

## Are human rights for migrants?

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Book review by Sally Ramage

The eleven chapters in this 233-page book have been written by *Upendra Baxi*, emeritus professor of law at Warwick University; *Linda Bosniak*, professor of law at Rutgers University School of Law; *Galina Cornelisse* of VU University, Amsterdam; *Daniela DeBono*, University of Sussex; *Marie Dombour*, professor of law and anthropology at the University of Sussex; *Tobias Kelly*, senior lecturer in social anthropology at the University of Edinburgh; *Stefanie Grant*, visiting research fellow at University of Sussex; *Marie Martin*, MA in migration studies; *Christina Rodriguez*, professor of law at New York University School of Law, and *Ruth Rubio-Marin*, professor of comparative public law at the European University Institute. This group of academics across subjects is a good mix for such a book.

The eleven chapters are titled: introduction; the recognition of migrants' rights within the UN human rights system; irregular migration and frontier deaths; the constitutional status of irregular migrants; protection in Spain and the United States; a new articulation of human rights, or why the European Court of Human Rights should think beyond 'Westphalian sovereignty'; the French Calais: transit zone or dead-end; why the detention of irregular migrants is not considered a human rights issue in Malta; human rights and immigration detention in the United Kingdom; the legalisation of human rights and the protection of torture survivors; human Rights within one state; and the struggle for '*sans papiers*' human rights.

Illegal and irregular migrants from the east to the west of the globe do not have any human rights recognised or respected, even though article 2 of the European Convention on Human Rights states that everyone's right to life shall be protected by law and that no-one shall be deprived of his life intentionally except in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law or if life is lost in defence of any person from unlawful violence; in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or because of any lawful taken for the purpose of quelling a riot or insurrection. It is, although not nowadays overtly stated, thought that developed nations comply with international human rights laws and undeveloped nations do not. The media in developed countries, especially, love to publish incidents of genocide in other countries and rightly so, especially of the genocide committed on over six million people by the Nazis during the Second World War. In antiquity, the life of a human being belonged to God. Human life was therefore distinct from political life. (See the 1789 *Declaration des droits de l'homme et du citoyen* at [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr)). The Universal Declaration of Human Rights (UDHR) also sets out the rights that should be enjoyed by everyone, yet, for decades; migrants have been on the margins of human rights law. Rights are attributed to the human being only to the degree to which he is the immediately vanishing presupposition of the citizen. Thus the refugee presents a disquieting element in the nation-state because it there is a break between the identity of the human being and the citizen; between nativity and nationality, bringing the originary fiction of sovereignty to crisis, with few exceptions. The first refugee camps were built in Europe as spaces for controlling refugees. Since then there has been a succession of internment camps; concentration camps; and even extermination camps. It is of note that one of the few rules the Nazis obeyed in their 'final solution' was that Jews and Gypsies could be sent to extermination camps only after being fully denationalized, ie. stripped of even the second-class citizenship they were relegated to after the Nuremberg laws. After being fully denationalized, they were, in Nazi eyes, no longer citizens and that is when they were doomed to death, being no longer truly sacred. In Roman times also, when a person was no longer a citizen, he was doomed to death. However, instead of re-categorizing refugees, the European Union has deemed them illegal immigrants.

## **Economic migration/globalisation**

It is the steady onflow of economic migration, which undermined the refugee regime, forged by international conventions to recognise the rights of individuals, protecting those refugees who were citizens, either by the states which would protect them as if they were citizens or by the international system responsible for the implementation of those universal norms. A third refugee regime has developed, an example being the Schengen Agreement which goes back to the basic principles of modernity, stressing individual rationality, self-reliance and self-determination in resolving the plight of refugees and placing the primary stress on the nation-state as the instrument of modernity with which to deal with such a crisis. Economic globalisation is the main factor and cause for refugees. It is based on a consumer culture that is its driving force where the market is left to redistribute production resources, resulting in manufacturing shifting rapidly to low-wage areas.

In the United Kingdom, where refugees are detained in detention centres, the situation consists of masses of people, including young children, cooped up. This detention is a means of border control, according to the author of chapter 8- Mary Bosworth. Bosworth claims that apart from reports by the NGOs, there is little evidence on the conditions under which people are detained in detention centres. She goes on to demonstrate in this chapter, that although, on paper, the human rights framework applicable in the United Kingdom appears very promising, in reality, the gap between human rights, rhetoric and the actual practice of detention raises serious questions about the usefulness of the human rights apparatus for migrants. Migrants who commit criminal offences and are then convicted and sentenced to imprisonment may find themselves eligible for deportation, and if escaped, might be placed, when found, in removal centres, used for temporary detention, in situations where people have no legal right to be in the UK but have refused to leave voluntarily. It has been discovered that half of the beds in detention centres have been reserved for these ex-prisoners. Irregular migration takes the form of trafficking for prostitution, for cheap labour and for other purposes. A key development in the global response to human trafficking has been the drafting of international and domestic legal instruments. Between January 1999 and October 2000 representatives of states parties and interested NGOs met at the UN Centre for International Crime Prevention in Vienna to negotiate the details of what became the United Nations Protocol to Suppress, Prevent and Punish Trafficking in Persons, Especially Women and Children 2000 (the Palermo Protocol). The Protocol contains the first broadly accepted definition of human trafficking, which can be contrasted with the definition of people smuggling (see Article 3 (a) of the 2000 United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air). In partial fulfilment of its obligations under the Palermo Protocol the United Kingdom's first dedicated anti-trafficking provisions were set out in the Nationality, Immigration and Asylum Act 2002. The relevant provisions in the 2002 Act were replaced by ss. 57-59, Sexual Offences Act 2003, which deal respectively with trafficking into, trafficking within, and trafficking out of the UK for sexual exploitation. All offences are triable either way and on indictment, carry a maximum prison sentence of 14 years. Trafficking for purposes other than sexual exploitation is illegal by the Asylum and Immigration (Treatment of Claimants) Act 2004, which creates a broad offence of trafficking, into, within, or out of the UK, for the purpose of exploitation. The impact of the trafficking legislation is complicated and difficult to interpret and human trafficking continues to be construed as a wide spectrum of behaviours. However, the scale and response to trafficking for sexual exploitation by the police and media has far surpassed the degree of successful prevention strategies or convictions. Media coverage of trafficking of women and children, migration and sex work is often confused and inaccurate. (See Laxmi Murthy and Rajashri Dasgupta, 'Figure it Out: Reporting on trafficking in women', (2009), in *Infoexchange News and Features*, [www.infochangeindia.org](http://www.infochangeindia.org)).

In all, this very serious book, with contributions by legal scholars, discusses a wide range of rights relating to migrants in exclusion zones where there is a gap between the promise of human rights conventions and the reality of discrimination and abjection and morally unacceptable conditions.