

International/European Framework for Protection of Human Rights in Patient Care

Governments are bound by the treaties they ratify.¹ For each human rights treaty, there is an enforcement mechanism to ensure governments comply with their obligations. Enforcement generally takes place through two forms: individual complaints and periodic government reports. Mechanisms such as the Human Rights Committee and European Court of Human Rights function as a court and hear individual complaints. Mechanisms such as the Human Rights Committee; Committee on Economic, Social and Cultural Rights; and the European Committee of Social Rights require governments to submit periodic reports on their progress in implementing a treaty. In addition to the official government report, these bodies also accept reports from NGOs to help assess a state's compliance. They then issue recommendations to the state on any needed actions.²

The chart below lists international and European human rights treaties most relevant to the protection of human rights in patient care, and their corresponding enforcement mechanisms.

The chart on the next page pairs key rights implicated in the provision of patient care with relevant treaty provisions and examples of violations. Please note that a violation depends on the circumstances and is a matter of interpretation based on the facts of the particular case. For each case, some rights may be violated while others are not. Human rights law is an evolving field, and many human rights violations are not directly addressed by existing legal precedents. Through ongoing documentation, advocacy, and litigation, advocates can build a stronger body of jurisprudence protecting human rights in patient care.

Treaty	Enforcement Mechanism
International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee (HRC)
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Committee on Economic, Social, and Cultural Rights (CESCR)
International Convention on the Elimination of all forms of Racial Discrimination (ICERD)	Committee on the Elimination of Racial Discrimination (CERD)
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	Committee on the Elimination of Discrimination against Women (CEDAW Committee)
Convention on the Rights of the Child (CRC)	Committee on the Rights of the Child (CRC Committee)
Convention on the Rights of Persons with Disabilities (CRPD)	Committee on the Rights of Persons with Disabilities (CRPD Committee)
[European] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)	European Court of Human Rights (ECtHR)
European Social Charter (ESC) or Revised European Social Charter (RESC)	European Committee of Social Rights (ECSR)
Framework Convention for the Protection of National Minorities (FCNM)	Committee of Ministers of the Council of Europe & Advisory Committee (AC)
[European] Convention for Human Rights and Biomedicine	Committee on Bioethics (CB) and European Court of Human Rights (ECtHR)

1. You can check which treaties have been ratified by your country at: <http://www1.umn.edu/humanrts/research>.

2. For further information, please see Open Society Foundations, *Health and Human Rights: A Resource Guide* at <http://equalpartners.info>.

Rights	Treaty Provisions	Examples of Violations
Right to Liberty and Security of Person	ICCPR 9(1), ECHR 5(1)	Patients are detained in a hospital for inability to pay.
Right to Privacy and Confidentiality	ICCPR 17(1), CRC 16(1), ECHR 8(1)	<ul style="list-style-type: none"> • Patient medical information is open to all staff. • Patients are forced to disclose their medical diagnosis to their employer in order to obtain leave from work. • Medical examinations take place in public conditions.
Right to Information	ICCPR 19(2), FCNM 9(1), European Convention on Human Rights and Biomedicine 10(2)	<ul style="list-style-type: none"> • A state fails to provide information on health care services. • Physicians fail to provide patients with information about treatment options and the potential risks and benefits of each procedure. • Patients are denied access to their medical files. • Information services are unavailable for people who speak certain languages.
Right to Bodily Integrity	ICERD 5(b), FCNM 6(1), CRC 19(1), European Convention on Human Rights and Biomedicine 5 ³	<ul style="list-style-type: none"> • Physicians fail to obtain “free and informed” consent from patients before performing medical procedures. • Patients are not allowed to switch physicians or health care providers.
Right to Life	ICCPR 6(1), ECHR 2(1)	<ul style="list-style-type: none"> • Due to inadequate reproductive health and prenatal care, complications from pregnancy are a leading cause of death for young women. • Ambulances fail to arrive at certain communities or for certain individuals in a timely manner, leading to patient deaths.
Right to the Highest Attainable Standard of Health	ICESCR 12, ICERD 5, CRC 24, CEDAW 12(1), ESC 11, ESC 13	<ul style="list-style-type: none"> • Doctors and health facilities are not located near neighborhoods of certain communities. • Social policies disproportionately exclude patients from certain communities from access to health insurance. • Patients belonging to certain groups are given inferior care.
Right to Freedom from Torture and Cruel, Inhuman and Degrading Treatment	ICCPR 7, Convention against Torture, ECHR 3, European Convention for the Prevention of Torture	<ul style="list-style-type: none"> • Prisoners are denied adequate medical treatment. • Women are sterilized without their consent while giving birth by cesarean section. • National laws restricting opioid availability and access cause cancer and AIDS patients to suffer unnecessary pain.
Right to Participation in Public Policy	ICCPR 25, ICERD 5(c), FCNM 15, CEDAW 7, CEDAW 14(2)	<ul style="list-style-type: none"> • Citizens lack an opportunity to comment on and participate in the setting of public health priorities.
Right to Non-discrimination and Equality	ICCPR 21(1), ICCPR 26, ICESCR 2(2), ICERD, FCNM 4(1), ECHR 14, European Convention on Human Rights and Biomedicine 3	<ul style="list-style-type: none"> • Maternal and reproductive health services are lacking. • Mothers belonging to certain ethnic groups are forced to stay in separate wards when delivering a baby.
Right to a Remedy	ICCPR 2(3), ICERD 6, CEDAW 2, ECHR 13	<ul style="list-style-type: none"> • The state takes no action to address any of the violations described above.

3 The right to bodily integrity is not specifically recognized under the ICCPR, ICESCR, ECHR, or ESC, but has been interpreted to be part of the right to security of the person (ICCPR 9, ECHR 5), the right to freedom from torture and cruel, inhuman, and degrading treatment (ICCPR 7, ECHR 3), and the right to the highest attainable standard of health (ICESCR 12, ESC 11).

The **European Charter of Patients' Rights**, compiled in 2002 by Active Citizenship Network, a European network of civic, consumer, and patient organizations, provides a clear, comprehensive statement of patient rights. This statement was part of a grassroots movement across Europe for patients to play a more active role in shaping the delivery of health services and an attempt to translate regional documents on the right to health care into specific provisions.⁴ Although this Charter is not legally binding, a strong network of

patient rights groups across Europe have successfully lobbied their national government for recognition and adoption of rights in the Charter.⁵ The Charter has also been used as a reference point to monitor and evaluate health care systems across Europe. In September 2007, the European Economic and Social Committee (EESC) approved its own initiative opinion on patients' rights, declaring that it "welcomes and acknowledges" the European Charter of Patients' Rights.

European Charter of Patients' Rights

The 14 Patient Rights	Description
1. Right to preventive measures	Every individual has the right to a proper service, in order to prevent illness.
2. Right of access	Every individual has the right of access to the health services that his or her health needs require. The health services must guarantee equal access to everyone, without discriminating on the basis of financial resources, place of residence, kind of illness, or time of access to services.
3. Right to information	Every individual has the right of access to all kinds of information regarding their state of health, the health services (and how to use them), and all that scientific research and technological innovation makes available.
4. Right to consent	Every individual has the right of access to all information that might enable him or her to actively participate in the decisions regarding his or her health. This information is prerequisite for any procedure and treatment, including participation in scientific research.
5. Right to free choice	Each individual has the right to freely choose from among different treatment procedures and providers, on the basis of adequate information.
6. Right to privacy and confidentiality	Every individual has the right to the confidentiality of personal information, including information regarding his or her state of health and potential diagnostic or therapeutic procedures, as well as the protection of his or her privacy during the performance of diagnostic exams, specialist visits, and medical/surgical treatments in general.
7. Right to respect for patients' time	Each individual has the right to receive necessary treatment within a swift and predetermined period of time. This right applies at each phase of the treatment.
8. Right to observance of quality standards	Each individual has the right of access to high-quality health services, on the basis of the specification and observance of precise standards.
9. Right to safety	Each individual has the right to be free from harm caused by the poor functioning of health services, medical malpractice and errors, and the right of access to health services and treatments that meet high safety standards.
10. Right to innovation	Each individual has the right of access to innovative procedures (including diagnostic procedures), according to international standards and independently of economic or financial considerations.
11. Right to avoid unnecessary suffering and pain	Each individual has the right to avoid as much suffering and pain as possible, in each phase of his or her illness.
12. Right to personalised treatment	Each individual has the right to diagnostic or therapeutic programmes tailored as much as possible to his or her personal needs.
13. Right to complain	Each individual has the right to complain whenever he or she has suffered harm, and the right to receive a response or other feedback.
14. Right to compensation	Each individual has the right to receive sufficient compensation within a reasonably short time whenever he or she has suffered physical (or moral and psychological) harm caused by a health service treatment.

Source: Active Citizenship Network, 2002

⁴ It is important to note that the pharmaceutical company Merck & Co. also provided funding for this movement.

⁵ One of the activities of new EU member-states during the process of preparation for accession in the EU was adjustment of health care legislation towards European standards. Many countries, such as Bulgaria, adopted a new health law, whose structure and contents are strictly in line with the European Charter of Patients' Rights.

The following chart pairs the right enumerated in the European Charter of Patients' Rights with the corresponding, established rights in the international and European human rights systems.

European Charter of Patients' Rights	Human Rights in Patient Care
Right to Preventive Measures	Right to Health
Right of Access	Right to Non-discrimination & Equality; Right to Health
Right to Information	Right to Information
Right to Consent	Right to Bodily Integrity: Right to Liberty & Security of Person; Right to Freedom from Torture & Cruel, Inhuman, Degrading Treatment; Right to Privacy; Right to Health
Right to Free Choice	Right to Bodily Integrity: Right to Liberty & Security of Person; Right to Freedom from Torture & Cruel, Inhuman, Degrading Treatment; Right to Privacy; Right to Health
Right to Privacy & Confidentiality	Right to Privacy
Right to Respect for Patients' Time	Right to Health
Right to Observance of Quality Standards	Right to Health; Right to Life
Right to Safety	Right to Health; Right to Life
Right to Innovation	Right to Health
Right to Avoid Unnecessary Pain & Suffering	Right to Health; Freedom from Torture & Cruel, Inhuman, Degrading Treatment
Right to Personalized Treatment	Right to Health; Right to Non-discrimination & Equality
Right to Complain	Right to a Remedy
Right to Compensation	Right to a Remedy

Open Society Public Health Program

The Public Health Program of the Open Society Foundations aims to build societies committed to inclusion, human rights, and justice, in which health-related laws, policies, and practices reflect these values and are based on evidence. The program works to advance the health and human rights of marginalized people by building the capacity of civil society leaders and organizations, and by advocating for greater accountability and transparency in health policy and practice.

For more information, see: www.soros.org/health.