

People on the move's right to health: how states and regions approach migrants' right to healthcare and migrants' and host communities' welfare in a globalised world

Keywords

Cross-border mobility – Rights of migrants – People in transit and on the move - Right to health – Access to healthcare – Social protection – Labour protection - Inequalities – Welfare – Europe – European Union

Research areas

Economics law – Labour law – Constitutional law – Public law - International law – European Union law – Comparative public law – Criminal law - Economics – Economic policy – Gender studies – Criminal law

Research project presentation and state of the art

Sustainable Development Goal (SDG) number three envisages 'ensuring healthy lives and promoting well-being for all at all ages'. Addressing health and ensuring people's access to essential health services without undue financial burden is an essential component of society contributing to attain SDG number one and two on 'no poverty' and 'zero hunger' respectively. SDG number ten on 'reducing inequality within and among countries' foresees as a target that of facilitating orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. Despite international entities', states' and regional unions and economic communities' (RECs) efforts in terms of improving people's health and increasing life expectancy, no target will ever be achieved if whole populations and groups, such as those on the move and their hosts, are not recognised and granted access to appropriate healthcare services and treatment, as well as social protection and labour guarantees, by the states and regions where they find themselves.

Migration is a phenomenon not in itself encompassing any health risk of an unforeseeable nature to those embarking on a journey. As populations' movements do happen and migratory routes are well known, states and RECs are in a position to ensure people on the move all information and care they may be in need of to monitor, address and make progresses on reducing issues such as leading communicable and non-communicable diseases, maternal and child mortality, and tackling aspects impacting on individuals' physical and mental health which may otherwise be affected and worsened by their journey. Ignoring the phenomenon and the conditions in which movements often take place does not only result in an explicit disregard for human life and dignity, but also in the foreseeable impossibility to attain any health and welfare goal states and regions may be moving towards.

As we are very well and regrettably experiencing today amid a pandemic, diseases do not respect borders nor choose their hosts and victims on grounds of status or nationality. Although diseases' action exacerbates inequalities and has therefore a greater impact on the most vulnerable, they nevertheless indiscriminately affect all, whether nationals and non-nationals, regular and irregular migrants, transiting, immigrating, emigrating individuals as well as their host communities.

If Country X for instance envisions to achieve the end of acquired immune deficiency syndrome (AIDS) by 2030, any law and policy granting healthcare and appropriate treatment only to nationals of Country X will automatically prevent the goal's attainment, as AIDS cannot be ended without

addressing the needs of all people living with and affected by human immunodeficiency virus (HIV), and not only a part thereof. Addressing all people means structuring laws, policies, and action plans where migrants and more vulnerable groups have their own place. In such hypothetical, a lack of universal health coverage (UHC) and of inclusion of people on the move living with HIV and their host communities in UHC dialogues, practically ruling out the possibility for all individuals present in a territory to access HIV prevention and treatment, will automatically dictate the impossibility to end AIDS. The goal's attainment would further be made unachievable if, for instance, laws and policies of said Country X also restricted to citizens only access to sexual and reproductive health services as well as harm reduction programs for individuals injecting drugs, thus exacerbating the conditions of people living with HIV not being entitled to such schemes and the communities they live within, whether temporarily or not.

Migration as a phenomenon is often spoken about and addressed in relation to security. Security of a nation, of its citizens, of a community, security to be achieved through the militarisation of borders, security from irregular entries of individuals. Security as a concept that seems to be curiously oblivious of health, that is rarely equated to safety of a person from the harm and risk deriving from any form of disease, that does not seem to envision as key priorities the protection of the bodies and minds of individuals, the wellbeing of their communities, the reduction of health vulnerability factors. Migration is also a phenomenon made of people on the move where however the person often disappears from the narrative it is described by: public discourse places much emphasis on the movement itself rather than on the people and their wellbeing to be cared for.

Research objectives

In such a context, the present research project foresees to engage with an analysis of the legislative and policy framework impacting on people on the move's wellbeing and right to healthcare, their entitlement to social protection and labour guarantees.

The research will firstly conduct a legal and policy analysis at the international, regional, and national level to:

- a. review and assess the global legislative and policy framework where RECs and nations operate and the alignment of their domestication efforts with international instruments;
- b. review and assess the regional framework of reference, considering both a geographical and economic unions' and communities' scope (main area of interest: Europe and the European Union; in alternative e.g., Africa and the African Union, including UMA, COMESA, CEN-SAD, EAC, ECCAS, ECOWAS, IGAD, SADC) and the conformity with international instruments;
- c. review and assess the national legislative and policy framework of the state(s) taken under detailed examination and the conformity of the instruments implemented therein with international and regional instruments.

The analysis will focus on the use of inclusive or non-inclusive language by the instruments considered in terms of rights holders, focusing on whether provisions on right to health, right to social protection and labour rights exclusively refer to nationals of the ratifying/implementing states or whether they do cover non-nationals and, if applicable, what groups of non-nationals. Relevant jurisprudence from international, regional and national courts and committees will also be considered, as well as, where relevant, the extraterritorial application of human rights enshrined in treaty provisions. The assessment will further enquire as to health and social protection schemes in place to address conditions of specific vulnerable groups such as unaccompanied minors, whether or not in transit, irregular migrants, as well as possible and identified victims of violence, of trafficking in persons (TIP) and of smuggling of migrants (SOM) among asylum seekers. Objective of the comparative analysis will

be to identify and flag possible discrepancies and grey areas in the overall framework of reference, with a view to render the exercise as useful as possible to professionals working in the field as well as law and policy makers.

Once outlined the legal and policy context in which people on the move across borders are to exercise their rights, the research will proceed in analysing the effective enjoyment of such rights. At this stage, the project envisions interactive and direct contact with entities and facilities responsible for the provision of healthcare to people in transit and their host communities, such as emergency rooms, public or private hospitals and clinics, mobile centres, NGOs-run medical centres, as well as makeshift settlements inhabited mainly by exploited seasonal workers, temporary settlements, reception or transit centres, etc. Issues relevant to the individuals' enjoyment of their rights will be enquired, such as, for instance: difficulties deriving from language barriers and cultural differences, not only impacting on essential communication but also on a person's mental and physical health; the individuals' right to information; the individuals' right to access and obtain services and care within a reasonable time; discriminations and any factor directly or indirectly determining or exacerbating inequalities; conditions and standards of living, presence of functioning infrastructures, etc. Objective of the field study will be to: a) effectively assess the practical consequences of the gaps identified during the legal and policy framework assessment, and b) assess any inadequacy of a system that, if seamlessly functioning on paper, may in practice not be adequate and operational directly on the territory. Leading characters of the research will thus be people in transit themselves, host communities and professionals in the field, whose experiences in terms of healthcare access and protection are to inform and lead the design and establishment of an inclusive and effective system.

Methodology

The project will be conducted adopting a knowledge-based and multi-disciplinary approach; it will combine comparative legal and policy research with the study of the phenomenon directly in the field with the intent to assess the effective nature and role of law and policy in society and their impact on individuals. It will comprise of a period of desk research as well as one of primary data collection from first-hand sources. Elements of law and economics will be applied to assess legal and policy framework's efficiency and impacts.

Expected results

The research is expected to produce a detailed and useful analysis of the legal and policy framework impacting on the health of people in transit and on cross-border mobility within society at large, with a view to identify positive and negative aspects characterising the matter and inform on the reality on the ground and the conditions for the enjoyment of individual rights in contexts of interaction between people on the move and host communities. It will aim at providing not only with an in-depth assessment of the context in which migrants may exercise their right to health, social and labour protection, but also on how such exercise of their rights or the lack thereof impacts on regional economic communities' and nations' welfare of all people, and as such an inclusive approach to healthcare and social protection shall be privileged.

Research in a three-year period

During the first year of research, the project will be developing at an early stage, defining its scope and objectives. It will be drawing inspiration from the courses attended and will seek to apply the appropriate interpretative tools and methods learned to the subject matter of the research, focusing on people on the move's enjoyment of their right to health and social protection and their interactions with host communities. Seminars, conventions, workshops and roundtables will be attended to acquire the latest information and controversies of the migration, reception and health system in

place in Italy and Europe. It will delineate the regional and national areas of interest to be investigated, at the moment identified, at the regional level, as the legal and policy framework currently in place in Europe and the European Union, and at the national level, as Mediterranean and transit countries of persons flowing from the Middle East and North Africa (MENA) as well as the Sahel and Sub Saharan regions. During the second year of research, the project, at this stage defined in its scope and objectives, will further engage with both of its core phases: a desk review to assess the international, regional and national legal and policy framework under analysis and a period(s) of primary data collection in healthcare related institutions providing services to migrants and the communities hosting them. Such phases will be conducted partially in Italy and partially abroad at a foreign university, institution or entity engaging with the dynamics of health and migration in today's globalised society. The third year will be dedicated to finalising the research and complete the thesis drafting, as well as beginning to engage with the dissemination and publication of findings.

Bibliography

Bernd Rechel, Philipa Mladovsky, Walter Devillé, Barbara Rijks, Roumyana Petrova-Benedict, Martin McKee (eds.), *Migration and Health in the European Union* (Open University Press, 2011)

Convention on the Elimination of All Forms of Discrimination against Women (1979)

Convention on the Reduction of Statelessness (1961)

Convention on the Rights of Persons with Disabilities (2006)

Convention on the Rights of the Child (1990)

Convention relating to the Status of Refugees (1951)

Convention Relating to the Status of Stateless Persons (1954)

Dawn Watkins and Mandy Burton (eds.), *Research Methods in Law* (Routledge, 2013)

Fons Coomans, *Application of International Covenant on Economic, Social and Cultural Rights in the Framework of International Organisations*, A. von Bogdandy and R. Wolfrum (eds.), *Max Planck Yearbook of United Nations Law*, Volume 11, 2007, p. 359-390 (2007 Koninklijke Brill N.V. Printed in The Netherlands).

International Convention on the Elimination of All Forms of Racial Discrimination (1969)

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

International Covenant on Economic, Social and Cultural Rights (1976)

International Labour Organization, *Declaration on Fundamental Principles and Rights at Work* (1998)

International Labour Organization, *No. 100: Equal Remuneration Convention* (1951)

International Labour Organization, *No. 102: Social Security (Minimum Standards) Convention* (1952)

International Labour Organization, *No. 105: Abolition of Forced Labour Convention* (1957)

International Labour Organization, *No. 111: Discrimination (Employment and Occupation) Convention* (1958)

International Labour Organization, *No. 118: Equality of Treatment (Social Security) Convention* (1962)

International Labour Organization, *No. 130: Medical Care and Sickness Benefits Convention* (1969)

International Labour Organization, *No. 143: Migrant Workers Convention* (1975)

International Labour Organization, *No. 155: Occupational Health and Safety Convention* (1981)

International Labour Organization, *No. 157: Maintenance of Social Security Rights Convention* (1982)

International Labour Organization, *No. 183 Maternity Protection Convention* (2000)

International Labour Organization, *No. 29: Forced Labour Convention* (1939)

International Labour Organization, *No. 97: Migration for Employment Convention (revised)* (1949)

International Organization for Migration, *Healthy migrants in healthy communities: promoting and delivery quality health care for migrants and host communities* (IOM information sheet, 2017)

Joint United Nations Programme on HIV/AIDS, *HIV and social protection assessment tool: Generating evidence for policy and action on HIV and social protection* (UNAIDS, 2017)

Joint United Nations Programme on HIV/AIDS, *Social protection: a Fast-Track commitment to end AIDS – Guidance for policy-makers, and people living with, at risk of or affected by HIV* (UNAIDS 2018)

Joint United Nations Programme on HIV/AIDS, *Social protection: advancing the response to HIV* (UNAIDS, 2015)

Marko Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford University Press, 2011)

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)

Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (2002)

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000)

Protocol relating to the Status of Refugees (1967)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)

United Nations General Assembly, *2030 Agenda for Sustainable Development (A/RES/70/1, 21 October 2015)*

Universal Declaration of Human Rights (1948)

World Health Organization, *International Health Regulations (2005) – Toolkit for implementation in national legislation: the National IHR Focal Point* (WHO/HSE/IHR/2009.4, January 2009)

World Health Organization, *International Health Regulations (2005) – Toolkit for implementation in national legislation: Questions and answers, legislative reference and assessment tool and examples of national legislation* (WHO/HSE/IHR/2009.3, January 2009)