Health rights in the post-2015 development agenda: including non-nationals

Claire E Brolan,[a] Stéphanie Dagron,[b] Lisa Forman,[c] Rachel Hammonds,[d] Laila Abdul Latif[e] & Attiya Waris[e]

With the approach of the September 2013 meeting of the United Nations General Assembly on the post-2015 Development Agenda, the health and intersectoral development goals have become the subject of considerable debate. Little of this debate has to do, however, with how the "right to the highest attainable standard of health" applies to non-nationals – i.e. people who live in a country without being its citizens and hence without access to health system benefits. The right to health obligates governments to facilitate access to health care to non-nationals and nationals alike. This is not simply a matter of human rights: it is a global development imperative.

Today there are 214 million international migrants – far more than ever recorded – and millions more are experiencing forced migration and displacement.[1,2] This massive movement of people across borders is linked to factors such as globalization, climate change, poverty, poor governance, conflict, education, economics, labour trends, transportation and technology.[3,4] Further intensification of this trend is forecast: By 2050, the number of migrants could reach 405 million – with 25 million to 1 billion of them projected to be "environmental migrants".[5] These figures are offset by the predicted increase in the world's population to at least 8.92 billion by 2050.[6]

Unprecedented numbers of non-nationals – with varying legal status – pose challenges to low- and high-resource states' responsibilities, resources, distributive justice mechanisms and long-standing Westphalian systems and structures. The large demographic influence that cross-border movement will have in shaping tomorrow's world is noted in key post-2015 reports.[7,8] Awareness of this influence is reflected in the High-Level Panel of Eminent Person's post-2015 transformative agenda of "leaving no one behind" and in the United Nations Secretary-General's call for "a life of dignity for all".[7,9]

Ensuring that governments apply new development goals and targets to all, including non-nationals, who are often the most vulnerable and marginalized social group, is an overriding challenge. Most countries regularly exclude non-nationals from the protection afforded by right-to-health laws, yet under international law, countries are required to protect the right to health of all people within their borders and to fulfil minimum core obligations vis-à-vis basic primary health care, essential medicines, and non-discriminatory access to health facilities, goods and services. However, the *de facto* reality is very different, as exemplified by Australia's limiting of tuberculosis treatment for Papuans along its Queensland border;[10] Spain's exclusion of undocumented migrants from testing and treatment for human immunodeficiency virus infection;[11] and Kenya's High Court decision that the right-to-health "law" in the nation's Constitution is a matter of policy for its nationals only.[12]

The denial of preventive and curative care is frequently tied to policies regulating cross-border movement.[11] Underlying statist traditions – health as security and foreign policy "metaphors"[13] and anti-immigrant policies – abound, mixed with global financial crisis shockwaves. Escalating unemployment and nations' fiscal tightening, including downsizing of the health workforce, are pressing concerns rendering the extension of health-care entitlements to non-nationals of little interest to governments keen on securing the popular vote. This is especially so when electorates question the "universal" nature of their state's "universal" health-care coverage – or want to see it implemented more effectively. There are other aspects to be considered: what type of services would be available to non-nationals; who would be eligible; how would service implementation be measured; and, most importantly, who would pay.

On a positive note, several countries in varying stages of development are extending social protection, including health-care benefits, to non-nationals. Thailand is a notable example.[14] Partnering with health economists to show that such a measure can be beneficial in terms of equitable national development might be a way forward.

High-level rhetoric around population dynamics in the post-2015 agenda is welcome, for the global community cannot continue to ignore the in-country inequities related to present and future large-scale human movement. As right-to-health lawyers, we submit that the discourse surrounding the post-2015 development agenda must progress to expressly include non-nationals. Realizing global goals for all rather than some will arguably be a truly transformative, paradigm shift. However, key issues pertaining to citizenship, population dynamics and interrelated health and human rights are likely to remain the elephant in the room in this iteration of global policy-making. ■

Funding and References

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[a] School of Population Health, The University of Queensland, Herston Road, Herston, QLD 4006, Australia.
[b] Faculty of Law, University of Zurich, Zurich, Switzerland.
[c] Dalla Lana School of Public Health, University of Toronto, Toronto, Canada.
[d] Institute of Tropical Medicine, Antwerp, Belgium.
[e] Department of Commercial Law, University of Nairobi, Nairobi, Kenya.
Correspondence to Claire E Brolan (e-mail: c.brolan@uq.edu.au).

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