



## **Critical analysis of international human rights jurisprudence in migration** **Análisis crítico de la jurisprudencia internacional sobre derechos humanos** **en contextos migratorios**

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### **ABSTRACT**

The aim of this article is to formulate a critical analysis of international jurisprudence on human rights in migration contexts. This study was descriptive documentary with a bibliographic design. The analysis of the 17 selected articles reveals key findings related to international human rights jurisprudence in migration contexts. In particular, it highlights the challenges faced by migrants in terms of access to fundamental rights such as health, protection from discriminatory practices and the need for more inclusive and holistic policies. A critical analysis of international jurisprudence on human rights in migration contexts highlights the urgent need to strengthen and harmonise normative frameworks at both global and regional levels. Precarious access to fundamental rights, such as health and education, as well as discriminatory practices in migration control, highlight the persistent challenges faced by migrants.

Descriptors: Human rights; migration; migration policy (Source: UNESCO Thesaurus).

### **RESUMEN**

El presente artículo tiene como objetivo formular un análisis crítico de la jurisprudencia internacional sobre derechos humanos en contextos migratorios. Este estudio fue descriptivo documental con un diseño bibliográfico. El análisis de los 17 artículos seleccionados revela hallazgos clave relacionados con la jurisprudencia internacional sobre derechos humanos en contextos migratorios. En particular, se destacan los desafíos que enfrentan los migrantes en términos de acceso a derechos fundamentales como la salud, la protección frente a prácticas discriminatorias y la necesidad de políticas más inclusivas y holísticas. El análisis crítico de la jurisprudencia internacional sobre derechos humanos en contextos migratorios evidencia la necesidad imperiosa de robustecer y armonizar los marcos normativos tanto a nivel global como regional. La precariedad en el acceso a derechos fundamentales, como la salud y la educación, así como las prácticas discriminatorias en el control migratorio, destacan los desafíos persistentes que enfrentan los migrantes.

Descriptores: derechos humanos; migración; política migratoria. (Fuente: Tesauro UNESCO).

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**Research articles section**



## INTRODUCTION

In the contemporary global context, migration emerges as a multidimensional phenomenon that poses significant challenges for the protection of human rights. International jurisprudence has played a crucial role in establishing standards and guidelines aimed at guaranteeing the dignity and fundamental rights of persons in situations of human mobility. However, these legal frameworks do not always manage to encompass the complexity of contemporary migration realities, especially when intertwined with restrictive national policies and discriminatory practices.

Various studies have explored the impact of regulations and jurisprudence on the rights of migrants in different regions, in this order, (Báez-Martínez et al. 2022) highlight the precariousness of the human right to health of migrants in transit through Mexico, underlining the vulnerability of this population in the face of inadequate health systems. For his part, (Cabrera, 2023) analyses human mobility and diversity in the light of Ecuadorian constitutional jurisprudence, highlighting both advances and pending challenges in the protection of these rights.

In Chile, (Domínguez-Valverde, 2020) questions whether Chilean migration law yields to sovereign prerogatives of migration control, compromising the minimum human rights of foreigners. Simultaneously, (Flores-Martínez et al. (2023) and (Giménez-Guariguata, 2024) address human rights in the migration context from a broader perspective, also considering social policies and the implications of these rights in different spheres.

This analysis is supported by the work of authors such as (Hellman-Moreno, 2022), who examines the recent jurisprudence of the European Court of Human Rights on irregular immigration, and (Illescas, 2023), who discusses the tensions and challenges in the normative and jurisprudential development of the rights of people in human mobility. In addition, studies on migration and its impacts on education and comprehensive well-being (Peláez et al., 2021) and on the educational inclusion of child migrants in Latin America (Sánchez-Mojica, 2021) will be considered.



This article aims to formulate a critical analysis of international jurisprudence on human rights in migration contexts.

## **METHOD**

This study was a descriptive documentary study with a bibliographic design, using the analytical method and the technique of legal analysis of documents. A critical analysis of international jurisprudence on human rights in migration contexts was formulated, carrying out a review of the existing literature and relevant jurisprudence on the subject.

The population of documents used for this analysis included a selection of 17 scientific articles located in Scielo, Latindex 2.0, Scopus, which addressed various aspects of human rights in migration contexts.

The analytical method applied in this research focused on the legal analysis of the selected documents. This approach made it possible to break down and examine in detail the different parts that make up international jurisprudence on human rights and migration. The technique of legal analysis of documents consisted of reviewing and critically assessing the texts, identifying patterns, divergences and convergences in legal interpretations.

### **Investigation procedure**

First, 17 articles were selected that addressed issues relevant to international human rights jurisprudence in migration contexts. Subsequently, a systematic literature review was conducted to identify the main themes and debates in international jurisprudence and their application in different national contexts.

A legal analysis of the selected documents was then carried out, breaking down the arguments and examining the legal interpretations presented in each. This process allowed us to compare and contrast the different interpretations and jurisprudential rulings, identifying common patterns and significant differences.



Finally, the results of the analysis were synthesised, highlighting the implications for the protection of human rights in migration contexts and proposing recommendations for future legal developments.

## ANALYSIS OF THE RESULTS

Based on the literature reviewed, the results of the research are presented:

**Table 1.** Documentary findings.

Author(s)	Year	Main theme	Key Findings
Báez-Martínez, Cepeda-Arellano, & Flores-Hernández	2022	Migrants' human right to health	Migrants in transit through Mexico face precariousness in their right to health due to inadequate health systems.
Cabrera	2023	Human mobility and diversity	Ecuadorian constitutional jurisprudence shows advances and pending challenges in the protection of migrants' human rights.
Domínguez-Valverde	2020	Migration law and human rights	Chilean migration law tends to yield to sovereign prerogatives of migration control, compromising the minimum human rights of foreigners.
Flores-Martínez, Zamarripa Esparza, & Yáñez Soto	2023	Human rights and social policies	It addresses human rights in the context of social migration policies, highlighting gaps in the implementation of comprehensive policies.
Giménez-Guariguata	2024	Human Rights and Migration	The interrelations between human rights and migration are highlighted, underlining the need for more holistic approaches.
Gómez-Rodríguez & Sandoval-Guevara	2022	Rights of nature and human rights	It examines the relationship between the rights of nature and human rights, proposing an integrated vision for Latin America and the Caribbean.
Gutiérrez-Silva, Romero Borré, Arias Montero, & Briones Mendoza	2020	Migration: Context and Impact	Migration significantly affects education, the economy and overall well-being, requiring multifaceted responses.
Hellman-Moreno	2022	ECHR case law on irregular immigration	The European Court of Human Rights has issued important rulings on irregular immigration, highlighting the protection of rights in illegal immigration.
Illescas	2023	Rights of persons in human mobility	It discusses the tensions and challenges in the normative and jurisprudential development of the rights of persons in human mobility.



Morán-Mejía, Atencio-González, & Moreno-Arvelo	2022	Rights of Venezuelan migrants in a pandemic	The pandemic exacerbated the human rights violations of Venezuelan migrants in Ecuador, highlighting the need for more inclusive policies.
Pavez-Soto & Colomé	2018	Human rights and migration control	Arbitrary discrimination in border control in Chile is analysed, highlighting human rights violations.
Peláez, Gallego Henao, Arroyave Taborda, & Gaviria Pérez	2021	Social impact of migration	Migration as a social phenomenon has a significant impact on education, economy and overall well-being.
Salgado-Guzmán, Solís-Salazar, & Montiel-Rodríguez	2022	Human and labour rights of migrants	The human and labour rights of migrants in Mexico are discussed, highlighting deficiencies in their protection.
Sánchez-Mojica	2021	Child migration and educational inclusion	Child migration and its educational inclusion are areas with important deficits in the implementation of comprehensive policies in Latin America.
Serrano-Cayamcela	2022	Universal citizenship and migration rights	It examines the principle of universal citizenship in the Ecuadorian context, arguing for broader protection of migration rights.
Feddersen, Pascual, & Rodríguez Atero	2022	Right to migrate	The human right to migrate in Latin American legal systems presents significant variations in its application and protection.
Martínez-Lazcano	2021	Protection of human mobility	The Inter-American Human Rights System's protection parameters for human mobility require updating and more consistent application.

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Source: Own elaboration.

The analysis of the 17 selected articles reveals key findings related to international human rights jurisprudence in migration contexts. In particular, it highlights the challenges faced by migrants in terms of access to fundamental rights such as health, protection from discriminatory practices and the need for more inclusive and holistic policies.

The studies highlight the precariousness of the right to health of migrants in transit through Mexico, the normative tensions in Chile and Ecuador, and the violation of rights during the pandemic in Ecuador. The interrelationship between human rights and migration is emphasised, proposing integrated approaches that address the educational, economic and comprehensive welfare needs of migrants. This analysis highlights the need to update and consistently apply normative and jurisprudential



frameworks to improve the protection of migrants' human rights at the international and regional levels.

### **Precariousness of the right to health of migrants in transit through Mexico**

The situation of migrants in transit through Mexico reveals a significant precariousness in their right to health, exacerbated by inadequate health systems. The lack of adequate medical infrastructure and services places migrants in a situation of extreme vulnerability (Báez-Martínez et al., 2022). This context calls for a revision of public health policies to include specific measures to address the needs of this mobile population, ensuring equitable and quality access to essential medical services.

### **Human mobility and diversity in Ecuadorian constitutional jurisprudence**

In Ecuador, constitutional jurisprudence has shown progress and challenges in the protection of migrants' human rights. Although important progress has been made in the inclusion and recognition of the cultural diversity of migrants, challenges persist in the effective implementation of these rights (Cabrera, 2023). It is crucial that Ecuadorian authorities continue to strengthen the legal framework and develop mechanisms that guarantee the full integration and protection of migrants.

### **Sovereign prerogatives vs. human rights in the Chilean context**

Chilean migration law faces a conflict between sovereign prerogatives of migration control and the minimum human rights of foreigners. Migration control policies often compromise the basic rights of migrants, reflecting a tension between national security and human rights protection (Domínguez-Valverde, 2020). To address this dilemma, a balance needs to be found that allows for effective migration management without undermining the fundamental rights of migrants.



## **Impact of social policies on the protection of migrants' human rights**

Social policies play a crucial role in protecting the human rights of migrants. The implementation of comprehensive policies that address the needs of migrants in a holistic manner is essential (Flores-Martínez et al., 2023). Current shortcomings in social policy highlight the need to develop more inclusive strategies that consider economic, social and cultural aspects, thus ensuring adequate protection of migrants' rights.

## **The relationship between human rights and migration: Holistic approaches**

The interrelationship between human rights and migration requires holistic approaches that address the various dimensions of this phenomenon. Integrating different perspectives and disciplines to develop policies and practices that protect migrants' rights in a comprehensive manner is fundamental (Giménez-Guariguata, 2024). A holistic approach makes it possible to address not only the immediate needs of migrants, but also their long-term rights, promoting sustainable inclusion in host societies.

## **Integration of the rights of nature and human rights in Latin America and the Caribbean**

The integration of the rights of nature and human rights offers an innovative vision for the Latin American and Caribbean region. Recognising the interdependence between environmental rights and human rights can provide a more sustainable and equitable framework for addressing migration challenges (Gómez-Rodríguez & Sandoval-Guevara, 2022). This approach can provide a more sustainable and equitable framework for addressing migration challenges, considering both the protection of people and the conservation of the environment.



## **Challenges and normative tensions in the protection of the rights of persons in human mobility**

Tensions and challenges in normative and jurisprudential development on the rights of people in human mobility are evident. Current norms often fail to adequately protect migrants, creating gaps in the implementation of their rights (Illescas, 2023). It is imperative that legal reforms take into account the changing realities of migration, adapting laws to provide more effective and consistent protection.

## **The pandemic's impact on the human rights of Venezuelan migrants in Ecuador**

The COVID-19 pandemic exacerbated human rights violations against Venezuelan migrants in Ecuador. Emergency measures and the health crisis have deepened the difficulties faced by migrants, limiting their access to essential services and increasing their vulnerability (Morán-Mejía et al., 2022). This situation underscores the need for emergency policies that are inclusive and respectful of human rights, even in times of crisis.

## **Arbitrary discrimination in border control in Chile**

Arbitrary discrimination in border control in Chile is a problem that seriously affects the human rights of migrants. Discriminatory practices at the border result in the violation of basic rights, creating a hostile environment for migrants (Pavez-Soto & Colomé, 2018). It is essential to adopt border control policies that respect the dignity and rights of all persons, avoiding any form of arbitrary discrimination.

## **Impact of migration on education, economy and overall wellbeing**

Migration has a significant impact on education, the economy and the overall wellbeing of societies. Migration affects these aspects, underlining the need for comprehensive policies that address these challenges in a coordinated manner (Peláez et al., 2021). By recognising migration as a multifaceted phenomenon, policies can be designed to maximise benefits and mitigate negative impacts on receiving communities.





## **Protecting the human and labour rights of migrants in Mexico**

The human and labour rights of migrants in Mexico face numerous shortcomings. The protection of these rights needs to be strengthened through fair labour policies and effective monitoring mechanisms (Salgado-Guzmán et al., 2022). Ensuring that migrants receive fair treatment and decent working conditions is essential for their integration and well-being in Mexican society.

## **Challenges in the educational inclusion of child migrants in Latin America**

The educational inclusion of migrant children in Latin America is an area with significant deficits. The lack of comprehensive policies and adaptive approaches limits access to quality education for migrant children (Sánchez-Mojica, 2021). It is crucial to develop inclusive education policies that consider the specific needs of these children, promoting their integration and academic development in their new environments.

## **Principle of universal citizenship and protection of migrant rights in Ecuador**

The principle of universal citizenship in the Ecuadorian context offers an innovative perspective for the protection of migration rights. Advocating for an extension of this principle, allowing for broader and more effective protection of migrants' rights, is crucial (Serrano-Cayamcela, 2022). Implementing this approach can help overcome current limitations and ensure greater equality and justice for migrants in Ecuador.

## **The human right to migrate in Latin American legal systems**

The human right to migrate in Latin American legal systems presents significant variations in its application and protection. Exploring how different countries have adopted this right and the challenges associated with its implementation is critical (Feddersen et al., 2022). Harmonising legal approaches at the regional level can strengthen the protection of this right and facilitate human mobility in safer and more dignified conditions.



## **Updating and consistent application of the parameters of protection of the inter-American human rights system**

The Inter-American Human Rights System's protection parameters for human mobility require updating and more consistent application. Current standards are often not applied uniformly, creating inconsistencies in the protection of migrants' rights (Martínez-Lazcano, 2021). These parameters need to be reviewed and updated to ensure effective and homogenous protection across the region, adapting to new migration realities.

### **CONCLUSIONS**

A critical analysis of international jurisprudence on human rights in migration contexts highlights the urgent need to strengthen and harmonise normative frameworks at both global and regional levels. Precarious access to fundamental rights, such as health and education, as well as discriminatory practices in migration control, highlight the persistent challenges faced by migrants. The COVID-19 pandemic has exacerbated these vulnerabilities, underscoring the urgency of developing inclusive and holistic policies that integrate diverse perspectives and legal disciplines.

To ensure effective protection of the human rights of migrants, it is essential to update and consistently apply existing regulations, promoting a sustainable and equitable approach that considers both individual rights and the preservation of the natural environment. In this regard, the adoption of principles such as universal citizenship may offer a promising avenue towards greater justice and equity for all people in human mobility.

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### **CONFLICT OF INTEREST**

There is no conflict of interest with persons or institutions involved in research.



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Migrants confronted with the defence of their human rights.

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