



## Immigration and International Human Rights Law: Mutually Exclusive or Overlapping Issues?

Professor Urfan Khaliq, Module Convenor for International Protection of Human Rights

This blog seeks to highlight some often overlooked connections between migration and human rights; a very current issue. Before examining the matter in the contemporary context, however, it is worth taking a 'long view'. If we look back over time, it is obvious that human beings have always migrated. The first homo sapiens lived in Africa but humans now occupy – with the possible exception of Antarctica - all parts of the globe on a permanent basis. The aftermath of conflict, the search for sustenance, escaping from natural disasters and also quite simply a better life, among other reasons, all mean that humans have always moved and will continue to do so. This is notwithstanding the creation of modern nation States which have stemmed such movements to a greater or lesser extent. States, of course, are artificial legal abstracts and boundaries have routinely been drawn at the whim of a cartographer's pencil often with little reference to the realities on the ground, historical practice and the needs of the local population. The Bedouin of the Arabian peninsula, for example, have had a nomadic lifestyle for millennia and still seek to reach oasis and grazing lands across borders which are less than a century old. Mass movements of populations across sea and land are often discussed as being a recent phenomenon but are not.

The subjugation and subsequent settling of the Americas by Europeans is a good example of the above; one which also involved the forcible movement of millions of Africans as slaves across the Atlantic so as to provide a cheap and almost endless labour supply for those territories.

Concerns about those who migrate are not new either. In the 13<sup>th</sup> Century, King Edward I, expelled all Jews from England – a community who had arrived around two hundred years earlier. Although the precise reasons for their expulsion is debated, there is little doubt there was resentment against Jews from the local and more established populations. Several hundred years later, the Aliens Act, 1905 – the first piece of immigration law anywhere in the world – was introduced by the British Parliament to stem the flow of persons from Europe but in particular Jewish immigrants who sought sanctuary from persecution in Central and Eastern Europe. There is now no nation State in the world that does not impose immigration restrictions and controls on who can enter and leave it.



Competition over scarce resources, issues of perceived fairness in treatment, as well as suspicion of the 'other' – be it their language, culture, religion, cuisine or ethnicity are often at the heart of tensions between more established communities and those more relatively recently arrived. This suspicion and dislike of the 'other' can currently be seen clearly in numerous countries. To take three examples. The current Republican candidate for President in the USA, Donald Trump, seeks to blame

much of the ills and crimes in the USA on those who have come from Mexico; hence he seeks to build a wall to keep them out. Equally he wishes to impose a ban on all 'Muslims' from entering the USA. In Britain, the 2016 vote about future membership of the European Union became for many about the fact that they felt there had been too much immigration.

A nationwide discussion about membership of an 'economic and political union' became about 'others' and by a slim majority the United Kingdom voted to leave the EU. In Pakistan, there has long been a debate about Afghani refugees and their return to Afghanistan now that the US led invasion of that country is over. Many Afghans and their families, however, have been in Pakistan for over 30 years since the Soviet Union invaded Afghanistan at the very end of the 1970s. They are far from the source of many problems afflicting that country but are a convenient scapegoat. So the quite legitimate question is how is all this related to human rights issues? Well, in numerous respects.

First, immigrants are entitled to certain human rights (notably some civil and political rights) simply by being within the 'territory' of a State which is party to a human rights treaty. It goes without saying that they cannot be tortured or held in slavery for any reason. Further, an immigrant cannot be denied their right to private life or their right to a fair trial simply on account of being an immigrant – although such rights can be limited for other reasons. Economic and social rights under human rights treaties are more problematic in this regard and rights to housing, education and social welfare, for example, need not be extended (indeed they often are not) to migrants in the same way they are extended to nationals. International law generally and international human rights law more specifically by and large permit discrimination on the basis of nationality. If they did not, States could not limit entry to the nationals of other States or provide visa-waivers for nationals of some States but not others.

Second, migrants are protected by the International Convention on the Protection of the Rights of Migrant Workers. This 1990 Convention seeks to specifically protect those who migrate for economic reasons and to work but not with a view to settling permanently in the host State. It is not a Convention we cover on the module but it is worth knowing it exists. If one considers the terrible conditions of South Asian labourers working in the construction industries in many Gulf States, it is clear that migrant workers desperately need the effective protection of such rights and the Convention seeks to protect these workers among many others.

Thirdly, (im)migrants and their descendants have the right not to be discriminated against solely on the basis of their race or ethnicity; this is distinct from nationality. This is covered by almost all human rights treaties with regard to the protection of rights contained in those treaties but also more specifically by the 1965 Race Convention. The 1965 Convention covers discrimination against, for example, those of African–American origin in the USA as well as those of Polish descent in the United Kingdom, where the unfavourable treatment is due to their race or ethnicity.

Finally, there are those who migrate from one State to another to escape persecution. Such persons can be protected under the 1951 Geneva Convention (or its 1967 Protocol). The 1951 Convention scheme is, however, rather narrow in terms of the grounds and criteria that must be satisfied. Those who seek to escape persecution are entitled to certain rights while their status is determined and are entitled to remain in the host state during that time. This has led to some of those who seek to circumvent immigration controls to claim refugee status. This in turn has led to a fairly widespread and troubling discrediting of the 1951 Convention in the eyes of many politicians, in particularly in developed States. Thus those who legitimately seek refuge are often very unfairly considered economic migrants seeking to circumvent immigration controls.



All of the issues above are linked and the issues as old as time immemorial. Immigration is a reflection of human necessity but at the same time an issue that continues to be contentious in all States.

Immigrants when in States of which they are not nationals have rights in those States but it is a complex web of which rights protect them and when. Considering and reflecting upon such connections not only improves our understanding of human rights law but also highlights its

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