



History and scope of social human rights for irregular migrants

HISTORIA Y ALCANCE DE LOS DERECHOS HUMANOS SOCIALES DE LOS MIGRANTES IRREGULARES

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ABSTRACT

One of the main questions regarding human rights of migrants with an irregular migratory status is whether or not they are entitled to the benefits of social rights, which are part of the human rights. The question arises because in addition to being foreigners, those migrants have an irregular migratory status and, in most cases, states decide first to guarantee these rights for the state's national population before attending migrants with an irregular migratory status. This article shows how international human rights laws, as they evolved, have managed to avoid exclusion based on the migration status. However, domestic administrative regulations are not always in line with international laws. To reach this conclusion, the study starts with the analysis of the historical evolution of human rights in the American continent, the international instruments of ILO and UN and finally, the study of the protection of the social human rights of irregular migrants in Mexico.

RESUMEN

Una de las principales interrogantes respecto a los derechos humanos de las personas migrantes en situación migratoria irregular es si tienen o no derecho a las prestaciones de los derechos sociales, los cuales además son parte de los derechos humanos. Este artículo muestra cómo las leyes internacionales que reconocen los derechos humanos, a medida que evolucionaron, han logrado evitar la exclusión basada en el estatus migratorio. Sin embargo, las reglamentaciones administrativas nacionales no siempre están en consonancia con las leyes internacionales. Para llegar a esta conclusión, el estudio parte del análisis de la evolución histórica de los derechos humanos vigentes en el continente americano, las convenciones y recomendaciones de la OIT sobre el derecho al trabajo y la seguridad

PALABRAS CLAVE

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Work

KEYWORDS

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social de los trabajadores migrantes, los instrumentos internacionales de la ONU regionales, y finalmente, el estudio de la protección de los derechos humanos sociales de los migrantes irregulares en México.

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I. INTRODUCTION

The evolution of international instruments recognizing human rights has led to the acceptance in the international consciousness that regardless of their migratory status, migrants are entitled to social human rights even if this situation is not always reflected in national laws.

Increasing migration in the world, mainly irregular migration, has led governments and even inhabitants of migrant-receiving countries to ask whether or not irregular migrants are entitled to benefits derived from social rights, which are in fact fundamental rights. In other words, should they receive social security, health care, education or housing benefits? The question stems from several interrelated factors:

First, they are foreigners in a country where they have irregular migration status, i.e., they do not meet receiving countries' administrative requirements to be granted legal residence.

Second, guaranteeing the compliance of social human rights implies the granting of benefits under the principle of progressiveness, which means that the State must invest financial resources in people who are not nationals and will probably not become nationals either. These benefits and services are financed by the taxes and contributions of a country's nationals, and this is a source of upset to some of them, who feel that these revenues are invested in people who did not generate these resources.

Third, the situation is aggravated by the urgent need to guarantee these rights for a State's national population before attending migrants with legal status. This places migrants with an irregular migratory status at the end of the line in terms of access to social services and benefits like health care, education, work, social security or housing, even though they are human rights.

Despite the above, human rights have certain characteristics like progressiveness, imprescriptibility, inalienability and, above all, universality. Moreover, they are contained in both soft law and binding legal instruments, which oblige States to guarantee these rights under the principle of progressiveness.

Hence, we find the contradiction between the inclusion established by international human rights instruments and the internal laws that establish unattainable requirements for migrants with an irregular migratory status, which is the subject of analysis in this article.

In other words, international instruments like the Universal Declaration of Human Rights (1948), the Charter of the Organization of American States (1948), the American Declaration on the Rights and Duties of Man (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the American Convention on Human Rights (1969), the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador, 1988) (to cite the most important ones) do not differentiate between the rights established for migrants; nor do national laws like constitutions and the regulations derived from constitutions. However, when we review the specific regulations that establish the requirements for access to economic benefits or benefits in kind that every person is entitled to receive because they correspond to social human rights, we find that these requirements are discriminatory and make access to them difficult for migrants who already do not meet the administrative migratory requirements to obtain legal residence.

Thus, this article follows a deductive approach to study the regulatory evolution of the social human rights of irregular migrants in five sections, the first of which is this

introduction. The second section addresses the conceptual definition and analysis of the evolution of social human rights, as well as a brief description of the main international laws governing them, both from a general perspective and from the perspective of provisions regulating migration and providing social human rights for migrants.

To further contextualize the importance of these rights for migrants with an irregular migratory status, the third section analyses the case of Mexico, as it is a country with a noticeable increase in irregular migration given the migrant caravans that began in 2018 and the reaction of the United States of America in implementing actions, such as the Migrant Protection Protocols (MPP)¹ that have resulted in more migrants staying in the country under an irregular migratory status.

Therefore, the international legal framework applicable to Mexico is explained through its various ratifications and its domestic legal limitations are revealed through the requirements the country imposes on irregular migrants to access the benefits of the following social rights: a) education, b) health care, c) housing, d) work and e) social security.

Lastly, the article closes with the respective conclusions and research sources.

II. THE EVOLUTION OF SOCIAL HUMAN RIGHTS

Human rights have allowed the evolution of the regulatory frameworks in every country with the objective of ensuring the protection of the rights inherent to each and every person. According to the National Human Rights Commission, they are defined as «the set of prerogatives based on human dignity, whose effective exercise is indispensable for the comprehensive development of the person. This set of prerogatives is established within the national legal system, in the Mexican Constitution, international treaties and laws»².

Therefore, these rights must be considered fundamental for the comprehensive development of any human being and the State has the responsibility to guarantee their due protection and effective fulfilment since they are part of national and even international legislation pursuant to the signing and ratification of various international treaties that provide for their protection.

These human rights have been constantly evolving to meet the new realities and needs in the world. Among them, the rights of people as citizens were regulated, followed by social rights and then environmental rights. Today we wonder whether human rights arising from artificial intelligence and digitalization should be established within the catalogue of human rights.

1. Enacted in January 2019 by former President Donald Trump, it states that any person entering the United States of America seeking asylum or protection must wait in Mexico for the duration of their immigration court proceedings.

2. Comisión Nacional de Derechos Humanos, *¿Qué son los derechos humanos?*, México, 2021, at: <https://www.cndh.org.mx/derechos-humanos/que-son-los-derechos-humanos>, accessed on 13 June 2022.

By way of example, we can cite Ferdinand von Schirach, who proposes six new human rights that should be adopted in Europe: the right to the environment, to digital self-determination, artificial intelligence, truth, globalization and the demand for fundamental rights³.

This interesting example shows how the evolution of human rights has allowed them to be in keeping with reality.

In this sense and fortunately thanks to the evolution of social human rights, they are now included in international instruments and national legal frameworks as provisions that recognize, guarantee and protect people from any type of vulnerability or social inequality through a series of positive benefits that allow for people's full development. These rights revolve around food, education, work, housing, health and social security.

Social human rights have succeeded in changing the very paradigm of social rights since they had been denied their coercive and enforceable nature over the years and have largely been considered simply aspirational and programmatic rights⁴.

Among the characteristics of human rights, analysed from the unique perspective of social human rights and migrant human rights, the following stand out:

- a) Universality: As these rights correspond to any person, without their being bound to any condition, including migratory status or nationality, in order to be granted, since, for the simple fact that the beneficiaries are persons, the human rights provided in international instruments, as well as those contained in the internal framework of States, must be guaranteed.
- b) Imprescriptible: As these rights do not expire for any reason, they can therefore not be taken away from the person and will always be valid and the State must respect and protect them.
- c) Non-renounceable: By the nature of the protective framework of human rights, they cannot be waived by any individual since human rights *per se* are inherent to human beings and waiving them would contradict their nature. Human rights remain with migrants and are not lost by crossing a border or a territorial jurisdiction boundary.
- d) Interdependent: All human rights are linked to each other in such a way that it is not possible to exercise one without taking the others into account. For instance, it is not possible to speak of the right to freedom without the right to migrate; or the right to life without associating it with the right to health, to mention a few.
- e) Progressiveness: These rights are in constant evolution according to the social contexts experienced every day. Thus, new generations of rights provide a more extensive protective mantle for the benefit of the individual. Moreover, compliance with this principle implies constant progress in guaranteeing

3. Von Schirach, F.; Mensch, J.: *Luchterhand*, Germany, 2021, pp. 18-19.

4. Arango Rivadeneira, R.: *Derechos sociales, Enciclopedia de Filosofía y Teoría del Derecho*, vol. 2, México, 2015. p. 1677.

people's rights, granting benefits or simply recognizing them in other legal systems. From the above, this principle «entails no regression in recognizing and guaranteeing these rights»⁵.

A. International Instruments with Human Rights in the Americas

If we briefly analyse the history of human rights starting from their regulatory origin applicable in the Americas, the main ones (but not the only ones) are:

1. *The Virginia Declaration of Rights of 1776*

Signed on June 12, 1776, in Virginia, United States of America, this document contains 16 declarations proclaiming that all men are by nature free and independent and have inherent rights. It should be noted that although it was an innovative document in terms of human rights, it was discriminatory since the points in this declaration did not apply to women, i.e., the rights therein were exclusively for men⁶.

2. *The Declaration of the Rights of Man and of the Citizen (Déclaration des Droits de l'Homme et du Citoyen)*

Adopted on August 26, 1789, by the French National Constituent Assembly, this was one of the fundamental documents for the consolidation of the French Revolution. This declaration has 17 articles (Declaración de los Derechos del Hombre y del Ciudadano, 1789) that discuss the rights that all men should enjoy merely because they are persons and that these rights should not be subjected to the consent of third parties for their fulfilment. Like the Virginia Declaration, the rights contemplated in this declaration did not apply to women or to enslaved people.

3. *The Charter of the Organization of American States of 1948*

This establishes the creation of the Organization of American States, entering into force on December 13, 1951. This charter contemplates the fundamental foundations of the organization in 146 articles divided into 21 chapters⁷. Its contents establish the human rights that must be respected by the States that ratify it, making it an instrument of utmost importance for the analysis of social human rights.

5. Comisión Nacional de los Derechos Humanos: *Aspectos básicos de derechos humanos*, México, 2018, p. 7.

6. Amnesty International: *Declaración de Derechos de Virginia*, 1976, at: <http://www.amnistiacatalunya.org/edu/docs/e-hist-Virginia.html>, accessed on 13 June 2022.

7. Carta de la Organización de los Estados Americanos 1948.

4. *Universal Declaration of Human Rights*

Approved in Paris in December 1948, it contains 30 articles describing «the guarantees and principles that correspond to any person regardless of origin, nationality, sexual orientation, religion, political ideology, gender, age»⁸. While this declaration is not, strictly speaking, an international treaty, it has been the fundamental benchmark instrument for the interpretation of all human rights instruments.

This declaration paved the way for the evolution of a new generation of rights that guarantees minimum protections for people simply because they are human and, ultimately, has led to the establishment of three generations of human rights that have broadened the catalogue of human rights.

5. *American Declaration of the Rights and Duties of Man*

Adopted at the 9th International American Conference in Bogota, Colombia in 1948, this declaration contemplates the indispensable and inherent rights of all men in its 38 articles, taking into consideration that

“the essential human rights by the American States together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions, not without a recognition on their part that they should increasingly strengthen that system in the international field as conditions become more favorable”⁹.

This declaration is an extremely important instrument for the Americas since the members of the Organization of American States are committed to fully respecting the contents of this document and, therefore, their populations will benefit from the rights stemming from this declaration.

6. *International Covenant on Economic, Social and Cultural Rights (ICESCR)*

Adopted and ratified by the United Nations General Assembly on December 16, 1966, this covenant consists of 31 articles divided into the following categories: social, economic and cultural. The content of the articles covers the «basic social and economic conditions needed for a life in dignity and freedom»¹⁰. In this sense, this covenant establishes social human rights, which include the following: the right to work, to social security, to health and education, among others.

8. UNHCR: *¿Cuáles son los derechos sociales y qué aplicación tienen?*, ACNUR, Suiza, 2016, at: https://eacnur.org/blog/cuales-los-derechos-sociales-aplicacion-tienen-tc_alt45664n_o_pstn_o_pst/, accessed on 13 June 2022.

9. Declaración Americana de los Derechos y Deberes del Hombre, 1948.

10. Red-DESC: *Una introducción a los derechos económicos, sociales y culturales*, Red-DESC, México, 2020, at: <https://www.escri-net.org/es/derechos>, accessed on 13 June 2022.

7. *The International Covenant on Civil and Political Rights of 1966*

Adopted by the United Nations General Assembly on December 16, 1966, for the purpose of obliging States to «promote universal respect for, and observance of, human rights and freedoms»¹¹, the 53 articles of the Convention include rights of a political nature, such as the self-determination of peoples, as well as civil rights, such as the prohibition of slavery.

8. *American Convention on Human Rights of 1969*

Adopted from November 7 to 22, 1969 in San Jose, Costa Rica, this instrument is important for migrants because it points out that the «essential rights of man are not derived from one's being a national of a certain state, but are based upon the attributes of the human personality»¹². Hence, the need for international protection must contribute to the highest protection of the rights of persons, including those provided for in the national frameworks of the States. Therefore, this instrument contains a series of basic and comprehensive rights to be respected by all signatory States, which are embodied in the 82 articles of the convention.

9. *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*

Also known as the Protocol of San Salvador, which gave rise to the Economic, Social, Cultural and Environmental Rights, better known as ESCER, this protocol was signed and ratified in 1999 and contains provisions intended to reiterate the purpose of having a continent based on respect for the essential human rights of men and women¹³. Its 22 articles establish provisions on economic, cultural and social matters. Examples of social human rights contained in ESCER are the right to health, to a healthy environment, and labour rights, among others.

Having outlined international instruments with human rights applicable in the Americas, we can examine them in the light of the problem of irregular migration. For many migrants whose migratory status is irregular, the fact that these regulations exist does not change their reality.

Access to the benefits deriving from social human rights such as labour rights, right to health and rights to access to social security for migrants implies multifaceted and multidimensional problems for States since it is necessary for them to act within their national legal frameworks, as well as through public policies that ensure the respect and protection of the social human rights of migrants living in their territories.

11. Pacto Internacional de Derechos Civiles y Políticos, 1966.

12. Convención Americana sobre Derechos Humanos, 1969.

13. Protocolo de San Salvador, 1988.

In this sense, the analysis is divided into two parts. The first one presents the general international instruments that include social human rights, as shown in Table 1, establishing the following rights as parameters: education, health, housing, work, and social security. The right to freedom of movement is also included as a guarantee of migration.

Table 1.

International human rights instruments that provide for social human rights in the Americas

International Instrument	Education	Health	Housing	Work	Social Security	Freedom of Movement
Universal Declaration of Human Rights (1948)	Right to free education	Right to an adequate standard of living through access to health care	Right to an adequate standard of living through access to housing	Right to access to work Right to employment benefits	Right to social security	Right to freedom of movement and choice of residence
Charter of the Organization of American States (1948)	Right to education	Right to work to ensure health through fair wages		Right to work		
American Declaration of the Rights and Duties of Man (1948)	Right to education	Right to the preservation of health and to well-being	Right to property	Right to work and to fair remuneration	Right to social security Right to protection of maternity	Right to residence and movement
International Covenant on Economic, Social and Cultural Rights (1966)	Right to education	Right to the enjoyment of the highest attainable standard of physical and mental health	Right to an adequate standard of living through housing	Right to work	Right to social security	
American Convention on Human Rights (1969)	Right to education		Right to property			Freedom of movement and residence
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador, 1988)	Right to education	Right to health and well-being		Right to work	Right to social security	
MERCOSUR's Social and Labor Declaration of 1998				Right to free choice of employment	Right to social security	

Source: Prepared by the author based on the abovementioned international instruments.

From the contents of the international human rights instruments listed in Table 1, the following conclusions can be drawn:

- a) The progressiveness of social human rights is evident in their historical development. While the Virginia Declaration of Rights of 1776 and the Declaration of the Rights of Man and of the Citizen of 1789 only generally addressed the right to property (the basis of the right to housing) without specifically establishing social human rights according to the selected categorization, as of 1948 the Universal Declaration of Human Rights already recognizes social human rights without discriminating against women and enslaved people.
- b) Meanwhile, the Universal Declaration of Human Rights undoubtedly marked an important turning point for transforming and adapting the national legal frameworks of countries so that their constitutions would include the human rights that all people should enjoy. This declaration contains the 6 social human rights analysed herein and although this instrument is not binding for UN member States, it is a guideline for building constitutions that adhere to respect for human rights. This declaration is the ultimate benchmark instrument on human rights and, consequently, on social human rights.
- c) The Universal Declaration of Human Rights led to the adoption of new human rights instruments through international, regional or continental bodies, which, along with the countries involved, made a commitment to implement, protect and respect these rights within their societies, with the aim of making them binding for these States. One example is the Organization of American States through the Charter of the Organization of American States and the American Declaration on the Rights and Duties of Man.
- d) The evolution of law has led to the establishment of international instruments that respond to the new realities of the world, which has resulted in rights have enhanced the concept of human rights. Such is the case of the human rights recognized by the International Convention on Economic, Social and Cultural Rights, which have prompted a new legal culture in the field of human rights and have given greater force to their recognition to the extent that they are considered fundamental social rights established in countries' constitutions.
- e) The inclusion of human rights, particularly social rights, in constitutions has opened the door to their justiciability through national and even international judicialization by constitutional courts and, consequently, the Inter-American Court of Human Rights.

As regards the rights of migrants, there are several international instruments applicable to the Americas, most notably: the 1984 Cartagena Declaration on Refugees; the 1994 San Jose Declaration on Refugees and Displaced Persons; the 2004 Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America; the 2010 Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas; the 2016 New York Declaration for Refugees and Migrants;

the Global Compact for Safe, Orderly and Regular Migration, which was approved at an intergovernmental conference on international migration on December 10-11, 2018 in Morocco, and the Global Compact for Safe, Orderly and Regular Migration of October 26, 2020. All these documents address, in general terms, the main problems affecting migrants and stress the need for States to take measures to eradicate the violation of their rights.

Therefore, to continue with the analysis described above, the second part is shown in Table 2, which contains an outline of the development of those international instruments on migration that include social human rights:

Table 2.

International instruments on migration that provide for social human rights

International Instrument	Education	Health	Housing	Work	Social Security	Freedom of Movement
Convention Relating to the Status of Refugees (1951)	Right to equal treatment in access to education		Right to equal treatment in access to housing	Right to employment benefits	Right to social security benefits	Right to freedom of movement and choice of residence
Declaration on the Human Rights of Individuals who are not nationals of the country in which they live (1985)	Right to education	Right to health		Right to employment benefits	Right to social security	Right to freedom of movement and choice of residence
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)	Right to education	Right to health	Right of access to housing	Right to employment benefits	Right to equal treatment in access to the social security system	Right to freedom of movement and choice of residence
Brazil Declaration "A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean" (2014)	Right to access for refugees to education	Right to access for refugees to health	Right to access for refugees to housing	Right of access for refugees to employment		Right to free movement of people
New York Declaration for Refugees and Migrants (2016)	Right to education	Right to health care	Humanitarian assistance for shelter			Right to leave any country, including his or her own, and to return to his or her country

Source: Prepared by the author based on the abovementioned international instruments.

The following 4 points can be gleaned from Table 2:

- a) The international instruments on migration under analysis consider a series of social human rights (based on the established categorization) that aim to protect migrants. Some of them, like the Declaration on the Human Rights of Individuals who are not nationals of the country, *are soft* law instruments with no binding obligation for compliance by the States. However, this does not mean that they are not a benchmark framework for any other document that establishes human rights, in addition to serving as guidelines for States to adapt their national legal frameworks on the subject.
- b) Most of these instrument clearly state that the protection of the social human rights covered will be for the benefit of migrant workers and, if applicable, their family members who have regular migratory status in the host country, thus limiting access to these rights to workers with an irregular migratory status, as in the case of the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families; the Convention on the Status of Refugees, 1951; the Brazil Declaration: A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean of 2014 and the New York Declaration for Refugees and Migrants of 2016.
- c) Some instruments contemplate social human rights differently since the right of access to work is not the same as the right to the benefits derived from employment (Declaration on the Human Rights of Individuals who are not nationals of the country in which they live); nor is the right of access to housing (Brazil Declaration) the same as humanitarian assistance for housing (New York Declaration); nor is the right to social security (Declaration on the Human Rights of Individuals who are not nationals) the same as the right to social security benefits (Convention Relating to the Status of Refugees) or the right to equal treatment to access the social security system (International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families). Although it is true that these instruments are intended to address social human rights, the form and context in which they must be guaranteed by the State are entirely different based on the commitments acquired and set forth in the document.
- d) As to migrants' right to freedom of movement and choice of residence, all these instruments state that migrants, who have a regular migratory status and comply with the formalities and requirements established in each of the States, will have this right. Therefore, this right is limited to the migrant's legal migratory status, which raises the question of whether the right to freedom of movement is a human right, given that it may only be exercised by complying with an administrative requirement regarding a person's migratory status and not by simply being a person, thus generating a contradiction.

Finally, it should be pointed out that social human rights have gained an international recognition that commits States, as members of the international community, to

respect and protect these rights through their national legislations. However, in many of these legislations, this recognition is still under development and requires legislative changes to achieve effective compliance, especially considering that not all countries have the same financial capacity or social conditions to assume the burdens entailed in the effective compliance of these rights since in some cases, like Mexico, universal coverage of social rights for nationals has yet to be attained, which further complicates the protection of these rights for foreigners.

B. International Labour Organization (ILO) Conventions and Recommendations Concerning the Human Right to work and social security for migrants

An important part of the evolution of social human rights is the recognition that specialized international organizations have given to some of these rights. Among such bodies, the ILO stands out as it is mandated to «set labour standards, develop policies and devise programmes promoting decent work for all, women and men and has international instruments that contribute to the protection of migrant workers.

The main instruments governing the labour and social security rights of migrants, regardless of their migratory status, are:

- Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).
- Equality of Treatment (Accident Compensation) Recommendation, 1925 (No. 25).
- Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48) (Status: Outdated instrument).
- Employment Service Convention, 1948 (No. 88).
- Migration for Employment Convention (Revised), 1949 (No. 97).
- Migration for Employment Recommendation (Revised), 1949 (No. 86).
- Social Security (Minimum Standards) Convention, 1952 (No. 102).
- Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100).
- Equality of Treatment (Social Security) Convention, 1962 (No. 118).
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).
- Migrant Workers Recommendation, 1975 (No. 151).
- Maintenance of Social Security Rights Convention, 1982 (No. 157).
- Maintenance of Social Security Rights Recommendation, 1983 (No.167).
- Protocol of 2014 to the Forced Labour Convention, 1930.

In this sense, a brief analysis is made of the content of those that regulate the human right to work and social security for persons with an irregular migratory status:

1. Migration for Employment Recommendation (Revised), 1949 (No. 86)

This recommendation, adopted on July 1, 1949, calls on States to adopt the necessary and sufficient measures to ensure that migrant workers and their families have access to free information and administrative migration procedures to facilitate their arrival or departure from the territory in a regular and orderly manner, as appropriate.

As regards migrants, there is a contradiction with respect to Convention 97 since the recommendation defines migrant workers by establishing that the term applies to those who migrate from one country to another to be employed, thereby including any person normally admitted, which is applicable even to those with an irregular migratory status, contrary to the Convention 97 provision, which establishes that its application is exclusively for people with a regular migratory status.

2. Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Convention 143 on migrant workers was passed in 1975 when the international community became aware of the increase in irregular migration. It stipulates the regulation of migratory flows, the elimination of clandestine migration and related crimes: human smuggling and trafficking, and the facilitation of the integration of migrants into host societies. It also regulates equal treatment and opportunities for migrant workers.

3. Migrant Workers Recommendation, 1975 (No. 151)

On June 24, 1975, this recommendation was adopted for the central purpose of insisting on the need for ILO member countries to apply policies on migration based on the economic and social needs of the countries of origin and of employment, considering the short and long-term consequences of migratory phenomena for migrant workers as well as for the communities concerned.

It establishes the rights for irregular migrants: access to vocational guidance and placement services, freedom to choose the employment of their preference and on the basis of individual suitability, advancement and security of employment, remuneration of equal value, conditions of work like working hours, mandatory rest periods, annual holidays, occupational safety and health measures and right to membership of trade unions. It also provides that all workers, regardless of their migratory status, will have the right to receive payment for services rendered and benefits owed to them at the time of leaving the territory of a Member country. If this is not the case, they will have the right to appeal to the corresponding legal authorities¹⁴.

14. Recomendación sobre los trabajadores migrantes, 1975.

C. International Instruments of the International Organization for Migration Regulating Social Human Rights

Recognizing and accepting the importance of migratory phenomena at international levels, various international instruments that address this issue have been signed. In order to know more about them, the following analyses those that regulate the human rights, particularly social human rights.

1. Global Compact for Safe, Orderly and Regular Migration

Its content represents the first document to be jointly negotiated between various government representatives and coordinated by the United Nations (UN) and the International Organization for Migration (IOM). It covers the following issues regarding international migration:

“...human rights of all migrants, drivers of migration, international cooperation and governance of migration, contribution of migrants and diasporas to sustainable development, smuggling migrants, trafficking in persons and contemporary forms of slavery, irregular migration and regular pathways, including decent work, labour mobility, recognition of skills and qualifications and other relevant measures...”¹⁵ (Portal de datos mundiales sobre la migración, s.f.).

The following ten cross-cutting and interdependent guiding principles are agreed upon as the basis of this Compact: people-centred, international cooperation, national sovereignty, rule of law and due process, sustainable development, human rights, gender responsive, child-sensitive, whole-of-government approach and whole-of-society approach.

Likewise, the measures are foreseen for its adequate implementation, follow-up and review of each of the 23 objectives (Pacto Mundial para la Migración Segura, Ordenada y Regular, 2018). In the area social human rights, the following stand out: 6. Facilitate fair and ethical recruitment and safeguard conditions that decent work (right to work); 15. Provide access to basic services for migrants (right to health, food and housing); 18. Invest in skills development and facilitate mutual recognition of skills, qualifications and competences (right to education and training for work) and 22. Establish mechanisms for the portability of social security entitlements and earned benefits (right to social security).

15. Portal de datos mundiales sobre la migración, Política migratoria, *El proceso de desarrollo del Pacto Mundial para la Migración*, at: <https://www.migrationdataportal.org/es/themes/el-proceso-de-desarrollo-del-pacto-mundial-para-la-migracion#definicion>, accessed on 13 June 2022.

2. *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)*

This convention was adopted on December 18, 1990. Mexico ratified this convention without any reservation on March 8, 1999, and it covers all workers who are immigrants in any country, without any distinction based on sex, nationality, race, religious belief or any other circumstance. Workers will be protected during the entire process surrounding their migration, i.e., from preparing for the trip, transportation, traveling to the country where they will work, and their stay there. Definitions of certain concepts are included, such as migrant worker, frontier worker, seasonal worker, seafarer, itinerant worker, specified-employment worker, self-employed worker, and irregular migrant worker, among others. This convention calls on member countries to equally uphold the rights of migrant workers, primarily human rights, as recognized for nationals of each country, including the right to work, health, social security, education and housing.

Of note in this document is Article 35, which states that none of the provisions contained in the convention should be conditioned on the regularization of the migratory status of the workers or members of their families. This complements the content of one of the considerations in the preamble, which indicates that the employment of migrant workers in an irregular situation may be discouraged to the extent that they are granted the same rights as regular workers, despite their immigration status, since it would no longer appeal to employers to hire them if, in the end, they have to be provided with the exact same benefits regardless of their migratory status.

D. **Recent Pan American Health Organization (PAHO) Resolutions**

Although the World Health Organization and the PAHO have drafted several resolutions that serve as guidelines for safeguarding the health of migrants, not all of them expressly include irregular migrants. From this perspective, the following stands out:

1. *Resolution CD55.R13 “Health of Migrants”*

This resolution was issued by the 55th Directing Council of the Regional Committee of WHO for the Americas on September 30, 2016. Its objectives include urging Member States to use the contents of this document to generate health policies and programs to address the problems of inequity that migrants suffer, to develop initiatives to change and improve regulatory and legal frameworks taking into account the specific needs of migrants, and to make progress in providing migrants with access to the same level of financial protection and health services as nationals. It points out that irregular migrants are included, as these aspirations are regardless of the migratory status, they may have¹⁶.

16. Consejo Directivo del Comité Regional de la OMS para las Américas: *Resolución emitida por el 55° Consejo, Health of Migrations*, 30 septiembre, 2016, at: <https://www.paho.org/hq/dmdocuments/2016/CD55-R13-e.pdf>, accessed on 13 June 2022.

III. MIGRATION IN MEXICO FROM THE PERSPECTIVE OF INTERNATIONAL PROVISIONS ON SOCIAL HUMAN RIGHTS

The topic of migration in Mexico can be analysed from many perspectives. For the purpose of this research, we will focus on identifying the international human rights provisions applicable to this country in order to subsequently show how the ratification of all these international instruments does not guarantee the provision of benefits derived from the social human rights of irregular migrants.

A. International conventions ratified by Mexico

Mexico has ratified several international human rights instruments that include social human rights, such as:

- Charter of the Organization of American States ratified on November 23, 1948¹⁷.
- American Convention on Human Rights ratified on March 2, 1981¹⁸.
- International Covenant on Civil and Political Rights ratified on March 24, 1981¹⁹.
- International Covenant on Economic, Social and Cultural Rights (1966) ratified on March 23, 1981²⁰.
- Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador, 1988) ratified on September 1, 1998²¹.

It should be noted that due to the non-binding nature of some international instruments, such as the Universal Declaration of Human Rights, the ratification by States parties is not necessary. However, this does not mean that Mexico does not consider its content since this Declaration serves as a guideline for amending the national regulatory framework.

Likewise, there are other instruments that do not require ratification for compliance since they come *per se* from international organizations and Mexico, by being a party to them, commits itself to comply with the undersigned declarations. One clear example

17. Comisión Interamericana de Derechos Humanos: *Declaración Americana de los Derechos y Deberes del Hombre*, CIDH, 1948, at: <http://www.oas.org/es/cidh/mandato/Basicos/declaracion.asp>, accessed on 13 June 2022.

18. Organización de Estados Americanos: *Convención Americana sobre Derechos Humanos*, Departamento de Derecho Internacional, Secretaría de Asuntos Jurídicos, México, 1969, at: https://www.oas.org/dil/esp/tratados_B-32_Convencion_Americana_sobre_Derechos_Humanos.pdf, accessed on 13 June 2022.

19. UN: *Pacto Internacional de Derechos Civiles y Políticos*, UN, USA, 1966, at: <https://www.ohchr.org/sp/professional-interest/pages/ccpr.aspx>, accessed on 13 June 2022.

20. Naciones Unidas: *Pacto Internacional de Derechos Económicos, Sociales y Culturales*, UN, USA, 1966, at: <https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>, accessed on 2 June 2022.

21. Organización de Estados Americanos: *Protocolo adicional a la Convención Americana sobre Derechos Humanos en materia de Derechos Económicos, Sociales y Culturales „Protocolo de San Salvador“*, OAS, 1988, at: <http://www.oas.org/juridico/spanish/tratados/a-52.html>, accessed on 13 June 2022.

of this is the American Declaration on the Rights and Duties of Man, which applies to the States that are members of the Organization of American States.

Mexico has also ratified international instruments –albeit few– on migration that include social human rights:

The 1951 Convention Relating to the Status of Refugees, adopted by Mexico on June 7, 2000, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) ratified on March 8, 1999.

It also approved the commitments covered by other international instruments, such as the 2016 New York Declaration for Refugees and Migrants, a document that does not require ratification for compliance.

As for the International Labour Organization instruments that regulate migrants' human right to work, health and social security, Mexico has only ratified Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) and Equality of Treatment (Social Security) Convention, 1962 (No. 118). Unfortunately, it should be mentioned that neither the Migration for Employment Convention, 1949 (No. 97) nor the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) have been ratified by Mexico. This is worrisome and disconcerting given that Mexico is a country of internal, international, transit, destination and return migration.

Continuing with this list, Mexico has ratified some multilateral or regional instruments that include social human rights, the most important of which are as follows:

- Convention on the Status of Aliens, adopted on February 20, 1928, in Havana, for the purpose of establishing the legal condition of migrants who are in a country other than their country of origin²².
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”.
- United States-Mexico-Canada Agreement (USMCA) or North American Free Trade Agreement (NAFTA), which entered into force on July 1, 2020²³.

Similarly, Mexico has signed a large number of bilateral agreements on various matters, the most representative of which containing social human rights are:

- Basic Agreement for Cooperation on Matters of Social Security between the United Mexican States and the Kingdom of Spain, signed on November 7, 1979.
- Cooperation Agreement on Matters of Social Security between the Government of the United Mexican States and the Government of the Oriental Republic of Uruguay, signed on October 26, 1990.

22. Organización de Estados Americanos: *Convención sobre Condiciones de los Extranjeros*, OAS, Estados Unidos de América, 2018, at: <https://www.oas.org/juridico/spanish/firmas/a-22.html>, accessed on 4 June 2022.

23. Senado de la República: *Aprueba Senado Protocolo Modificadorio del T-MEC*, México, 2020, at: <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/47234-aprueba-senado-protocolo-modificadorio-del-t-mec.html>, accessed on 4 June 2022.

- Agreement on Social Security between the United Mexican States and the Kingdom of Spain, signed on April 25, 1994.
- Agreement on Social Security between the United Mexican States and Canada, signed on April 27, 1995.
- Cooperation Agreement between the Government of the United Mexican States and the Government of the French Republic regarding the Readmission of Persons, signed on October 6, 1997.

Last but not least, it is worth mentioning Advisory Opinion 18/2003 on the Juridical Condition and Rights of Undocumented Migrants issued by the Inter-American Court of Human Rights at the request of Mexico²⁴.

Mexico raises four questions in this document. The core of each one is to determine whether the fact that a person holds the status of “illegal immigrant”²⁵ in US territory is sufficient cause to deny them the application and recognition of human rights like those of equality and non-discrimination. While it is understandable that the treatment given to a person who enters a country’s territory illegally can never be the same as that given to someone with a legal status, it is also understandable that this situation can under no circumstances be a reason for them to be discriminatorily denied fundamental labour rights like the right to labour equality, to equitable remuneration, to unionize, and to due process, among others.

The Inter-American Court of Human Rights ruled that human rights must be respected and guaranteed, based on the principle of equality and non-discrimination, including for migrants, as well as the recognition of the rights of undocumented workers and the government’s obligation to establish migration policies that respect human rights.

It stands to note that the Court recognizes that is not possible to compare a legal migrant with an illegal one and therefore grant them the same treatment. However, this inequality should not be understood or applied detrimentally, nor with the purpose of undermining their fundamental rights, considering, above all, that they are already in a situation of juridical disadvantage.

It reiterates the State’s obligation to protect and oversee relations between individuals, including labour relations, and that discriminatory conduct on behalf of employers should not be tolerated, regardless of the worker’s immigration status, especially in the case of the United States, as it is a country that receives significant migration flows.

24. Opinión Consultiva OC-18/2003, (2003) Solicitada por los Estados Unidos Mexicanos, at: https://www.corteidh.or.cr/docs/opiniones/seriea_18_esp.pdf, accessed on 4 June 2022.

25. Even though the term “illegal migrant” was used in the Court, it refers to migrants with an irregular migratory status.

B. Provisions regulating social human rights for migrants with an irregular migratory status

The Political Constitution of the United Mexican States includes several provisions that must be analysed in connection with the social human rights of migrants with an irregular migratory status. The basis of all such provisions is found in Article 1, which contemplates several guarantees:

- a) All persons in Mexican territory shall enjoy human rights.
- b) The human rights that persons are entitled to are those recognized in the Constitution and in the international treaties signed and ratified by Mexico.
- c) Discriminatory behaviours based on, *inter alia*, ethnic or national origin, is prohibited.

Pursuant to these provisions and applied to the specific case of migrants (with regular or irregular migration status), it must be understood that by the mere fact of being in Mexican territory, migrants are protected by the same rights as any national, without there being any justification so that the human rights recognized in both the Constitution and in the international treaties, which have been mentioned throughout this article, may be applied differently and to their detriment. This provision is stressed in the Migration Law, stating that «the Mexican State shall guarantee to all foreigners the exercise of the rights and freedoms recognized in the Constitution, in the international treaties and conventions to which the Mexican State is a party and in the applicable legal provisions, regardless of their migration status»²⁶.

It should be pointed out that Mexico has recently raised the visibility of irregular migratory status in its regulations by providing a specific definition in the Migration Law: A foreigner is considered to have an irregular migratory status when they have failed to comply with the migration-related provisions for their entry and stay in the country²⁷. This has conflicting consequences because on the one hand, by making them visible, migrants with an irregular migratory status are granted recognition of their human rights; on the other hand, it clearly establishes that foreigners who are in national territory irregularly will be subject to the assisted return and deportation procedure, barring the exceptions provided for in the law itself.

And from the recognition of their human rights, the regulatory framework governing the protection of social human rights for migrants is established and analysed below:

1. Education

The right to education in national territory is outlined from Article 3 of the Federal Constitution, which begins by stating: «Every person has the right to education».

26. Cámara de Diputados: LXV Legislatura, *Ley de Migración*; (2011), México. at: <http://www.diputados.gob.mx/LeyesBiblio/index.htm>, accessed on 4 June 2022.

27. *Idem*.

The General Education Law, which regulates this constitutional article, indicates that «every person shall enjoy the fundamental right to education under the principle of the intangibility of human dignity»²⁸. This is consistent with international human rights treaties extending this protection to migrants with an irregular migratory status.

In this regard, it also points out that the State is in charge of education. In addition to being mandatory, the education provided by the State will be universal as it is a human right that corresponds to all persons equally. Therefore, its benefits will be extended without any discrimination whatsoever, in accordance with the provisions of Article 1 of the Political Constitution of the United Mexican States²⁹.

Specifically, regarding the inclusion of migrants with an irregular migratory status, Article 8 of the Migration Law stipulates that:

“... regardless of their migration status, the migrant population may have access to educational services provided by the public or private sector and it further states that no administrative act shall establish restrictions on foreigners greater than those established in general for Mexicans”³⁰.

In this context, the right to education for them is guaranteed through various programs and regulations:

- a) The Education without Borders Program of the National Institute for Adult Education (INEA), whose purpose is «to provide educational services to migrants, whether they are returning or repatriated co-nationals, applicants for refugee status, refugees, beneficiaries of complementary protection or foreigners living in Mexico»³¹.

The obstacle encountered in this program is based on the requirements to be a beneficiary, which are found in the operating rules of the adult education program (INEA) for the 2020 tax year. Said rules state that repatriated persons and persons in a situation of educational backwardness in national territory must be registered with the General Office of National Registry of Population and Identity (RENAPO) at the Ministry of the Interior. If the interested party states that they do not have the Sole Population Registration Code (CURP) issued by RENAPO or school records, they can only receive educational services by filling out a Beneficiary Registration. However, in order to obtain this registration a certificate or certification of studies, or financial support under the provisions of these operating rules, a CURP or, in the case of middle school, an

28. Cámara de Diputados: LXV Legislatura, *Ley General de Educación*, México, 2019, at: <http://www.diputados.gob.mx/LeyesBiblio/index.htm>, accessed on 4 June 2022.

29. *Idem*.

30. *Idem*.

31. Instituto Nacional para la Educación de los Adultos (INEA): *Acciones y Programas: Educación sin fronteras*. INEA, at: <https://www.gob.mx/inea/acciones-y-programas/educacion-sin-fronteras-190952>, accessed on 4 June 2022.

elementary school diploma³², must be presented. The services provided in the educational scope are for literacy and to encourage the target population to «start, continue or certify their elementary or middle school» education. These services are available in the 31 states and Mexico City.

- b) Initial and Basic Community Education Program by the National Council for the Promotion of Education (CONAFE). This program allows migrant children and adolescents of school age to attend kindergarten, elementary and middle school³³, without any impediment in terms of the requirements for their admission. The only limitation could be related to the communities since they must organize themselves to ensure that the educational services of this program become possible and that the irregular migrant population can have access to them.
- c) Specific school control rules on enrolment, re-enrolment, accreditation, advancement, regularization and certification in basic education. On the other hand, they are inclusive in that they encourage the inclusion of migrant children and adolescents, favouring at all times the right to education by addressing the requirements and documents for enrolling in public and private schools within their guidelines and stressing that «the lack of documentation will not be an obstacle to guaranteeing their rights. It is enough for students to simply be the age established by the General Education Law»³⁴, the only restriction considered is the discretion accorded to the states to set the requirements, where the right to education for that population is hindered.

Lastly, it should be noted that the Migration Law states that foreigners, making special mention of children and adolescents, at migrant holding centres have the right to participate in recreational, educational and cultural activities throughout their stay at migrant holding centres³⁵.

It follows that, although children have access to educational services, adults in an irregular migratory situation do not have access to this right because of the administrative requirements for their enrolment or school certification.

2. Health

Article 4 of the Political Constitution of the United Mexican States declares that every person has the right to health protection and the Migration Law reiterates this

32. Secretaría de Gobernación: Diario Oficial de la Federación, Acuerdo número 06/03/21 por el que se emiten las Reglas de Operación del Programa Educación para Adultos (INEA) para el ejercicio fiscal 2021, México, 2021, at: http://www.dof.gob.mx/nota_detalle.php?codigo=5614145&fecha=23/03/2021, accessed on 4 June 2022.

33. *Idem*.

34. Secretaría de Educación Pública: Documentos normativos: normas específicas de control escolar relativas a la inscripción, reinscripción, acreditación, promoción, regularización y certificación en la educación básica. México. at: https://www.controlescolar.sep.gob.mx/es/controlescolar/Documento_de_Normas, accessed on 4 June 2022.

35. Cámara de Diputados: LXV Legislatura, *Reglamento de la Ley de migración*, México, 2012, at: <http://www.diputados.gob.mx/Ley%20General%20de%20Educaci%C3%B3nLeyesBiblio/index.htm>, accessed on 9 June 2022.

commitment to the irregular migrant population, stressing that «medical services must be provided regardless of their migratory status»³⁶.

An analysis of this law and its regulations suggests the following:

- a) Immigration authorities may, for humanitarian reasons, authorize the entry of foreigners who do not comply with any of the requirements for internment on grounds of protection when due to a risk to their own health or life, they cannot be returned to their country of origin or cannot continue their trip.
- b) Medical and psychological care services shall be provided at migrant holding centres. Even people with special dietary needs, such as older adults and pregnant women, will receive a suitable diet so that their health will not be affected while their migration status is being defined³⁷.
- c) Regardless of their migration status, migrants will have the right to receive, free of charge and without any restriction whatsoever, any type of urgent medical care needed to safeguard their lives with no greater restrictions than those established in general for Mexicans³⁸.

Besides, in 2018 the Comprehensive Health Care Plan for the Migrant Population was established seeking to promote access to medical care, as well as psychological care, at other levels of care –emergency, hospital, rehabilitation or palliative care– regardless of migratory status when required to preserve the health or life of both the migrant and any family member in national territory. It should be specified that this plan already included vaccination for migrants before the pandemic, and therefore migrants are being vaccinated at the various Temporary Migrant Shelters, Migrant Attention Modules and Health Units (permanent or mobile).

From this perspective, migrants with an irregular migratory status have access to assistance programs like the so-called Health Institute for Welfare (INSABI)³⁹ and the Mexican Social Security Institute (IMSS) through IMSS-BIENESTAR. The first one offers first and second level medical care for people who do not have social insurance and the second one provides *first level medical care, psychological care and public health care*⁴⁰ (Plan Integral de Atención a la Salud de la Población Migrante, s.f.) for those who do not have social security, do not have the financial means to access medical services and reside in a marginalized area.

Unfortunately, affiliation to either institution is subject to the requirements listed in the «General Health Law and its regulatory provisions» (Ley General de Salud, 1984). For this, it is necessary to have a means of identification like a birth certificate or a Sole Population Registration Code (CURP), documents that the migrant

36. Cámara de Diputados: ob. cit.

37. *Idem*.

38. *Idem*.

39. Hereinafter, INSABI.

40. Secretaría de Salud: *Plan Integral de Atención a la Salud de la Población Migrante*, México, at: <https://epidemiologia.salud.gob.mx/gobmx/salud/documentos/manuales/PlanIntegralAttnSaludPobMigrante.pdf>, accessed on 9 June 2022.

population in an irregular migratory situation does not have within their reach, thus limiting their access to the right to health to the services they can receive at the various Temporary Migrant Shelters, Migrant Attention Modules and Health Units (permanent or mobile).

3. Housing

The Mexican Constitution establishes that «every family has the right to enjoy a decent and respectable housing»⁴¹, and the corresponding regulation is the Housing Law, which adheres to the principles of equity and social inclusion, regardless of ethnic or national origin.⁴²

The possibilities to access housing that meets the applicable legal characteristics in terms of human settlements, construction, etc., and thereby deemed decent and respectable, are regulated through social assistance. The 2021-2024 National Housing Program recognizes the right to housing as a human right; however, Annex 7 of the Rules of Operation of the Social Housing Program for the 2021 tax year establish that there are six types of support for families: acquisition of housing, housing self-construction, relocation, housing reconstruction, improvements, sustainable comprehensive and improvement of housing units. The same rules stipulate several requirements which include the abovementioned CURP; official identification with the beneficiary's photograph, which may be any of the following: an identification card issued by the INE or IFE, a professional license issued by the SEP, a valid passport or in the case of minors, a marriage license or birth certificate(s) of their dependents; a simple copy of birth certificate; proof of residence and even proof of income, depending on the type of benefit the beneficiary is applying.

The administrative requirements, while not discriminatory to the national population, are unattainable for irregular migrants. Thus, their human right to housing is reduced to temporary lodging provided by shelters, refuges or migrant attention modules.

4. Work

Article 5 of the Constitution says that no person may be prevented from engaging in the profession, industry, trade or work of their choice, provided that it is lawful. Its regulations prohibit discrimination based on ethnic or national origin, regardless even of the worker's migratory status (Ley Federal del Trabajo, 1970)⁴³. In spite of this, the Federal Labour Law contradicts itself by establishing different limitations for foreign workers, which consist of the following:

41. Cámara de Diputados: LXV Legislatura, *Constitución Política de los Estados Unidos Mexicanos*, Congreso de la Unión, México, 2022, at: <http://www.diputados.gob.mx/Ley%20General%20de%20Educaci%C3%B3nLeyesBiblio/index.htm>, accessed on 9 June 2022.

42. Cámara de Diputados: LXV Legislatura, *Ley de Vivienda*, México, 2006, at: <http://www.diputados.gob.mx/Ley%20General%20de%20Educaci%C3%B3nLeyesBiblio/index.htm>, accessed on 9 June 2022.

43. Cámara de Diputados: LXV Legislatura, *Ley Federal del Trabajo*, Congreso de la Unión, México, 1970, at: <http://www.diputados.gob.mx/Ley%20General%20de%20Educaci%C3%B3nLeyesBiblio/index.htm>, accessed on 9 June 2022.

- a) Employers are required to have at least 90% Mexican workers.
- b) The categories of technicians and professionals are reserved exclusively for national workers unless a specific expertise is required.
- c) To perform specialty work, foreign workers may be hired, but on a temporary basis and without exceeding 10% of the workers falling into this category. They must also train national workers to carry out these activities.
- d) All physicians working in companies must be Mexican (Ley Federal del Trabajo, 1970).
- e) Any company that hires foreign workers must comply with a series of procedures and legal requirements before the National Immigration Institute.
- f) Foreign workers may not be members of a labour union's board of directors.

From the perspective of immigration regulations, the Migration Law states that no visa grants permission to work in exchange for remuneration, unless it is explicitly indicated in said document. This automatically leaves people in an irregular migratory situation without the possibility of accessing the human right to work because it would contravene the immigration administrative provision.

Additionally, it should be pointed out that only 256 people were able to enter the country in 2020⁴⁴ with a permit for remunerated activity.

5. Social security

Regrettably, the human right to social security continues to be linked to formal employment, both for nationals and foreigners. This precludes access to social security benefits derived from the branches of insurance included in Mexican social insurance, such as: occupational risks, illnesses and maternity, disability and life insurance, severance at advanced age and old age insurance, and childcare and social benefits. Although Advisory Opinion 18/2003 indicates that labour rights, including social security for workers, do not depend on migratory status, the reality is that neither do nationals have access to social security without formal employment.

Even so, it is possible to voluntarily affiliate oneself to the Mexican Social Security Institute (IMSS), which is one of the most important social insurances in the country. It is known as the Family Health Insurance and is organized by this institute, through which it guarantees the provision of benefits in kind (medical, surgical, pharmaceutical and hospital) arising from sickness and maternity. It is a voluntary insurance that only requires signing an agreement with the institute to receive the benefits in exchange for the payment of the corresponding per person and annual quotas.

The main obstacles for irregular migrants are the following:

44. Unidad de Política Migratoria: *Registro e Identidad de Personas*, Subsecretaría de Derechos Humanos, Población y Migración, Secretaría de Gobernación,, México, 2020, at: http://portales.segob.gob.mx/work/models/PoliticaMigratoria/CEM/Estadisticas/Sintesis_Graficas/Sintesis_2020.pdf, accessed on 12 June 2022.

- a) It is an expensive insurance since the annual premiums are paid per person and in advance. For example, the 2021 quotas go from \$6,200 Mexican pesos (\$303.9 USD)⁴⁵ to \$14,850 pesos Mexican pesos (\$727.94 USD) depending on the age range of the insured.
- b) Various documents are requested, such as: official identification, birth certificate, CURP and proof of residence, of the beneficiary and the family members to be included. Hence, we again face an administrative requirement that at first glance is literally easy to verify, but for a migrant in an irregular migratory situation, it tends to be a challenge to substantiate this requirement.

Lastly, it should be noted that through social assistance, social protection benefits are granted to migrants, among which the following programs stand out:

- Health care through the Health Institute for Welfare.
- Community kitchens.

IV. CONCLUSIONS

The evolution of social human rights has led to their recognition in international instruments, which helps ensure that States respect the essential rights of vulnerable social groups.

Within this development process, we find that not only have human rights protection frameworks been extended, but they have also been incorporated into domestic legislation, which empowers migrants in the exercise of their rights since their claim is not limited to a geographic area.

The evolution of law, especially in the field of human rights, has led to the establishment of guidelines through international instruments with a view to standardizing international norms and national frameworks so as to ensure respect for the fundamental rights that every person is entitled to enjoy regardless of where or what time they may be.

However, the effectiveness of international instruments on migration depends on State ratification for the protection of the rights inherent to one of today's most vulnerable groups, i.e., irregular migrants.

In the case of Mexico, recent reforms to the Migration Law and its regulations reflect the interest in complying with the international commitments acquired through the ratification of many social human rights international instruments. However, increased irregular migration has made it impossible for irregular migrants to receive social benefits because the requirements imposed on them act as a barrier, on the

45. The exchange rate used for this report is \$20.40.03 Mexican pesos = 1 USD, data from the Bank of Mexico on 23 August 2021, available at: Banco de México, Tipo de cambio, Mexico, Banco de México, 2021, <http://www.anterior.banxico.org.mx/portal-mercado-cambiaro/index.html>.

one hand preventing access to irregular migrants, and on the other allowing more nationals to have access since they do not have to share the economic resources allocated for these benefits.

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