES ACT, 1998 (ACT NO. 130 OF 1998) REFUGEES REGULATIONS,” 2019.

¹⁹⁴ The Republic of South Africa, “National Health Insurance Bill,” 2019.

¹⁹⁵ The Republic of South Africa, “National Health Insurance Bill.”

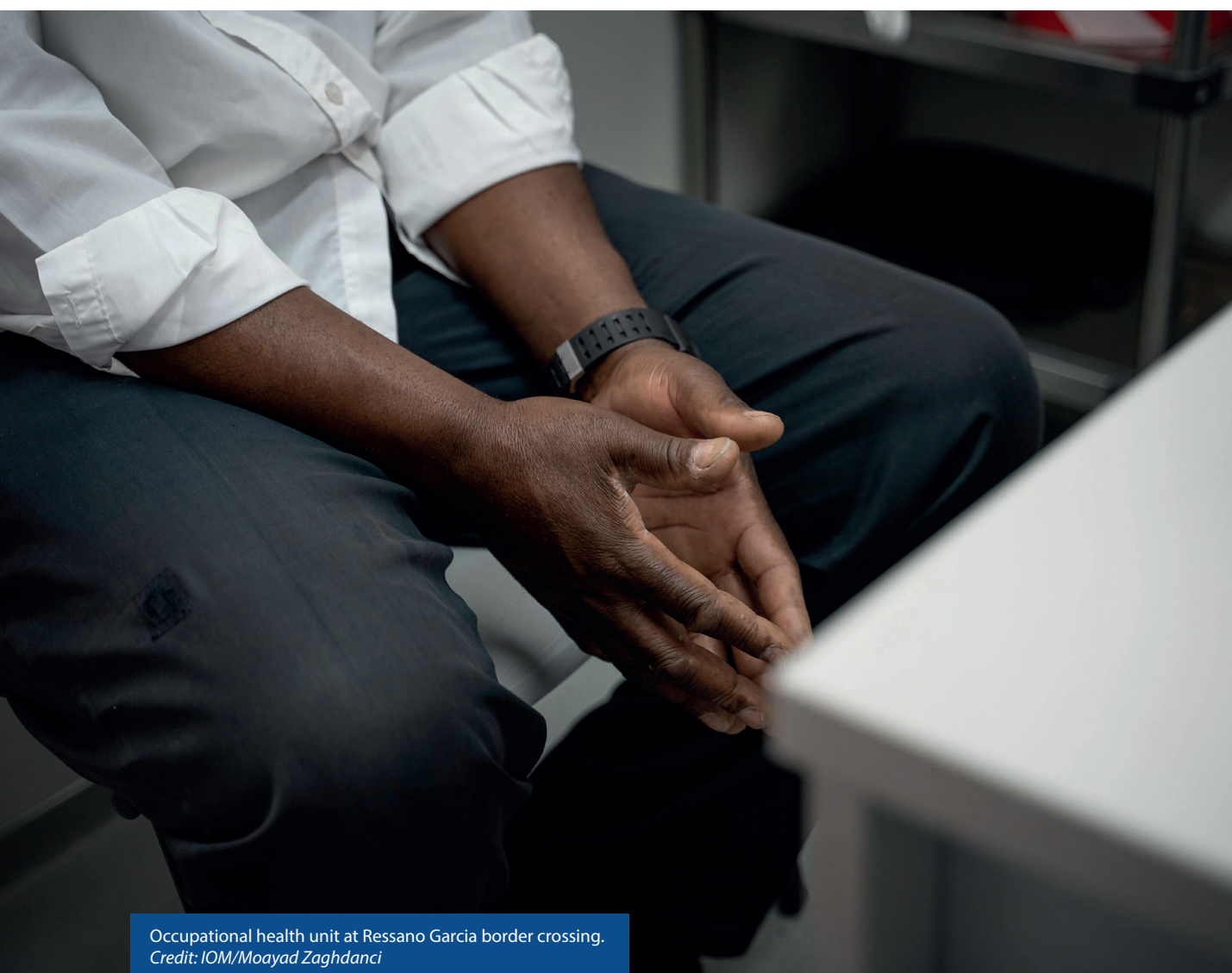
¹⁹⁶ The Republic of South Africa, “National Health Insurance Bill.”

¹⁹⁷ The Republic of South Africa, “National Health Insurance Bill.”

¹⁹⁸ The Republic of South Africa, “National Health Insurance Bill.”

Policies and Frameworks

The development of policies, strategic plans and frameworks in South Africa echo the mixed response to migration and migrants' rights to health. Some, such as the draft **National Labour Migration Policy for South Africa (2022)**¹⁹⁹ and the **National Development Plan**²⁰⁰ provide comprehensive and far-reaching plans for reaching goals for the attainment of the SDGs and for South Africa to move towards UHC. Others, however, fail to engage with migration. The **National Adolescent Sexual and Reproductive Health and Rights (SRHR) Framework Strategy (2014-2019)**²⁰¹ and the **National Strategic Plan for the Prevention and Control of Non-Communicable Diseases 2020-2025**²⁰² both provide comprehensive plans, which aim to move South Africa closer to meeting the SDGs and achieving UHC and do not consider migration, migrants' access to health or how migration should be factored into interventions and public health responses. In this way, South Africa's policies, as with its legislation provide the aims and strategies for achieving UHC yet, include limitations on access for migrants, which will render migrants more vulnerable and impede the attainment of UHC. This is shown, for example in the clauses in the **National Health Insurance Bill**²⁰³ which restrict asylum seekers to emergency healthcare".



Occupational health unit at Ressano Garcia border crossing.
Credit: IOM/Moayad Zaghdanci

¹⁹⁹ Department of Employment and Labour, "National Labour Migration Policy 2021 2.," 2021.

²⁰⁰ South Africa and National Planning Commission, *Our Future: Make It Work: National Development Plan, 2030* (Pretoria: National Planning Commission, 2021).































²⁰¹ The Department of Social Development, "National Adolescent Sexual and Reproductive Health and Rights Framework Strategy," 2015.








²⁰² National Department of Health, "NATIONAL STRATEGIC PLAN FOR THE PREVENTION AND CONTROL OF NON-COMMUNICABLE DISEASES 2020-2025," 2022.

²⁰³ The Republic of South Africa, "National Health Insurance Bill."

²⁰⁴ The Republic of South Africa, "National Health Insurance Bill."

Figure 16: South Africa - documents reviewed

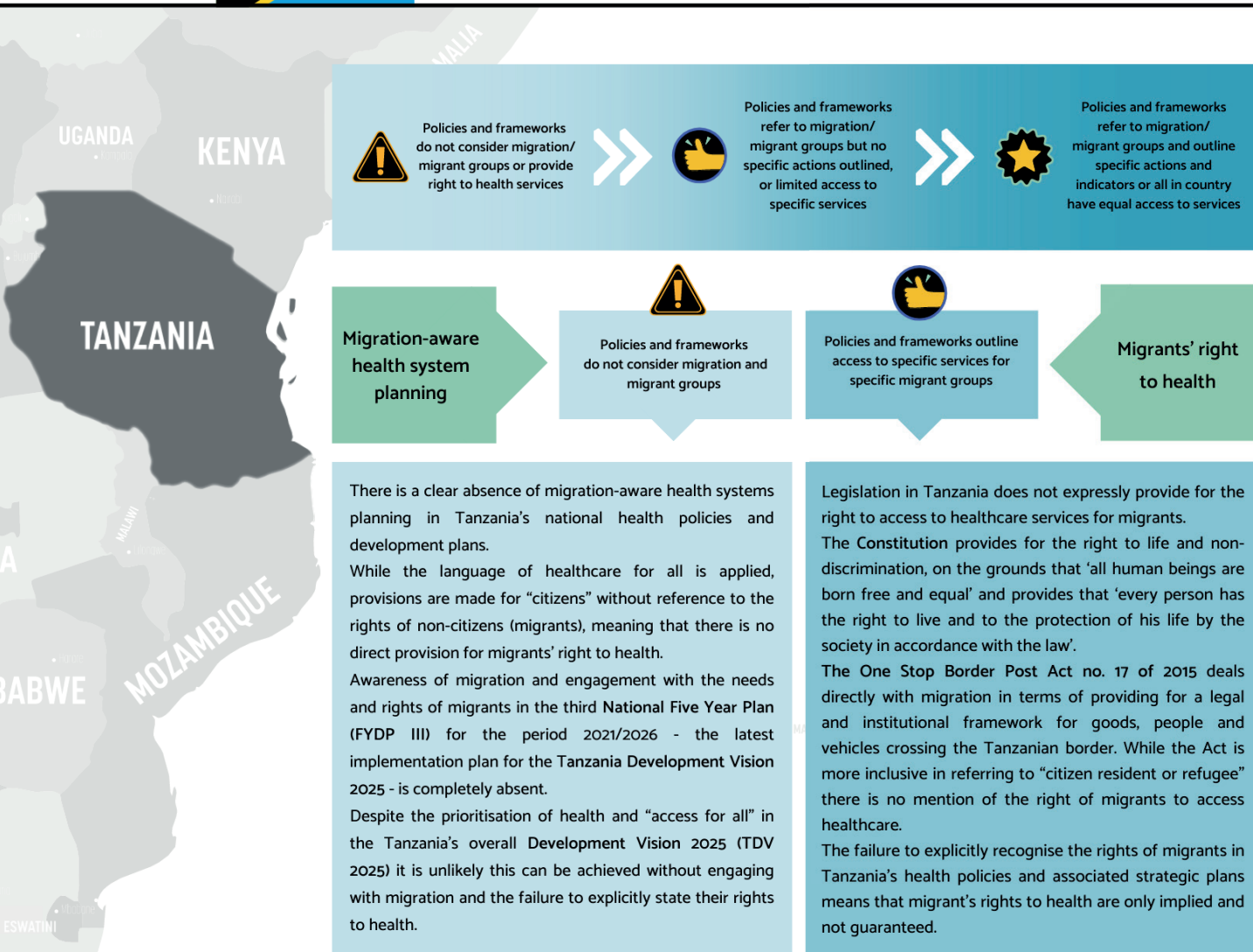
Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
The Constitution and Bill of Rights	1996	Approved and implemented		<ul style="list-style-type: none"> Applies to citizens and non-citizens State must progressively realise socio-economic rights for all 		<ul style="list-style-type: none"> Section 27: everyone has the right to health Section 28: every child has a right to health care
Legislation						
National Health Act No. 61 of 2003	2003	Approved and implemented		<ul style="list-style-type: none"> Gives effect to Section 27 of the Constitution's right to health No specific focus on migrants 		<ul style="list-style-type: none"> Section 5: a health worker or health establishment may not refuse a person's emergency medical treatment and are not restricted solely to citizens
The Choice on Termination of Pregnancy Act 92 of 1996	1996	Approved and implemented		<ul style="list-style-type: none"> Does not mention migration 		<ul style="list-style-type: none"> States responsibility to provide reproductive health to all Does not specify migrants
The Mental Health Care Act 17 of 2002	2002	Approved		<ul style="list-style-type: none"> No mention of asylum-seekers, refugees, or migrants 		<ul style="list-style-type: none"> No explicit statement regarding who is entitled to access mental health care though in line with the Constitution, all have the right to reproductive care
Occupational Health and Safety Act, 1993 (Act No.85 of 1993)	1993	Approved and implemented		<ul style="list-style-type: none"> Does not engage with migration 		<ul style="list-style-type: none"> The Act however, does not specifically identify (to include or exclude) migrants in terms of protection or access to health care.
National Integrated Sexual and Reproductive Health and Rights Policy (2019)	2019	Approved and implemented		<ul style="list-style-type: none"> Objective 3: Migrants and asylum seekers are specifically mentioned as a priority group Health passports Training for clinic staff and referral services in response to migration and mobility Broader framework for the provision of quality and comprehensive SRHR services 		<ul style="list-style-type: none"> It acknowledges human rights in the context of SRHR as critical as well as autonomy which enables informed choices The policy is framed around the six key components of the WHO Health System Framework
The Immigration Act 13 of 2011	2002	Approved and implemented		<ul style="list-style-type: none"> Rights-based approach to migration Focus on legal labour 		<ul style="list-style-type: none"> Access to health determined by legal status "Illegal foreigners" to be reported
Immigration Amendment Act No. 13 of 2011	2011	Approved and implemented		<ul style="list-style-type: none"> Key changes for migrants entering South Africa More restrictive approach 		<ul style="list-style-type: none"> Increased restrictions imply reduced rights Right to health not specified
The Refugee Act 130 of 1998	1998	Approved and implemented		<ul style="list-style-type: none"> Provides particular rights to legally recognised refugees and asylum seekers, including the freedom to move, work and access social services such as health and education 		<ul style="list-style-type: none"> Right to health services is not defined in terms of "basic health care"
The Refugee Amendment Act and 2019 Regulations	2017	Approved		<ul style="list-style-type: none"> Addresses migration through increased restrictions on asylum seekers and refugees 		<ul style="list-style-type: none"> Removes the automatic right to seek and attain employment and to study, which is currently afforded to asylum seekers Implies encampment policy Amendments that would significantly impact rights, including to health
Employment Services Act, No. 4 of 2014	2014	Approved and implemented		<ul style="list-style-type: none"> Focus on employment of non-nationals 		<ul style="list-style-type: none"> The right to health for migrants is not covered specifically in this Act.
The Promotion of Equality and Prevention of Unfair Discrimination Act of 2000	2000	Approved and implemented		<ul style="list-style-type: none"> Does not engage with migration 		<ul style="list-style-type: none"> Prohibits 'unfairly denying or refusing any persons access to health care facilities or failing to make health care facilities accessible to any person and, refusing to provide emergency medical treatment to persons of particular groups identified by one or more of the prohibited grounds'. Uses the language of 'all persons' rather than citizens it does not specify the inclusion or exclusion of migrant groups.
Disaster Management Act No. 57 of 2002	2002	Approved and implemented		<ul style="list-style-type: none"> Does not engage with migration 		<ul style="list-style-type: none"> Does not engage with migration
Strategic Plans and Frameworks						
National Health Insurance	2017	Approved		<ul style="list-style-type: none"> Engages with migrants but restricts rights to access healthcare 		<ul style="list-style-type: none"> The majority of non-nationals will be excluded from NHI fund and any coverage Contravenes international law
White Paper on International Migration for South Africa	2017	Approved		<ul style="list-style-type: none"> Linked to NDP Points to positives of migration for development but introduces restrictions Suggests Asylum Processing Centres 		<ul style="list-style-type: none"> Right to health not mentioned Increased restriction on rights generally

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Draft National Labour Migration Policy for South Africa Feb 2022	2022	Draft		<ul style="list-style-type: none"> Provides the guiding framework on all issues relating to migration for employment. 		<ul style="list-style-type: none"> The NLMP follows a rights-based approach to the protection of all workers employed in South Africa and the protection of South African workers abroad as defined in South Africa's international obligations, regional and SADC commitments. Includes the enforcement of social protection rights which migrant workers are entitled to, including access to health care as well as the prevention of exposure of migrant workers to Occupational Safety and Health hazards.
National Development Plan 2030	2013	Approved and implemented		<ul style="list-style-type: none"> The NDP draws on the SADC Regional Indicative Strategic Development Plan (RISDP) as well as the AU's Agenda 2063 The plan engages with the diversity of migration and its potential benefits for development and acknowledges the risks of failing to engage with migration in increasing the vulnerability of migrants to "continued abuse, exploitation and discrimination" No engagement with migration as a key social determinant of health 		<ul style="list-style-type: none"> Does not specifically set out rights to health for migrants Points to restrictive immigration policies as impact progress towards SDGs
National Adolescent Sexual and Reproductive Health and Rights Framework Strategy (2014-2019)	2015	Approved and implemented		<ul style="list-style-type: none"> Comprehensive strategy but no mention of migration, or migrant's access to SRHR and services in South Africa. 		<ul style="list-style-type: none"> No mention of migration, or migrant's access to SRHR and services in South Africa.
Malaria Elimination Strategic Plan 2019-2023	2019	Approved and implemented		<ul style="list-style-type: none"> Ensure universal access to diagnosis and treatment in endemic and non-endemic areas according to national guidelines for the period 2019-2023 Universal access to quality treatment and coverage across the country underpins the strategic plan 		<ul style="list-style-type: none"> Right to health for all underlies plan
South Africa's National Strategic Plan on HIV, TB, and STIs 2017-2022	2017	Approved and implemented		<ul style="list-style-type: none"> Targeted interventions reaching all key and vulnerable populations - including "Mobile populations, migrants and undocumented foreigners" Engages with a majority of the UHC indicators recognising the need for the provision of SRH services along transport corridors, communication and prevention messaging around GBV, drug and alcohol-use and the need for psychosocial interventions. 		<ul style="list-style-type: none"> Goal 3 to 'Reach all key and vulnerable populations with customised and targeted interventions', states that 'to ensure that no one is left behind, efforts to maximise access to high-quality services for key populations will be enhanced.'
National Strategic Plan for the Prevention And Control Of Non-Communicable Diseases 2020-2025	2020	Approved		<ul style="list-style-type: none"> The NSP does not engage with mobility and migration as determinants of health. There is no consideration of vulnerable or 'key' populations in terms of non-communicable diseases nor how migration needs to be factored into interventions and public health responses. 		<ul style="list-style-type: none"> No guaranteed right to health

3.3.14. TANZANIA



Tanzania: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitutional

The **Constitution**²⁰⁵ of Tanzania provides for non-discrimination, on the grounds that "all human beings are born free and equal". Section 14 of the **Constitution** further provides that "every person has the right to access health services". While there is no specific provision on the right to healthcare for migrants in the **Constitution**, migrants may find recourse and protection through the **Constitutional** provisions of the right to health, the right to life and the right to non-discrimination as enforceable rights in the Constitution. Section 14 of the **Constitution** provides that "every person has the right to live and to the protection of his life by the society in accordance with the law". This is supported by the fact that Tanzania is also party to international and regional instruments and, while as a dualist state these are not directly legally enforceable, they are persuasive and thus shape and influence the Bill of Rights and its application, as well as that of other domestic legislation. Access to healthcare is further addressed through Tanzania's legislation and policies although predominantly using the language of "Citizens." Without the express provision for the right of migrants to access healthcare in the Constitution and other foundational legislation, rights to access are implicit and can be subject to interpretation.

²⁰⁵ The Government of the Republic of Tanzania, "THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, 1977 (Amended in 1995)," 1995, at 19.

Legislation

The **1998 Tanzanian Refugees Act**²⁰⁶ empowers the Minister to make rules that regulate “the reception, transfer, residence, settlements, treatment, health and well-being of asylum seeker or refugee”. However, there is no reference to the right to health or wellbeing, as is also the case in the **Immigration Act 1995**²⁰⁷ and the Immigration (Amendment) Regulations 2016²⁰⁸. Although The **Non-Citizens (Employment Regulation) Acts 2015**²⁰⁹ and **2016**²¹⁰ provide for the right of non-citizens, including refugees, to work with specific conditions and requirements, the **Occupational Health and Safety Act (2003)**²¹¹ does not include migrants and refugees in terms of provisions for their health, welfare and safety at work. The **2010 Disability Act**²¹² provides more scope for deducing a migrant’s right to health whereby Article 26(1) provides that: “Every person with a disability shall have the right to enjoy the attainable standard of health care services without any discrimination”. Although there is again no specific reference to migrants, “every person” can be seen as inclusive of migrants. This is also the case with the **HIV and AIDs (Prevention and Control) Act, 2008**²¹³ which, in creating a legal framework to respond to HIV/AIDS provides that ‘every person’ has the right to testing and treatment. However, this is contradicted by the **Public Health Act 2009**²¹⁴, which restricts the right to healthcare to “all citizens of Mainland Tanzania” and the **Health Policy 2017**²¹⁵, which only refers to migrant health services in terms of the risks of disease posed by cross-border migrants at the country’s borders. There is little awareness of or engagement with migration or migrants access to health. The language throughout refers to citizens. While, there is reference to vulnerable groups requiring more access and specific health care asylum seekers, refugees and migrants are not listed. The only two references to migrant health services and migrant health generally are, in fact, in relation to porous borders and port health services and the need for further securitised borders. Finally, The **One Stop Border Post Act no. 17 of 2015**²¹⁶ deals directly with migration in terms of providing for a legal and institutional framework for goods, people and vehicles crossing the Tanzanian border. While the Act is more inclusive in referring to ‘citizen resident or refugee’ there is no mention of the right of migrants to access healthcare.

Policies and Frameworks

The current **Health Sector Strategic Plan 2021-2026, (HSSP V)**²¹⁷ has been developed to guide the continued transformation of the health sector, to address the increasing demand for decentralised, affordable, equitable and quality health services. While the language throughout is premised on *healthcare for all*, the use of ‘citizen’ without direct reference to the rights of non-citizens (migrants) means that, like the **Constitution** and Legislation there is no direct provision for migrants’ right to health. As with the **Health Policy of 2017**²¹⁸ there is only reference to cross-border migrants in relation to public health threats posed by a lack of border security and lack of healthcare services at points of entry. Furthermore, awareness of migration and engagement with the needs and rights of migrants in the third **National Five Year Development Plan (FYDP III) for the period 2021/2026**²¹⁹ - the latest implementation plan for the **Tanzania Development Vision 2025**²²⁰ - is completely absent. Therefore, despite the prioritisation of health and ‘access for all’ in the Tanzania’s overall **Development Vision 2025 (TDV 2025)**²²¹ it is unlikely this can be achieved without engaging with migration and the failure to explicitly state their rights to health.

²⁰⁶ The Government of the Republic of Tanzania, “THE REFUGEES ACT, 1998,” 1998.

²⁰⁷ The Government of the Republic of Tanzania, “The Immigration Act,” 1995.

²⁰⁸ Government for the Republic of Tanzania, “IMMIGRATION ACT CAP 54 2016,” 2016.

²⁰⁹ The Government of the Republic of Tanzania, “The Non-Citizens (Employment Regulation) Act,” 2015.

²¹⁰ Government for the Republic of Tanzania, “The Non-Citizens (Employment Regulation) Act (Cap 436) 2016,” 2016.

²¹¹ The Government of the Republic of Tanzania, “The Occupational Health and Safety Act, 2003,” 2003.

²¹² Government of the Republic of Tanzania, “The Persons with Disabilities Act, No. 9 of 2010,” 2010.

²¹³ Government for the Republic of Tanzania, “The HIV and AIDS (Prevention and Control) Act 2008,” 2008.

²¹⁴ Ministry of Health and Social Services, “Public Health Act,” 2009.

²¹⁵ Ministry of Health, Community Development, Gender, Elderly and Children, “Tanzania National Health Policy_2017_,” 2017.

²¹⁶ Government for the Republic of Tanzania, “The One Stop Border Posts Act No 17 of 2015,” 2015.

²¹⁷ Ministry of Health, Community Development, Gender, and Elderly and Children, “Tanzania-Health-Sector-Strategic-Plan-V-17-06-2021-Final-Signed.Pdf,” 2021.

²¹⁸ Ministry of Health, Community Development, Gender, Elderly and Children, “Tanzania National Health Policy_2017_.”

²¹⁹ Ministry of Finance and Planning, “National Five Year Development Plan 2021/22-2025/26,” 2021.

²²⁰ The Government of the Republic of Tanzania, “TZA 1999 National Development Vision 2025,” 1999.

²²¹ The Government of the Republic of Tanzania, “TZA 1999 National Development Vision 2025.”

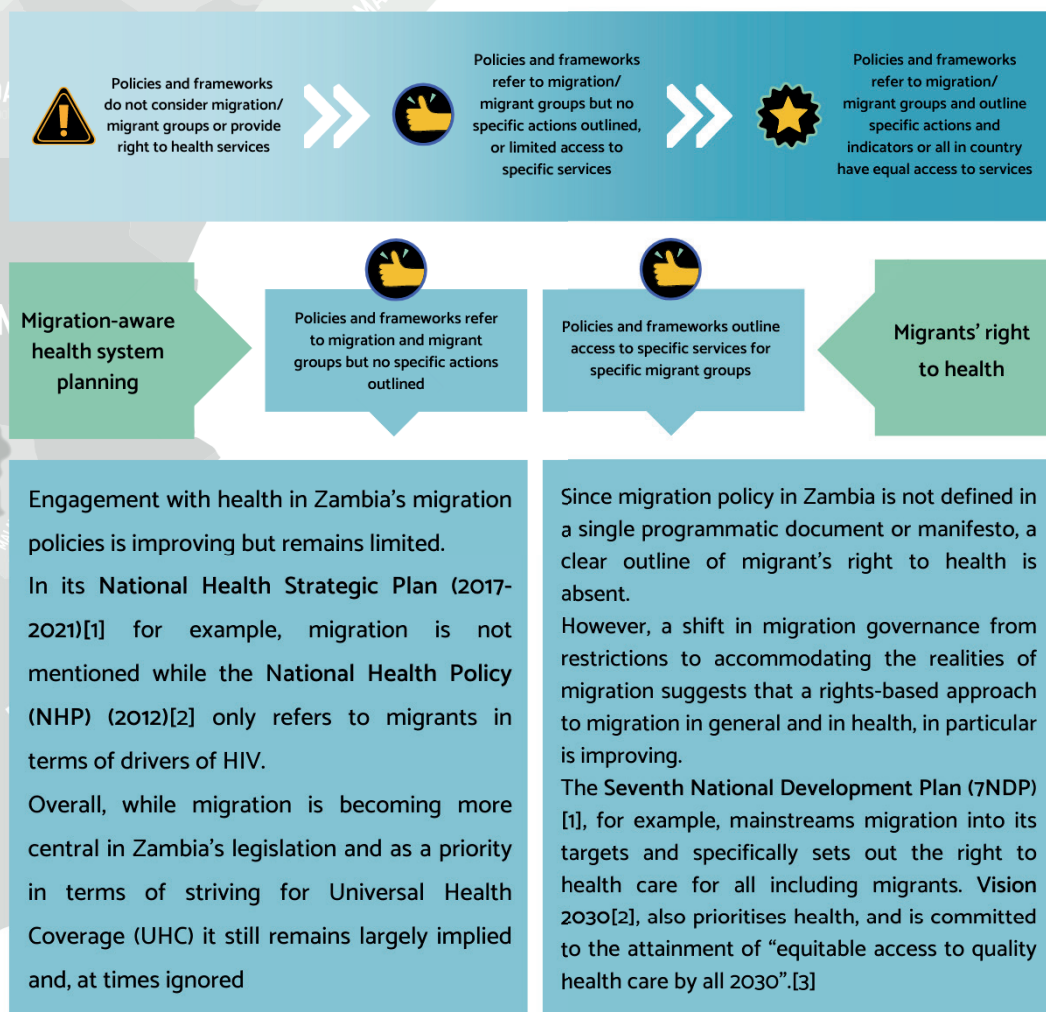
Figure 17: Tanzania - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution of the Republic of Tanzania 1977 and amended to 1995	1977/1995	Approved and implemented		No mention of migration or migrants		No explicit right to health but protection; rights can be deduced from right to life and non-discrimination
Legislation						
Refugees Act 1998	1998	Approved and implemented		Focus on refugees.		One mention of health as a provision but no details provided. The right to health is not specified.
Immigration Act 1995	1995	Approved and implemented		Focus on immigration and migrants.		No rights stated; prohibits entry of migrant with mental health problems or contagious/infectious disease.
Immigration (Amendment) Regulations 2016	2016	Approved and implemented		Focus on migrants and provision of documentation.		No mention of health.
Non-Citizens (Employment Regulation) Act 2015	2015	Approved and implemented		Based on regulating the employment of non-citizens (migrants).		No reference to health.
Non-Citizens (Employment Regulation) Regulation	2016	Approved and implemented		Based on regulating the employment of non-citizens (migrants).		No reference to health.
National Health Policy 2003	2003	Approved and implemented		Does not engage with migration.		Implied but not specified. Uses both language of 'healthcare for all' but only refers to citizens.
The Occupational Health Act and Safety Act, 2003	2003	Approved and implemented		No reference to migration or migrant workers.		No reference to health.
Mental Health Act 2008	2008	Approved and implemented		No reference to migration or migrants.		Refers to National Health Insurance for All but only mentions Tanzanian citizens.
The HIV and AIDS (Prevention and Control) Act, 2008	2008	Implemented		No reference to migration or migrants.		Testing and treatment as well as basic healthcare for all those requiring it
Public Health Act 2009	2009	Approved and implemented		No reference to migration or migrants.		Provisions in terms of citizens and children born in Tanzania
Employment and Labour Relations Act 6 of 2004	2004	Approved and implemented		No reference to migration or migrants.		Refers to National Health Insurance for All but only mentions Tanzanian citizens.
Persons with Disability Act 2010	2010	Approved and implemented		No reference to migration or migrants.		No explicit engagement with rights for migrants but can be taken to refer to all in the country.
One Stop Border Posts (OSBP) Act no. 17 of 2015	2015	Approved and implemented		Based on cross-border arrangements but no specific recognition of different types of migration etc.		No explicit engagement with rights for health
Strategic Plans and Frameworks						
National Development Vision 2025	1999	Approved and implemented		No reference to migration or migrants.		Provisions in terms of citizens and children born in Tanzania.
National Health Policy 2017	2017	Approved and implemented		Little/no engagement with migration – only in terms of port health services and risks posed by migrants.		Aim is for access to healthcare for all, does not explicitly include or exclude migrants.
Health Sector Strategic Plan 2021–2026 (HSSP VI). Leaving No One Behind	2021	Approved and implemented		No reference to migration or migrants.		Implied access through "healthcare for all" but does not explicitly include or exclude migrants.
National Five Year Development Plan (FYDP II) 2016/17 – 2020/21	2016	Implemented		No reference to migration or migrants.		Provisions in terms of citizens and children born in Tanzania.
Third National Five Year Plan (FYDP III) 2021/2026	2021	Implemented		No reference to migration or migrants.		Refers to National Health Insurance for All but only mentions Tanzanian citizens

3.3.15. ZAMBIA



Zambia: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitutional

Article 112(d) of the **Zambian Constitution**²²² entrenches directive principles of state policy which include a nonjusticiable right to 'adequate medical and health facilities' for all. The **Constitution** also makes provision for the right to life and the right to non-discrimination, which are judicially enforceable. However, the provision that personal liberty can legitimately be deprived "for the purpose of preventing the spread of an infectious or contagious disease" could affect migrants' access to health services in Zambia.

²²² The Government of Zambia, "The Constitution Of Zambia (Amendment) Bill, 2019," 2019.











Legislation

Zambia's legislative approach to immigration has shifted from one based on control and restrictions to responding to the realities of migration and a more rights-based approach to migration in general and health, in particular. Up until 2017, the reception of refugees was governed by the **1971 Refugee Control Act**²²³ and restricted the movement of refugees to settlements or camps. As signatory to the 1951 Refugee Convention, Zambia did not adopt a number of its refugee-rights provisions into law including elements of the refugee definition. Under Zambia's dualist system international law provisions can only be enforced when formally incorporated into national/domestic law. A shift in approach however, is evident in a number of new laws and policies including **the Seventh National Development Plan (7NDP) (2018)**²²⁴, which mainstreams migration into its targets and specifically sets out the right to health care for all including migrants. Zambia's **Vision 2030**²²⁵, also prioritises health, and is committed to the attainment of 'equitable access to quality health care by all 2030'. These are also supported by the **2020 Public Health Act**²²⁶, which provides for the realization of the right to health for all.

Policies and Frameworks

Since migration policy in Zambia is not defined in a single programmatic document or manifesto a clear outline of migrant's right to health is absent. In its **National Health Strategic Plan (2017-2021)**²²⁷ for example, migration is not mentioned while the National Health Policy (NHP) (2012) only refers to migrants in terms of drivers of HIV. The **National Health in All Policies (HiAP) framework**²²⁸ based on recommendations of various international, regional and national protocols for addressing social determinants of health, health promotion and Health in All Policies²²⁹ also fails to fully engage with migration and migrant rights. In terms of the stipulated need to "Improve equity in access to health services across the population" there is no specific engagement with how to ensure this. Overall, migration is becoming more central in Zambia's legislation and as a priority in terms of striving for UHC it still remains largely implied and, at times ignored.

Figure 18: Zambia - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Constitution Act 1996 and Constitution (Amendment) Act 2 of 2016	1996/2016	Approved and implemented		No engagement with migration.		The Constitution of Zambia guarantees fundamental rights and freedoms to all persons within Zambian territory but does not stipulate the rights of migrants to access healthcare services.
The Constitution Amendment Bill, 2019	2019	Not approved		No engagement with migration.		Does not stipulate the rights of migrants to access healthcare services.
Legislation						
The Refugee Control Act	1970	Approved and implemented		Makes provision for the control of refugees and an encampment policy for refugees.		Does not consider the right to access healthcare services for refugees.
The Anti Trafficking Act No. 11 of 2008	2008	Approved and implemented		Focused on illegal movement across borders and providing assistance to all victims. Art. 31 (f) provides that an "illegal foreign child" who is found to be a victim of human trafficking will be assisted in applying for asylum in terms of the Refugees (control) Act and (3) will be allowed to remain in Zambia for the duration of the children's court order.		Art. 47 sets out the provision of health care services and states that a victim is entitled to the same healthcare services as citizens in Zambia.
The Immigration and Deportation Act, No 18 of 2010	2010	Approved and implemented		Principal Act for regulating entry, exit and stay of foreign nationals in Zambia and is based on a human rights approach to migration issues.		There is no official policy of special provisions for vulnerable groups among applicants for refugee status including social or economic protection. The Act makes it an offence for a refugee to be outside a refugee settlement without a permit.

²²³ Ministry of Legal Affairs, Government of the Republic of Zambia, "The Refugees (Control) Act 1970," 1970.

²²⁴ Ministry of National Development Planning; Republic of Zambia, "7NDP Implementation Plan 2017–2021," 2018.

²²⁵ The Republic of Zambia, "Republic of Zambia Vision 2030," 2006.

²²⁶ Zambia National Public Health Institute, "The Zambia National Public Health Institute Act No. 19 of 2020," 2020.

²²⁷ Ministry of National Development Planning; Republic of Zambia, "7NDP Implementation Plan 2017–2021,"

²²⁸ The Government of Zambia, "NATIONAL HEALTH IN ALL POLICIES STRATEGIC FRAMEWORK (3).Pdf," 2017.

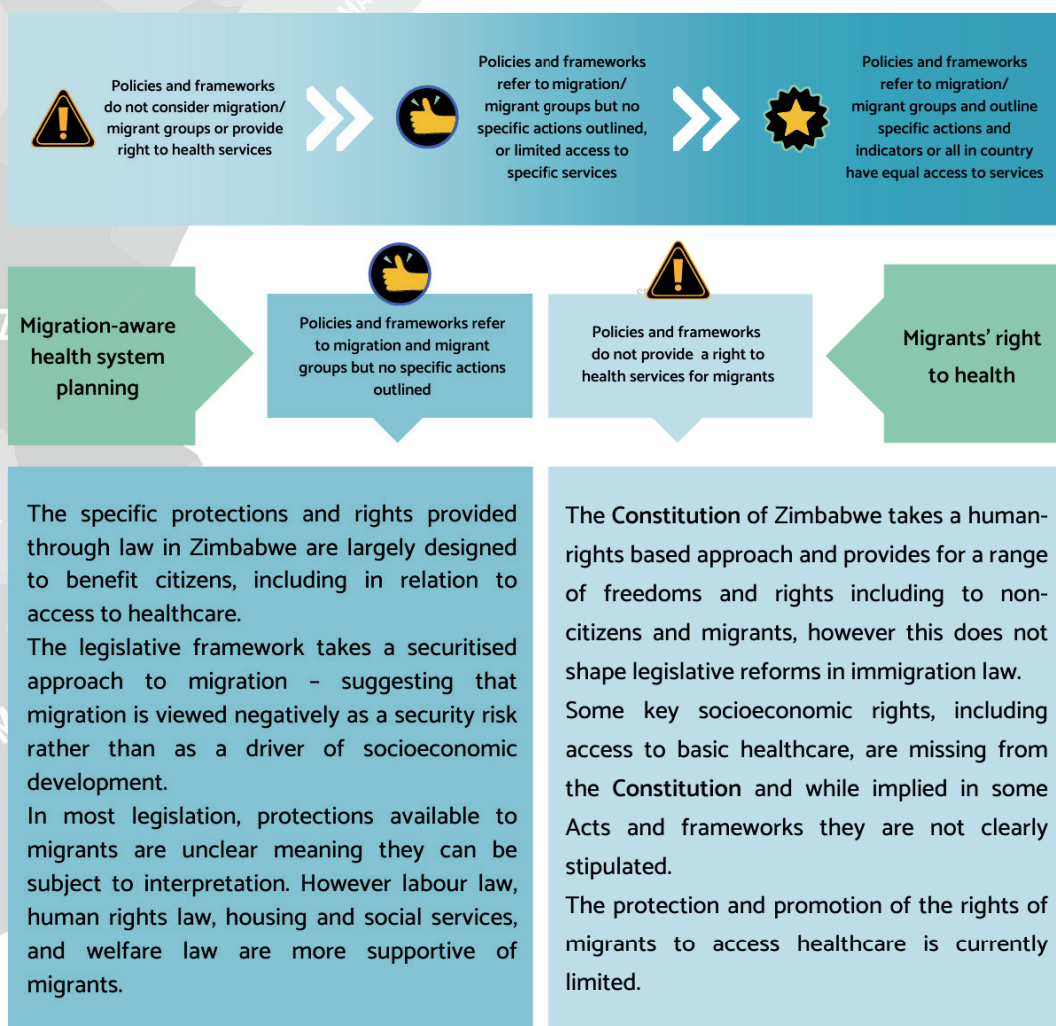
²²⁹ K. Leppo et al., eds., "Health in All Policies: Seizing Opportunities, Implementing Policies" (Ministry of Social Affairs and Health, Finland, 2013).

The Refugees Act	2017	Approved and implemented		The Act provides that provisions can be made in refugee settlements to 'ensure that all proper precautions are taken to preserve the health and wellbeing of the refugees in the refugee settlement.'		Provides for the recognition, protection and control of refugees alongside the need to make provisions for the rights and responsibilities of refugees in Zambia.
The Persons with Disabilities Act No. 6 of 2012	2012	Approved and implemented		No engagement with migration and migrants with disabilities.		Provides for the domestication of the UN Convention on the Rights of persons with Disabilities (UNCPRD). Links to other international instruments to promote and protect full and equal enjoyment of human rights. Does not specify migrant rights.
National Health Insurance Act 2018	2018	Implemented		Engages with migration and stipulates the entitlements and requirements of foreigners regarding the NHI.		NHI is focused on citizens and residents. Foreigners are required to have health insurance to enter Zambia.
Mental Health Insurance Act	2019	Approved and implemented		Does not engage with migration.		The Act is guided by widespread and equitable access to mental health services it is also restricted to citizens.
Employment Code Act	2019	Approved and implemented		No direct engagement with migration other than to state jobs must be prioritized for citizens over foreign nationals.		N/A
Strategic Plans and Frameworks						
Vision 2030	2006	Approved and implemented		Overall, the Vision 2030 engages with migration however falls short of assuring a right to health and universal health care.		Prioritises health, and is committed to the attainment of 'equitable access to quality health care by all 2030'. No specific mention of vulnerable groups here including refugees and other migrants.
National Health Policy (NHP) 'A Nation of Healthy and Productive People'	2012	Approved and implemented		Migration considered in terms of communicable diseases and occupational health. Considers labour migration and silicosis.		Aims: "To ensure equitable access to healthcare for all the people of Zambia, regardless of their geographical location, gender, age, race, social, economic, cultural or political status."
National Social Protection Policy	2014	Approved and implemented		Includes migrants among the vulnerable groups of people who need protection.		Migrants may not qualify for all forms of social protection, as some packages are meant exclusively for Zambian citizens.
The Strategic Framework for Local Integration of Former Refugees in Zambia (SFLI) 2014	2014	Implemented		Focus on offering durable solutions for former refugees. Offers Permanent Residence Status.		Proscribes access to basic services including healthcare in camps encampment policy ultimately limits how far integration and access to basic services can go.
Guidelines for Protection Assistance for Vulnerable Migrants in Zambia and the National Referral Mechanism for the Protection of Vulnerable Migrants in Zambia	2014	Implemented		Provides guidance on the different stages of assistance to vulnerable migrants requiring protection assistance. The National Referral Mechanism provides a clear framework for meeting the migrant's immediate, medium- and long-term protection needs.		The right to health underlines the key principles of the guidelines and the importance of being able to access and receive quality health care is emphasised.
The National Resettlement Policy (2015) and Guidelines for the Compensation and Resettlement of Internally Displaced Persons (2013b)	2015	Implemented		Provide for the protection of IDPs during displacement, return, resettlement or reintegration. The emergency needs provided include temporary shelter, water, health-care services and others, as well as supporting attainment of durable solutions.		Rights implied but not spelt out.
National Health in All Policies (HiAP)	2017	Implemented		Point 7: Improve the life conditions of migrants and refugees.		States: "Improve equity in access to health services across the population". Focus on Citizens and not clear outline of migrant rights.
National Health Strategic Plan (NHSOP) 2017-2021	2017	Implemented		Focuses on delivering quality health services across the continuum of care which includes promotive, preventive, curative, rehabilitative and palliative care.		Attainment of the universal health coverage will be made possible through primary health care with a focus on community health.
National HIV/AIDS Strategic Framework 2017-2021	2017	Implemented		Suggests a comprehensive package of services targeting key populations including migrants so that the Fast Track targets can be reached.		The importance of "access for all" and addressing accessing inequities across populations is emphasised. Language of citizens used predominately.
The Seventh National Development Plan (7NDP)	2018	Implemented		Migration is mainstreamed into the 7NDP and is explicitly mentioned in Pillar 5. Outcome 3 provides for reduced vulnerabilities associated with HIV/AIDS prevalence (mobility and migration being among the key drivers of HIV). Refugees and IDPs are also mentioned in the context of the need to mainstream national disaster management policies in all key sectors of the economy.		Provides to 'improve coverage and targeting of social protection programmes to ensure that the poor and vulnerable have increased access to basic social protection.' Strategy 5 states to 'Ensure recruiting and retaining the health workforce to curb brain drain of health professionals as well as ensure equal access to health services for all including migrants
National Community Health Strategy 2019-2021	2019	Implemented		There is no mention of migration or migrants.		No migrant rights are outlined.
The National Comprehensive Condom Strategy 2020-2025	2020	Approved and implemented		Recognises key populations that are most vulnerable to infection, including truck driver, Public transport operators and Seasonal/migrant workers.		States, 'Migrant workers on the mines and farming areas will be specifically targeted to increase inclusivity and ensure that no one remains behind.'
The Draft National Migration Policy 2022	2022	Draft		Drives for a coordinated approach across borders, in the provision of services.		Objective 9 deals with the facilitation of migrants' access to equitable health care services. Recognizes the need for equitable access to health services for all people living in the country regardless of their nationality.

3.3.16. ZIMBABWE



Zimbabwe: Overall country legislative and policy assessment towards migration-aware health responses, including the right to access healthcare services



Constitutional

The new **Constitution** of Zimbabwe (2013)²³⁰ takes a human-rights based approach and provides for a range of freedoms and rights, including to migrants. Although it provides a broader rights framework for the protection, promotion and enforcement of fundamental rights and freedoms in Zimbabwe, this does not shape legislative reforms in immigration law. Further, despite the series of rights that are provided for 'all persons' in Zimbabwe, including to life, human dignity and non-discrimination, this does not extend to the right to access basic healthcare. As a result, access to basic health is unduly restrictive for migrants and reflective of immigration and health legislation.

²³⁰ The Government of Zimbabwe, "Zimbabwe Constitution of 2013," 2013.

Legislation

The specific protections and rights provided through law in Zimbabwe are largely designed to benefit citizens. The legislative framework takes a securitised approach to immigration – suggesting that migration is viewed negatively as a security risk rather than as beneficial to socio-economic relations. The primary law governing immigration is the **Immigration Act**²³¹ and its accompanying regulations, which govern the entry of persons into and the departure or removal of persons from Zimbabwe. The most important immigration laws predate the 2013 **Constitution** and lack contemporary international standards and best practices around migration.

The **Immigration Act**²³² regulates and impacts several migration-related issues including: labour, human trafficking and smuggling, irregular migration, migration and health, among others. Protections available to migrants are unclear and sometimes, implied but not stated specifically in law meaning they can be subject to interpretation. That said, labour law, human rights law, housing and social services and welfare law are more supportive of migrants. The **Prevention of Discrimination Act (19 of 1998)**²³³ in particular provides protection through the prohibition of discrimination on the basis of nationality. Together with the **National Migration Management and Diaspora Policy**²³⁴ this can address unequal access to healthcare, particularly in relation to the treatment of communicable diseases (including HIV) for migrants from the Southern African Development Community (**SADC**). This is in line with the **SADC Protocol on Health**²³⁵.

Policies and Frameworks

The Zimbabwean **National HIV and AIDS Strategic Plan 2021-2025**²³⁶ reflects a common pattern across policies and strategic plans through which aspirations and commitments to alignment with SDGs and movement towards Universal Health Coverage (**UHC**) are comprehensively set out but with very little engagement with migration. The **National Health Strategy for Zimbabwe (2016-2020)**²³⁷ for example identifies key priority areas and focuses on the provision of accessible, affordable, acceptable and effective quality health services at community and health centre level (Priority 4). The **National Development Strategy 2021-2025**²³⁸ reiterates the **Constitutional** provision of health as a human right yet there is no specific mention of migration in the Strategy generally or in relation to health, specifically.

Most policies and plans recognise migration as a cross-cutting issue that should be mainstreamed into all laws that impact and are impacted by migration, yet the steps for doing so- particularly in terms of clarifying the right to healthcare for all – remain absent.

²³¹ The Government of Zimbabwe, "Immigration Act 1979 Amended in 2001," 2001.

²³² The Government of Zimbabwe, "Immigration Act 1979 Amended in 2001."

²³³ Government of Zimbabwe, "Prevention of Discrimination Act 19 of 1998," 1998.

²³⁴ The Ministry of Macro-Economic Planning and Investment Promotion, "Zimbabwe-Diaspora-Policy-Document," 2016.

²³⁵ SADC, "Protocol on Health in the Southern African Development Community"

²³⁶ Ministry of Health and Childcare, "ZIMBABWE-NATIONAL-HIV-STRATEGIC-PLAN_2021-2025-1.Pdf," 2020.

²³⁷ Zimbabwe et al., eds., Zimbabwe National HIV and AIDS Strategic Plan (ZNASP), 2006-2010 (Harare, Zimbabwe: National AIDS Council of Zimbabwe : Ministry of Health and Child Welfare : UNAIDS, 2006).

²³⁸ Government of Zimbabwe, "National Development Strategy 1 (2021-2025)," 2021.

Figure 19: Zimbabwe - documents reviewed

Name of Policy	Year	Status	Migration aware		Right to health	
			Assessment	Description	Assessment	Description
Constitution						
Citizenship of Zimbabwe Amendment Act, 2003	2003	Approved and implemented		Engages with migration but limited rights.		No mention of rights to health. Limited rights to citizenship.
Constitution of Zimbabwe 2013	2013	Approved and implemented		Engages with migration but does not specifically address migration.		Engages with migration but does not specifically address migration.
Legislation						
Prevention of Discrimination Act (Ch 8:16), 19 of 1998 and Amended Act 22 of 2001	1998/2001	Approved and implemented		Reference to nationality and origin of birth as factors that a person cannot be discriminated against.		Right to health implied through protection from discrimination on grounds of nationality - can address unequal access to health care and especially treatment of communicable diseases but not specified.
Immigration Act 1979 as amended in 2001	2001	Approved and implemented		Engages with migration but limited.		Denial of rights to migrants for appeal, to enter Zim with certain conditions. No mention of right to health.
The Refugee Act 2001	2001	Approved and implemented		Engages with migration. Part 3 states that refugees are entitled to the same rights and restrictions as those who are non-citizens of Zimbabwe.		No specific reference to rights to health or access to or provision of health-care.
The Trafficking in Persons Act No. 4 of 2014	2014	Implemented		Only deals with cross-border trafficking and not internal. Does not engage effectively with irregular migration.		No mention of right to health.
Public Health Act (No.22/2002)	2002	Approved and implemented		Engages with migration. Limited provisions.		Introduces more regulations on diseases and regulations = restrictions.
Labour Act Chapter 28:01 of 2005	2018	Implemented		No engagement with migration – migrant workers doesn't feature specifically.		Section 5 prohibits discrimination of employees on the grounds of race, tribe, place of origin, political opinion, colour, creed, gender, pregnancy, HIV/AIDS status or disability. Focus on every worker not just citizens but not explicit.
Public Health Act (No.11/2018)	2018	Approved and implemented		Engages with migration. Limited provisions.		Affirms right to health care for citizens and permanent residents. Right to emergency care.
Strategic Plans and Frameworks						
Zimbabwe Diaspora Policy 2016	2006	Approved and implemented		Engages with diaspora but limited.		Right to health not mentioned.
Zimbabwe Trafficking in Persons National Plan of Action (NAPLAC) 2016-2018	2016-2018	Implemented		Limited awareness.		No mention of right to health.
The National Health Strategy for Zimbabwe 2016-2020	2017	Implemented		Target population is identified as Displaced persons, PLHIV and all HIV vulnerable persons and key populations in humanitarian and emergency situations.		While health for all is emphasised the rights and access of migrants are not made explicit. The only consideration of migrants is as a target population for an HIV response in emergency settings.
Mental Health Strategic Plan 2019-2023	2019	Approved and implemented		No engagement with migration.		Mentions health for all but no specific reference to migrants. Acknowledges need for strengthened access.
National Migration Management and Diaspora Policy	2019	Draft		Limited engagement only through emigration and transit migration.		Implied but not explicit.
The National Development Strategy 1 (2021-2025)	2021	Implemented		No engagement with migration.		Focus on health systems but nothing on right to health.
Zimbabwe National HIV and Aids Strategic Plan (ZNASP) 2021-2015	2021	Implemented		Limited engagement with migration Vulnerable populations are identified (from the ZNASP III) as: small-scale mine workers, cross border populations, farm workers, fishermen, people with disabilities and the informal sector.		Mentions health for all but no specific reference to migrants. Acknowledges need for strengthened access.

4. CONCLUSION

The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.²³⁹

This report shows that the majority of SADC Member States offer limited access to healthcare for migrants as stipulated in national constitutions, legislation and policies. Whilst there is a trend towards increasingly migration-aware legislation and policy across the region, the rights of migrants to access healthcare services remain limited when compared to the rights of citizens.

It is important to note that this assessment was designed to review the constitutional, legislative, and policy ambitions of each country, not their implementation. To this end, the findings presented in this report do not necessarily reflect what is happening in practice. Future research is needed to assess how these ambitions are translated in practice.

Moving forward, there is a need to work towards progressively translating commitments into legislation and policy at the national level. This includes engaging with the **Global Compacts** on (1) **Safe Orderly and Regular Migration**²⁴⁰ and (2) **Refugees**²⁴¹, relevant **World Health Assembly (WHA) Resolutions**²⁴² and the **Global Action Plan (GAP) for the Health of Refugees and Migrants**²⁴³. To do so will assist Member States in their efforts to achieve **Universal Health Coverage (UHC)**²⁴⁴ through developing inclusive responses that provide migrants with the right to access healthcare services.

To support this, it would be helpful to revive regional discussions around developing and implementing coordinated and harmonised migration-aware health responses and equitable cost-sharing mechanisms, as well as ensuring monitoring and reporting mechanisms linked to Universal Health Coverage, progressively track the inclusion of migrants at the country level.



Factory workers in Madagascar. Credit: IOM/Giacomo Dei Rossi

²³⁹ OHCHR, "CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)" Art. 12.3.

²⁴⁰ United Nations, "Global Compact for Safe, Orderly and Regular Migration - A/RES/73/195."

²⁴¹ United Nations, "Global Compact on Refugees - A/73/12."

²⁴² World Health Assembly, "WHA61.17," 2008; Assembly, *WHA Resolution 70.15 Promoting the Health of Refugees and Migrants*.

²⁴³ WHO, "Promoting the Health of Refugees and Migrants. Draft Global Action Plan, 2019–2023. A72/25 Rev.1."

²⁴⁴ United Nations, "Political Declaration of the High-Level Meeting on Universal Health Coverage 'Universal Health Coverage: Moving Together to Build a Healthier World.'"

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APPENDIX 1: KEY GLOBAL GOVERNANCE PROCESSES

Year	Process/Document/Policy/Framework
BINDING LAW: TREATIES, COVENANTS, DECLARATIONS	
1951	1951 Convention relating to the Status of Refugees
1965	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
1966	Intl Covenant on Economic Social and Cultural Rights (ICESCR)
1967	The 1967 Protocol
1990	Intl Convention on the Protection of the Rights of All Migrant Workers and members of their families (CMW)
1966	Intl Covenant on Civil and Political Rights (ICCPR)
1979	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
1984	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
1989	Convention on the Rights of the Child (CRC)
2006	Intl Convention for the Protection of All Persons from Enforced Disappearance (CED)
2007	Convention on the Rights of Persons with Disabilities (CRPD)
2005	International Health Regulations (3 rd Revision in 2016) ²⁴⁵
WORLD HEALTH ASSEMBLY RESOLUTIONS	
2008	World Health Assembly Resolution 61.17 on the Health of Migrants ²⁴⁶
2017	World Health Assembly Resolution 70.15: Promoting the Health of Refugees and Migrants ²⁴⁷
SDGS AND GLOBAL COMPACTS	
2015	2030 Agenda for Sustainable Development ²⁴⁹
2017	Global Compact for Progress Towards Universal Health Coverage (UHC) ²⁵⁰
2018	Global Compact on Refugees ²⁵¹ ;
2018	Global Compact for Safe, Regular and Orderly Migration ²⁵²
WORLD HEALTH ASSEMBLY PROCESSES	
2016	69 th World Health Assembly: 27 th May 2016 - Technical Briefing on Migration and Health ²⁵³
2016	Promoting the Health of Migrants. Report from the Secretariat ²⁵⁴
2017	WHO Input to the 70 th World Health Assembly - Draft framework of priorities and guiding principles. A70/24 ²⁵⁵
2017	Promoting The Health of Refugees & Migrants. Draft Framework of Priorities & Guiding Principles To Promote The Health Of Refugees & Migrants. Report by the Secretariat ²⁵⁶
2019	Report A72/25 to the World Health Assembly. Promoting the Health of Refugees and Migrants Draft Global Action Plan, 2019–2023. Report by the Director-General ²⁵⁷

²⁵¹ United Nations, "Global Compact on Refugees - A/73/12."

²⁵² United Nations, "Global Compact for Safe, Orderly and Regular Migration - A/RES/73/195"

²⁵³ WHO, "Report of the 69th World Health Assembly Technical Briefing on Migration and Health" (Geneva: World Health Organization, 2016).

²⁵⁴ World Health Assembly, "WHA 70.15."

²⁵⁵ WHO, "Promoting the Health of Refugees and Migrants Draft Framework of Priorities and Guiding Principles to Promote the Health of Refugees and Migrants. A70/24" (World Health Organization, 2017).

²⁵⁶ WHO, "Promoting the Health of Refugees and Migrants. Draft Framework of Priorities and Guiding Principles to Promote the Health of Refugees and Migrants. Report by the Secretariat. Seventieth World Health Assembly. Provisional Agenda Item 13.7." (Geneva: WHO, 2017).

²⁵⁷ WHO, "Promoting the Health of Refugees and Migrants. Draft Global Action Plan, 2019–2023. A72/25 Rev.1."

Year	Process/Document/Policy/Framework
GLOBAL CONSULTATIONS	
2010	First Global Consultation on the Health of Migrants ²⁵⁸
2017	2 nd Global Consultation on Migration and Health, February 2017 – 'Resetting the Agenda' ²⁵⁹
HIGH-LEVEL DISCUSSIONS & ASSOCIATED DECLARATIONS	
2015	High-level Panel Discussion on Migration, human mobility and global health: a matter for diplomacy and intersectional partnership ²⁶⁰
2016	UN GENERAL ASSEMBLY: 9th May 2016 - High-level Meeting on Addressing Large Movements of Refugees and Migrants; Report of the Secretary-General: In Safety and Dignity: Addressing Large Movements of Refugees and Migrants ²⁶¹
2016	UN General Assembly High-level Meeting to Address Large Movements of Refugees & Migrants; Report - Health in the Context of Migration & Forced Displacement ²⁶²
2016	New York Declaration for Refugees and Migrants ²⁶³
2019	United Nations High-Level Meeting on 'Universal Health Coverage: Moving Together to Build a Healthier World' Political Declaration ²⁶⁴
(forth-coming) 2023	UN High-Level Meeting on UHC in September 2023
SELECTED REPORTS & POSITION PAPERS	
2003	IOM Position Paper on Psychosocial and Mental Well-Being of Migrants ²⁶⁵
	WHO publishes International Migration, Health and Human Rights ²⁶⁶
2011	Report of the United Nations Special Rapporteur on the human rights of migrants, Jorge Bustamante ²⁶⁷
2016	Leaving no one behind: the imperative of inclusive development Report on the World Social Situation 2016 ²⁶⁸
2017	Promoting a Rights-based Approach to Migration, Health, and HIV and AIDS: A Framework for Action. Report by International Labour Organization (ILO) ²⁶⁹
2017	Global Compact Process - IOM Thematic Paper: The Health Of Migrants: A Core Cross-Cutting Theme ²⁷⁰

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²⁵⁹ IOM, "Health of Migrants: Resetting the Agenda. Report of the 2nd Global Consultation. Colombo, Sri Lanka, 21-23 February 2017" (Geneva, Switzerland: IOM, 2017).

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Year	Process/Document/Policy/Framework
2017	IOM Migration Health Division, Thematic Paper: MIGRATION HEALTH IN THE SUSTAINABLE DEVELOPMENT GOALS: 'Leave No One Behind' in an increasingly mobile society ²⁷¹
2021	WHO publishes Common Health Needs of Refugees & Migrants ²⁷² ;
	Mapping Health System Responsiveness to Refugee & Migrant Health Needs ²⁷³
	IOM Health, Border and Mobility Management Framework ²⁷⁴
2022	WHO Global Report on the Health of Refugees and Migrants ²⁷⁵
2022	Action on health systems, for universal health coverage and health security. A UHC2030 strategic narrative to guide advocacy and action ²⁷⁶
RESOURCES	
2021	WHO Global Competency Standards for Health Workers ²⁷⁷
	WHO Knowledge Guide & Curriculum Guide to Support the Operationalisation of Refugee & Migrant Health ^{278,279}
KEY WHO AND IOM COUNCIL/EXECUTIVE BOARD SESSIONS	
2015	IOM 106 th Council Session: Advancing The Unfinished Agenda of Migrant Health For The Benefit Of All - C/106/INF/15 ²⁸⁰
2017	January 2017 – 140 th Session of the WHO Executive Board of the World Health noted the WHO Secretariat report on 'Promoting the health of migrant' and adopted Decision EB140(9) – Promoting the health of refugees and migrants ²⁸¹

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Cotton workers in Zambia.
Credit: IOM/Davina Jogi



Services provided at the occupational health unit at Ressano Garcia border crossing.
Credit: IOM/Moayad Zaghdanci





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