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Model International Mobility Convention: An Inter-American System of human rights reflection on the non-criminalization principle
Modelo de Convenção da Mobilidade Internacional: um sistema interamericano de reflexão sobre os direitos humanos sobre o princípio da não criminalização

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Model International Mobility Convention: An Inter-American System of human rights reflection on the non-criminalization principle*

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Abstract

This paper aims to provide an Inter-American reflection on the Model International Mobility Convention (MIMC), which is a proposal of an international convention on international mobility. First, it offers an introductory overview of the MIMC. Next, it analyzes the drafter's background, and the MIMC references to assess a perspective of States members of the Inter-American System of human rights was considered. The paper claims the need for a participatory assessment of scholars that provide an Inter-American view. Finally, it suggests some additions to the MIMC regarding the principle of non-criminalization of migration, based mainly on Brazilian law and the Inter-American Court of Human Rights jurisprudence. Other Inter-American contributions are also relevant and need to be the object of further studies.

Keywords: Model International Mobility Convention; migration; refugee; Inter-American System of Human Rights; Inter-American Court of Human Rights; criminalization; non-criminalization principle.

Resumo

Este artigo tem como objetivo proporcionar uma reflexão interamericana sobre o Modelo de Convenção Internacional de Mobilidade (MIMC). Primeiro, oferece uma visão geral introdutória do MIMC. Em seguida, analisa os antecedentes do redator e considera as referências da Convenção para avaliar a perspectiva dos Estados membros do Sistema Interamericano de Direitos Humanos. O documento afirma a necessidade de uma avaliação participativa dos estudiosos que fornecem uma visão interamericana. Por fim, sugere alguns acréscimos ao MIMC quanto ao princípio da não criminalização da migração, com base principalmente na legislação brasileira e na jurisprudência da Corte Interamericana de Direitos Humanos. Outras contribuições interamericanas também são relevantes e precisam ser objeto de estudos posteriores.

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1 Introduction

In a world with over 280 million migrants,¹ those who cross borders are left with uncertainties and a lack of protection as the international mobility regime is “fragmented and incoherent.”² Except for a few specific conventions, such as the 1951 Refugee Convention³ and the Migrant Workers Convention,⁴ there is no international law framework on the theme. The Model International Mobility Convention (MIMC) is a cutting-edge proposal of an international convention that aims to redesign the global governance of international mobility, which was embraced by the Carnegie Council for Ethics in International Affairs. It “urges the international community to be proactive with regard to mobility,”⁵ and offers a holistic approach that fills essential gaps in international law. It addresses visitors, tourists, students, migration workers, investors and residents, refugees, forced migrants,⁶ asylum seekers, migrants victims of trafficking, and migrants caught in States in crisis.⁷ It “[...]creates for the first time, a holistic and cumulati-

ve framework to cover these different categories of mobile people.”⁸ It aims to build a better international law framework for those crossing borders. It is complementary to other legal instruments and both reaffirms existing rights and expands rights and duties.⁹ The MIMC foresees, for instance, essential protection to forced migrants, who are those who flee due to “serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order in either part or the whole of her or his State of nationality or in the case of a stateless person her or his state of habitual residence.”¹⁰ Therefore it provides opportunities to enhance the universal human rights law system regarding forced human mobility. It presents substantial innovative mechanisms to address migration challenges, such as a Responsibility Sharing framework¹¹, the Mobility Visa Clearing House, the Remittance Subcommittee Global Planning Platform, and a Global Refugee Fund.¹² The MIMC was drafted by a commission of eminent scholars and policy experts.¹³ It is also being further developed after the initial draft within the framework of the Carnegie Council.¹⁴

Despite the importance of an international mobility convention, such as the MIMC, we claim that its draft must embrace perspectives from various regions of the world, both to ensure a more effective instrument and also to avoid that international law serves as an instrument of enhancing prevailing colonial power dynamics that reinforce the global-north perspectives while silencing the global-south.¹⁵ Therefore, this paper aims to answer the questions if an Inter-American System of human rights perspective was considered so far

¹ MIGRATION DATA PORTAL. *Total number of international migrants at mid-year 2020*. (Jan. 20, 2021). Disponível em: https://migrationdataportal.org/international-data?i=stock_abs_&t=2020.

² ACHIUME, E. Tandayi. The Fatal Flaw in International Law for Migration. *Colum. J. Transnat'l L.*, 257 (2017-2018), p. 258.

³ Convention relating to the Status of Refugees, 189 UNTS 137 (Jul. 28, 1951).

⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families A/RES/45/158 (Dec. 18, 1990)

⁵ NAIR, Parvati. Beyond Mapped Horizons: Reflections on the Model International Mobility Convention. *Colum. J. Transnat'l L.* v. 56, p. 256, 2017-2018.

⁶ Se Aleinikoff T. Alexander. Taking Mobility Seriously in the Model International Mobility Convention. *Colum. J. Transnat'l L.*, v. 56, p. 296, 2017-2018 on the MIMC's contribution on the mobility of refugees and forced migrants.

⁷ Model International Mobility Convention. International Convention on the Rights and Duties of All Persons Moving from One State to Another and of the States They Leave, Transit or Enter. 2017. Disponível em: https://www.internationalmobilityconvention.org/wp-content/uploads/sites/2/2020/11/mimc_document_web.pdf [<https://perma.cc/F3Q3-6G88>] [Hereinafter MIMC]. https://mobilityconvention.columbia.edu/sites/default/files/content/pdf/mimc_document_web.pdf p. 4

⁸ MIMC, supra note 1, p. 5.

⁹ DOYLE, Michael W. The Model International Mobility Convention. *Colum. J. Transnat'l L.* v. 56, p. 221, 2018.

¹⁰ MIMC, supra note 1, art. 125.

¹¹ BANERJEE, Kiran. Rethinking the Global Governance of International Protection. *Colum. J. Transnat'l L.*, v. 56, p. 322-323, 2017-2018.

¹² MIMC, supra note 1, p. 99. For further information see the Treaty Body arts. 201 and following.

¹³ MIMC, supra note 1, p. 5.

¹⁴ According to professor Michael Doyle's speech at the Conference Model International Mobility Convention at the Brazilian Branch of the International Law Association (Sep. 2021) Disponível em: <https://www.youtube.com/watch?v=sLXL8Uxjp3E>

¹⁵ OKAFOR, Obiora Chinedu, 'Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective.' 43 *Osgoode Hall Law Journal*, p. 174, 2005. See also, KERNER, Ina. Differences of Inequality Tracing the Socioeconomic, the Cultural and the Political in Latin American Postcolonial Theory, Working Paper No. 60, p. 22, 2013.

in MIMC's drafting process and, if not, what could be some of the possible contributions of an Inter-American System of human rights standpoint to the MIMC. By an Inter-American System of human rights perspective, this paper means a viewpoint from the States members of the American Convention on Human Rights and from scholars educated or affiliated with institutions located in member States of the American Convention on Human Rights. Hence, for the purposes of this paper, Inter-American System of human rights perspective is a synonym of the perspectives of scholars educated or affiliated with institutions located in member States of the American Convention on Human Rights, as well as perspectives from its organs and member States.

The hypothesis is that an Inter-American System of human rights viewpoint was not considered so far and that Inter-American System of human rights viewpoint might contribute to MIMC's way forward. Thinking through how the Inter-American System of human rights viewpoint might contribute to MIMC's development, we analyze the non-criminalization of migration based on Brazilian law. There are for sure other Inter-American contributions to the MIMC, such as the condition of indigenous refugees¹⁶, that need to be the object of further works.

The methodology used was a quantitative analysis of: 1) the MIMC's drafter's background in two tracks - 1.1) their current State(s) of affiliation and 1.2) the State(s) where they were educated (the first degree [or first law degree if both were in the same State], Masters and Ph.D.); 2); and 2) the citations contained in the MIMC's text. Affiliation with the United Nations and United Nations Documents were considered separately. We also reviewed the bibliography, legal instruments, and case law.

2 The drafter's background and the citations that litch-pin the Convention's articles

Aiming to assess if an Inter-American System of Human Rights perspective was considered so far, this

¹⁶ See for instance, FIGUEIRA, Rickson Rios, Indigenous refugees and cultural erosion: possibilities and limits of international refugee and indigenous peoples law in the protection of indigenous cultural expressions related to traditional land and native language. *Revista de Direito Internacional*, Brasília, v. 17, n. 3, p.439-477, 2020.

paper analyzed the commission members' background and the footnotes presented in the MIMC, as published by the Columbia Journal of Transnational Law.¹⁷

Regarding the commission members, the paper analyzed their current affiliation and education.

Out of the forty Commission members, twenty-five were affiliated with organizations located in the United States, three in Canada, three in Sweden, two in the United Kingdom, two in Switzerland, one in Colombia (also affiliated with an institute located in Switzerland), one in India, one in Australia, one in the Netherlands, and one in Portugal and two related to the United Nations. In sum, only one of the commission members was affiliated with a State member of the Inter-American System of Human Rights, Bimal Ghosh, an Emeritus Professor at the Graduate Institute of Public Administration in Bogota and a Senior Fellow at the Graduate Institute for International and Development Studies in Geneva.¹⁸

On the educational background, we looked at the first degree (or first law degree if both were in the same State), Master and Ph.D.¹⁹ According to the information available on the internet, none of the commission members did their bachelor's, master's, or Ph.D. degree in a State member of the Inter-American System of Human Rights, except Saskia Sassen, who spent a year at the University of Buenos Aires in the 1960ths.²⁰

In conclusion, the only bonds found of the drafters with the Inter-American System of Human Rights were: Bimal Gosh, who is an Emeritus Professor at Graduate Institute of Public Administration in Bogota, and Saskia Sassen, who spent a year at the University of Buenos Aires in the 1960ths. While researching within the framework defined, current affiliation and education, we occasionally came across two bonds with States members of the Inter-American System of Human Ri-

¹⁷ Model International Mobility Commission. Model International Mobility Convention. International Convention on the Rights and Duties of All Persons Moving from One State to Another and of the States They Leave, Transit or Enter. *Colum. J. Transnat'l Law*, v. 56, p. 342-465, 2018. The same version is available at MIMC, supra note 1.

¹⁸ See Annex I.

¹⁹ See Annex I. We were not able to identify the State of the first degree of four of the commission members and none of the educational background of three commission members.

²⁰ See Annex I. We were not able to identify the State of the first degree of four of the commission members and none of the educational background of three commission members.

ghts that fall outside the predefined elements: Professor José Antonio Ocampo, born in Colombia, and Bianca Z. Santos, who did an internship in the NGO Conectas, in Brazil. It is also relevant to emphasize that Diego Acosta, though from Europe, has dedicated substantial efforts of his distinguished career to Latin American migration law.²¹

The affiliation and educational background of the drafters presented indicate a low likelihood of consideration of the Inter-American System of Human Rights perspective on human mobility. To further assess if an Inter-American System of Human Rights perspective was considered, all the footnotes of the MIMC were analyzed.

The citations throughout the MIMC also demonstrate that the Inter-American System of Human Rights perspective regarding jurisprudence, treaties, and scholarship was almost not considered. Two hundred and twenty-six out of the footnotes related to the United Nations²² and two to OECD²³. Fifty-two footnotes related to European Documents,²⁴ twenty-one to US documents,²⁵ five to African documents²⁶, three to Asian documents, one to Australian documents.²⁷ There were only three citations of Latin-American documents,²⁸

two of them regarding family reunification. Forty-three footnotes related to the scholarship.²⁹ The scholarship references were all in English, and none of the authors were affiliated with Inter-American Human Rights System member States institutions. One related to Japan, one to India, four to the UN, six to Canada, twelve to Australia, fifteen to Europe, and forty-four with the US.³⁰

Once we analyzed the original MIMC, which is also called MIMC 1.0, we analyzed the profile of the additional contributors to the MIMC 2.0,³¹ which is a development of MIMC 1.0, and found no links with States members of the Inter-American System of Human Rights.³²

In conclusion, the drafters were eminent scholars and practitioners, but only one of them was affiliated with an institution located in a State member of the Inter-American System of Human Rights. According to the information publicly available, none of them received a bachelor's, master or Ph.D. degree in a State member of the Inter-American System of Human Rights, except one who spent a year in Argentina. Furthermore, the instruments cited along the MIMC and that inspired the draft MIMC's articles were mainly from the UN Europe and the US. As a result, this paper argues that the MIMC as it currently stands reflects a global-north perspective. Significantly enough, the Inter-American System of Human Rights and its member-states have relevant jurisprudence and human mobility laws. The Interamerican Court of Human Rights has critical jurisprudence on migration issues, such as the non-criminalization of migration which are way more progressive than the MIMC. This paper claims that this Inter-American human rights system perspective can contribute

²¹ See for instance ARCARAZO, Diego Acosta & GEDDES, Andrew, *Transnational Diffusion or Different Models? Regional Approaches to Migration Governance in the European Union and MERCOSUR*, *European Journal of Migration and Law*, vol. 16, no. 1, pp. 19-44 (2014).

²² MIMC, supra note 1, footnotes 2,3,4,5,6,7,8,10,11,12,13,14,15,17,18,19,20,21,22,23,26,27,28,29,30,31,32,33,35,36,37,38,39,40,41,42,43,45,46,47,48,49,52,53,54,55,59,60,61,62,63,64,65,77,86,88,89,90,91,92,93,95,96,97,98,99,100, 101,102, 13,104, 105, 106, 107, 108, 109, 110,111,112,113,114,115,116,117,118,119,120,121,122,123,124,125,126,127,128,129,130,132, 133,133,134,135,136,137,138,139,141,142,143,144,145,147,148, 150,151, 155, 158, 161, 162,163,164,165,166,167,168,169,170,171,172, 176, 180, 182, 185, 186, 188, 189, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 213,215, 216,217, 218,219,220,221,222,223,224, 225,226, 230, 231, 232, 234, 242,243,244, 245, 246,247, 249,250,251,252, 254,255,256,257,258,259,260,261,262,263,264,265,266,267, 271, 276, 279, 281, 282, 284, 285, 290, 297, 300, 307, 309, 3010, 311, 312, 313,314, 315,315,317, 318,319,320,321,322,323,324,325,326, 328, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 351.

²³ MIMC, supra note 1, footnotes 146 and 193.

²⁴ MIMC, supra note 1, footnotes 25,34,44,50, 69,87, 100,131,132, 152, 153, 154, 156, 173, 174, 178, 184, 195, 229, 235,236,237, 239, 241, 251, 269,270,272, 273,274, 275, 277, 278, 280, 286, 289,291,292, 293, 294, 295, 297, 298, 299, 300, 301, 302, 306, 328, 330, 332, 348.

²⁵ MIMC, supra note 1, footnotes 51,56,57,58,66,67, 68, 70,71,72,73,74,75,76,78,79,80,81,82,83,84

²⁶ MIMC, supra note 1, footnotes 235, 251, 303, 304, 305.

²⁷ MIMC, supra note 1, footnote 232.

²⁸ MIMC, supra note 1, footnotes 47, 328, 331.

²⁹ MIMC, supra note 1, footnotes 1,9,16, 85,94, 132,140, 149, 157, 159, 160, 175, 177, 179, 181, 183, 187, 190, 191, 192, 194, 196, 197, 212, 228, 233, 235, 240, 248, 253, 268, 279, 283, 287, 308, 327, 329, 334, 336, 343, 346, 349, 350.

³⁰ If more than one scholar was cited, we considered each of the authors. If one scholar was cited more than once, each of the citations was counted.

³¹ Draft Model International Mobility Declaration, An Agenda of Principles and Policies for the Next Decade. Disponível em: <https://www.internationalmobilityconvention.org/wp-content/uploads/sites/2/2020/11/Model-International-Mobility-Declaration.pdf> As stated in its footnote 2. See annex II. Unfortunately, the authors were not able to find the professional and academic background of Park Eun, John Kydd and Susan Oh. [hereinafter MIMC 2.0].

³² MIMC 2.0, supra note 18.The MIMC 2.0 is a declaration and contains only 2 footnotes.

to the debate and development of the MIMC. To reach the “realistic utopia”, it is necessary, in the words of Vincent Chetail, to dominate the “architecture of international migration law,”³³ a movement that distorts the conventional opposition between center and margin, outside and inside and more specifically: the opposition between refugee and migrant worker, documented and undocumented, legal and illegal. We also claim that the MIMC shall assure the participation of perspectives from the Inter-American System of Human Rights, itself, its States members, and scholars. Different perspectives enhance international law capability to address migration challenges that arise from all over the world. We recall, for instance, that it is estimated that two-thirds of the world’s refugees are hosted in global-south States. Furthermore, if a convention of international mobility disregards the Inter-American perspective, it risks being one more instrument of international law that plays a colonizing role, reproducing power domination of global-north States.

We acknowledge that MIMC is a minimum standard and its complementary character with other legal regimes³⁴ and congratulate drafters’ efforts to find a balance between the needs of those who cross borders and States sovereign interests.³⁵ Nonetheless, this paper claims that an Inter-American Human Rights System perspective can add food for thought to the MIMC’s way forward.

Once demonstrated MIMC’s lack of a Inter-American Human Rights System perspective, the following section will present a substantial contribution on the non-criminalization of migration, based on the Inter-American Human Rights system and the Brazilian Migration Law. Other aspects of the Inter-American perspective need to be the object of further works³⁶.

3 The Brazilian and Inter-American contribution on the principle of non-criminalization of migration

Based on the Inter-American perspective and the Brazilian law, we claim that the MIMC shall take the opportunity to convey the principle of non-criminalization of migration expressly. This principle is provided in article 3 of Brazilian Migration Law (13.445/2017).³⁷ It is also grounded on the Inter-American Court of Human Rights case “Vélez Lóor versus Panama”,³⁸ in its Advisory Opinions 18/2003³⁹ and 21/2014⁴⁰, and in the Inter-American Commission of Human Rights “Report on immigration in the United States: Detention and due process.”⁴¹ Inspired by the Brazilian law, the non-criminalization principle can be further divided into four subprinciples: (a) non-discrimination in criminal proceedings and criminal enforcement; (b) due process in administrative measures of compulsory withdrawal; (c) non-criminalization of crossborder movements; (d) non-imprisonment of migrants with a basis in their legal status.⁴²

³⁷ BRASIL. *Lei 13.445/2017 de 24 de Maio de 2017*. Diário Oficial da União [D.O.U] de 24.5.2017 (Braz.). Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13445.htm.

³⁸ C. Vélez Lóor vs. Panamá, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 218 (Nov. 23, 2010). See also LEÓN, Gisela De, Contributions and Challenges for the Inter American Court of Human Rights for the protection of migrant’s rights: the case of Vélez Lóor vs. Panamá 7 Inter-Am. & Eur. Hum. Rts. J. 39 (2014).

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³⁹ Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, (Sept. 17, 2003).

⁴⁰ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, (Aug. 19, 2014). See also Jorge Contesse. Rights and Guarantees of Children in the Context of Migration and/or in need of International Protection (Inter-Am. Ct. H.R.). *International Legal Materials*, v. 56, n. 5, p. 839-930, 2017. doi:10.1017/ilm.2017.32. Tatiana A. F. R. Cardoso Squeff and Marcia Leonora S. R. Orlandini. Is there a latin american child migration law? An analysis of the ‘Advisory Opinion n. 21 on the rights of child migrants’ rendered by the Inter-American Court of Human Rights. *Revista Videre*, v. 11, n. 21, 2019.

⁴¹ Report on Immigration in the United States: Detention and Due Process, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II. Doc. 78/10 (2010).

⁴² MORAES, Ana Luisa Zago de. The non-criminalization principle in accordance to the new Brazilian Migration Law. *Panorama of Brazilian Law*, Rio de Janeiro, v. 5, n. 7-8, p. 113-136, 2017. Available at: <https://www.e-publicacoes.uerj.br/index.php/pbl/issue/view/1816>.

³³ CHETAIL, Vincent. *International Migration Law*. Oxford: Oxford University Press, 2019.

³⁴ MIMC, supra note 1, Summary p. 1.

³⁵ MIMC, supra note 1, p. 5.

³⁶ See for instance BARBOSA, Lúcia Valadares Fernandes, Citizenship: A Durable solution for those born as refugees Vol. 1 No. 2 Latin American Journal of European Studies 239 (2021). The paper suggests MIMC expressly embraces a right to citizenship for those born as refugees in its path to becoming a treaty “The Latin-American States are prone to lead the call for a right to citizenship for those born as refugees since birthright citizenship is adopted by nearly every State in Latin-America.”

Analyzing the MIMC we note that it already provides some relevant standards regarding subprinciples (a) non-discrimination in criminal proceedings and criminal enforcement and (b) due process in administrative measures of compulsory withdrawal.⁴³ However, additional specific topics inspired by the Brazilian Migration Law and the Inter-American Court of Human Rights case law, and Inter-American Commission of Human Rights recommendations and reports can enhance the minimal protection of those who cross borders. This additional protection especially regards the sub principles of (c) non-criminalization of cross-border movements and (d) non-imprisonment of migrants with a basis on their legal status. The four subprinciples will be discussed both based on an Intern-American system of human rights perspective and the MIMC in the subheadings ahead to point out the issues in which the Intern-American system of human rights perspective can add to the MIMC.

3.1 Non-discrimination in criminal proceedings and criminal enforcement

The principle of non-discrimination in criminal proceedings accrues from the principle of non-discrimination⁴⁴. As stated by the Inter-American Court of Human Rights in the Advisory Opinion OC-18/03, discrimination means “any exclusion, restriction or privilege that is not objective and reasonable, and which adversely affects human rights.”⁴⁵ The Inter-American Court of Human Rights has recognized that the principle of non-discrimination is part of *jus cogens*⁴⁶ and entails States’ obligation to assure adequate access to

⁴³ Non-discrimination in criminal proceedings and due process in administrative measures of compulsory withdrawal are provided in the following MIMC articles: non-discrimination (articles 5, 55, 98, 133), protection against arbitrary expulsion (article 13), protection against collective expulsion (article 70), protection against torture, or cruel, inhuman or degrading treatment or punishment (article 16), the right to respectful treatment during arrest, detention and imprisonment (article 26), right not to be imprisoned merely on the ground of failure a visa obligation (article 28). See MIMC supra note 1.

⁴⁴ See Himanen, Markus. An Ambiguous Ban on Ethnic Profiling Reforming Immigration Law Enforcement at the Juncture of Non-Discrimination Norms and Migration Control. *Nordic Journal of Studies in Policing*, p. 1 – 18, 2022.

⁴⁵ Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, p. 95 (Sept. 17, 2003).

⁴⁶ Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶101 p. 99 (Sept. 17, 2003).

measures of protection of their rights, irrespective of their migratory status, which encompasses the right to access to justice and to adequate jurisdictional protection.⁴⁷ States must not only refrain from acting in a venue that gives rise to discrimination but must also take measures against discrimination.⁴⁸

103. In compliance with this obligation, States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of de jure or de facto discrimination. This translates, for example, into the prohibition to enact laws, in the broadest sense, formulate civil, administrative or any other measures, or encourage acts or practices of their officials, in implementation or interpretation of the law that discriminate against a specific group of persons because of their race, gender, color or other reasons.”¹⁰⁴. In addition, States are obliged to take affirmative action to reverse or change discriminatory situations that exist in their societies to the detriment of a specific group of persons. This implies the special obligation to protect that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations.

As the Inter-American Court of Human Rights has emphasized, “[...] States may not subordinate or condition observance of the principle of equality before the law and non-discrimination to achieving their public policy goals, whatever these may be, including those of a migratory character.”⁴⁹

The MIMC already has provisions on non-discrimination, especially article 5, from which the sub-principle of non-discrimination in criminal proceedings and criminal enforcement follows. Thus, we claim that there is no need for additional provisions in this regard, but it is important to emphasize it as a component of the principle of non-criminalization of migration.

3.2 Due process in administrative measures of compulsory withdrawal

Due process is a *jus cogens* principle and is also stated in various international treaties, including the American

⁴⁷ Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18,). ¶107, p. 100 (Sept. 17, 2003)

⁴⁸ Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, ¶ 103 (Sept. 17, 2003). P. 99/100

⁴⁹ Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, (Sept. 17, 2003).

Convention. Aside from the general guarantees applicable to all proceedings, Article 8(2) of the American Convention affords a series of minimum fair trial guarantees. Although the provision recognizes these minimum guarantees as applying to criminal proceedings, in an evolutive interpretation, the Inter-American Court, has widened its scope of application to proceedings outside the criminal sphere that concern the determination of rights and obligations of a civil, labor, fiscal or any other nature.⁵⁰

The MIMC touches upon the principle of due process in migratory administrative procedures in its articles that deal with non-discrimination (articles 5, 55, 98, 133), protection against arbitrary expulsion (article 13), protection against collective expulsion (article 70), protection against torture, or cruel, inhuman or degrading treatment or punishment (article 16), the right to respectful treatment during arrest, detention and imprisonment (article 26), right not to be imprisoned merely on the ground of failure to fulfill a visa obligation (article 28). Despite the relevant provisions in the MIMC, we claim that the MIMC shall expressly recognize the principle of due process for measures of compulsory withdrawal. Measures of compulsory withdrawal are understood as compulsory withdrawal due to the commission of crimes (expulsion), compulsory withdrawal of an individual in an irregular immigration situation (deportation), and the repatriation of a person who is in a situation of impediment.⁵¹

The Inter-American system of human rights provides a vital linchpin for this claim. Article XXVI of the American Declaration sets forth that “[e]very person accused of an offense has the right to be given an impartial and public hearing [...]”⁵² According to the Interamerican Commission on Human Rights, the right to due process and access to justice stated in article XXVI embraces administrative and judicial migratory procedures.

⁵⁰ See Human rights of migrants, refugees, stateless persons, victims of human trafficking and internally displaced persons: Norms and standards of the InterAmerican Human Rights System. Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.Doc. 46/15 ¶ 300 (2015).

⁵¹ See articles 46 to 60 of the Brazilian Migration Law. BRASIL. *Lei 13.445/2017 de 24 de Maio de 2017*. Diário Oficial da União [D.O.U] de 24.5.2017 (Braz.). Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13445.htm.

⁵² American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, Int’l Conf. of Am. States, 9th Conf., OEA/ser.L/V/II.23 doc.21 rev.6 (May 2, 1948).

“83. Regarding the issue of deportation as a civil procedure and the protections of due process afforded by the Declaration, the Commission has held that Article XXVI is applicable to civil as well as to criminal cases.[53] Indeed, to deny an alleged victim the protection afforded by Article XXVI simply by virtue of the nature of immigration proceedings would contradict the very object of this provision and its purpose to scrutinize the proceedings under which the rights, freedoms and well-being of the individuals under the State’s jurisdiction are established.”⁵³

The aim is to ensure careful examination of procedures in which States decide the person’s rights and life destiny. The Inter-American Commission on Human Rights has also expressed concern on “the impact of detention on due process, mainly with respect to the right to legal counsel which directly affects the right to seek release.”⁵⁴

In the same sense, the Inter-American Court in the Advisory Opinion OC-18/03 indicated that “[...] the right to due process of law must be recognized as one of the minimum guarantees that should be offered to any migrant, irrespective of his migratory status. The broad scope of the preservation of due process encompasses all matters and all persons, without any discrimination.”⁵⁵ This advisory opinion expressly affirmed that due process embraces all State’s proceedings that can affect migrants, including administrative and judicial.⁵⁶

The Inter-American Court of Human Rights, in the Vélez Lóor case, stated that “due legal process refers to the: all the requirement that must be observed in the procedural stages in order for an individual to be able to defend his rights adequately vis-à-vis any [...] act of the State that could affect them.”⁵⁷ It further specifies

⁵³ Case Andrea Mortlock, Admissibility and Merits, Publication, Inter-Am. Comm’n H.R., Report 63/08, Case 12534 ¶ 83 (2008). See also Report on Immigration in the United States: Detention and Due Process, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II. Doc. 78/10, ¶ 56 (2010); and Report on Terrorism and Human Rights, Inter-Am. C.H.R., ¶ 401, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr. (2002)

⁵⁴ Report on Immigration in the United States: Detention and Due Process, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II. Doc. 78/10, p. 144 (2010).

⁵⁵ Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, (Sept. 17, 2003).

⁵⁶ Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, (Sept. 17, 2003).

⁵⁷ Juridical Condition and Rights of Undocumented Migrants, ¶

that “due process of law must be respected in any act or omission on the part of the State bodies in a proceeding, whether of an administrative, punitive or jurisdictional nature.”⁵⁸

In the same sense, the Inter-American Court in the Advisory Opinion OC-21/14 as regards to rights and guarantees of children in the context of migration and/or in need of international protection has recalled that the right to due process refers to all procedures, administrative, legislative and judicial, to assure that people are capable to appropriately uphold their rights when a State decision is at stake.

Due process is also closely related to the notion of justice, which is reflected in: (i) access to justice that is not merely formal, but that recognizes and resolves the factors of real inequality; (ii) a fair trial; and (iii) the settlement of disputes so that the decision adopted attains the highest level of correctness in the law, that is to say, that a just solution is ensured insofar as possible.⁵⁹

In that regard, an analysis of inter-American jurisprudence and the thematic reports prepared by the Inter-American Commission in this area leads to the conclusion that immigration proceedings should offer the following minimum procedural guarantees:⁶⁰

(a) the right to prior notification in detail of the procedure for determining their legal status and, in the case of anyone who is detained, to be informed of the reasons for their detention and to be promptly notified of the charge or charges against them;

(b) the right of any person detained to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to a trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. Their release may be subject to guarantees to assure his appearance for trial;

(c) the right to a hearing without delay, to adequate time and means for the preparation of their defense, and to meet freely and privately with their counsel;

(d) the right that immigration proceedings are conducted by a competent, independent, and impartial adjudicator;

(e) the right to be assisted without charge by a translator or interpreter;

(f) the right to be assisted by legal counsel;

(g) the right that the decision adopted is duly reasoned;

(h) the right to be notified of the decision adopted in the proceeding;

(i) the right to appeal the decision before a higher court, with suspensive effect;

(j) the right to information and effective access to consular assistance.

In sum, the principle of due process, including administrative procedures, is essential to assure that migrants are capable of defending their rights when the State’s decisions affect them. The MIMC being a minimum standard to assure a better future for those who cross borders shall expressly foresee the principle of due process for all administrative measures of compulsory withdrawal.

3.3 Non-detention of migrants with a basis in their legal status

This paper claims that the term “detention” must be understood in a broad sense, equivalent to deprivation of liberty, which means a more inclusive concept. Regardless of the specific term used at the local level, what matters is that the person cannot or is unable to leave or abandon at will the place or establishment where she or he has been placed. Hence, any situation or measure that fits in this definition will turn operational the associated guarantees.⁶¹ In this sense, the United Nations High Commissioner for Refugees has understood that, in the sphere of persons seeking international protection, detention means the “deprivation of liberty or

123, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, (Sept. 17, 2003).

⁵⁸ Juridical Condition and Rights of Undocumented Migrants, ¶ 123, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18, (Sept. 17, 2003).

⁵⁹ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, p. 44 ¶109, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, (Aug. 19, 2014).

⁶⁰ Human rights of migrants, refugees, stateless persons, victims of human trafficking and internally displaced persons: Norms and standards of the InterAmerican Human Rights System. Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.Doc. 46/15 ¶ 303-304 (2015).

⁶¹ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, p. 44 ¶145, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, (Aug. 19, 2014).

confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.” Additionally, it stated that “[d]istinctions between deprivation of liberty (detention) and lesser restrictions on movement is one of ‘degree or intensity and not one of nature or substance.’” Thus, “[r]egardless of the name given to a particular place of detention, the important questions are whether an asylum-seeker is being deprived of her or his liberty de facto and whether this deprivation is lawful according to international law.”⁶²

In the Advisory Opinion 21/2014 concerning rights and guarantees of children in the context of migration, the Inter-American Court of Human Rights affirmed that the principle of non-criminalization requires that States consider reviewing policies that criminalize cross-border movements and pursue alternatives to detention.⁶³ Thus, the offenses concerning the entry or stay in one State may not, under any circumstances, have the same or similar consequences to those derived from the commission of a crime. Migration and criminal proceedings must have different procedural purposes.⁶⁴

In the case *Vélez Lóor v. Panama*, the Inter-American Court of Human Rights established that measures of deprivation of liberty that aim at punishing the migratory flow or at immigration control are arbitrary and incompatible with the American Convention and American Declaration. Specifically, it determined that the detention of an individual owing to failure to comply with the immigration laws should never have a punitive scope. Measures of deprivation of liberty should only be used when necessary and proportionate on a case-by-case basis to ensure the appearance of the person at the immigration proceedings or to guarantee the implementation of a deportation order and only for the

shortest time possible. Consequently, the Court considered arbitrary immigration policies that establish the mandatory detention of irregular migrants, without an individualized assessment by the competent authorities of the possibility of using less restrictive measures that would be effective to achieve the required objectives.⁶⁵

The Special Rapporteur of the United Nations on the Human Rights of Migrants has already recommended that “[d]etention of migrants on the ground of their irregular status should under no circumstance be of punitive nature”.⁶⁶

When it comes to children, deprivation of liberty is always forbidden, including if the State admits detention based on the requirement of necessity to guarantee the implementation of a deportation order (what Brazilian legislation forbids too), because this can never be understood as a measure that responds to the child’s best interest. Thus, the Inter-American Court considers that measures of the deprivation of liberty of a child migrant in an irregular situation, ordered on this basis alone, is arbitrary and, consequently, contrary to both the Convention and the American Declaration.⁶⁷

Keeping family together owing to the child’s best interest is not a sufficient reason to legitimate or justify the exceptional admissibility of children’s deprivation of liberty with their parents. The reason is that deprivation of liberty has prejudicial effects on child’s emotional development and physical well-being. On the contrary, when the child’s best interest requires keeping

⁶² United Nations High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention ¶ 5 (2012). <https://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html>

⁶³ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, (Aug. 19, 2014). See also SMYTH, Ciara M. Towards a Complete Prohibition on the Immigration Detention of Children, *Human Rights Law Review*, Volume 19, Issue 1, February 2019, Pages 1–36.

⁶⁴ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, ¶ 150, Inter-Am. Ct. H.R. (ser. A) No. 21, (Aug. 19, 2014).

⁶⁵ C. Vélez Lóor vs. Panamá, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 171, Inter-Am. Ct. H.R. (ser. C) No. 218 (Nov. 23, 2010). It cites Human Rights Committee, C. v. Australia, (Communication No. 900/1999), ¶ 8 UN Doc. (CCPR/C/76/D/900/1999), decision adopted on November 13, 2002.

⁶⁶ PIZARRO, Gabriela Rodríguez (Special Rapporteur on the Human Rights of Migrants) Specific Groups and Individuals: Migrant Workers, ¶ 73, U.N. Doc. E/CN.4/2003/85, 30 December 2002. Disponível em: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/162/55/PDF/G0216255.pdf?OpenElement>. Report of the Working Group on Arbitrary Detention, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development, ¶ 53 and 65, U.N. Doc. A/HRC/7/4, (10 Jan. 2008). See also, BUSTAMANTE, Jorge (Special Rapporteur on the human rights of migrants), Promotion and Protection of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development, ¶ 65, U.N. Doc. A/HRC/11/7, (May 14, 2009).

⁶⁷ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, ¶ 151 and 154, Inter-Am. Ct. H.R. (ser. A) No. 21, (Aug. 19, 2014).

the family together, the imperative requirement not to deprive the child of liberty extends to her or his parents. It obliges the authorities to choose alternative measures to detention as a precautionary measure in immigration proceedings, which are appropriate to the needs of the children.⁶⁸

Based on the above, we suggest that the MIMC expressly states the impossibility to use deprivation of liberty or, at least, the impossibility to use the detention of a punitive nature to control migratory flows, particularly those of an irregular nature. We also suggest the impossibility to use deprivation of liberty against children in any case, including as a precautionary measure in immigration proceedings.

3.4 Non-criminalization of cross-border movements

In recent years criminal law has become a prominent tool used by States in the Global North for the purpose of immigration control. While there are significant jurisdictional differences, the criminalization of immigration offenses has had a considerable impact on the lives of migrants, particularly the most vulnerable ones.⁶⁹

It is crucial to recognize the vulnerability of the irregular migrant, especially those who are victims of human trafficking or human smuggling, and those who suffered other violations of rights worsened by their migratory condition.

Criminal convictions have become, in several States, the fastest path leading to deportation. In the US, deportation became, after several legislative changes, “the consequence of almost any criminal conviction of a non-citizen,”⁷⁰ According to the data provided by

the US Immigration and Customs Enforcement, the numbers of so-called criminal aliens removed from the country have risen dramatically in the past decade.

Deportation and immigration detention are becoming forms of criminal power that represent an expression of the State’s will to control, inflict pain upon, and often, punish its non-members. By doing so, criminal power is no longer a domain of internal domestic relations, but also enters inter-State relations and becomes one of the mechanisms of global social control and governance.⁷¹

In this line, the UN’s Working Group on Arbitrary Detention has affirmed that “criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary detention.”⁷² Besides that, the Special Rapporteur on the human rights of migrants irregular entry or stay should never be considered criminal offenses: they are not *per se* crimes against persons, property or national security. So it is essential to emphasize that irregular migrants are not criminals *per se* and should not be treated as such.⁷³

The Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against Transnational Organized Crime, requires States parties to establish as a criminal offense the smuggling of migrants. However, the criminalization requirement does not apply to the migrants who are being smuggled. The Protocol states that migrants shall not become liable to criminal prosecution under the Protocol for the fact of having been the object of smuggling.⁷⁴

⁶⁸ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, ¶ 158, Inter-Am. Ct. H.R. (ser. A) No. 21, (Aug. 19, 2014).

⁶⁹ MORAES, Ana Luisa Zago de. *Crimigração: a relação entre política migratória e política criminal*. IBCCRIM, 2016; SASSEN, Saskia. *Expulsions: Brutality and Complexity in the Global Economy*. The Belknap Press of Harvard University Press, 2014. p. 34. The precariousness includes not only the physical dangers of the journey, but also social marginality upon arrival, economic hardship and exploitation, as well as intrusive policing, surveillance and the threats of deportation and detention. Pickering, Sharon; BOSWORTH, Mary; FRANCO, Katja. *Criminologia da mobilidade*. In: FRANÇA, Leandro Ayres; CARLEN, Pat. (org.). *Criminologias Alternativas*. Porto Alegre: Canal Ciências Criminais, 2017. p. 185-191.

⁷⁰ STUMPF, Juliet. *Crimmigration Crisis: Imigrants, Crime and Sovereign Power*. *Am. U. L. Rev.*, v. 56, p. 371, 2006.

⁷¹ Pickering, Sharon; BOSWORTH, Mary; FRANCO, Katja. *Criminologia da mobilidade*. In: FRANÇA, Leandro Ayres; CARLEN, Pat. (org.). *Criminologias Alternativas*. Porto Alegre: Canal Ciências Criminais, 2017. p. 185-191.

⁷² Rep. of the U.N. Working Group on Arbitrary Detention, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, ¶ 53, U.N. Doc. A/HRC/7/4, (Jan. 10, 2008).

⁷³ Crépeau, François. *Special Rapporteur on the human rights of migrants*. Rep. of Special Rapporteur on the human rights of migrants, ¶ 13. U.N. Doc. A/HRC/20/24 Disponível em: https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf

⁷⁴ Crépeau, François. *Special Rapporteur on the human rights of migrants*. Rep. of Special Rapporteur on the human rights of migrants, ¶ 14, U.N. Doc. A/HRC/20/24. Disponível em: https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf

We claim that MIMC embraces the prohibition of using criminal law to control irregular migration unless another legal asset was taken, such as in the case of human trafficking. In this sense, migrants' vulnerability reaffirm the right to personal liberty (Articles 7 of the American Convention and XXV of the American Declaration): liberty must be the rule while the immigration situation is decided or safe voluntary repatriation is implemented.⁷⁵

4 Final considerations

This paper provided Inter-American reflections on the Model International Mobility Convention, which is a cutting-edge proposal of an international convention that aims to redesign the global governance of international mobility, which was embraced by the Carnegie Council for Ethics in International Affairs. First, it analyzed MIMC's form and next contributed a share of its substance.

Regarding the form, it provided a quantitative analysis of the MIMC's drafter's profile and MIMC's references to assess if an Inter-American system of human rights perspective was considered. It confirmed the hypothesis and concluded that the perspective of States members of the American Convention on Human Rights was not voiced so far. Only one of the drafters was affiliated with an institution located in a State member of the Inter-American System of Human Rights, and none of them received a bachelor's, master or Ph.D. degree in a State member of the Inter-American System of Human Rights, except one who spent a year in Argentina. Furthermore, the instruments cited along the MIMC, were mainly from the UN Europe and the US, and none of the doctrinal works cited were from the authors from State members of the American Convention on Human Rights.

Considering this outcome, the paper claims for a participatory assessment of scholars from States members of the American Convention on Human Rights. International law tends to reproduce and reinforce power dynamics that give prominence to global-north States, while silencing those from the global-south, such as

the Inter-American System of Human Rights member-states. However, it is essential to assure participation from all geographic regions if international law aims at addressing the international mobility global challenge democratically. We recall that most forced migrants, for instance, are hosted in the global-south, highlighting the need for member States of the American Convention on Human Rights effective participation.

On the substance, aiming at contributing to the MIMC's realistic utopia, the paper offered some Inter-American suggestions, based mainly on the Brazilian Migration Law, the Inter-American Court of Human Rights jurisprudence, and the Inter-American Commission of Human Rights recommendations and reports regarding the principle of non-criminalization of migration. Our claim is that the MIMC shall take the opportunity to convey the principle of non-criminalization of migration expressly and embraces provisions that: (a) assure due process in administrative measures of compulsory withdrawal; (b) expressly states the impossibility to use deprivation of liberty or, at least, the impossibility to use the detention of a punitive nature in order to control migratory flows, in particular, those of an irregular nature; (c) guarantees the impossibility to use deprivation of liberty against children in any case, including as a precautionary measure in immigration proceedings, and (d) prohibits using criminal law to control irregular migration, unless another legal asset was taken, such as in the case of human trafficking.

⁷⁵ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, ¶ 163, Inter-Am. Ct. H.R. (ser. A) No. 21, (Aug. 19, 2014).

5 Annex I and II

Annex 1- MIMC 1.0 Commission members⁷⁶

Commission Member	Affiliation	State affiliation	First Degree / First Law degree ⁷⁷	Master	Ph.D.
Diego Acosta	University of Bristol	UK	University of Madrid	Stockholm University	Kings College London
T. Alexander Aleinikoff	The New School- NY	US	Yale University		
Kiran Meisan Banerjee	University of Saskatchewan	Canada	University of Chicago	University of Chicago	The University of Toronto
Elazar Barkan	Columbia University	US	Tel Aviv University		Brandeis University (US)
Pierre Bertrand	Former UNHCR/ now public advocacy Consulting activities	UN	University of Montréal University of Geneva		
Jagdish Bhagwati	Columbia University	US	University of Cambridge Sydenham College of Commerce & Economics, Mumbai.		MIT
Joseph Blocher	Duke University	US	Yale University	Cambridge University MPhil	
Emma Borgnäs	<i>Swedish Ministry for Foreign Affairs</i>	Sweden	<i>University of Oslo</i>	<i>Columbia University</i>	
Frans Bouwen	The Hague Process on Refugees and Migration	Nederland	Bossey Ecumenical Graduate School Geneva	State University of Leiden	
Sarah Cliffe	NYU	US	Cambridge University	<i>Columbia University</i>	
François Crépeau	McGill University	Canada	McGill University	Bordeaux University	
Michael W. Doyle	Columbia University	US	<i>Harvard University</i>	<i>Harvard University</i>	<i>Harvard University</i>
David FitzGerald	University of California-San Diego	US	University of Texas at Austin	UCLA UC San Diego	UCLA
François Fouinat	Migration and Development, United Nations	UN	Institut des Hautes Etudes de l'Amérique Latine, Paris		
Justin Gest	George Mason University	US	<i>Harvard University</i>	London School Of Economics	
Bimal Ghosh, FALTA	Graduate Institute for International and Development Studies- Geneva; Graduate Institute of Public Administration- Bogota	Switzerland and Colombia			
Guy S. Goodwin-Gill	University of New South Wales	Australia			

⁷⁶ The source was information publicly available on the internet. We apologize in advance if some information is missing or outdated. Despite the limitations, we believe that the aim to assess the general profile of the commission and if there are bonds with Inter-American System of Human Rights was accomplished.

⁷⁷ If the drafter has a law degree, only the law degree was provided. However, if the first degree was in a different State, it was also informed.

Commission Member	Affiliation	State affiliation	First Degree / First Law degree ⁷⁷	Master	Ph.D.
Randall Hansen	University of Toronto	Canada	University of British Columbia	St. John's College Oxford	St. John's College Oxford
Mats Karlsson	Swedish Institute of International Affairs	Sweden			
Donald M. Kerwin, Jr.,	Center for Migration Studies of New York	US	Michigan University		
Khalid Koser	Global Community Engagement and Resilience Fund Switzerland	Switzerland	University of Cambridge		University College in London
Rey Koslowski	University at Albany (SUNY)	US	Wesleyan University		University of Pennsylvania
Ian Matthew Kysel	Cornel University	US	Georgetown University	Georgetown University	
Justin MacDermott	<i>Swedish Ministry of Justice</i>	Sweden		<i>London School of Economics</i>	
Susan F. Martin	Georgetown University	US	Rutgers University	University of Pennsylvania	University of Pennsylvania
Sarah A.D. Miller	Columbia University	US	Valparaiso University	Oxford University	Oxford University
Elora Mukherjee	Columbia University	US	Yale Law School		
Parvati Nair	Queen Mary University of London	UK	University of London	University of London	University of London
Steven S. Nam	Stanford University	US	Columbia University	Columbia	
Daniel M. Naujoks	Columbia University	US	Humboldt University in Berlin		University of Münster
José Antonio Ocampo	Columbia University	US	University of Notre Dame		Yale
Maggie Powers	Columbia University	US	University Chicago	Columbia University	
Benedita Menezes Queiroz	Instituto de Ciências Jurídico-Políticas	Portugal	Portuguese Catholic University	European University Institute, Portuguese Catholic University	European University Institute
Dr S. Trudaya Rajan	Centre for Development Studies, Thiruvananthapuram, Kerala	India			
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⁷⁸ The source was information publicly available on the internet. We apologize in advance if some information is missing or outdated. Despite the limitations, we believe that the aim to assess the general profile of the commission and if there are bonds with Inter-American System of Human Rights was accomplished.

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