



Author-meets-readers: *Irregular Migrants and the Right to Health* by Stefano Angeleri

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ABSTRACT

On 16 May 2023, the launch of Dr Stefano Angeleri's book, *Irregular Migrants and the Right to Health*,¹ in which we all participated, developed into an enriching discussion on the need to challenge a restrictive and selective human rights approach to the health of migrant populations. On that occasion, we came up with the idea of drafting a short 'author-meets-readers' piece which is a format that allows a more dynamic engagement than a book review, helping to demonstrate not just the quality of a book being published but also the different responses to it and how they prompt ideas for future research. Therefore, the structure of this review is as follows: the first three sections feature critical feedback on the book's topical issues from Professor Felipe González Morales, Dr Claire Lougarre and Dr Sarah Craig respectively. In the fourth section, Dr Angeleri provides a brief engagement with these perspectives.

* Professor González served as the UN Special Rapporteur on the Human Rights of Migrants from 2017 to 2023.

1 S Angeleri, *Irregular Migrants and the Right to Health* (Cambridge University Press 2022).

A HUMAN RIGHTS-BASED CALL FOR CHANGING THE TUNE AND TRULY PROTECTING MIGRANT RIGHTS

Felipe González Morales

As the United Nations (UN) Special Rapporteur on the human rights of migrants from 2017 and 2023, I witnessed firsthand how state regulations and practices often fall short of aligning with international standards when addressing the health of irregular migrants. Angeleri's book compellingly underscores another critical dimension: stark disparities in how international human rights bodies interpret the scope of the right to health of irregular or undocumented migrants, revealing a fragmented and inconsistent approach that demands urgent attention. The restrictive stance adopted by certain human rights tribunals often fails to consider the myriad factors that compel many individuals to remain in an irregular migratory status. These include the *insufficiency of current regular pathways to migrate*, *limited availability of regularisation schemes* in most countries and *undue limitations on the right to seek asylum*, all fuelled by the invocation of state sovereignty disguising discriminatory approaches when adopting migration policies.

One of the main purposes of the six-year-old Global Compact for Safe, Orderly and Regular Migration was precisely to enhance such pathways for regular migration.² However, many would agree that its impact in this regard has been a limited one, with some countries even experiencing a regression on this matter by enacting stronger barriers to migration.

As for the availability of schemes that allow irregular migrants to regularise their status and obtain a residence permit, though some countries have recently adopted such measures, they are rather the exception than the rule. As pointed out in one of my recent reports to the UN Human Rights Council, this perpetuates irregularity of status for thousands and sometimes millions of migrants, preventing them from enjoying full-fledged human rights, including the right to health.³ Another ongoing trend affecting the rights of people on the move is that the right to seek asylum has been constrained in many countries, in violation of the 1951 Refugee Convention. These restrictions include banning entrance to the country to request asylum or raising the standard for being granted asylum in excess of international

2 Global Compact for Safe, Orderly and Regular Migration (19 December 2018) UNGA Res 73/195.

3 Felipe González Morales, 'Report of the Special Rapporteur on the human rights of migrants (focus: how to expand and diversify regularization mechanisms and programmes to enhance the protection of the human rights of migrants)' (2023) A/HRC/53/26.

regulations.⁴ The net result of this practice is that thousands of asylum-seekers *are pushed into irregular migrant status*, leading to precarious or impaired enjoyment of human rights.

The restrictive regulations described in this book highlight a weakened international law, often failing to reconcile sovereignty with human rights in the context of migrant health. While democratic nations rarely invoke their sovereignty to limit human rights, they frequently do so regarding migration, sometimes assimilating the entrance of migrants and asylum-seekers to a military invasion. This approach severely undermines migrants' rights, leading to harsh migration policies and to irregular migrants being criminalised, stigmatised and left indefinitely in the shadow.

Over the past two decades, many scholars have explored this overall subject, chapter 1 of this book stands out for its concise yet insightful analysis of the complex normative tension between sovereignty and migrant rights, offering a sharp review of how different rights frameworks have grappled with this enduring challenge. To tackle restrictive approaches, the book then refers to the equity-based concept of vulnerability (or we should say *vulnerabilities*) as a key normative tool to interpret existing international instruments and determine an expanding scope of the right to health for this group (and subgroups) of people. In all substantive chapters, inside and outside the context of migration control, the author places at the forefront the existence of a too wide protection gap between the UN human rights system and procedures – with empowering anti-discrimination and public health arguments – and the European system – where access to healthcare is guaranteed as a matter of other fundamental rights and considerations, and which, in any case, remains exceptional for irregular migrants. While this treatise of migrant health rights is rigorous and systematic, it would have, however, benefited from a greater focus on the cutting-edge jurisprudence of the Inter-American human rights system. Within this framework, vulnerability, non-discrimination, the international *corpus juris* and a pro-persona approach have led to the development of highly protective standards that can bridge the protection gap between civil rights and social rights for the most disadvantaged populations, including migrants.⁵

4 Eg National Immigrant Justice Center, 'New Biden Executive Action Further Eviscerates the Right to Seek Asylum: Frequently Asked Questions about the Latest Anti-immigrant Policy' *NIJC Commentary* (5 June 2024); Colin Yeo, 'The new, higher standard of proof doesn't apply to human rights claims', *Free Movement Asylum Hub* (18 June 2024).

5 Armin von Bogdandy et al (eds), *The Impact of the Inter-American Human Rights System: Transformations on the Ground* (Oxford University Press 2024).

Angeleri's work offers valuable insights into the intersection between health rights and migration, blending legal analysis with interdisciplinary approaches. It should serve as a crucial foundation for further discussions on the limitations of the jurisprudence of the European human rights system in this field, thus fostering more inclusive and effective supranational legal orders.

MIGRATION, GENDER AND THE RIGHT TO HEALTH

Claire Lougarre

Building on the arguments put forward by Professor González above, I would add that this book invites readers to ponder upon the tensions between human rights legal theory and states' practice. Whilst various scholars have discussed migrants' health in their work,⁶ few have done so through the lens of the human right to health, and even fewer by focusing on undocumented migrants,⁷ with most recent contributions crystallised in short journal articles. This book, therefore, provides substantial ground for discussions. It also represents a timely contribution to the literature: economic crises such as the 2007 Great Recession and the 2020 Covid-19 pandemic have polarised debates on migration and social welfare and created real challenges for key human rights principles such as that of non-discrimination.

The disconnect between the purpose of human rights law (dignity for all) and the tolerance of states' practices protecting undocumented migrants' right to health to a lesser level than the rest of their populations is significant in the context of *gender*. As summarised by the International Organization for Migration:

Gender is a significant factor shaping every aspect of human mobility – from the decision to migrate, transiting across borders, to settling in the country of destination, or choosing to return home. Access to services, the labour market or other opportunities and benefits depend on migrants' gender too.⁸

When analysing the relationship between gender and undocumented migrants' right to health, two issues are particularly worth noting.

6 Eg H Legido-Quigley et al, 'Healthcare is not universal if undocumented migrants are excluded' (2019) 366 *British Medical Journal* l4160; or N Sahraoui, *Borders across Healthcare: Moral Economies of Healthcare and Migration in Europe* (Berghahn Books 2020).

7 Eg A C Vargas, C Quagliariello and L Ferrero, *Embodying Borders: A Migrant's Right to Health, Universal Rights and Local Policies* (Berghahn Books 2021); P Pace, *International Migration Law N°19 – Migration and the Right to Health: A Review of International Law* (International Organization for Migration 2015).

8 International Organization for Migration, Thematic brief – women and girls on the move: a snapshot of available evidence (IOM Issue NR 2, March 2023).

Firstly, adequate access to sexual and reproductive health services being at the heart of gender equality in health, human rights law recognises states' obligation to provide such services to undocumented migrants, specifically women, girls and transgender persons.⁹ However, undocumented migrants' first-hand experience is often different, as noted by Bouaddi and colleagues: restricted access to sexual and reproductive health services, interrupted care or negative interactions with health staff, as well as gender-based violence, all result in adverse health outcomes.¹⁰ Secondly, gender also impacts undocumented migrants' ability to access healthcare, especially for domestic workers, the overwhelming majority of whom are women. As recognised by human rights law, domestic work does not always result in documented migration status and, therefore, prevents individuals from obtaining health insurance and from seeking healthcare through fear of deportation.¹¹ However, states often leave domestic workers at the margin of labour law,¹² thereby failing to monitor and redress their precarious living conditions, as well as ensure their access to healthcare. These situations are aggravated by the lack of a clear stance against discrimination on the ground of migration status in human rights law, as argued by Angeleri, since some treaties allow differential treatments based on citizenship (despite them failing to echo human rights standards such as non-discrimination or proportionality or international rules of treaty interpretation, I would argue).

To conclude, human rights law acknowledges the need to further protect undocumented migrants' rights and the significant impact of gender on the realisation of their right to health. Nevertheless, human rights bodies should clarify their stance regarding differential treatments based on citizenship and legal status; to encourage more firmly states to monitor and improve the often-poor levels of health observed among undocumented migrants. Without sufficient political and legal will, the gap will not be bridged, including and perhaps especially in the context of gender.

9 UN Committee on Economic, Social and Cultural Rights, 'General Comment No 22 on the right to sexual and reproductive health' (2016) UN Doc E/C.12/GC/22.

10 O Bouaddi, S Zbiri and Z Belrhiti, 'Interventions to improve migrants' access to sexual and reproductive health services: a scoping review' (2023) 8(6) *BMJ Global Health* e011981. See also Y Y B Chen, 'International migrants' right to sexual and reproductive health care' (2022) 157(1) *International Journal of Gynaecology and Obstetrics* 210–215.

11 UN Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, 'General Comment No 1 on Migrant Domestic Workers' (2011) UN Doc CMW/C/GC/1.

12 V Mantouvalou, *Structural Injustice and Workers' Rights* (Oxford University Press 2023).

EU MIGRATION AND REFUGEE POLICY: MULTIFACETED POLICY AND PROTECTION GAPS?

Sarah Craig

At the very heart of this book is a critical and timely reflection on the inherent hurdles those with a lived experience of migration face on a daily basis. The synergies to discussions within this book are apparent across many facets of migration and refugee law, not least the questions of *solidarity*, *protection shortcomings* and *policy coherence* within the European Union (EU) framework of the Common European Asylum System (CEAS). These questions continue to be pivotal in light of the new legislative and non-legislative measures contained within the new EU Pact on Migration. Arguably, the above concerns are still ongoing with protection framed or pitted against the EU's migration management objective without recognising the repeated human rights violations and human costs often involved.¹³

Taking a lead from a core point raised by the author early in the book concerning the 'selective approaches'¹⁴ to human rights, this resonates clearly with broader questions of solidarity¹⁵ and protection gaps within the EU protection framework. As mentioned by González above, as access to asylum becomes more stringent and progressively delimited, there is unfortunately a stark divide between those able to benefit from protection and those outside the remit. It is clear that nuanced and reflective questions need to be asked of whether current legislative frameworks, and policy responses, are currently capable of working in a manner which truly meets protection needs. The structural hurdles and multidimensional tensions for human rights law to normatively shape the field of irregular migration and health, which Angeleri succinctly outlines, are similarly true when discussing solidarity and protection deficits for persons seeking international protection. With asylum responsibilities disproportionately shared between EU member states, the human cost is inevitably borne by asylum seekers themselves who are often considered *transferable* by the legislation and politicians alike.¹⁶ The pervading state sovereignty

13 S Peers, 'The new EU asylum laws: taking rights half-seriously' (2024) Yearbook of European Law 1–71 (advanced online copy).

14 Angeleri (n 1 above) 2.

15 For detailed discussions on solidarity within the EU CEAS, see V Moreno-Lax, 'Solidarity's reach: meaning, dimensions, and implications for EU (external) asylum policy' (2017) 24(5) Maastricht Journal of European and Comparative Law 740–762.

16 It must be noted this is not solely an EU issue either. The post-Brexit policy of the United Kingdom (UK) remains particularly troubling and further strains any hope of humane policies for those seeking international protection.

issues, which Angeleri notes of particular concern insofar as arguing that European human rights law jurisprudence is ‘somewhat deferential to States’,¹⁷ are also present, if not considerably heightened, within the EU CEAS arena. Inevitably, state interests and selective participation by states¹⁸ all too often take precedence over the human dignity and the lives of those who are forced to seek asylum. As such, it is worth reinforcing the multidimensional vulnerabilities, inclusive of health concerns, and precarious status of those *within* the formal protection space, specifically, seeking international protection insofar as the structural process of seeking asylum can also create vulnerability.¹⁹

Similar concerns surrounding the global apprehension of migratory healthcare policies are replicated more broadly when considered in light of solidarity tensions whereby the EU and member states continue to effectively thwart meaningful protection through policies of deterrence, shifting protection responsibilities both internally and externally and routine rights-based violations of refugees and asylum seekers.²⁰ The migration process itself, at various stages, exposes and can compound migrants to significant health risks, such as stringent border control policies and detention practices.²¹ As the protection space is becoming increasingly fragmented, policy coherence is therefore pivotal insofar as ensuring the implementation of policy and legislative measures do not compound vulnerabilities further. In a similar vein to discussions above on solidarity, a comparable argument can be made that dignified, equitable and cohesive responses can in turn aid the health landscape of the communities where migrants are predominantly situated. It reinforces the principled stance that migrant health cannot and should not be dealt with in an isolationist approach nor as an afterthought, with the book laying the groundwork for contesting these policies.

17 Angeleri (n 1 above) 265.

18 See E L Tsourdi, ‘Solidarity at work? The prevalence of emergency-driven solidarity in the administrative governance of the Common European Asylum System’ (2017) 24(5) *Maastricht Journal of European and Comparative Law* 667–686.

19 For a critical discussion on the approach of the CEAS framework on vulnerabilities within asylum procedures, see C Costello and E Hancox, ‘The recast Asylum Procedures Directive 2013/31/EU: caught between the stereotypes of the abusive asylum seeker and the vulnerable refugee’ in V Chetail, P De Bruycker and F Maïani (eds), *Reforming the Common European Asylum System: The New European Refugee Law* (Brill Nijhoff 2016) 375–445.

20 See V Moreno-Lax, *Accessing Asylum in Europe: Extraterritorial Border Controls and Refugee Rights under EU Law* (Oxford University Press 2017) which traces the numerous ways in which the EU regulates its borders.

21 See J Smith, ‘Human rights and health failures in immigration detention exemplify the UK’s hostile environment’ (*RLI Blog* 12 December 2022) for recent discussions on the UK.

The work within this book encapsulates the synergies between migrant human rights and public health principles. However, the layered protection gaps and troubling state practices, which are the inherent trend across the book, have also been noted in many intersections of themes by the discussants. As such, it is a timely reminder of the need for advocating for a rights-based, meaningful and dignified protection landscape for migrants and the need for interdisciplinary voices to highlight the myriad of intersecting protection gaps.

A LAW BOOK FOR TRANSFORMATIVE ACTION

Stefano Angeleri

I am deeply grateful to the three outstanding colleagues who have so generously engaged in this conversation. Your insightful and critical reflections offer me the opportunity to further consider the imperative of uniting efforts to address the complex health and displacement challenges well beyond the scope of this book.

Overall, my aim was to systematise international and European human rights law on this critical topic, drawing from perspectives from public health and disability studies. By doing so, I sought to identify several legal consistency and protection gaps, with the hope that this work could serve as a foundation for broader, interdisciplinary dialogue and action. I agree with Professor González that there is a lot to be gleaned from Inter-American human rights law which, by adopting a very strict approach to the principle of non-discrimination on the ground of migrant status²² and incorporating progressive UN human rights law in the regional interpretation of health rights,²³ boldly stated:

Every migrant has the right to enjoyment of the highest attainable standard of physical and mental health and to the underlying determinants of health ... regardless of migration status or origin, (and) has the right to receive the same health care as nationals ...²⁴

However, to avoid overly broad conclusions across varying contexts and continents, this book juxtaposes UN human rights standards – progressive, yet requiring greater internal coherence and

22 *Juridical Condition and Rights of the Undocumented Migrants*, Advisory Opinion OC-18, IACtHR Series A no 18 (17 September 2003) paras 112–114.

23 *Poblete Vilches et al v Chile* (IACtHR 2018) Series C No 349, paras 111–117.

24 IACmHR, *Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking* (IACmHR) Res 04/19, 7 December 2019, para 35.

systematization – with the European standards – more conservative and landlocked, but generally consistent in this area. Dr Lougarre identifies salient points on gender as a structural driver of inequality, intricately linked with exploitative employment conditions and irregular migratory status. In the book, I explored the urgency of tackling these and other factors of discrimination, precariousness and vulnerability affecting undocumented individuals through the public health framework of *social determinants of health* (SDH). This paradigm underscores how the best attainable standard of health – both individual and collective – emerges from the interplay between structural forces and living conditions²⁵ that human rights law should contribute to addressing. By integrating SDH principles into human rights law, we gain a valuable lens for fostering what Dr Craig describes as ‘policy coherence’ around health, migration and refugee protection. I reckon mobility and human rights challenges demand intersectoral, right-based and inclusive policies (and other state and non-state measures) to address the diverse health vulnerabilities of migrants, asylum seekers, refugees and their subcategories. In essence, this book calls for interdisciplinary efforts to transcend narrow interpretations of human rights law, advancing research and possibly benefiting advocacy and community empowerment through human rights literacy.²⁶ It challenges structural discrimination and normalised forms of ‘precarious inclusion’,²⁷ urging the legal field to confront the realities of a mobile world shaped by shrinking social budgets, growing inequalities, escalating xenophobia and the weaponisation of political othering.

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- 25 World Health Organization – Commission on Social Determinants of Health, *Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health: Final Report of the Commission on Social Determinants of Health* (World Health Organization 2008); M Marmot et al, ‘Fair society, healthy lives: the Marmot Review’ (Department for International Development 2010) 104.
- 26 S Angeleri and T Murphy, ‘Parsing human rights, promoting health equity: reflections on Colombia’s response to Venezuelan migration’ (2023) 31(2) *Medical Law Review* 1–18; Margaret Satterthwaite, ‘Critical legal empowerment for human rights’ in G de Búrca (ed), *Legal Mobilization for Human Rights* (Oxford University Press 2022).
- 27 M A Karlsen, *Migration Control and Access to Welfare: The Precarious Inclusion of Irregular Migrants in Norway* (Routledge 2021).