

## Article

### Perspective of Migrant Human Rights



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#### KEYWORDS:

Human rights, migrant, international treaties, migration, international law.

#### ABSTRACT:

This essay is a brief analysis of the perspective of migrants within the protection of human rights and their perception as a vulnerable group, as well as some of the causes of migration, the risks involved, and the precedents that international law has for the protection of fundamental rights.

#### PALABRAS CLAVES:

Derechos humanos, migrante, tratados internacionales, migración, derecho internacional.

#### RESUMEN:

El presente ensayo es un breve análisis respecto a la perspectiva de los migrantes dentro de la protección de los derechos humanos y su visualización como grupo vulnerable, así como algunas de las causas que originan la migración, los riesgos, y los antecedentes con los que cuenta el derecho internacional para la protección de los derechos fundamentales.

#### MOTS CLES :

Droits de l'homme, migrant, traités internationaux, migration, droit international.

#### RESUME :

Cet essai analyse brièvement le point de vue des migrants dans le cadre de la protection des droits humains et leur perception en tant que groupe vulnérable, ainsi que certaines des causes à l'origine des migrations, les risques encourus et le cadre juridique international relatif à la protection des droits fondamentaux.

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## 1 INTRODUCTION

The issue of migration is not a concept that is defined and recorded in a document for simple analysis; it is an expression of reality in a globalized world, where, although demagogic discourse proclaims that borders are being broken down, it seems that governments are building walls (figuratively and literally) to separate their population from a current and real social context.

While it is true that the political and legal concepts are essentially clear, it is also true that the social context in which society develops is undergoing a whirlwind of changes, not only in its political structure, but also in the controversies surrounding the application of respect for human rights.

Thanks to technology, we can access information immediately, with or without political bias, and this is giving more weight to the decisions of the courts when deciding between the rights of migrants.

However, it is not only a matter of questioning preferential rights, whether of the nationals of origin or those of the receiving State; it goes beyond fitting typical figures into legal systems; it is about analyzing the coherence of the application to a current social context.

To give an example of the above, if a family emigrates from their country due to an armed conflict, it is not only a matter of conceptualizing rights in terms of domestic and foreign policy, it is a matter of broadly visualizing individual rights, family rights, children's rights and, above all, respect for human rights.

Similarly, in the case of someone fleeing because they are persecuted for their ideologies or preferences, human rights must take precedence. However, even though this seems logical in its application, there are countries that prioritize their internal policies in this area, legally justifying their arguments for imposing restrictions that leave the migrant vulnerable.

## 2 CONTEXT

One of the first concepts that are formed in the field of International Law is that relating to migration issues and their formal and material relationship with Consular Law, both in their origin and in their consequences, being analyzed from the legal and political frameworks at the level of public administration and judicial as well as at the personal level.

Since ancient times, humanity has transcended through the continuous movement of people between towns, whether out of necessity or to seek to improve the quality of life.

All interactions that have shaped the relationship between individuals, but especially between states receiving immigrants, have been the subject of analysis and public policies in order to maintain the sovereignty of the receiving state, but also to regulate the treatment that will be given without further diminishing the human rights of the people who settle in the new territory.

This personal and inter-State relationship has historically shaped the way in which the application and implementation of regulatory frameworks for the protection of rights between nationals and foreigners will develop, generating the need to regulate them according to the needs and obligations imposed by the receiving State.

With the establishment of permanent diplomacy in the 17th century, consulates lost importance. However, during the second half of the 18th century, the consulate began to recover as a useful means for the development of international relations, a process that has been rapid and sustained to the present day. Consulates have become vitally important in

light of the increase in international population mobility, which, impacted by globalization and its resulting changes in the characteristics, causes, and consequences of migration in both origin and destination societies, significantly affects areas of state interest such as the economy, health, employment, border security, and international relations. Furthermore, when states regulate international population movements through laws implementing immigration and foreigner policies, they create unfavorable scenarios for the rights of immigrants and other categories of foreigners, affecting essential legal rights for the material and spiritual development of non-nationals in host societies. (Martínez&Zaldivar, 2015).<sup>1</sup>

The right to asylum was specifically codified through regional treaties, beginning with the Treaty on International Criminal Law in 1889, and culminating in the adoption of the Convention on Territorial Asylum and the Convention on Diplomatic Asylum, both in 1954. The adoption of a catalog of treaties related to diplomatic and territorial asylum and non-extradition for political reasons led to what has commonly been defined as "the Latin American tradition of asylum". (The Inter-American Human Rights System [IAHRS], 2015)<sup>2</sup>

In the region, the traditional concept of asylum evolved with the normative development of the Inter-American human rights system. Thus, the 1948 American Declaration of the Rights and Duties of Man (hereinafter "American Declaration") included the right to asylum in its Article XXVII, which led to the recognition of an individual right to seek and receive asylum in the Americas. This development was followed at the universal level with the adoption in 1948 of the Universal Declaration of Human Rights, in which "the right to seek and enjoy asylum in any country" was explicitly recognized in Article 14. From that moment on, asylum began to be codified in human rights instruments and not only in treaties of a purely interstate nature. (IAHRS, 2015)<sup>3</sup>

Subsequently, the 1951 Convention relating to the Status of Refugees (hereinafter "the 1951 Convention") was adopted to address the situation of refugees resulting from the Second World War and, therefore, places great emphasis on the prohibition of refoulement and the right of assimilation. Its 1967 Protocol extended the applicability of the 1951 Convention by removing the geographical and temporal restrictions that had limited its application to persons displaced in that context. Bolivia acceded to these treaties on February 9, 1982, and, through Law 2071 of April 14, 2000, "adopted said Convention as law of the Republic." (IAHRS, 2015)<sup>4</sup>

The central importance of both treaties lies in the fact that they are the first global instruments to specifically regulate the treatment of those forced to flee their homes due to a break with their country of origin. Even though the 1951 Convention does not explicitly establish the right to asylum as a right, it is considered implicitly incorporated in its text, which includes the definition of a refugee, protection against the principle of non-refoulement, and a list of rights to which refugees are entitled. In other words, these treaties establish the basic principles upon which the international protection of refugees, their legal status, and their rights and duties in the country of asylum are based, as well as matters relating to the implementation of the respective instruments. With the protection afforded by the 1951 Convention and its 1967 Protocol, the institution of asylum assumed a specific form and modality at a universal level: that of refugee status. Thus, "the institution of asylum, which is a direct emanation of the right to seek and enjoy asylum, stated in paragraph 1 of article 14 of the Universal Declaration of Human Rights of 1948, is one of the most

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<sup>1</sup>Martínez Pérez, O., & Zaldivar Valdes, D. (2015). Consular protection as a human right. *Revista De Derecho*, (18), 4–16. <https://doi.org/10.5377/derecho.v0i18.1990>.

<sup>2</sup>Institute of Legal Research. *Human Mobility Inter-American Standards. Human rights of migrants, refugees, stateless persons, victims of trafficking in persons and internally displaced persons: Norms and Standards of the Inter-American Human Rights System*. First edition: 2015. Chapter 11. Scope and content, para. 417.

<sup>3</sup>Ibidem. Paragraph 418

<sup>4</sup>Ibidem. Paragraph 419

fundamental mechanisms for the international protection of refugees.” ([The Inter-American Court of Human Rights \[IACHR\], 2013](#))<sup>5</sup>

For its part, in 1969 the right of every person to seek and receive asylum was recognized in Article 22.7 of the American Convention. As noted, Bolivia has been a party to the American Convention since July 19, 1979. ([IACHR, 2013](#))<sup>6</sup>

Subsequently, the Cartagena Declaration on Refugees was adopted at a colloquium organized by UNHCR and other institutions in November 1984 in Cartagena de Indias, Colombia. Among the participants were experts from the six Central American countries (Belize, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and from the countries comprising the Contadora Group (Colombia, Mexico, Panama, and Venezuela). The Declaration broadened the definition of refugee to encompass, in addition to the elements of the [1951 Convention](#) and the [1967 Protocol](#), those who have fled their countries because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances that have seriously disturbed public order. This Declaration reaffirmed the peaceful, apolitical, and exclusively humanitarian nature of granting asylum or recognizing refugee status. The expanded definition of refugee contained in this Declaration has been adopted in 14 different national legislations in the Latin American region and, in the case of Bolivia, was included in [Supreme Decree 19640 of July 4, 1983](#), which was applied in the facts of the present case. ([IACHR, 2013](#))<sup>7</sup>

Over time, the proper implementation of provisions regarding the rights of migrants has generated discomfort in various nations, not because of acting in a dehumanizing manner, but because of the primary pursuit of defending sovereignty and the customs and traditions of the State; however, it should not be negligent in complying with the recognition of human rights and the guidelines established by International Organizations.

The above was certainly not easily accepted by some States with rigid customs and complex guidelines in the eyes of someone seeking refuge in a foreign city who has ideologies and practices that break with the political and social daily life of a nation; thus, in addition to the protection of the State, the knowledge and application of the norms of International Law is fundamental.

International law recognizes the right of all persons to leave any country, including their own, and to return to their own country. However, it does not recognize the right to enter another country; instead, it enshrines the sovereign prerogative of States to determine the criteria for the admission and expulsion of non-nationals, including migrants. States are prohibited from returning any person to countries where they could suffer torture and other serious human rights violations or persecution, as established in the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol. They must also guarantee due process in expulsion or deportation proceedings to prevent collective expulsions. The general interpretation of international law also stipulates that there are certain unacceptable grounds for discrimination, such as race, sex, religion, or health status (for example, being or potentially being infected with HIV), when determining who may be admitted to a country and who may not. This should also be avoided in migrant selection procedures and quotas. ([The Institute of Legal Research \[IIJ-UNAM\], 2015](#))<sup>8</sup>

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<sup>5</sup>Inter-American Court of Human Rights. Case of the Pacheco Tineo Family v. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 272. Paragraph 139

<sup>6</sup>Ibidem. Paragraph 140

<sup>7</sup>Ibidem. Paragraph 141

<sup>8</sup>Institute of Legal Research. UN Collection. Migration, Human Rights and Governance. 2015 Handbook for Parliamentarians No. 24. Chapter 2, p. 44. Available at <https://archivos.juridicas.unam.mx/www/bjv/libros/16/7658/17.pdf>

### 3 GENERAL CONCEPTS OF THE CAUSES OF MIGRATION

There are various causes that have given rise to international displacement, from the hope of finding a better quality of life for oneself and one's family, to the necessity of surviving armed conflicts; no justification will be analyzed nor will value judgments be made in this regard, it is simply a matter of taking a look at some of the main reasons why people leave their nation and how this in turn generates the possibility of the violation of their rights.

One of the main causes is the lack of job opportunities in their country, coupled with the desire to generate higher incomes and, therefore, an improvement in the quality of life; to the above it must be considered that, although there is the possibility of economic progress, in most cases, professional growth, personal development, and family relationships are sacrificed, either by distance or by the time that is left for healthy coexistence.

Migrants, especially those who are in irregular or unauthorized status, can be considered an ideal reserve of very flexible labour. Those without authorization for entry and or employment are at the margin of protection by labour workplace safety, health, minimum wage and other standards; they often are employed in sectors where such standards are non-existent, non-applicable or simply not respected or enforced. ([International Organization for Migrant. \[IOM\], 2000](#))<sup>9</sup>

In this regard, it is worth noting that the pursuit of progress in economic quality of life standards entails exposure to job insecurity, since, due to different internal policies, if staff shortages occur, those who come from other countries are usually the ones who end up being laid off, or their job opportunities are not renewed.

In addition to the above, equality in treatment in general depends on the idiosyncrasies of the population of the receiving country, since although there are guidelines, rights and obligations of mutual respect, one of the two parties (national and migrant) will try to impose their ideologies, due to the rigid character of certain areas of the population, which of course generates personal conflicts, difficulty in having the best access to health, educational and labor services.

To that end, the International Organization for Migration has defined migrants in vulnerable situations as those who cannot effectively enjoy their human rights, who are at greater risk of suffering violations and abuses, and who, consequently, have the right to claim greater protection from the guarantors of rights. ([IOM, 2019](#))<sup>10</sup>

Certainly, one of the biggest reasons that give rise to migration is the escalating insecurity caused by social violence and, as a consequence, the search for asylum.

This cause originates from fleeing armed conflicts, civil and governmental repression, situations that generate constant personal and family risk, the behaviors and consequences of discrimination in all its perspectives, and public policies that force people to leave everything behind in search of refuge and to safeguard their integrity and fundamental human rights.

This same situation has generated political conflicts regarding the application of regulatory frameworks, since, on the one hand, there is the obligation to respect the human rights of migrants, and on the other hand, the defense of national sovereignty, a situation that may be left to the interpretation of the State and that, precisely, should not overlook the defense of the fundamental prerogatives of all people.

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<sup>9</sup> International Organization for Migrant. IOM. 2000. The Human Rights of Migrants. Exploitation of migration and migrants. Exploitation of migration and migrants by Taran A. Patrick, P.14. [https://publications.iom.int/system/files/pdf/migrants\\_human\\_rights.pdf](https://publications.iom.int/system/files/pdf/migrants_human_rights.pdf)

<sup>10</sup>International Organization for Migration. IOM 2019. Glossary on Migration. No. 34. <https://publications.iom.int/system/files/pdf/iml-34-glossary-es.pdf>

The Court has defined the State's obligation not to return a person to a territory where they would face persecution as an integral component of the right to seek and receive asylum. Indeed, the principle of non-refoulement is the cornerstone of international protection for refugees and asylum seekers and is codified in Article 33.1 of the 1951 Convention. In this context, the principle of non-refoulement has been recognized as a customary norm of international law binding on all States, whether or not they are parties to the 1951 Convention or the 1967 Protocol. The Court has interpreted that, within the framework of the American Convention, the principle of non-refoulement established in Article 22.8 takes on a unique expression, even though this provision was included after the recognition of the individual right to seek and receive asylum, a right that is broader in its meaning and scope than that which operates in the application of international refugee law. Thus, the prohibition of return under international treaty law offers complementary protection to foreigners who are not asylum seekers or refugees in cases where their right to life or liberty is threatened for the reasons listed. The protection afforded by the principle of non-refoulement, as established in this provision, therefore extends to all foreign nationals, not just to a specific category such as asylum seekers and refugees. (IACHR, 2018)<sup>11</sup>

It does not go unnoticed that, in their eagerness to emigrate urgently, people try to settle illegally in receiving countries; however, this situation exponentially increases the risks for the immigrant and their family.

Since he does not have legal status, he lacks formal support, which is why he is urgently trying to regularize his stay, and even if he could stabilize his situation in the country, it does not generate total satisfaction in order to meet the necessary needs and protections.

Certainly, and by virtue of globalization which has been generating cultural and educational attractions, the interests of the community that aspires to increase its knowledge and preparation in high-quality institutions have expanded, and which, for different reasons, it cannot find in its country of origin.

Without disregarding the justification for migration, it is important to recognize that it presents a clash of two ideas: the human rights of those who emigrate and those who reside within the sovereignty of the receiving country.

That is why States must adopt suitable and special measures so that, while respecting their sovereignty, it is effective in the field of respect for the human rights of migrants, especially in cases of children's rights.

For this reason, the paradox of value judgments regarding the conflict, which is reformulated in the face of the collision of rights in a new globalized vision of migrant rights and obligations, is analyzed from the field of International Migration Law.

#### 4 REGULATORY FRAMEWORK

Although migrant's rights are derived from customary international law (i.e., law resulting from a general and consistent practice of States that follow it out of a sense of legal obligation), this thematic page focuses on treaty law. (Migration Data Portal, 2022)<sup>12</sup>

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<sup>11</sup>Inter-American Court of Human Rights. 2018. The institution of asylum and its recognition as a human right in the Inter-American System of Protection (interpretation and scope of Articles 5, 22.7 and 22.8, in relation to Article 1.1 of the American Convention on Human Rights). Advisory Opinion OC-25/18 of May 30, 2018. Series A No. 25

<sup>12</sup>Migration Data Portal. Migrant Rights. 2022. Table and content at <https://www.migrationdataportal.org/es/themes/derechos-de-los-migrantes>

**List 1: International human rights treaties and their related additional protocols that grant rights to migrants by virtue of their human status:**

1948	Universal Declaration of Human Rights. The Universal Declaration is not a treaty, so it does not need to be ratified and does not directly create legal obligations for all members of the international community. However, it is an expression of the fundamental values shared by all members. Furthermore, it has had a profound influence on the development of international human rights law and is now considered customary international law.
1963	International Convention on the Elimination of All Forms of Racial Discrimination
1966	International Covenant on Economic, Social and Cultural Rights
1966	International Convention on the Elimination of All Forms of Racial Discrimination
1965	Convention on the Elimination of All Forms of Discrimination against Women
1979	Convention on the Elimination of All Forms of Discrimination against Women
1984	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
1989	Convention on the Rights of the Child
1990	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
2006	Convention on the Rights of Persons with Disabilities
2006	International Convention for the Protection of All Persons from Enforced Disappearance

**List 2: Fundamental treaties of international public law that establish rights for migrants and duties of States:**

1949	International Labour Organization (ILO) Migrant Workers Convention (No. 97)
1951	Convention relating to the Status of Refugees and its 1967 Protocol
1954	Convention on the Status of Stateless Persons
1961	Convention to Reduce Cases of Statelessness
1974	International Convention for the Safety of Life at Sea
1975	ILO Convention concerning Abusive Migration and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143)
1979	International Convention on Maritime Search and Rescue (SAR)
1982	United Nations Convention on the Law of the Sea
2000	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
2000	Protocol against the Smuggling of Migrants by Land, Sea and Air
2011	Convention on Decent Work for Domestic Workers

(Table from <https://www.migrationdataportal.org/es/themes/derechos-de-los-migrantes>.)

One of the main non-binding instruments is the Global Compact for Safe, Orderly and Regular Migration, which is enshrined in international law and sets forth numerous objectives derived from customary international law. It is the first intergovernmentally negotiated agreement to cover all aspects of international migration. Respect for human rights is one of its guiding principles. (IOM, 2025)<sup>13</sup>

The Global Compact for Migration is a non-legally binding framework for cooperation grounded in the objectives and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, all fundamental international human rights treaties, international labor standards, and relevant norms of international law. It also builds upon the commitments made by Member States in the [New York Declaration for Refugees and Migrants \(2016\)](#) and the 2030 Agenda for Sustainable Development. It reaffirms that States have the sovereign right to determine their own migration policies and the prerogative to regulate migration within their jurisdiction, in accordance with international law ([Global Compact for Migration, para. 15](#)). It enshrines the collective commitment to foster cooperation on international migration, recognizing the key contribution of migration to the human experience since the dawn of history, and migration as a source of prosperity, innovation, and sustainable development, which can be enhanced by improving migration governance. Furthermore, a common conception, shared responsibilities, and unity of purpose regarding migration are stated. ([United Nations Migration Network, 2023](#))<sup>14</sup>

As can be seen from the previous texts, the aforementioned pact is based on the constant and permanent interest of reaffirming the commitment of States to respect and protect the human rights of all migrants, seeking to eradicate all types of actions or omissions that contain a discriminatory character in all its forms.

Human rights are the most basic components of individual freedom. They transcend cultural, geographic and socioeconomic differences to establish a threshold of obligations, which States assume with respect to their own “body politic.” Through guarantees—such as freedom of expression and association—and protections—such as freedom from cruel and inhuman treatment, arbitrary detention, and discrimination, human rights empower individuals to pursue their respective visions of life and happiness. They foster a social infrastructure where it is more likely that boys and girls will have access to education, women will enjoy equal economic opportunities, and individuals from all walks of life will receive adequate health-care services. ([United Nation Population Found \[Unfpa, 2004\]](#))<sup>15</sup>

In Mexico, there are various Federal and State regulations, including the Migration Law, the Law on Refugees, Complementary Protection and Political Asylum, and their corresponding regulations.

It is essential to highlight respect as one of the principles underpinning its migration policy, which is quoted as follows: “Unrestricted respect for the human rights of migrants, both nationals and foreigners, regardless of their origin, nationality, gender, ethnicity, age, and immigration status, with special attention to vulnerable groups such as minors, women, indigenous people, adolescents, and the elderly, as well as victims of crime. Under no circumstances will an irregular immigration status in itself constitute the commission of a

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<sup>13</sup>International Organization for Migration. 2025. International legal instruments for migration. <https://www.iom.int/es/international-law-on-migration>.

<sup>14</sup>United Nations Migration Network. Implementation of the Global Compact for Safe, Orderly and Regular Migration. Booklet April 2023. <https://migrationnetwork.un.org/system/files/docs/IOM-IGCM-BOOKLET-ES.pdf>

<sup>15</sup>United Nation Population Found. Unfpa.org. 2004. Meeting the challenges of migration progress since the ICPD. Human Rights. P. 40 from [https://www.unfpa.org/sites/default/files/pub-pdf/migration\\_icpd.pdf](https://www.unfpa.org/sites/default/files/pub-pdf/migration_icpd.pdf)

crime, nor will the commission of offenses by a migrant be prejudged simply because they are undocumented.” ([Migration Law, 2026](#))<sup>16</sup>

It can be observed that it is relevant how, in addition to providing guarantees for the protection of human rights, the presumption of innocence is assumed regardless of the quality of the person's immigration status.

However, within the European framework, on December 8, 2025, the members of the European Union approved a tightening of their migration policies and regulations. This included the creation of return centers, where migrants whose asylum applications have been rejected would be sent. The package also includes harsher penalties for those who refuse to leave European territory, including prison sentences. Furthermore, it allows for the possibility of sending migrants to countries other than their countries of origin, but which Europe deems "safe." ([Expansion, 2025](#))<sup>17</sup>

The above has certainly generated doubts, complaints and uncertainty regarding its application, along with the human rights violations that will be incurred, especially by giving these spaces the power to send immigrants wherever they deem appropriate, completely dehumanizing people in these conditions.

It is for all the reasons mentioned, and by virtue of the large number of binding and non-binding legal regulations, that, although it is true that there is a constant expression of the will of the States party to the treaties to improve the application of their regulatory framework in order to protect people, migrants or not, it is also true that a large part of the regulations are not binding, and total commitment is needed from those who implement them, since, if continuity is not given to what is set out in guidelines with great intentions, it will simply remain as expressions without real and objective application.

## 5 PRO HOMINE PRINCIPLE AND ITS RELATIONSHIP WITH THE RIGHTS OF MIGRANTS

As has been developed in this text, the intention of States in general is the attention and protection of human rights, regardless of the status in which they have arrived as migrants, this protective guarantee being closely linked to the so-called pro homine principle, a concept that has become especially relevant in modern times in the constitutional and legal analysis of legislation and regulatory frameworks.

The pro homine principle is a legal norm that contains a criterion of effectiveness of human rights —of all rights (including collective, and not only liberal)— that radiates integrally to the legal system and binds all legal operators to apply the norm or choose the most protective interpretation, in those matters in which human rights are involved, and conversely, to apply the norm or choose the most restrictive interpretation in those matters related to restrictions on the exercise of human rights. ([Silva&Gómez, 2015](#))<sup>18</sup>

The Inter-American Court of Human Rights (IACHR), since its first ruling in the Viviana Gallardo case of November 13, 1981, incorporated the pro persona principle by stating that the American Convention on Human Rights (ACHR) has a purpose which is the international protection of essential human rights, and to achieve that purpose, it organizes a system that

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<sup>16</sup>Migration Law. Art. 2, second paragraph. Last Amendment Published in the Official Gazette of the Federation on April 27, 2024 at <https://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra.pdf>

<sup>17</sup>Expansion. (2025, December 16). Europe follows the US example and tightens its immigration measures. Expansion News. <https://expansion.mx/mundo/2025/12/16/europa-fue-gran-iman-para-la-migracion-nueva-politica>

<sup>18</sup>Silva García, Fernando and Gómez Sámano, José Sebastián. 2015. The Pro Homine Principle vs. Constitutional Restrictions: Is it Possible to Constitutionalize Authoritarianism? Constitutional State, Human Rights, Justice, and University Life. Studies in Honor of Jorge Carpizo. Constitutional State, Volume IV, Part 2. P. 701 at <https://archivos.juridicas.unam.mx/www/bjv/libros/8/3845/27.pdf>

represents the limits and conditions within which the States Parties have consented to assume international responsibility for the violations of which they are accused, and in this regard stated the following: “Consequently, the balance of the interpretation is obtained by orienting it in the most favorable sense to the recipient of international protection, provided that this does not imply an alteration of the system.” (Silva&Gómez, 2015)<sup>19</sup>

In concept, the aforementioned principle is looking to provide the best for people, and adapting it to the topic at hand tends to favor and protect the human rights of migrants; however, here the opposition and collision of rights may arise between those related to the immigrant, and those of the nationals of origin.

For this purpose, it is necessary to mention that various treaties have contemplated the pro persona principle, if not conceptually, then in the very nature of the development of the topic, as is the case with Article 5 of the International Covenant on Civil and Political Rights, which is cited.

*“1. Nothing in the present Covenant may be interpreted as granting any right to any State, group or individual to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for in the Covenant.*

*2. No restriction or impairment of any of the fundamental human rights recognized or existing in a State Party by virtue of law, conventions, regulations or custom shall be permitted on the pretext that the present Covenant does not recognize them or recognizes them to a lesser degree.* (United Nations General Assembly [UNGA], 1966)<sup>20</sup>

It is not about violating fundamental rights to exceed the limits established for society in the sovereignty of the receiving State, but about weighing rights in order to avoid to a greater extent the impairment of rights that are in conflict.

In Mexico, as a result of the reform to the first article of the Constitution, published in the Official Gazette of the Federation on June 10, 2011, a great step was taken in the area of human rights by introducing the pro homine principle into the field of positive law and thereby more broadly favoring the protection of fundamental rights by interpreting them in accordance with the Constitution itself and international treaties, this ex officio through the control of conventionality in order to apply the most favorable norm to the person.

The above can be analyzed from a couple of perspectives, the first in terms of the choice of rules, which, as mentioned, should be the one that most favors the person, and the second in terms of the interpretation of said rules.

This certainly generated a prima facie conflict for the jurisdictional authorities, as they found themselves in a collision of rights, which they would have to clarify and resolve before the court by weighing and assessing the best applicable law, and in the interest of the broadest protection of human rights, especially if people in vulnerable situations are at risk.

To that effect, and within the scope of rights protection, taking into account the best interests of the child, special mention must be made of the provisions of the Convention on the Rights of the Child in its Article 41, which states: “Nothing in the present Convention shall affect provisions which are more conducive to the realization of the rights of the child and which may be contained in: (a) The law of a State Party; (b) International law in force with respect to that State.” (UNGA, 1989)<sup>21</sup>

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<sup>19</sup>Ibidem p. 703

<sup>20</sup>United Nations General Assembly (1966). International Covenant on Civil and Political Rights <https://www.ordenjuridico.gob.mx/TratInt/Derechos%20Humanos/D47.pdf>

<sup>21</sup>United Nations General Assembly. (1989). Convention on the Rights of the Child. <https://www.un.org/es/events/childrenday/pdf/derechos.pdf>.

However, in addition to the intrinsic relevance of care and protection in accordance with the best interests of the child, it is worth highlighting the large number of migrant families with children who suffer the consequences of migration and all the risks involved.

Due to the particular vulnerability of children outside their country of origin, and especially unaccompanied or separated children, access to communication and consular assistance becomes a right of special importance that must be guaranteed and treated as a priority by all States, particularly because of the implications it may have on the process of gathering information and documentation in the country of origin, as well as to ensure that voluntary repatriation is only arranged if recommended by the outcome of a procedure to determine the best interests of the child, in accordance with due process, and once it has been verified that it can be carried out under safe conditions, so that the child will receive care and attention upon their return. (IACHR, 2014)<sup>22</sup>

Thus, in accordance with the pro homine principle, which is progressive in the face of the constant evolution of society, and derived from the conforming interpretation, the control of conventionality must be generated in order to apply the law that is most convenient with a human rights perspective, especially in consideration of the best interests of children and people who are in situations of vulnerability, such as the case that may occur with migrants.

## 6 CONTROL OF CONVENTIONALITY IN THE MIGRATION FRAMEWORK

The Inter-American Court of Human Rights oversees the process of ensuring compliance with international human rights standards. At the international level, the Court is responsible for interpreting the American Convention on Human Rights in this area. Domestically, state officials are responsible for this type of review within their respective jurisdictions. This obligation falls particularly heavily on judges, who must verify the compatibility of domestic laws, as well as their interpretation and application, with Inter-American standards in the cases before them. To fulfill this international obligation, the judicial bodies of states, within their respective jurisdictions, must use various interpretive tools (such as interpretation in conformity with international human rights standards) or refrain from applying laws that contradict Inter-American human rights standards. (Supreme Court of Justice of the Nation, [SCJN] 2021)<sup>23</sup>

The principle of conventionality control is exercised between domestic law and the Convention, as it binds judges and other officials in signatory countries to limit political power and defend human rights. Signatory countries are obligated to interpret all national laws in accordance with the Convention. In case of incompatibility, local bodies must refrain from applying the national law to avoid violating internationally protected rights. If a State is a party to the American Convention, all its organs are bound by its decisions and, therefore, must ensure that the effects of those decisions are not diminished by the application of norms contrary to their object and purpose, as the Court held in *Gelman v. Uruguay (2011)*. This control has allowed various countries to move toward incorporating standards for the

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<sup>22</sup>Inter-American Court of Human Rights. Jurisprudence Booklet of the Inter-American Court of Human Rights No. 2: Persons in Situations of Migration or Refuge. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21. <https://www.onlinelibrary.iihl.org/wp-content/uploads/2021/08/2020-Corte-IDH-Cuadernillo-de-jurisprudencia-de-la-corte-interamericana-de-derechos-humanos-n%C2%BA-2-%E2%80%93-personas-en-situacio%CC%81n-de-migracio%CC%81n-o-refugio.pdf>

<sup>23</sup>Center for Constitutional Studies of the Supreme Court of Justice of the Nation. 2021. Jurisprudence Notebooks No. 10. Conventionality Control. [https://www.sitios.scjn.gob.mx/cec/sites/default/files/publication/documents/2021-09/CONTROL\\_DE\\_CONVENCIONALIDAD.pdf](https://www.sitios.scjn.gob.mx/cec/sites/default/files/publication/documents/2021-09/CONTROL_DE_CONVENCIONALIDAD.pdf)

protection of rights, even when the current government or majorities represented in Parliament or elected in a referendum have defended a different position. (García, 2014)<sup>24</sup>

To that effect, the Inter-American Court of Human Rights has established in various judgments that its resolutions within the framework of the control of conventionality must be applied harmoniously using the criteria established in the American Convention on Human Rights.

To further illustrate the above, we have the case of *Almonacid Arellano et al. v. Chile*, which establishes that when a State is a Party to an international treaty such as the American Convention, all its organs, including its judges, are subject to it, which obliges them to ensure that the effects of the provisions of the Convention are not diminished by the application of norms contrary to its object and purpose. Therefore, judges and bodies linked to the administration of justice at all levels are obligated to exercise *ex officio* a “control of conventionality” between domestic norms and the American Convention, evidently within the framework of their respective powers and the corresponding procedural regulations. In this task, they must take into account not only the treaty, but also the interpretation of it made by the Inter-American Court, the ultimate interpreter of the American Convention. (IACHR, 2006)<sup>25</sup>

Another case is that of the Dominican and Haitian persons expelled vs. the Dominican Republic, in which the Inter-American Court of Human Rights issued a judgment declaring the State responsible for the human rights violations resulting from the collective and mass expulsions by the Dominican Republic; the case of the Pacheco Tineo Family vs. Bolivia, in which the members of the Pacheco Tineo family had entered Bolivia and were in Bolivia as irregular migrants, who requested to be recognized as refugees and during the course of the proceedings were expelled back to their country of origin; among many others.

However, as has been pointed out, everything described above seems to be subject to analysis and application within the legal field; however, it is mandatory in all administrative and governmental spaces.

In addition to the above, the Inter-American Court has indicated that the application of the principle of conventionality control in situations where its use is necessary must be carried out *ex officio*. This means that state authorities do not require interested parties to request the application of this tool; rather, it must be applied directly as part of fulfilling the obligation derived from the treaty. It is important to emphasize that the Inter-American Court indicates that this obligation to carry out conventionality control is primarily directed at judges, but also notes that it is binding on bodies related to the administration of justice at all levels. (Castro, 2025)<sup>26</sup>

In light of the foregoing, and with due application of the principle of conventionality control, the Public Administration of receiving States must ensure the broadest protection of human rights, regardless of the migrant's status or circumstances, especially when the life and integrity of so-called vulnerable groups are at risk. These groups are defined, according to the context, as any group or sector of society (children; the elderly; persons with disabilities; ethnic or religious minorities; migrants, particularly those in an irregular situation; or persons of diverse sex, sexual orientation, and gender identity) that are at greater risk of being subjected to discriminatory practices, violence, social disadvantages, or economic hardship

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<sup>24</sup>García Jaramillo, Leonardo. (2014). The control of conventionality. *Mexican Bulletin of Comparative Law*, 47(141), 1199-1205. [http://www.scielo.org.mx/scielo.php?script=sci\\_arttext&pid=S0041-86332014000300013&lng=es&tlng=es](http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S0041-86332014000300013&lng=es&tlng=es).

<sup>25</sup>Case of *Almonacid Arellano and others v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 124; Case of *Gomes Lund and others (Guerrilha do Araguaia)*, supra note 16, para. 176, and Case of *Cabrera García and Montiel Flores*, supra note 16, para. 225.

<sup>26</sup>Castro Barenchea, Claudia L. 2025. *Conventionality Control in Peru*. Szmoisz Carolina (Coord.). *Conventionality Control*. Nova Tesis Editorial Jurídica. P. 12

compared to other groups within a State. These groups are also at greater risk during periods of conflict, crisis, or disaster. (IOM, 2024)<sup>27</sup>

The attention of economists and demographers is also focused on the restrictions of immigrants on education, social security, and social insurance. Chiswick supports immigration legislation policies and their screening process. The state, which focuses on the qualifications of the immigrant as the main criterion in obtaining a visa, follows a special development model, which means that it no longer pursues an immigration policy related to family reunification and refugee status determination. Naturally, immigrants in countries with different immigration policies also differ from each other. Political scientists and lawyers, who began to pay more attention to the issue later than other disciplines, decided to look for answers to these questions. (Madaminova et al., 2022)<sup>28</sup>

## 7 CONCLUSIONS

In modern times, the study of relations between nations in the area of human rights has become increasingly relevant, due to the number of international migrations that have taken place, whether due to the aspiration to improve the quality of life, for educational or professional advancement, or due to the need to flee from situations that put the life and integrity of people at risk.

Similarly, public policies have conducted a more thorough analysis, regulating the situations of individuals based on the number of asylum applications they submit while having a regular or irregular status in their stay in the territory where they seek protection.

There are multiple causes that have increased the flow of people who emigrate from their country of origin, leaving behind their personal history, family, work and in general any roots that may have been created in their nation, and all this mainly due to the search for greater job opportunities, better conditions for the quality of personal and family life and, of course, in the safeguarding and protection of their rights by fleeing situations that endanger their life, their integrity and in general their fundamental rights.

In a globalized world, where borders seem to be disappearing (at least virtually), anti-immigration measures appear to be tightening and the supranationalist idea of sovereignty based on a country's internal system is being strengthened.

Contrary to the above, States must adopt protective measures within the framework of International Law, based on the principle of progressivity, which is fundamental for harmony in a State of Law, that in the same way that society evolves, so too must the Law and its organs administering justice, but not only limiting its application to legal operators, but to all Public Administration, in order to comply, by virtue of the control of conventionality, with international treaties, which are the guideline for the broadest protection of the human being.

Thus, in accordance with the resolutions, criteria, jurisprudence, precedents, internal regulations, and those supported by international law, the defense of the fundamental rights of migrants must be a basis and priority, not being subject to any type of discrimination; on

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<sup>27</sup>International Organization for Migration (IOM). (2024). Glossary on Migration. Retrieved from <https://publications.iom.int/system/files/pdf/iml-34-glossary-es.pdf>

<sup>28</sup>Madaminova, Durdona & Zilong, Wang. (2022). The Problem of Migration and Approaches to Its Study. International Journal of Social Science Research and Review. 5. 176-183. 10.47814/ijssr.v5i1.184.

the contrary, with the support and protection of guarantees so that they do not run a greater risk than they already face as a vulnerable group in a foreign nation.

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