

Editorial

# Editorial Special Issue on “Migrants and Human Rights Protections”

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The idea for this Special Issue on ‘Human Rights Protection for Migrants’ was born out of a combination of frustration and scepticism in the face of International Human Rights Law’s enduring struggles to extend protections to non-nationals, but also out of hope in the light of (some) human rights bodies’ attempts to carve out ‘protective spaces’ for migrants against the backdrop of hostile migration laws and policies across the globe.

International migration is a universal and fundamentally human phenomenon. Yet, laws and policies worldwide increasingly construe migration and migrants as an ‘anomaly’ and a threat to the nation-state and the national community. Against this backdrop, International Human Rights Law, with its universal premise, is commonly perceived as the last rampart against the acute problematising of migration and the ensuing dehumanisation of migrants. However, it is well established that one’s position vis à vis the nation state— one’s legal status—continues to matter for human rights protection, and that immigration status constrains human rights protection, especially in the case of ‘unwanted migrants’. For example, Lingaas points out how Norway’s migration laws trump protection for male migrant victims of forced labour there (Lingaas 2022). Similarly, albeit in a very different context, Nguyen shows how Thailand’s categorisation of refugees in Thai camps as *illegal* migrants prevents protections for this group (Nguyen 2023).

The contributions to this Special Issue show how diverse migrants and their life experiences are, as they examine human rights protection standards for non-nationals; herein, the authors discuss male migrant victims of forced labour in Norway (Lingaas 2022); permanent migrants who face expulsion from the UK, having engaged in criminal activity (O’Nions 2020); Karen refugees in Thailand’s refugee camps (Nguyen 2023); unaccompanied migrant children in the European Union (Vannelli 2022); and children in the Americas (Fuentes and Vannelli 2019, 2021). Yet, as the contributions compellingly demonstrate, what migrants have in common is that the protection of their human rights is inextricably entwined with the exercise of the government immigration power, which in turn is shaped by the state’s migration laws and policies. In this regard, O’Nions’s contribution persuasively shows how we cannot discuss human rights protections for migrants without challenging the concepts of (national) citizenship and membership (O’Nions 2020). Indeed, as Hannah Arendt so forcefully argued in her critique of human rights, ‘the right to have rights’ demands belonging to a political community; it demands membership in the *national* community. In contrast with national citizens, migrants’ membership remains contested—albeit to varying degrees—and contingent on their immigration status. ‘Unwanted’ migrants—those who were not ‘invited’ to enter and stay by the ‘host’ state—are denied access to national membership (Lingaas 2022; Nguyen 2023), while (regular) permanent residents are eligible for membership in the socio-economic sphere (but not in the political sphere, for the nation state is committed to maintaining a divide between nationals and migrants). O’Nions, however, reminds us that permanent residents’ membership remains subject to the exercise of government immigration power, and is thus fragile (O’Nions 2020).

It follows that investigating human rights protection for migrants puts the universal premise of International Human Rights Law to the test, and it may be tempting to conclude that this body of law has altogether failed this test. Migrants remain confined to the margins



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of human rights protection regimes or, at the very least, at the risk of being pushed to their margins. Yet, as I note at the start of this editorial, there is hope. Yes, International Human Rights Law continues to fail migrants, but this assessment does not tell the whole story. There have been strides in human rights protection for migrants. For example, Fuentes and Vannelli show how the pioneering case law of the Inter-American Court of Human Rights in recent years has significantly improved human rights protections for children in the context of migration processes (Fuentes and Vannelli 2019), and has progressed the recognition of children's rights to a dignified life, including migrant children (Fuentes and Vannelli 2021). These contributions demonstrate how, through 'an *evolutive, dynamic and effective*' approach that puts human rights protection first, the Inter-American Court of Human Rights has furthered human rights protections for children in the Americas (Fuentes and Vannelli 2019, p. 2). The European Convention on Human Rights system is commonly described as the most advanced in the world. Yet, the European Convention on Human Rights system, and in particular the European Court of Human Rights, has much to learn from the Inter-American Court of Human Rights's *pro homine* approach to the adjudication of human rights, including those of migrants. In her contribution, Nguyen constructs an innovative legal framework for the protection of Karen refugees in Thailand's refugee camps that brings together International Human Rights Law, International Refugee Law, and International Law on Indigenous Peoples (Nguyen 2023).

Ultimately, it could be that we are asking too much of International Human Rights Law. Indeed, in my view, and as the contributions to this Special Issue suggest, the recognition of migrants—all migrants—as fully fledged human rights subjects does not start with human rights. International Human Rights Law alone cannot humanise what can be violently hostile laws and policies. Bringing migrants to the core of human rights protection regimes starts with a drastic reset of how the nation-state and the national community relate to migrants and migration. It calls for human and humane migration laws and policies that recognise the realities of international migration and the migrant experience. Until and unless such a humanising turn takes place, International Human Rights Law will not be able to live up to its universal premise. This assessment, however, does not leave International Human Rights Law 'off the hook', and it is apparent from this Special Issue's contributions that human rights protections for migrants can be strengthened, notwithstanding the violence exerted by migration laws and policies worldwide.

**Conflicts of Interest:** The author declares no conflict of interest.

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