

SERIES ON HUMAN RIGHTS AND HEALTH



4. MIGRATION

A Human Rights-based Approach

PAHO



Pan American
Health
Organization



World Health
Organization
REGIONAL OFFICE FOR THE
Americas

4. MIGRATION: A Human Rights-based Approach

"The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."

Preamble to the Constitution of the World Health Organization

THE HEALTH OF JULIA AND HER FAMILY¹

Julia was a single woman under the age of 18 who was pregnant when she emigrated to a neighboring country for economic reasons, in search of new opportunities and a better future for herself and her family. She had no hope of continuing her education or finding employment in her home country due to the increasingly deteriorating social and economic conditions. So, despite the difficulties and risks involved, she decided to migrate to another country, as several people she knew had done.

She went to live in a boarding house that she shared with several people who had migrated before her, with very poor infrastructure and unsanitary conditions.

Julia never had prenatal checkups, in part because she was not aware that she was supposed to have them. Due to her immigration status and lack of documentation, it was also more difficult to access the health system. Ultimately, Julia was rushed to a hospital by medical professionals who spoke to her in a language she did not understand and who did not respect her traditions or culture when they delivered her babies.

Julia gave birth to twins, a girl and a boy, who were born prematurely. Since Julia did not have an identification document, she stopped going to health centers after the birth because she was constantly being asked questions about her and her twins' lack of documentation. Julia began to fear that the people who treated her at the health centers would report her immigration status and that she would be forcibly returned to her country of origin. As a result, she and her twins went a long period without receiving any medical treatment. Years later, her twins required medical attention for follow-up care due to their premature birth, which was denied on the grounds that their mother's irregular immigration status extended to her children, and that they did not have birth certificates. Julia was told that her son and daughter could only receive emergency care, and therefore they could not access much-needed medical treatment for their physical and mental development. Finally, Julia has been trying to obtain COVID-19 vaccination, but her immigration status makes her ineligible for inclusion in the priority groups.

After fighting for some time for her twins to gain access to medical care, Julia got a nongovernmental human rights organization to accept her case and take it to court.

¹ This story is based on real situations that occurred in Latin America that have been the subject of national court judgments, with observations and recommendations from the treaty bodies of the United Nations human rights system.

Migrants: Who they are and what their situation is

International migration is the movement of people across borders to reside permanently or temporarily in a country other than their country of birth or citizenship. The United Nations global estimates of international migrants include those who live outside their country of birth or citizenship for more than one year. This estimate includes migrant workers, migrants with irregular status, and refugees (1).

The number of international migrants is increasing, and there are new destination countries and changes in migration profiles: more women and children—rather than mainly young men—are seeking economic opportunities outside their countries of origin (2).

The countries of the Americas have demonstrated increasing regional solidarity in providing support for migrants in recent years. However, large-scale movements of people have created a high demand for health services and public health promotion and prevention measures, straining institutions. Health care systems have struggled to adequately meet the health needs of the migrants coming across their borders while also meeting those of the local population. Among the biggest challenges facing health systems are limited financial, human, and infrastructural resources, and legal constraints (2).

In this context, migrant populations are exposed to psychosocial factors that can undermine their health, such as negative acculturation, adoption of harmful habits more prevalent in the receiving society, or lack of a social support network. These psychosocial factors also expose migrants to a higher risk of occupational injuries, sexual abuse, violence, drug abuse, and psychological disorders, as well as the possibility of contracting infectious diseases. Difficulties in accessing social benefits and health services in destination or transit countries can exacerbate these risks (3).

Barriers to accessing health services include cultural and language differences, high costs, discrimination, and the inability to enroll in local health financing plans (2).

Nationality or legal status can sometimes be a criterion for deciding who may access health care services (4). Migrants may be subject to investigation, detention, deportation, or human trafficking. Social conflicts and disaster situations can also worsen health risks for these populations (2).

It is clear that health systems alone cannot end the inequalities migrants face in access to quality health care; education and access to employment and housing are examples of social determinants that affect the health of migrants (5).

Recently, during the COVID-19 pandemic, countries closed borders and established travel restrictions to curb the spread of the disease, affecting refugees and migrants around the world. The pandemic has prompted some countries to take steps to further reduce population movement, affecting humanitarian corridors around the world. Asylum seekers may also be deported and returned to their countries of origin where they risk persecution, in violation of international law. There is evidence that refugees and migrants are at an increased risk of contracting diseases, including COVID-19, because they generally live in crowded conditions or lack access to basic sanitation (6).

It is essential to understand the implications of protecting migrants' right to health during the COVID-19 pandemic and throughout its future consequences. Various international organizations have strongly urged governments and societies to provide special protection for vulnerable populations, including migrants, in low-income communities with unequal access to health care, underemployment, and a lack of social protection. Although they are not necessarily more susceptible to COVID-19 than other individuals and communities, many migrants are at a significantly higher risk of becoming infected,

given that they are generally more vulnerable from a health perspective. Migrants, particularly undocumented or irregular migrants, often face increased exposure to poverty, overcrowded and unsanitary housing conditions, discrimination and lack of access to health services and social protection rights, lack of safe drinking water and sanitation, unsafe working conditions (where physical distancing can be difficult), digital exclusion, and language and cultural barriers that can increase health-related vulnerabilities (6).

Finally, although economic, social, and legal conditions vary from country to country in the Americas, and despite the enormous legal advances made in recent years to promote and protect the human rights of migrants, serious challenges remain in preventing mistreatment and abuse in migrant health care.

Protecting and promoting the health and socioeconomic security of migrants is a public policy issue and a human rights issue. To prevent further abuse, recognition of the situation must be followed by action.

Protection under international and regional human rights instruments

Both the United Nations and the Inter-American System of Human Rights have an important set of legal instruments that recognize and protect the rights and freedoms of all people. Because international human rights instruments established by international law protect all persons without distinction of any kind, such as ethnicity, color, sex, language, religion, political or other ideology, national or social origin, economic status, birth, or any other social status, they are also considered to protect the rights and freedoms of migrants.

Conventions or treaties are legal instruments that are binding on the States that have ratified them. There are also other instruments, such as declarations, resolutions, and comments issued by the United Nations

mechanisms and the Inter-American System, which establish international human rights standards. Human rights standards represent a consensus of international opinion. Most are issued by the United Nations General Assembly, the Human Rights Council, treaty monitoring mechanisms, other United Nations bodies, the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS), and specialized agencies of the United Nations and the Inter-American system. These standards serve as an essential guide for implementing human rights treaties domestically through the formulation and review of legislation, policies, plans, and programs for greater protection of the right to health and other related rights of migrants, and for restructuring health services to benefit migrants.

The UN human rights system

The United Nations human rights monitoring system consists of two types of bodies: United Nations Charter-based bodies and treaty bodies (7). The charter-based bodies are the Human Rights Council (a 47-member intergovernmental body tasked with the promotion and protection of all human rights) (8), the Universal Periodic Review (a State-led process to review the human rights situation in all States, providing an opportunity for each country to report on what measures it has taken to address and improve its human rights situation) (9), and the special procedures of the Human Rights Council (a mechanism through which prominent individuals are assigned a mandate, either individually or as a task force, to address specific situations or thematic areas (10); an example of this mechanism is the mandate of the Special Rapporteur on the human rights of migrants).²

United Nations treaty bodies are committees of independent experts that monitor the implementation of international human rights treaties (11). Their existence derives from the treaty itself; for example, the Committee on the Protection of the Rights of All Migrant Workers and

² <https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/SRMigrantsIndex.aspx>.

Members of Their Families is the body of independent experts responsible for monitoring the States Parties' implementation of the Convention of the same name (12). These treaty bodies are mandated to receive and consider reports submitted periodically by States Parties detailing how they are implementing the provisions of the treaty at the national level. Following a review process, the Committee communicates its concerns and recommendations to the State Party in "concluding observations." The treaty bodies are also empowered to issue general comments on matters falling within their mandate and to engage in individual communications processes in which they issue recommendations on the specific case before them.

Binding international legal instruments³

International Covenant on Civil and Political Rights (1966)

This Covenant recognizes the inherent right to life and establishes that no one shall be arbitrarily deprived of their life or subjected to torture or to cruel, inhuman, or degrading treatment or punishment, especially medical or scientific experimentation without their free consent. It guarantees that all persons have the right to freedom and security and shall not be unlawfully deprived of these, and that anyone deprived of their freedom shall be treated with humanity and with respect for the inherent dignity of all persons. No one shall be subjected to arbitrary arrest or detention. The Covenant establishes due process, i.e., the right of any person accused of committing a crime to be presumed innocent and to be afforded certain guarantees that must be respected during the proceedings. It also recognizes the right to equal protection under the law and the prohibition of discrimination on any grounds, which means that States Parties have a duty to respect the human rights of migrants. The Covenant further provides that everyone lawfully within

the territory of a State shall have the right to liberty of movement and freedom to choose their residence, and that everyone shall have the right to leave any country, including their own. These rights may not be restricted except as provided by law. Any restrictions must be necessary to protect national security, public order, public health or morals, or the rights and freedoms of others, and must be consistent with the other rights recognized in the Covenant. Along the same lines, the Covenant provides that a foreign person lawfully within the territory of a State Party may only be expelled pursuant to a decision reached in accordance with law (13).

International Covenant on Economic, Social and Cultural Rights (1966)

This treaty recognizes a wide range of economic, social, and cultural rights, such as the right to health, education, work, social security, and culture, among others. It provides for the right of all persons to the enjoyment of just and favorable working conditions that ensure a minimum standard of living for themselves and their families, including a fair wage, and that guarantees women working conditions not inferior to those enjoyed by men. It also recognizes the right to health as the right of all persons to the enjoyment of the highest attainable standard of physical and mental health.

The Covenant establishes the right of all persons to social security, a term that implicitly covers all risks involved in the loss of livelihood for reasons beyond one's control. It also recognizes the right of all persons to the enjoyment of the highest attainable standard of physical and mental health. Finally, the Covenant provides that States recognize the right of everyone to education for the full development of the human personhood and the sense of dignity, and that education should strengthen respect for human rights and fundamental freedoms.

³ The designations "covenant" and "convention" or other forms do not change the binding nature of these instruments. These are treaties within the meaning of the Vienna Convention on the Law of Treaties (1969), which provides that every treaty is binding on the States that have ratified it and must be performed in good faith by those States, which may not invoke domestic law to justify noncompliance with a treaty.

This Covenant establishes that States Parties must undertake to guarantee the exercise of the rights set forth therein without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or other status. This includes migrants (14).

Convention on the Elimination of All Forms of Discrimination Against Women (1979)

This landmark instrument of international law condemns discrimination against women in all its forms and recognizes rights and obligations for States Parties to promote and protect the rights of women, including migrant women. States Parties should eradicate any act or practice of discrimination against women, including migrant women, and should ensure that public authorities and institutions take all appropriate measures to eliminate discrimination against women in health care to ensure that women and men have equal access to health care services. These provisions are critical in terms of access to health services for migrant women, who may have specific needs, for example, during pregnancy and postpartum, or who may be discriminated against because of their status as migrants (15).

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

Under this Convention, States Parties have the obligation to take effective legislative, administrative, judicial, or other measures to prevent acts of torture and other cruel, inhuman, or degrading treatment or punishment in any territory under their jurisdiction. The Convention also requires States Parties to ensure that all acts of torture are offenses under their criminal law and requires them to make these offenses punishable by penalties that reflect their grave nature. This instrument establishes that each State Party shall take the necessary steps to prevent cruel, inhuman, or degrading treatment or punishment in all territories under its jurisdiction when such

acts are committed by, at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity (16). These provisions are vitally important for the protection of the mental and physical health of migrants in public institutions.

Convention on the Rights of the Child (1989)

The guiding principles of this Convention are the right of children not to be discriminated against, the best interests of the child as a criterion to be followed in all decisions concerning them, as well as the right of children to express their opinion and to be heard in matters affecting them. Regarding the right to health, under the Convention, States Parties recognize children's right to the enjoyment of the highest attainable standard of health and to services for the treatment of illness and rehabilitation of health. They also agree to take measures to reduce infant and child mortality, to ensure the provision of necessary medical assistance and health care to all children, to emphasize the development of primary health care, and to combat disease and malnutrition, among other commitments.

The Convention also establishes that States Parties shall respect and ensure the rights set forth therein for every child within their jurisdiction without discrimination of any kind, irrespective of the child's, or his or her parents', or legal guardian's ethnicity, color, sex, language, religion, political or other opinion, national, ethnic or social origin, economic status, disability, birth, or other status (17). This provision is central to the promotion and protection of the rights of migrant children and children of migrants.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

This Convention establishes the application of the principle of non-discrimination to all migrant workers, who are entitled to the rights enshrined therein without distinction of any kind such as to sex, race, color, language,

religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status. The rights recognized under the Convention include the right to liberty and security of the person, and protection against violence, physical harm, threats, and intimidation by public officials or private persons, groups, or institutions; the right to equality with State nationals before courts and tribunals; the prohibition of collective expulsion and safeguards in the expulsion process; the right to recognition everywhere as a person before the law, and the right to information.

It also protects fundamental social rights relating to equal treatment with nationals in respect to compensation and other labor and employment conditions, social security, access to medical care, and education (18).

Convention on the Rights of Persons with Disabilities (2006)

This Convention recognizes the special protection that States Parties must guarantee to persons with disabilities, as it establishes all their political, civil, economic, social, and cultural rights with the specificities this population requires. This Convention recognizes the rights of migrants with disabilities to liberty of movement, freedom to choose their residence, and to nationality, on an equal basis with others. Migrant persons shall not be deprived, on the basis of disability, of their ability to obtain, possess, and utilize documentation of their nationality or other identification documentation, or to utilize relevant processes, such as immigration proceedings, to facilitate the exercise of the right to liberty of movement (19).

International declarations, principles, recommendations, and guidelines

Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights establishes that all people are free and equal in rights and dignity, without distinction of any kind, including ethnicity, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or other status. This general provision means that migrants and their family members enjoy the protection of international human rights law like any other person, even if they have an irregular or undocumented status. Although States may exercise their power to set migration policies by establishing mechanisms to control the entry and exit of non-nationals to and from their territory, such policies must be compatible with the standards for the protection of the human rights of migrants. The Declaration further states that no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing, or under any other limitation of sovereignty (20).

General Comment No. 14 of the Committee on Economic, Social and Cultural Rights on the Right to the Highest Attainable Standard of Health (2000)

This general comment is central to understanding the scope of the right to health and the obligations assumed by States upon ratifying the International Covenant on Economic, Social and Cultural Rights. In this comment, the Committee on Economic, Social and Cultural Rights analyzes the content and scope of Article 12 of the Covenant

on the right to health, as well as the obligations of States Parties derived from it, and provides clear guidelines on the measures to be taken to guarantee this right. In the comment, the Committee establishes that the right to health is closely related to other human rights, such as the rights to life, freedom from discrimination, equality, personal liberty, personal integrity, freedom of association, assembly, and movement, food, housing, employment, and education, all of which rely on its exercise. It refers to migrants in particular by establishing that States have the obligation to respect their right to health and to abstain from denying or limiting equal access to preventive, curative, and palliative health services for all persons, including asylum seekers and undocumented immigrants.

The Committee also sets out the four essential and interrelated elements that make up the right to health in all its forms and at all levels, the application of which will depend upon the conditions prevalent in a given State Party:

(a) **Availability.** Functioning public health and health-care facilities, goods, services, and programs have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods, and services may vary depending on numerous factors, including the State Party's level of development. However, these services will encompass the underlying determinants of health, such as clean drinking water and adequate sanitation; hospitals, clinics, and other health-related facilities; trained and well-paid medical and professional staff, taking into account the conditions in the country; and essential drugs as defined by the World Health Organization's Programme of Action on Essential Drugs;

(b) **Accessibility.** Health facilities, goods, and services have to be accessible to everyone without discrimination, within the jurisdiction of the State Party. This element has four dimensions: (i) non-discrimination; (ii) physical accessibility; (iii) economic accessibility (affordability), and (iv) access to information;

(c) **Acceptability.** All health facilities, goods, and services must be respectful of medical ethics and culturally appropriate, i.e., respectful of the culture of individuals, minorities, peoples, and communities, sensitive to gender and life-cycle requirements, and designed to respect confidentiality and improve the health status of those concerned; and

(d) **Quality.** As well as being culturally acceptable, health facilities, goods, and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation (21).

2030 Agenda for Sustainable Development: Sustainable Development Goals (2015)

The 2030 Agenda for Sustainable Development proposes ending poverty for all people, including migrants, and working to achieve gender equality, women's empowerment, healthy lives, well-being at all ages, economic growth, full employment, and inclusive cities and human settlements.

Several targets set out in the SDGs refer to the importance of migration for development. Target 8.8 calls for the protection of labor rights and the promotion of safe and secure working environments for all workers, including migrant workers, in particular migrants who are women and those in precarious employment; and target 10.7 calls for the facilitation of orderly, safe, regular, and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies (22).

New York Declaration for Refugees and Migrants (2016)

This Declaration of the United Nations General Assembly is a recognition of the importance of migration and refugee issues on the international agenda. Member States of the United Nations recognized the need for a comprehensive approach to human mobility and strengthened inter-

national cooperation by creating mechanisms to protect migrant populations. The Assembly reaffirmed its obligations to fully respect the human rights of refugees and migrants and recognized that the protection of refugees and assistance to host States are a shared responsibility and should be assumed in a more equitable and predictable manner. The countries also agreed to work towards the adoption of a global compact on refugees and a global compact for safe, orderly, and regular migration (23).

Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration

In this general comment, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child recalled that both the Convention on the Rights of the Child and the International Convention on the Protection of All Migrant Workers and Members of Their Families impose obligations to respect, protect, and fulfill the rights of children in the context of international migration, regardless of their or their parents' or legal guardians' migration status. They also recalled that, in all policies affecting children in the context of international migration, States should be guided by the principles of non-discrimination, the best interests of the child, the right of children to express their views in all matters affecting them, and the right to life, survival, and development. They also stressed that collective expulsions of migrant children and families are prohibited (24).

Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return

In this general comment, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child emphasized that children between the ages of 15 and 18 should be afforded the same standards of protection as those under the age of 15, regardless of their migration status. The Committees also maintained that children should not be criminalized or subject to punitive measures such as detention because of their parents' immigration status, and that irregular entry and stay do not constitute crimes per se against persons, property, or national security. They stressed that access to justice is a fundamental right and a prerequisite for guaranteeing other human rights and that, therefore, in the context of international migration, every child must be able to assert his or her rights. States also have an obligation to maintain family unity. With regard to the right to health, the Committees recalled that all children should have full and unrestricted access to health services, regardless of their migration status (25).

Inter-American System of Human Rights

The Inter-American System of Human Rights consists of two bodies: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (26).

The IACHR comprises seven independent members and focuses on three main areas of work: (a) the petition and case system (through which complaints related to specific cases are brought to the IACHR); (b) monitoring the human rights situation in OAS member countries, for example, through country visits and published reports with recommendations, and (c) work in priority thematic areas, including monitoring and technical cooperation by the rapporteurships and working groups (27), including the Rapporteurship on the Rights of Migrants.⁴

The Inter-American Court of Human Rights, composed of seven judges, is an autonomous institution with contentious and advisory functions whose main purpose is to

⁴ <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/r/dm/default.asp>.

interpret and apply the American Convention on Human Rights. Under its contentious function, the Court may determine whether a State has incurred international responsibility for the violation of a right guaranteed in the Convention or in other treaties of the Inter-American system. The Court also performs an advisory role, under which it can answer questions from Member States or other OAS bodies on the interpretation of the American Convention and other treaties, or on the compatibility of national laws with the Convention (26).

Binding Inter-American legal instruments⁵

American Convention on Human Rights (Pact of San José, 1969)

This treaty is the main human rights instrument in the Region because of the number of rights it recognizes and its central role in the human rights obligations of States Parties. It recognizes, among other rights, the right to life, physical integrity, and personal liberty. This last right is particularly important for migrants, as policies, plans, programs, laws, or practices that deprive migrants of their liberty in institutions (such as prisons, detention centers, or other institutions) may affect their physical and mental health. The Convention also recognizes that all persons, including migrants, have the right, without discrimination, to the equal protection of the law (28).

Inter-American Convention to Prevent and Punish Torture (1985)

All acts of torture and any cruel, inhuman, or degrading treatment or punishment of migrants violate human dignity, and the human rights and fundamental freedoms enshrined in the aforementioned international and regional human rights instruments. Each State must prevent and punish torture and other forms of cruel, inhuman, or degrading treatment or punishment

within its jurisdiction (29). This Convention is extremely important in cases involving migrant detention or internment centers.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1988)

Under this international instrument, the States Parties undertake to guarantee the exercise of the economic, social, and cultural rights set forth therein, without discrimination of any kind as to ethnicity, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or other status. The Protocol guarantees that every human being should enjoy the right to health and affirms that the States agree to recognize health as a public good, to prevent further abuses, and to promote education on health problems. This Covenant recognizes the protection of the rights of migrants through its nondiscrimination clause (30).

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) (1994)

The cornerstone of this instrument is that the elimination of violence against women is essential for their individual and social development. The Convention establishes that all women, including migrant women, are entitled to the recognition, enjoyment, exercise, and protection of all human rights and freedoms contained in international and regional human rights instruments. These rights include the right to respect for their life and their physical, mental, and moral integrity (37). This instrument is key for eradicating physical, sexual, and psychological violence against women that frequently occurs within the family, the community, medical centers, and detention centers.

⁵ The titles "covenant," "convention," "protocol," and others do not change the binding nature of these instruments. These are treaties within the meaning of the Vienna Convention on the Law of Treaties (1969), which provides that every treaty is binding on the States that have ratified it and must be performed in good faith by those States, which may not invoke domestic law to justify noncompliance with a treaty.

Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999)

This Convention aims to prevent and eliminate all forms of discrimination against persons with mental or physical disabilities and to promote their full integration into society (32). It is the first international convention to specifically address the rights of persons with disabilities. It is an effective instrument for protecting the human rights of migrants with disabilities.

Inter-American Convention against All Forms of Discrimination and Intolerance (2013)

This Convention states that discrimination is “any distinction, exclusion, restriction, or preference, in any area of public or private life, the purpose or effect of which is to nullify or curtail the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties” (33), and that discrimination may be based specifically on nationality, among many other grounds, which in certain cases may be combined. It also provides that “indirect discrimination shall be taken to occur, in any realm of public and private life, when a seemingly neutral provision, criterion, or practice has the capacity to entail a particular disadvantage for persons belonging to a specific group, or puts them at a disadvantage, unless said provision, criterion, or practice has some reasonable and legitimate objective or justification under international human rights law” (33). These provisions are central to formulating, implementing, and evaluating public policies relating to migrants.

Inter-American Convention on Protecting the Human Rights of Older Persons (2015)

This Convention recognizes the specific rights of older persons, including older migrants, such as the right to independence and autonomy, the right to long-term care, the right to free and informed consent in the area of health and safety, freedom from violence, prevention

of torture and other cruel treatment, and economic, social, cultural, and environmental rights. In particular, this Convention provides that States Parties shall develop specific approaches in their policies, plans, and legislation on aging and old age in relation to older persons who are vulnerable and those who are victims of multiple forms of discrimination, including migrants (34).

Regional statements, principles, recommendations, standards, and technical guidelines

American Declaration on the Rights and Duties of Man (1948)

The objective of this Declaration is to protect civil, political, economic, social, and cultural rights and fundamental freedoms (35), and it is part of what is known as the regional corpus juris of human rights. Although it is not an international treaty that States must ratify, it is understood by virtue of international custom that this Declaration is binding on the countries of the Americas.

Cartagena Declaration on Refugees (1984)

This Declaration promotes the ratification of the 1951 Convention Relating to the Status of Refugees among countries that have not ratified it. It also reiterates the importance and significance of the principle of non-refoulement (including the prohibition of rejection at the border) as a cornerstone of international refugee protection, a jus cogens principle, i.e., one that is binding on all countries under international law (36).

Advisory Opinion OC-18/03 of the Inter-American Court of Human Rights: “Juridical Condition and Rights of Undocumented Migrants” (2003)

In this Advisory Opinion, requested by Mexico, the Inter-American Court of Human Rights opined on the deprivation of labor rights of undocumented migrant workers and on the principle of equality. The Court asserted that excluding a class of persons under the control or jurisdiction of a country from the protection afforded to them

under international human rights law on the basis of their migratory status is incompatible with the American Convention on Human Rights. Thus, the immigration policies of the States must respect this principle and cannot be discriminatory. The Court concluded that States must respect the human rights of individuals, regardless of their migratory status. In the Court's opinion, States should not allow private employers to violate the human rights of workers (37).

Resolution CD53. R14 of the Pan American Health Organization: "Strategy for Universal Access to Health and Universal Health Coverage" (2014)

This resolution approves the Strategy for Universal Access to Health and Universal Health Coverage of the Pan American Health Organization (PAHO). Universal access to health and universal health coverage implies that all people and communities have access, without any kind of discrimination, to comprehensive, appropriate and timely, quality health services determined at the national level according to needs, as well as access to safe, affordable, effective, quality medicines, while ensuring that the use of these services does not expose users to financial hardship, especially groups in conditions of vulnerability. This resolution established a framework that countries can use to develop policy and regulatory frameworks to remove barriers to migrants' access to health services. The resolution also calls for addressing the social determinants of health and eliminating barriers to accessing health services, such as cost, language, cultural differences, discrimination, and lack of information (38).

Advisory Opinion OC-21/14 of the Inter-American Court of Human Rights: "Rights and guarantees of children in the context of migration and/or in need of international protection" (2014)

This Advisory Opinion, requested by Argentina, Brazil, Paraguay, and Uruguay, refers to two broad groups of migrant children: children who require international

protection and have refugee or asylum status or have requested it; and children who arrive in a country under other circumstances, whether with their families or unaccompanied, and who are vulnerable to the potential violation of their rights because, for example, they are victims of domestic violence or abuse, human trafficking, child labor, or they are not receiving education or health care because neither they nor their parents have the proper documentation. The Court established several important criteria, including: (a) irregular migratory status cannot be invoked to deprive a child of his or her liberty; (b) under the international humanitarian law principle of *non-refoulement*, if they wish to return a child to his or her country of origin, States must consider both whether the child's life and physical integrity are at risk in the receiving country and whether the conditions for his or her comprehensive development are present in that country; (c) children have the right to family life (their parents cannot be expelled from a country for administrative immigration violations); (d) the focus on the human rights of children must take precedence over any consideration of their migratory status; (e) States should identify children in need of international protection and provide them with individualized treatment; and (f) States should ensure due process of law, including, inter alia, the right to be heard and the right to translation or interpretation when necessary (39).

PAHO Resolution CD55.R13: "Health of Migrants" (2016)

In this resolution, the 55th Directing Council of PAHO urges PAHO Member States, as appropriate to their contexts, priorities, and institutional and legal frameworks, to lead the effort to modify or improve regulatory and legal frameworks to address the specific health needs of migrant individuals, families, and groups. The resolution establishes that health services should be inclusive and responsive to the needs of migrants and easily accessible to them, removing geographic, economic, and cultural barriers. Addressing the specific and dif-

ferential needs of migrants should be a key component of a country's progress towards comprehensive, quality, universal, and progressively expanded health services. Thus, the provision of care must consider cultural, religious, and gender issues and ensure that migrants have access to health services in the health system of countries of transit or destination. The resolution also refers to undocumented migrants, who form a highly vulnerable subgroup due to their limited access to health care and other public services available to documented migrants. The resolution stresses that countries should modify the regulatory or legal framework to address the needs of migrants, in line with international human rights instruments related to health. Countries should work closely together to improve health services in border areas to protect individuals, families, and migrant populations during transit across borders (40).

PAHO Guidance Document on Migration and Health (2018)

This document serves as a resource for Member States to address the public health and health system challenges related to migration, including the promotion and protection of migrants' health throughout their migration process. It aims to support the integration of the health needs of migrants into national health policies, strategies, and programs, to not only protect the health of this population, but also that of the host population.

The document lays out an action plan defining five strategic lines of action to address the health needs of migrants:

(a) Strengthen health surveillance, information management, and monitoring. This line of action aims to ensure that disaggregated data and information are generated at regional and country (national and subnational) levels, and that adequate, standardized, and comparable records on the health of migrants are available to sup-

port policy- and decision-makers to develop more evidence-informed policies, plans, and interventions.

(b) Improve access to health services for the migrant and host population. To implement this strategic line of action, it is important to determine specific barriers to access and define specific interventions, for example, facilitating linguistic, intercultural, and financial support to improve access to health services for migrant and host populations. Existing mechanisms should be strengthened to increase the capacity of health services in areas with a high influx of migrant populations. Services should cover the spectrum of care;

(c) Improve communication and exchange of information to counter xenophobia, stigma, and discrimination. This line of action focuses on the provision of accurate information and dispelling of fears and misperceptions among migrant and host populations about the health impacts of migration and displacement on mobile populations, and on the health of local communities and health systems;

(d) Strengthen partnerships, networks, and multi-country frameworks to understand the status and promote and protect the health of migrants. This line of action seeks to ensure that the determinants affecting migrants' health are addressed through joint action and coherent multisectoral public health policy responses, including differentiated impacts among women and girls, children, and indigenous and Afro-descendent communities, and

(e) Adapt policies, programs, and legal frameworks to promote and protect the health and well-being of migrants. This strategic line targets the mainstreaming of migrant's health in national agendas and promotes migrant-sensitive health policies and legal and social protection, and the health and well-being of women, children, and adolescents living in migrant settings. It also seeks to ensure equality in national programs and policies, including the empowerment of migrant women and girls and gender equality (2).

IACHR Resolution 04/19: “Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking” (2019)⁶

The IACHR adopted this resolution on 7 December 2019. It contains 80 principles and presents guidelines to support the action of States, civil society organizations, and international bodies in the progressive development and implementation of the standards of the Inter-American System of Human Rights and good practices observed in countries of the Region and other regional contexts regarding the human rights of migrants, refugees, stateless persons, and victims of trafficking (41).

IACHR Resolution 1/2020: “Pandemic and Human Rights in the Americas” (2020)

On 10 April 2020, the IACHR adopted Resolution 01/2020, entitled “Pandemic and Human Rights in the Americas,” in light of the unprecedented global health emergency facing the Americas and the world, caused by the rapid global spread of COVID-19. In the section containing the Commission’s recommendations, the resolution refers specifically to migrants, asylum seekers, refugees, stateless persons, victims of human trafficking, and internally displaced persons to ensure respect for them as full rights-holders, in accordance with human rights standards, in the face of the COVID-19 pandemic. The following recommendations are made:

(a) Avoid the use of strategies for detaining migrants and other measures that may increase the risk of contagion and propagation of the disease caused by COVID-19 and the vulnerability of migrant people, such as deportations or mass expulsions, or any form of return without proper coordination and verification of the corresponding health conditions, ensuring that migrants and their families can preserve their right to health without discrimination of any kind. Mechanisms should quickly be put in place to release people currently in detention centers;

(b) Refrain from taking measures that may hinder, intimidate or discourage people who are in a migrant situation from having access to programs, services, and policies to respond to the COVID-19 pandemic, such as migrant controls or restraints around hospitals or shelters, and the sharing of information between hospital services and migration law enforcement authorities;

(c) Guarantee the right to return and migrate back to a person’s state or territory of origin or nationality, through cooperation, exchange of information and logistical support between the States concerned, paying heed to the required health protocols, and giving particular attention to the right of stateless persons to return to the countries where they usually reside, and ensuring the principle of respecting the family unit;

(d) Take steps to prevent and combat xenophobia and the stigmatization of people who are in a migrant situation in the context of the pandemic; and

(e) Expressly include migrant populations in economic recovery policies and actions as necessary throughout the crisis produced by the pandemic (42).

How these standards should be applied and how international and regional human rights systems can be used strategically

The instruments and mechanisms of the United Nations and the Inter-American System of Human Rights establish a solid foundation for the adoption of measures to promote and safeguard the rights of migrants in the Americas. These measures should involve all segments of society: the different branches of government, civil society, academia, the media, and the public. All actors and stakeholders should be aware of the human rights and protections guaranteed by these instruments and use them to improve and review national laws, policies, plans, programs, and practices. In addition, all sectors of society should respect the dignity and personal integrity of migrants and promote the protection of their fundamental rights and freedoms.

⁶ <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf>

The bodies of the United Nations human rights system and the Inter-American System of Human Rights are essential tools to complement and support the work done by States at the national level. They can function both as monitoring and complaint bodies and as bodies for cooperation and technical assistance to States for the promotion and protection of the human rights of migrants.

Ministries of health, education, labor, and other relevant agencies, such as immigration authorities. These entities have the obligation to know, apply, and disseminate the international human rights instruments that their States ratified voluntarily. These legal instruments create a range of obligations in terms of public policy, legislation, budget, and practices concerning migrants. Among other responsibilities, human rights conventions require protection against violations of individual freedom and autonomy, as well as the guarantee of the economic, social, cultural, and environmental rights of migrants.

Governments have an obligation to bring their programs, plans, policies, and practices in line with the human rights standards set forth in international instruments. The recommendations of the various bodies of the United Nations system and the Inter-American system, which offer guidance and guidelines to States on what measures to adopt and how to do so from a human rights perspective, are useful in this regard.

States have not only the obligation to not violate the rights of migrants, but also the responsibility to ensure that third parties do not do so either. This is particularly relevant when establishing regulations on public and private health institutions, as well as any other situation in which the prevention of abuse, violence, and mistreatment must be guaranteed. Human rights education is also a key tool for the promotion and protection of migrants' rights. Along these lines, States must also ensure that they provide State agents with the broadest possible education and training on the protection of the human rights of migrants. In particular, national immi-

gration authorities should ensure that public officials do not make arbitrary decisions that fail to consider the human rights of migrants.

Management team and staff at health care centers should be familiar with the standards for the protection of the human rights of migrants and put them into practice. Since many migrants choose not to seek care from medical professionals, except in severe cases, for fear of being discriminated against in hospital facilities, all staff should be trained to consider the specific needs of migrants, particularly cultural differences with the receiving country, and to avoid stigmatizing migrants, who may be seen as competitors for existing medical resources. These institutions should also have mechanisms in place to ensure that migrants' personal information is not used against them to discriminate against them, report them, or cause them to be persecuted because of their nationality of origin or their irregular migratory status.

Nursing and other health care staff in hospitals, clinics, and other health care facilities should be aware of the rights of migrants, implement them, and ensure that these rights are respected and protected in every interaction with migrants. Health care staff should bear in mind that they have an essential role to play in preventing the stigmatization of migrants by ensuring that migrants receive care on an equal footing with nationals, and that they have an obligation to report any violation of migrants' rights to the appropriate officials.

Legislators and lawmakers must be thoroughly familiar with international human rights law and have an obligation to ensure that all domestic laws are consistent with the obligations arising from international human rights conventions and instruments. They must ensure that laws do not make arbitrary distinctions that discriminate against migrants and do not promote their stigmatization. Otherwise, the legal instruments should be analyzed and amended to bring them in line with international standards.

Justice system officials must apply the international and regional human rights legal framework in all their decisions and promote respect for human rights and fundamental freedoms without discrimination. The role of the judiciary is central to the dissemination of international human rights law for the promotion and protection of migrants' rights. To this end, members of the judiciary should receive human rights training to incorporate not only the standards, but also the human rights approach in all judicial proceedings and in every decision involving migrants.

Members of the security forces should fully understand the importance of international human rights law in protecting the rights and freedoms of individuals and groups within society. They must ensure respect for and protection of these rights and freedoms for all migrants and avoid arbitrary detention based solely on migrant status. Governments have an obligation to provide human rights training to all security forces personnel.

National human rights institutions and the Office of the Ombudsperson. These institutions should follow up on complaints from migrants and visit health centers to ensure that human rights are respected under international and national laws. They should also incorporate the human rights of migrants into their priorities, as they play a central role in the dissemination and promotion of the human rights of the migrant population.

Nongovernmental organizations working with migrants or for the promotion and protection of their rights play a vitally important role in the ongoing demand that States ensure the full realization of rights. They should work to raise public awareness of human rights and make use of the regional and international protection mechanisms, utilizing them in cases of rights violations that occur within a country at the local level. Networking and partnerships among nongovernmental organizations are highly effective in joining forces and making better use of available resources.

Educational institutions, at their different levels, contribute greatly to a culture that fosters the integration of migrants into the community. They should train their teaching teams to adopt language free of stereotypes, stigmatization, and discrimination to facilitate the integration of students from migrant families. Their curricula should also reflect a commitment to human rights. Researchers working on migration-related issues should also strive to use language free of stereotypes and perform evidence-based work.

The media play a fundamental role in promoting the human rights of migrants. They should always ensure that communication involving migrants is free of stereotypes, stigmatization, and discrimination.

References

- Inter-Parliamentary Union, International Labour Organization, Office of the United Nations High Commissioner for Human Rights. Migration, human rights and governance. Handbook for Parliamentarians No. 24 [Internet]. France: Inter-Parliamentary Union; 2015 [accessed 25 October 2021]. 218 pp. Available at: https://www.ohchr.org/documents/publications/migrationhr_and_governance_hr_pub_15_3_en.pdf.
- Pan American Health Organization. Guidance Document on Migration and Health [Internet]. Washington, D.C.: Pan American Health Organization; 2019 [Accessed 25 October 2021]. 21 pp. Available at: <https://www.paho.org/en/documents/guidance-document-migration-and-health>.
- 55th Directing Council of the Pan American Health Organization. Health of Migrants [Internet]. Washington, D.C.: Pan American Health Organization; 7 October 2016 [accessed 25 October 2021]. Available at: <https://iris.paho.org/bitstream/handle/10665.2/31442/CD55-11%2c%20Rev.1-e.pdf?sequence=1&isAllowed=y>.
- World Health Organization. Promoting the health of refugees and migrants. Draft global plan of action, 2019-2023. Report of the Director-General [Internet]. Geneva: World Health Organization; 24 December 2018 [accessed 25 October 2021]. Available at: https://apps.who.int/gb/ebwha/pdf_files/EB144/B144_27-en.pdf.
- International Organization for Migration, World Health Organization, Office of the United Nations High Commissioner for Human Rights. International Migration, Health and Human Rights [Internet]. Geneva: International Organization for Migration; 2013 [accessed 25 October 2021]. 65 pp. Available at: <https://publications.iom.int/books/international-migration-health-and-human-rights>.
- González Morales F (Special Rapporteur on the human rights of migrants). Report of the Special Rapporteur on the human rights of migrants. One and a half years later: the impact of COVID-19 on the human rights of migrants [Internet]. Geneva: United Nations; 30 July 2021 [accessed 25 October 2021]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/212/04/PDF/N2121204.pdf?OpenElement>.
- Office of the United Nations High Commissioner for Human Rights. Human rights bodies [Internet]. Geneva: Office of the United Nations High Commissioner for Human Rights; 25 August 2015 [last updated 19 October 2021; accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>.
- Human Rights Council. United Nations Human Rights Council [Internet]. Geneva: United Nations Human Rights Council; 20 February 2018 [last updated 19 October 2021; accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/HRBodies/HRC/Pages/Home.aspx>.
- Human Rights Council. Universal Periodic Review [Internet]. Geneva: United Nations Human Rights Council; December 5, 2015 [last updated October 19, 2021; accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/hrbodies/upr/pages/uprmain.aspx>.
- Office of the United Nations High Commissioner for Human Rights. Special Procedures of the Human Rights Council [Internet]. Geneva: Office of the United Nations High Commissioner for Human Rights; 13 September 2015 [last updated 19 October 2021; accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx>.
- Office of the United Nations High Commissioner for Human Rights. Human rights treaty bodies [Internet]. Geneva: Office of the United Nations High Commissioner for Human Rights; 30 September 2015 [last updated 19 October 2021; accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.
- Office of the United Nations High Commissioner for Human Rights. Committee on the Protection of the Rights of All Migrant Workers and Members of their Families [Internet]. Geneva: Office of the United Nations High Commissioner for Human Rights; 7 May 2019 [last updated 19 October 2021; accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIndex.aspx>.
- General Assembly. International Covenant on Civil and Political Rights [Internet]. Geneva: Office of the United Nations High Commissioner for Human Rights; 16 December 1966 [accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.
- General Assembly. International Covenant on Economic, Social and Cultural Rights [Internet]. Geneva: Office of the United Nations High Commissioner for Human Rights; 16 December 1966. [accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.
- General Assembly. Convention on the Elimination of All Forms of Discrimination against Women [Internet]. Geneva: Office of the United Nations High Commissioner for Human Rights; 18 December 1979. [accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>.
- General Assembly. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [Internet]. Geneva: Office of the United Nations High Commissioner for Human Rights; 10 December 1984 [accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.
- General Assembly. Convention on the Rights of the Child [Internet]. Geneva: Office of the United Nations High Commissioner for Human Rights; 20 November 1987 [accessed 25 October 2021]. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.
- General Assembly. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families [Internet]. Geneva: Office of the United Nations High Commissioner for Human Rights; 18 December 1990 [accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>.
- General Assembly. Convention on the Rights of Persons with Disabilities [Internet]. Geneva: Office of the United Nations High Commissioner for Human Rights; 13 December 2006. [accessed 25 October 2021]. Available at: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>.
- United Nations. The Universal Declaration of Human Rights [Internet]. New York: United Nations; 18 March 2021 [last updated: 25 October 2021; accessed 25 October 2021]. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.
- Committee on Economic, Social and Cultural Rights. Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights. General Comment No. 14 (2000). The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights) [Internet]. Geneva: United Nations; August 11, 2000 [accessed 25 October 2021]. Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWIAVC1NkPsgUedPIFivfPMJ2c7ey6PAz2qaojTzDjMCoY%2b9t%2bsAtGDNzdEqA6SuP2r-0w%2f6sVBGTpvTSCbiOr4XVFTqhQY65auFbQRPWNDxL>.
- United Nations. Sustainable Development Goals [Internet]. New York: United Nations; 30 August 2019 [accessed 25 October 2021]. Available at: <https://www.un.org/sustainabledevelopment/>.
- General Assembly. 70/1 New York Declaration for Refugees and Migrants [Internet]. New York: United Nations; 3 October 2016 [accessed 25 October 2021]. Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf.

24. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Committee on the Rights of the Child. Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration [Internet]. Geneva: United Nations; 16 November 2017 [accessed 25 October 2021]. Available at: <https://www.refworld.org/docid/5a1293a24.html>.
25. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Committee on the Rights of the Child. Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return [Internet]. Geneva: United Nations; 16 November 2017 [accessed 25 October 2021]. Available at: <https://www.refworld.org/docid/5a12942a2b.html>.
26. Inter-American Court of Human Rights. What is the I/A Court H.R.? [Internet]. San José: Inter-American Court of Human Rights; 1 January 2010 [accessed 25 October 2021]. Available at: https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en.
27. Organization of American States, What is the IACHR? [Internet]. Washington, D.C.: Organization of American States; 2021 [last update 25 October 2021; accessed 25 October 2021]. Available at: <https://www.oas.org/en/iachr/js-Form/?File=/en/iachr/mandate/what.asp>.
28. Organization of American States. American Convention on Human Rights [Internet]. Washington, D.C.: Organization of American States; 22 November 1969. [accessed 25 October 2021]. Available at: https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.
29. Organization of American States. Inter-American Convention to Prevent and Punish Torture [Internet]. Washington, D.C.: Department of International Law, Organization of American States; 9 December 1985 [accessed 25 October 2021]. Available at: <https://www.oas.org/juridico/english/treaties/a-51.html>.
30. Organization of American States. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" [Internet]. Washington, D.C.: Department of International Law, Organization of American States; 17 November 1988 [accessed 25 October 2021]. Available at: <http://www.oas.org/juridico/english/treaties/a-52.html>.
31. Organization of American States. Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará" [Internet]. Washington, D.C.: Department of International Law, Organization of American States; 9 June 1994 [accessed 25 October 2021]. Available at: <https://www.oas.org/juridico/english/treaties/a-61.html>.
32. Organization of American States. Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities [Internet]. Washington, D.C.: Department of International Law, Organization of American States; 7 June 1999 [accessed 25 October 2021]. Available at: <https://www.oas.org/juridico/english/treaties/a-65.html>.
33. Organization of American States. Inter-American Convention against All Forms of Discrimination and Intolerance [Internet]. Washington, D.C.: Organization of American States; 5 June 2013 [accessed 25 October 2021]. Available at: https://www.oas.org/en/sla/dil/inter_american_treaties_A-69_discrimination_intolerance.asp.
34. Organization of American States. Inter-American Convention on Protecting the Human Rights of Older Persons [Internet]. Washington, D.C.: Organization of American States; 15 June 2015 [accessed 25 October 2021]. Available at: https://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons.asp.
35. Ninth International Conference of American States. American Declaration of the Rights and Duties of Man [Internet]. Washington, D.C.: Organization of American States; 2 May 1948 [accessed 25 October 2021]. Available at: <https://www.oas.org/en/iachr/mandate/Basics/declaration.asp>.
36. Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems. Cartagena Declaration on Refugees [Internet]. Cartagena de Indias: Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems; 22 November 1984 [accessed 25 October 2021]. Available at: <https://www.unhcr.org/en-us/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html>.
37. Inter-American Court of Human Rights. Advisory Opinion OC-18/03 of September 17, 2003, requested by the United Mexican States: Juridical Condition and Rights of Undocumented Migrants [Internet]. San José: Inter-American Court of Human Rights; 17 September 2003 [accessed 25 October 2021]. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf.
38. 53rd Directing Council of the Pan American Health Organization. Resolution CD53. Strategy for universal access to health and universal health coverage [Internet]. Washington, D.C.: Pan American Health Organization; 2 October 2014 [accessed 25 October 2021]. Available at: <https://www.paho.org/hq/dmdocuments/2014/CD53-R14-e.pdf>.
39. Inter-American Court of Human Rights. Advisory Opinion OC-21/14. Rights and guarantees of children in the context of migration and/or in need of international protection. Official summary issued by the Inter-American Court of the Advisory Opinion of August 19, 2014, requested by the Republic of Argentina, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay [Internet]. San José: Inter-American Court of Human Rights; 19 August 2014 [accessed 25 October 2021]. Available at: https://www.corteidh.or.cr/docs/opiniones/resumen_seriea_21_eng.pdf.
40. 55th Directing Council of the Pan American Health Organization. Resolution CD55.R13. Health of Migrants [Internet]. Washington, D.C.: Pan American Health Organization; 30 September 2016 [accessed 25 October 2021]. Available at: https://cdn.who.int/media/docs/default-source/documents/publications/paho-resolution-health-of-migrants1c362c3f-8292-4fa1-a32e-04908ef7a9b4.pdf?sfvrsn=d413365e_1&download=true.
41. Inter-American Commission on Human Rights. Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking. Resolution 04/19 adopted by the Commission on December 7, 2019 [Internet]. Washington, D.C.: Inter-American Commission on Human Rights, Organization of American States; 7 December 2019 [accessed 25 October 2021]. Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-4-19-en.pdf>.
42. Inter-American Commission on Human Rights. Pandemic and Human Rights in the Americas. Resolution 1/2020 [Internet]. Washington, D.C.: Inter-American Commission on Human Rights, Organization of American States; 10 April 2020 [accessed 25 October 2021]. Available at: <https://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>.

Annexes

Annex 1. United Nations Human Rights System

Table A.1.1 shows eight international instruments of the United Nations human rights system that protect the fundamental rights and freedoms indicated. Table A.1.2 lists the countries that are parties to these instruments.

Table A.1.1. Select International Instruments of the United Nations Human Rights System that Protect the Listed Fundamental Rights and Freedoms

| Fundamental rights and freedoms | Universal Declaration of Human Rights | International Covenant on Civil and Political Rights | International Covenant on Economic, Social and Cultural Rights | Convention on the Elimination of All Forms of Discrimination against Women | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families | Convention on the Rights of the Child | Convention on the Rights of Persons with Disabilities |
|--|---------------------------------------|--|--|--|--|---|---------------------------------------|---|
| Life | Art. 3 | Art. 6, para. 1 | | | | Art. 10 | Art. 9 | Art. 10 |
| Personal integrity | Art. 5 | Art. 7 | | | Arts. 1 & 16 | Art. 10 | Art. 19 | Art. 17 |
| Personal liberty | Art. 3 | Art. 9 | | | | Art. 16 | | Art. 14 |
| Due process | Art. 8 | Art. 14 | | | Art. 13 | | Arts. 37 & 40 | |
| Privacy | Art. 12 | Art. 17 | | | | Art. 14 | Art. 16 | Art. 22 |
| Freedom of expression | Art. 19 | Art. 19, para. 2 | | | | Arts. 12 & 13 | Arts. 12 & 13 | Art. 21 |
| Movement | Art. 13 | Art.12 | | Art. 15, para. 4 | | Art. 22 | | Art. 20 |
| Equal protection of the law | Art. 7 | Art. 26 | | Arts. 3 & 15, para.1 | | Art. 18 | | Art. 12 |
| Judicial protection | Art. 10 | Art. 14 | | Art. 15, para. 2 | Art. 13 | Art. 18 | Arts. 37 & 40 | Art. 13 |
| Work | Art. 23 | | Arts. 6 & 7 | Art. 11 | | Art. 25 | | Art. 27 |
| Enjoyment of the highest attainable standard of physical and mental health | Art. 25, para. 1 | | Art. 12 | Art. 12 | | Art. 28 | Art. 24 | Art. 25 |
| Education | Art. 26 | | Art. 13 | Art. 10 | | Art. 30 | Art. 28 | Art. 24 |
| Culture | Art. 27 | | Art. 15 | Art. 13, section (c) | | | | |
| Consular assistance | | | | | | Art. 23 | | |
| Protection of women | Art. 25, para. 2 | | Art. 12, para. 2 (a) | All | | | | Art. 6 |
| Refugee status | | | | | | | Art. 22 | |
| Social security | Art. 23 | | Art. 9 | Art. 11 | | Art. 27 | Art. 26 | Art. 28 |

Table A.1.2. Countries in the Region of the Americas that are Parties to Select International Instruments of the United Nations Human Rights System

| International instrument | States Parties |
|--|---|
| Universal Declaration of Human Rights | Not subject to ratification |
| International Covenant on Civil and Political Rights | Argentina, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela (Bolivarian Republic of) |
| International Covenant on Economic, Social and Cultural Rights | Argentina, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of) |
| Convention on the Elimination of All Forms of Discrimination against Women | Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of) |
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | Antigua and Barbuda, Argentina, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, United States of America, Uruguay, and Venezuela (Bolivarian Republic of) |
| Convention on the Rights of the Child | Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of) |
| International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families | Argentina, Bolivia (Plurinational State of), Chile, Colombia, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Paraguay, Peru, Saint Vincent and the Grenadines, Uruguay, and Venezuela (Bolivarian Republic of) |
| Convention on the Rights of Persons with Disabilities | Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of) |

Annex 2. Inter-American System of Human Rights

Table A.2.1 shows eight international instruments of the Inter-American System of Human Rights that protect the fundamental rights and freedoms indicated. Table A.2.2 lists the countries that are parties to these instruments.

Table A.2.1. Select International Instruments of the Inter-American System of Human Rights that Protect the Listed Fundamental Rights and Freedoms

| Fundamental rights and freedoms | American Declaration of the Rights and Duties of Man | American Convention on Human Rights | Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights | Inter-American Convention on Protecting the Human Rights of Older Persons | Inter-American Convention Against All Forms of Discrimination and Intolerance | Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities | Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women | Inter-American Convention to Prevent and Punish Torture |
|--|--|-------------------------------------|--|---|---|---|---|---|
| Life | Art. I | Art. 4 | | Art. 6 | | | Art. 4, section (a) | |
| Personal integrity | Art. XXV | Art. 5 | | Arts. 9 & 10 | | | Art. 4 | Art. 6 |
| Personal liberty | Art. I | Art. 7 | | Art. 13 | | | Art. 4, section (c) | |
| Due process | Art. XVIII | Art. 8 | | | | | Art. 7, section (f) | Art. 8 |
| Privacy | Art. V | Art. 11 | | Art. 16 | | | | |
| Freedom of expression | Art. IV | Art. 13 | | Art. 14 | | | | |
| Movement | Art. XIII | Art. 22 | | Art. 15 | | | | |
| Equal protection of the law | Art. II | Art. 24 | | Art. 30 | Art. 2 | Arts. II & III | Art. 4, section (f) | Art. 8 |
| Judicial protection | Art. XXVI | Art. 25 | | Art. 31 | Art. 10 | | Arts. 4, section (g), & 7 | |
| Work | Art. XIV | | Arts. 6 & 7 | Art. 18 | | Art. III, para. 1 (a) | | |
| Enjoyment of the highest attainable standard of physical and mental health | Art. XI | | Art. 10 | Art. 19 | | Art. III, para. 2 (a) & (b) | Art. 4, section (b) | |
| Education | Art. XII | | Art. 13 | Art. 20 | | Art. III, paras. 1 (a) & 2 (b) | | |
| Culture | Art. XIII | | Art. 14 | Art. 21 | | Arts. III, para. 2, & IV, para. 2 | | |
| Consular assistance | | | | | | | | |
| Protection of women | Art. VII | | | Arts. 5, 20, & 23 | | | All | |
| Refugee status | | | | | Art. 1 | | Art. 9 | |
| Social security | | | | Art. 17 | | | | |

Table A.2.2. Countries in the Region of the Americas That Are Parties to Select International Instruments of the Inter-American System of Human Rights

| International instrument | States Parties |
|--|---|
| American Declaration of the Rights and Duties of Man | Not subject to ratification |
| American Convention on Human Rights | Argentina, Barbados, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of) |
| Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) | Argentina, Bolivia (Plurinational State of), Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela (Bolivarian Republic of) |
| Inter-American Convention on Protecting the Human Rights of Older Persons | Argentina, Bolivia (Plurinational State of), Chile, Costa Rica, Ecuador, El Salvador, Peru, and Uruguay |
| Inter-American Convention Against All Forms of Discrimination and Intolerance | México and Uruguay |
| Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities | Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela (Bolivarian Republic of) |
| Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women | Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Trinidad and Tobago, Uruguay, and Venezuela (Bolivarian Republic of) |
| Inter-American Convention to Prevent and Punish Torture | Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela (Bolivarian Republic of) |

PAHO



Pan American
Health
Organization



World Health
Organization
REGIONAL OFFICE FOR THE
Americas

525 Twenty-third Street, NW
Washington, D.C., 20037
United States of America
www.paho.org