Migration with Dignity:
A Conceptual and Policy Framework

June 2021

Erin Daly, James R. May, Shanna N. McClain, Carl Bruch, Yuko Hamada,
Glykeria Teji, Miko Maekawa, and Nagisa Yoshioka
“Human dignity hovers over our laws like a guardian angel; it underlies every norm of a just legal system and provides an ultimate justification for every legal rule.”

Migration with Dignity: A Conceptual and Policy Framework

Executive Summary

Migration involves moving from one place of residence to another, within a country or across an international border, temporarily or permanently, for myriad reasons. The UN International Organization for Migration estimates that about one quarter of a billion people migrate annually, three-quarters of whom are workers, one-half of whom are women, and nearly one in nine of whom are children. Climate change exerts additional pressures on migration: as much as three-quarters of all migration in the coming decade could be caused or complicated by climate change.

Migration comes with a host of dangers, complications, and risks that can occur before, during, and after an individual migrates, and can present challenges to lives and livelihoods. The concept of Migration with Dignity is increasingly used to promote voluntary migration in the pursuit of life with dignity. While there is a growing body of work analyzing dignity rights, there is to date no meaningful analysis of what these rights mean for people who migrate. This report thus presents, for the first time, an in-depth legal and policy framework for identifying what dignity rights mean in practice.

Dignity is an inherent human quality that embodies the equal worth of every person, everywhere. Dignity matters to migrants because it is inherent in the human person and inalienable; it therefore travels with migrants wherever they go and it can not be abridged by governmental or private action. Because it reflects equal worth, it demands that migrants are treated by public and private actors as having the same worth and value as every other person, whether they are citizens or not. This means that every person has the same right as any other person to have their dignity respected, in terms of quality of life, access to services, security, and every other way that matters. While dignity rights are reflected in most of the world’s constitutions and are embedded in human rights law at the international, regional, national, and subnational levels, they must be implemented and applied for the benefit of people who migrate within countries and across borders.

This Framework for Migration with Dignity presented here emphasizes six fundamental aspects of the migration experience: 1) freedom of movement, including the right to choose when to leave and when to return; 2) the right to be secure in one’s person, and free from rape, slavery, torture, and labor exploitation; 3) the right of equality, to be treated equally under the law and in a nondiscriminatory manner; 4) the right to a basic quality of life, including rights related to employment, housing, and food; 5) the right to access services, including health care, education, and utilities; and 6) civil and political rights, including identity, free speech, and participation in political decision making. The Report further considers application across the migration lifecycle and in the context of climate change, before offering some closing remarks.
Acknowledgments

The authors are grateful to the following individuals who provided research and drafting assistance: Randall H. Brown, Emily Glaubman, Daulton Gregory and Farzana Urme in the Dignity Rights Practicum of the Dignity Rights Project at Widener University Delaware Law School as well as Sarah Plasse for research assistance; and Carmelita François and Elen de Paula Bueno, with the Environmental Law Institute. Mikiyasu Nakayama of the Ocean Policy Research Institute (OPRI) provided inspiration and thoughtful feedback in the development of this conceptual framework. All translations from Spanish are by Erin Daly.

The Ocean Policy Research Institute (OPRI) of the Sasakawa Peace Foundation and the Nippon Foundation provided support. The Sasakawa Peace Foundation (SPF), established in 1986 in Japan, through endowments from the Nippon Foundation and the Japan motorboat racing industry, has worked since its inception to advance international exchange and cooperation. The Ocean Policy Research Institute (OPRI) of SPF is a think tank with a mission to pursue "Co-existence between Man and the Ocean." OPRI carries out research and think tank activities from both policy and science perspectives, aiming at the comprehensive management and sustainable development of the ocean so as to address a wide range of ocean problems and issues in a comprehensive, inter-disciplinary and solution-oriented manner.

The Environmental Law Institute is a global leader in protecting the environment through sustainable environmental law, policy, and management. For 50 years, ELI has played a pivotal role in shaping and fostering innovative, just, and practical law and policy solutions to enable leaders across borders and sectors to make environmental, economic, and social progress. Since the mid-1980s, ELI has assisted governments, NGOs, and other institutions around the world to develop laws and regulations, build capacity, and strengthen institutions to implement and enforce environmental laws and policies.

Dignity Rights International (DRI) advances dignity rights of vulnerable people throughout the world through advocacy, education, and consultation. A not-for-profit organization based in Philadelphia, Pennsylvania, it works in partnership with international and national NGOs as well as more localized grassroots organizations to develop innovative strategies that promote human dignity through law. DRI provides consulting services, issues policy reports, develops educational materials, and situation-specific plans for dignity action. For more information on Dignity Rights International, see https://www.dignityrights.org.

The Delaware Law School is the leading academic institution in the United States advancing dignity law through experiential learning and applied academic programs. More information on the Dignity Rights Project of Delaware Law School is available at https://delawarelaw.widener.edu/prospective-students/jd-program/jd-academics/signature-programs/dignity-rights-project/.

The International Organization for Migration (IOM) is the leading intergovernmental organization in the field of migration and is committed to the principle that humane and orderly
migration benefits migrants and society. As an intergovernmental organization, IOM acts with its partners in the international community to assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants. **Disclaimer:** The opinions expressed in this Framework are those of the authors and do not necessarily reflect the views of the IOM. The designations employed and the presentation of material throughout the report do not imply the expression of any opinion whatsoever on the part of IOM concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.
# Table of Contents

*Executive Summary* ......................................................... 3  
*Acknowledgments* ................................................................ 4  
*Introduction* ........................................................................ 7  
*I. Dignity Law* ..................................................................... 10  
**II. Framework for Migration with Dignity** ................................... 16  
   A. Freedom of Movement......................................................... 17  
   B. Security ......................................................... 20  
      1. Sexual Violence.......................................................... 20  
      2. Human Trafficking, Slavery, and Forced Labor ................ 22  
      3. Arbitrary and Abusive Detention................................. 23  
   C. Equality ......................................................... 25  
   D. Basic Quality of Life......................................................... 27  
      1. Right to Work ......................................................... 27  
      2. Shelter ............................................................ 31  
   E. Access to Services .......................................................... 32  
      1. Access to Healthcare .................................................. 32  
      2. Access to Education ................................................ 33  
      3. Access to Welfare and Other Benefits .......................... 34  
      4. Access to Legal Services and Justice ......................... 36  
   F. Civil and Political Rights .................................................. 37  
      1. Freedom of Speech .................................................. 37  
      2. Political Participation ................................................ 38  
      3. Freedom of Religion .................................................. 38  
*III. Application of Migration with Dignity* .................................. 40  
   A. Migration with Dignity across the Migration Life Cycle .......... 40  
   B. Dignity Rights of Climate Migrants .................................... 41  
*Conclusion* ........................................................................... 45
Introduction

This Conceptual and Policy Framework for Migration with Dignity elucidates what a global commitment to Migration with Dignity would entail. It illustrates how attention to human dignity and to the legal rights that flow from the recognition of human dignity can improve the lives of millions of people who migrate.

Dignity represents the commitment that every person, everywhere has equal worth. It is inherent, immutable, inalienable and universal. Accordingly, every person who migrates possesses the same dignity as every other person, whether in migration or not.

The rights that flow from the recognition of human dignity are denoted in myriad international and regional laws, in the constitutional texts of more than 160 countries, and by thousands of courts across the globe. Dignity rights refer to social and economic rights -- including rights to housing, to health, to education, and to a healthy environment – as well as civil and political rights including the rights to freedom of speech, to association, and to political participation.

Applying dignity rights to migration embodies the idea that all people throughout the world are connected by a common system of values that integrates legal protections and procedures at the international, regional, national, and local levels, and further demonstrates the indivisibility and interdependence of rights. Recognizing the right of migrants to human dignity accepts the equal worth of each person without regard to gender, race, wealth, political status, or any other societal signifier.

The UN International Organization for Migration (IOM) defines “migration” as “the movement of persons away from their place of usual residence, either across an international border or within a State.” IOM notes that there are many reasons for migration, and that “migration is in large part related to the broader global economic, social, political and technological transformations that are affecting a wide range of high-priority policy issues.”

Migration is caused by compounding factors that range from escaping war, violence, persecution, poverty, climate change or unlivable political or environmental conditions to pursuing educational, vocational or employment opportunities; seeking better access to

3 Daly & May, Casebook, at 509.
healthcare, access to justice, or safe working conditions or better working conditions; to personal reasons related to reuniting with family members or loved ones, as well as for reasons involving parenting or elder care. Migration can be short- or long-term, internal or international, and it can include multiple transition (e.g., short-term destination) points along the way. Migration can be undertaken by individuals leaving or arriving on their own, or in small family groups or in larger gatherings.

IOM estimates that there are more than a quarter of a billion people who migrate. Nearly three-quarters of migrants are workers, one-half are women, and nearly one every nine are children. Moreover, an estimated 26 million people are refugees, 40 million persons are displaced due to internal conflict, and 4 million persons are stateless.

People who migrate often forfeit their legal rights, including rights that impinge on human dignity, such as the rights to health care, education, housing, employment, legal representation, welfare, and medical treatment, and rights to participate in cultural, social, and political communities: “In the international migration field, we witness the disastrous human toll exacted by state and non-state actors that violate rights and dishonor the concept of human dignity.”

The toll of the loss of legal rights is compounded by systemic corruption, deceit, abuse, and mistreatment by public authorities and private actors. Women and children in particular face constant increased risks, including exploitation, servitude, trafficking, and physical and sexual violence, along with the challenges of caring for family members and keeping a family together. Often, a migrant’s life in a new location is characterized by a constant struggle between holding on to her traditions, customs, and values, while at the same time attempting to assimilate and adjust to a new society, or fit in.

None of these indignities is inevitable and none is consistent with the recognition of the equal and inherent worth of every human being. Indeed, the United Nations Office of the High

---


7 Castelli, supra note 6.


10 IOM World Migration Report 2020, supra note 4 at 1.


Commissioner on Human Rights observes that the dignity of migrants should be “respected, protected, and fulfilled.”\(^\text{14}\) Migration with Dignity can serve as a touchstone for considering how to treat people who migrate.\(^\text{15}\)

It’s important to recognize human dignity in migration for three reasons. First, people have human dignity wherever they are – across jurisdictional boundaries, and independent of sovereign-based rules or restrictions. Second, it touches every important aspect of life, reflecting the human experience, as humans experience it: when someone is forced from their land because of climate change, or mistreated at the border, or treated without a name, it harms their human dignity because they know that they are being treated as less than human, in a way that violates their right to equality but also, more fundamentally, in a way that violates their own sense of humanity. Third, unlike other claims that may be barred by doctrinal and technical rules of interpretation, the inherent right to dignity reaches injuries that other doctrinal claims may not reach. It thus brings law closer to how people live, regardless of whether they live in their country of birth or not.

This report asserts that it is time to adopt a global legal framework to protect and promote the right to migrate with dignity – a right that human beings are entitled to by virtue of being human. Following an overview of dignity under law (Part I), this report proposes a new framework for advancing human dignity in migration (Part II), which it then applies across the migration life cycle, beginning with the country of origin, through transit, to the country of destination (Part III). Finally, it considers the application of Migration with Dignity to climate change (Part IV).


\(^{15}\) “Migration with Dignity” is a phrase coined by then-President of Kiribati Anote Tong, who aimed to empower Kiribati people to envision conditions in which they have control over whether, when, and how they migrate. IOM World Migration Report 2020, supra note 4.
I. Dignity Law

Human dignity recognizes the equal worth of each person without regard to gender, race, wealth, political status or any other socially constructed differentiator.\(^{16}\) It is deeply rooted in most of the world’s religious traditions, including Buddhism,\(^{17}\) Islam,\(^{18}\) and Christianity,\(^{19}\) as well as secular humanism.\(^{20}\)

Dignity’s recognition under law originates in international law\(^{21}\) primarily from the 1948 adoption by the United Nations General Assembly of the Universal Declaration of Human Rights (UDHR).\(^{22}\) The UDHR grounds the protection of all human rights in the affirmation of human dignity. It asserts that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” and further that “all human beings are born free and equal in dignity and rights.”\(^{24}\) The UDHR recognizes the “inherent dignity and equal and inalienable rights of all members of the human family” and is a common standard of achievement “for all peoples and all nations.”\(^{23}\) With 30 articles, the UDHR explicitly states that everyone is entitled to a life of dignity without distinction based on sex, race, color, national or social origin, religion or political opinion, birth or other status.

Both human rights covenants, to which almost every country adheres, recognize human dignity. The International Covenant on Civil and Political Rights (ICCPR) and the International

---

16 See Daly, Dignity Rights, supra note 2; Daly & May, Casebook, supra note 2; James R. May & Erin Daly, Advanced Introduction to Human Dignity and Law (2020); Daly & May, A Primer for Dignity Rights, supra note 1; Dignity Rights Project, https://delawarelaw.widener.edu/prospective-students/jd-program/jd-academics/signature-programs/dignity-rights-project/; Dignity Rights International, https://www.dignityrights.org
17 The Śrīmad-Bhāgavatam – an ancient Vedic text of literary and philosophical value – equates dignity and deism: “The state assembly house is constructed according to the dignity of the particular state. In the heavenly planets, the state assembly house called Sudharmā was deserving of the dignity of the best of the demigods.” Prabhupada, A.C.B.S, Bhaktivedanta Vedabase (The Book Bhaktivedanta Trust International, CA) (2019).
18 The Quran declares: “We have bestowed dignity on the children of Adam … and conferred upon them special favors above the greater part of our creation.” The Holy Quran, Surah Al-Isnā, 17:70. Quran Commentator, Shihab al-Din al-Alusi, instructed that “everyone and all members of the human race, including the pious and the sinner, are endowed with dignity, nobility and honor, which cannot be made exclusive to any particular group or class of people.” See al-Alusī, Ruh al-ma ‘ārif fi tafsīr al- Qur‘ān al-‘Azīm (Cairo: Dār al-Turāth, n.d.).
20 Remy Debes, Dignity: A History (Oxford University Press 2017); See e.g., Immanuel Kant, Groundwork for the Metaphysics of Morals (Yale University Press 2002) (Immanuel Kant claiming that human dignity is an “absolute, not relative condition” of the human species).
21 International law comprises treaties (covenants and conventions), customary law, and general principles of law, Statute of the International Court of Justice, art. 38. ¶ 1. Treaties are binding laws that obligate countries which have ratified the instrument as that means these countries have agreed to a set of rules between them. Customary laws are norms that have been accepted as law because they are widely practiced across nations and they are thought of as binding on the international community. U.N., Statute of the International Court of Justice, Apr. 18, 1946, https://www.refworld.org/docid/3deb4b9c0.html (last visited June 5, 2021).
23 Id. pmbl.
24 Id.
Covenant on Economic, Social and Cultural Rights (ICESCR) both acknowledge that the equal and inalienable rights of all members of the human family “derive from the inherent dignity of the human person.”24 From there spring other rights to which all persons are entitled merely by being human: right to life, liberty and security of a person,25 prohibition of slavery or servitude,26 right to work,27 prohibition of torture or inhuman or degrading treatment or punishment,28 right to be presumed innocent until proven guilty,29 right to leave any country and to return to one’s own country,30 right to freedom of thought and religion,31 and freedom of expression,32 as well as the right to family, rights to physical and mental health,33 right to education34; and right to culture,35 among others. Human dignity underpins all such rights.

More recently, human dignity has been recognized by the United Nations Human Rights Committee in affirming that the right to life protected in the ICCPR is the right to live with dignity:

Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Obligations of States parties under international environmental law should thus inform the contents of article 6 [on the right to life] of the Covenant [on Civil and Political Rights], and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.36

Similarly, the Committee on Economic, Social and Cultural Rights has affirmed that under the ICESCR “the right to work is essential for realizing other human rights and forms an inseparable

---

26 G.A. Res. 217, supra note 22, art.4; ICCPR, art.8.
27 G.A. Res. 217, supra note 22, art.23; ICESCR, arts.6-8.
28 G.A. Res. 217, supra note 22, art.5; ICCPR, art.7.
29 G.A. Res. 217, supra note 22, art.11; ICCPR, arts.9, 10.
30 G.A. Res. 217, supra note 22, art.13; ICCPR, art.12.
31 G.A. Res. 217, supra note 22, art.18; ICCPR, art.18.
32 G.A. Res. 217, supra note 22, art.19; ICCPR, art.19.
33 ICESCR, art. 12.
34 G.A. Res. 217, supra note 22, art. 26; ICESCR, art. 13.
35 G.A. Res. 217, supra note 22, art. 27; ICESCR, art. 15.
and inherent part of human dignity.” Thus, human dignity has been recognized as a foundational right throughout international law.

In addition, many international laws devote attention to protecting the dignity of individuals in vulnerable circumstances, expanding on the core dignity principles of non-discrimination and universal human worth of the UDHR, ICCPR, and ICESCR, namely: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the United Nations Convention on the Rights of the Child (CRC), the UN Declaration on Rights of Indigenous Peoples (UNDRIP), and the Convention on the Rights of Persons with Disabilities (CRPD), which states “the purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” Likewise, the Final Act of the Helsinki Conference on Security and Cooperation in Europe of 1 August 1975, stipulates that the states “will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.”

Dignity is prominent in the architecture of regional human rights law as well. The Inter-American Court of Human Rights (IACtHR) has described dignity as the “cornerstone of the rights that protect the person against the state.” The IACtHR has relied on dignity to provide protection against violations by public and private individuals, focusing especially on three major areas: (1) the recognition of legal personality, (2) the respect for physical integrity and a dignified life, and (3) the protection of the individual against authoritarian regimes.

The Charter of Fundamental Rights of the European Union foregrounds human dignity: Title I declares that “Human dignity is inviolable. It must be respected and protected.” It explains: “[c]onscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity.” The Social Charter makes

---

38 Convention on the Elimination of All Forms of Discrimination Against Women provides protections for women against sexual exploitation (art. 6) and discrimination related to education, employment, and health (arts. 10, 11, and 12). CEDAW also recognizes the role women play in the “the economic survival of their families” (art. 14).
39 G.A. Res. 44/25, United Nations Convention on the Rights of the Child (Sept. 2, 1990) protects children under the age of 18 from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse” (art. 19); See also the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure of 19 Dec. 2011, the Preamble to which reaffirms “the status of the child as a subject of rights and as a human being with dignity and with evolving capacities.”
44 Id.
46 Id., Title 1.
many of the UN-defined political, social, and economic rights binding for EU citizens and residents in EU law. The Charter requires that all European Union policies and legislation be consistent with the Charter, and EU courts are empowered to rule against any legislation adopted by EU institutions that contravenes it. Moreover, with respect to the European Convention on Human Rights, which does not explicitly refer to dignity, the European Court of Human Rights has “emphasised that respect for human dignity forms part of the very essence of the Convention.” This commits all European countries to protect human dignity.

The Arab Charter on Human Rights affirms the principles contained in the UDHR and the International Covenants on Human Rights regarding dignity and equality. It provides for a number of traditional human rights, including the right to liberty and security of persons, equality of persons before the law, protection of persons from torture, the right to own private property, freedom to practice religious observance and freedom of peaceful assembly and association.

Dignity is pervasive at the domestic level as well, with more than 160 constitutions around the world incorporating human dignity in their texts, as a fundamental value, a stand-alone right, or both. Through and by the incorporation as well as judicial interpretation and application of those texts, the right to dignity comes to life; in certain instances, dignity is recognized as a stand-alone substantive right. For example, Germany’s Basic Law of 1949 provides that, “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.” Other constitutions have protected the socio-economic aspect of dignity: the 2014 Constitution of Egypt provides that “the state guarantees citizens the right to decent, safe and healthy housing, in a way that preserves human dignity and achieves social justice.” Because living in a dignified manner is an inherent right, where constitutions are not explicit, courts have developed a jurisprudence of the social welfare of human dignity. Other constitutions protect other aspects of dignity, including protection of bodily integrity (including the prohibition against torture and inhumane treatment), civil and political rights (including speech and participation rights as well as access to justice), and rights relating to agency and identity.

47 Id. pmbl.
48 Id.
49 Bouyid v. Belgium, supra note 42, at para. 89.
51 Id.
52 Constitución Política Del Peru [Constitution], Dec. 29, 1993, art. 1 (Peru) (“The defense of the human person and respect for his dignity are the supreme purpose of the society and the State.”).
53 Grundgesetz [GG] [Basic Law] May 23, 1949, art. 1, sec. 1 (Ger.) (“Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.”).
54 See e.g., S. Afr. Const., 1996, (sec. 7, “This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.”) (sec. 10 “Everyone has inherent dignity and the right to have their dignity respected and protected.”).
55 Grundgesetz [GG] [Basic Law] May 23, 1949, art. 1, sec. 1 (Ger.).
57 See Daly, Dignity Rights, supra note 2, 55-70 and Daly & May, Casebook, supra note 2, 239-338.
Where constitutions have been explicit and even where they have not been, courts around the world have applied human dignity in relation to this broad range of rights in thousands of cases. While there is not a formal legal definition of dignity that courts invoke, there are distinct patterns that demonstrate areas of global consensus. For example, the Constitutional Court of Colombia has recognized three predominant areas subsumed in the term “human dignity”: (i) human dignity understood as autonomy or as the possibility of designing a life plan (living as one wishes); (ii) human dignity understood as certain material conditions (living well); and (iii) human dignity understood as intangible goods, i.e. physical and moral integrity (living without humiliation). These broad themes are consistent with jurisprudence throughout the world, even as courts use their own cultural language to denote the main aspects of human dignity.

Globally, courts have engaged dignity rights in myriad circumstances. For example, the Mexican Supreme Court has held that “the dignity of man is inherent to his essence, to his being. It is about the recognition that, in the human being, there is a dignity that must be respected in any case, because it is about the right to be considered as a human being, as a person, that is, as a being of eminent dignity.” The Supreme Court of Israel has held that “human dignity is violated if a person wishes to maintain his life as a human being within the society to which he belongs but finds that his means are poor and his strength is too weak to do so.” The Indian Supreme Court has affirmed all the bare necessaries of life that go with dignity “such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.” The Pakistan Supreme Court has recently held:

Dignity means human worth: simply put, every person matters. No life is dispensable, disposable or demeanable. Every person has the right to live, and the right to live means right to live with dignity. A person should live as “person” and no less. Human dignity hovers over our laws like a guardian angel; it underlies

---

61 See, e.g., Trop v. Dulles, 356 U.S. 86, 100 (1958) (“The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.”); and see Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors, (1981) 2 SCR 516 (India) (“the right to life includes the right to live with human dignity and all that goes along with it . . . ”).
62 Sentencia T-088/08 at 3.5.5 (Constitutional Court of Colombia): “Y es que el contenido de la expresión “dignidad humana” puede presentarse de dos maneras: a partir de su objeto concreto de protección ya partir de su funcionalidad normativa. Al respecto, en la sentencia T-881 de 2002 esta Corporación manifestó: “(...) Al tener como punto de vista el objeto de protección del enunciado normativo “dignidad humana”, la Sala ha identificado a lo largo de la jurisprudencia de la Corte, tres lineamientos claros y diferenciables: (i) La dignidad humana entendida como autonomía o como posibilidad de diseñar un plan vital y de determinarse según sus características (vivir como quiera). (ii) La dignidad humana entendida como ciertas condiciones materiales concretas de existencia (vivir bien). Y (iii) la dignidad humana entendida como intangibilidad de los bienes no patrimoniales, integridad física e integridad moral (vivir sin humillaciones).”
63 DALY, DIGNITY RIGHTS, supra note 2, at 26-54, 71-101; DALY & MAY, CASEBOOK, supra note 2 at 67-191.
64 Acción de Inconstitucionalidad 2/2010 (Same-sex Marriage and Adoption Case) (internal citations omitted).
66 Francis Coralie Mullin, supra note 61.
every norm of a just legal system and provides an ultimate justification for every legal rule. Therefore, right to dignity is the crown of fundamental rights under our Constitution and stands at the top, drawing its strength from all the fundamental rights under our Constitution and yet standing alone and tall, making human worth and humanness of a person a far more fundamental a right than the others, a right that is absolutely non-negotiable.  

Thus, the recognition of human dignity has now become a leitmotiv of human rights law, informing the rights not only of citizens but of all persons. The sections that follow explore linkages between human dignity and migration in various contexts, including movement, security, equality, well-being, access to services, and civil and political rights.

---

II. Framework for Migration with Dignity

Human dignity encapsulates two elements essential to migration. First, each person – every member of the human family – has value; no one can be dismissed, ignored, mistreated, or abused. Each person has a right to live as if their life matters, and each person has a right to be treated “as a person.” And second, no one’s life is more important than any other person’s.68 If each person’s right to agency, to self-development, to choose one’s life course is the same as every other’s, then no one can determine another person’s choices, treat another as an object, or treat a person as if their life does not matter.

Yet, there is no international agreement to advance and protect the human dignity of people who migrate. While the Global Compact for Migration “[p]rovide[s] newly arrived migrants with targeted, gender-responsive, child-sensitive, accessible and comprehensive information and legal guidance on their rights and obligations, including … access to justice to file complaints about rights violations,”69 it does not expressly protect Migration with Dignity. Moreover, the Global Compact is not binding on states or non-state actors. This is particularly problematic for people who migrate and who therefore find themselves in particularly vulnerable situations, outside the jurisdiction of state protection.

Thus, we propose a Framework for Migration with Dignity, addressing six facets of the migration experience:

(A) Movement, that is, the right to choose when to leave and when to return;

(B) Security, namely, the right to be free from sexual violence including rape and sexual exploitation, human trafficking, slavery, forced labor and arbitrary and abusive detention;

(C) Equality, that is the right to be treated in a nondiscriminatory manner as a human being of equal worth, including access to benefits, services, and legal protections;

(D) Right to a basic quality of life, including rights related to employment, housing, and food;

(E) Access to services, including healthcare, education, and legal services; and

(F) Civil and political rights, including freedom of speech, religion, assembly, and political participation.

68 See Daly & May, CASEBOOK, supra note 2, at xi.
69 Global Compact for Safe, Orderly and Regular Migration (GCM), intergovernmentally negotiated and agreed outcome (13 July 2018), para. 15. (“Rule of law and due process: The Global Compact recognizes that respect for the rule of law, due process and access to justice are fundamental to all aspects of migration governance. This means that the State, public and private institutions and entities, as well as persons themselves are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international law.”).
This Framework for Migration with Dignity uses examples from around the world to illustrate how courts, constitutions, and legislatures have recognized that respect for human dignity is integral to all aspects of the human experience, including the migration experience. The legal practices we discuss in this report at times explicitly refer to non-citizens and at times do not; in all cases, however, the dignity-based principles they discuss should apply to people who migrate on an equal basis as everyone else precisely because every person must be treated with dignity—that is, "as a person"—at all times.

A. Freedom of Movement

Freedom of movement and the expectation to be treated with dignity at the receiving country are critical aspects of Migration with Dignity because they bear on their identity and sense of self, on their capacity to care for themselves and for others, and on their need to be protected against humiliation, oppression, and discrimination.

Freedom of movement has four components:

(1) freedom to leave one’s country of origin,70
(2) freedom to return to one’s country of origin,71
(3) admission to a foreign country, and
(4) freedom of movement with country of origin or country of destination.

Existing international and national law recognizes the right to freedom of movement: Article 13 of the UDHR states that “(1) everyone has the right to freedom of movement and residence within the borders of each state and (2) everyone has the right to leave any country including his own and return to his country”72 and Article 14 states “(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution […]”73 However, at the level of national legislation and implementation, there is some variability in constituent rights, depending in part on the reasons for movement (fleeing persecution, labor, education, etc.), and immigration laws are not often committed to the principle of the equal worth of every human being.

Some courts have invoked dignity in upholding the freedom of movement. For example, the Supreme Court of India has emphasized that travel is an essential human right deriving from the dignity of the person. In a case of a well-known journalist whose passport had been impounded by the authorities under the Passport Act of 1967, the Supreme Court rejected claims of sovereignty and territorial integrity, emphasizing that:

It cannot be disputed that there must exist a basically free sphere for man, resulting from the nature and dignity of the human being as the bearer of the

70 ICCPR, art. 12(2).
71 Id., art. 12(4).
72 G.A. Res. 217, supra note 22, art. 13.
highest spiritual and moral values. This basic freedom of the human being is expressed at various levels and is reflected in various basic rights. Freedom to go abroad is one of such rights, for the nature of man is a free agent necessarily involves free movement on his part. There, can be no doubt that if the purpose and the sense of the State are to protect personality and its development, as indeed it should be of any liberal democratic State, freedom to go abroad must be given its due place amongst the basic rights. This right is an important basic human right for it nourishes the independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience.\(^74\)

Similarly, the Colombian Constitutional Court has noted that the freedom to travel is essential to living according to one’s life plan.\(^75\)

However, for political reasons, countries often restrict freedom of movement, for instance, by imposing requirements for passports and visas or by imposing quotas or denying entry to specific individuals on grounds of foreign policy or national security. Additionally, public health or safety emergencies (such as COVID-19) may justify some restrictions on leaving or even re-entering one’s country, leaving a foreign a country, or moving around within a country; these limitations can be both legal and practical.\(^76\)

These policies must be weighed against the need to respect the intrinsic dignity of every person; that is the inalienable right of every person to find security for oneself and one’s family and to have agency about their life plan and to make decisions for themselves about such things as whether to leave one’s home, pursue education or work. The dignity-based sense of autonomy and self-worth provide people with the ability to make decisions about their lives and the law must demonstrate respect towards their innate dignity.\(^77\)

Migration with dignity is critical because of the fundamental importance to human identity of the decision whether to leave one’s home, community, and country. For some, the decision can be relatively simple, as when something beneficial such as a job, an educational opportunity, or a family member awaits in the new place. But for hundreds of millions of people, the decision is much more fraught, brought about by conditions beyond their control, including warfare or political instability, persecution, or environmental degradation, all of which can make their home uninhabitable and compel a person to leave against their desires. The pressures under which many people make their decisions can impair the dignity-based need for agency and control over one’s life.\(^78\)

\(^74\) Maneka Gandhi v. Union of India, (1978) 2 SCR 621 (India).
\(^75\) See Sentencia T-088/08, \textit{supra} note 62.
\(^77\) \textit{Id.}
\(^78\) Castelli, \textit{supra} note 6.
Factors affecting mobility might be political, economic, and social, among others, and may be present in countries of origin, transit countries, and destination countries. For example, following the Arab Spring in 2010, uprisings in Libya, Tunisia, Egypt, Yemen, and Syria and elsewhere led to a wave of migration, contributing to a dire situation for many millions of people.79

Other factors affecting freedom of movement can also be present in the country of origin or the destination country. Women who live in a situation of domestic violence often have limited freedom of movement, which places them in grave danger regardless of the country in which they find themselves.80 The situation is exacerbated when economic and other factors limit their freedom of mobility even further.81 For instance, Guatemalan citizens deported from the United States during the COVID-19 pandemic have, upon return to Guatemala, faced rising levels of food insecurity, a stagnant economy, and movement restrictions, while being ostracized by their own communities.82 All such factors affect migration with dignity. Regardless of the reasons, people who migrate should be treated with dignity.

Attention to each person’s dignity is especially important for people who are seeking asylum who require heightened levels of international protection because their departure from their country of origin is due to fear of persecution, conflict, generalized violence, or other circumstances that have seriously disturbed public order.83 Such protections include admission to the destination country and provision of asylee status, employment authorization, access to public benefits, pathway to citizenship, and where children are involved, safeguards as to their best interests.84 Certain countries, however, refuse to acknowledge migrants’ designation as refugees, thus depriving them of international protections. For example, in Kituo Cha Sheria v. Attorney General, Kenya had hosted an estimated 600,000 registered refugees and asylum seekers drawn from, among others, Somalia, Ethiopia, Eritrea, Sudan, Rwanda, Burundi, and the Democratic Republic of Congo, but after Kenya suffered several grenade attacks, the government stopped receiving and registering refugees and forced all refugees to move from urban areas to inadequate refugee camps, denying them, in essence, international protection.85 This case illustrates the precariousness of life for those who need asylum: without permanent

81 Id.
82 See e.g., Adolfo Flores, Guatemalans Deported from the US Are Being Threatened with Violence at Home over Coronavirus Fears, BUZZFEED NEWS (May 1, 2020), https://www.buzzfeednews.com/article/adolfoflores/guatemala-us-deportees-threats-coronavirus.
85 See Kituo Cha Sheria and others v. The Attorney General, no. 19, Judgment (H.C.K. 2013).
protections, even those who live in a new country for years or indefinitely, are relegated to a life in limbo, denied a solid sense of permanence in their new locations and unable to take advantage of employment and educational opportunities for them and their families and denied the infrastructure that is necessary to living a life of dignity.

Relying on the inherent dignity of all people, including those who are fleeing persecution, the Kenyan High Court concluded that the actions of the Kenyan government were not proper; that the refugees’ freedom of movement and their fundamental right to be treated as equals had been overlooked, and that the Kenyan government violated the state’s responsibility to persons in a vulnerable situations.\textsuperscript{86} Ultimately, the plan to remove refugees constituted a merciless, undignified act by the Kenyan government, considering that individuals were forced to uproot and move elsewhere. The Court’s analysis was based not on their legal status as refugees as much as on the universal value of human dignity as reflected in the Constitution of the Republic of Kenya and the UDHR. This illustrates why foregrounding dignity is essential to people who migrate, whether they are fleeing persecution or not: dignity depends not on a person’s legal status or location but on a person’s humanity.

Freedom of movement is at the core of migration and an essential aspect of human dignity. This does not mean that all persons have to be admitted to a new country as citizens, but rather that countries’ immigration policies must be designed and implemented with respect for each person’s inherent and equal worth, regardless of a person’s status or reasons for migrating.

\textbf{B. Security}

Personal security in migration is essential to the protection of human dignity. Threats of insecurity and exploitation of a person’s vulnerability – including sexual violence, human trafficking, slavery and forced labor, and arbitrary and abusive detention – prevent a person from being in control of their lives, diminish their worth in the eyes of others and in their own eyes, and amplify the sense of inequality between people. Experiences like these scar a person’s psyche in ways that diminish their ability to function effectively with dignity throughout their lives.

1. Sexual Violence

Migration with dignity should protect against the threat of sexual violence against men and women and girls and boys and ensure that their right to security is upheld. Sexual violence includes physical, sexual or psychological harm as well as threats and coercion, occurring in both public and private spheres.\textsuperscript{87} Sexual violence, in particular, has profound effects on human dignity: “violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms….”\textsuperscript{88} This is

\textsuperscript{86} Id.
\textsuperscript{87} U.N. Fourth World Conference on Women, \textit{Beijing Declaration and Platform of Action} (Oct. 27, 1995)
\textsuperscript{88} G.A. Res. 48/104 A, Declaration on the Elimination of Violence against Women (Dec. 20 1993).
equally true for men, although women and girls are by far the most common victims and survivors of sexual violence perpetrated by men and boys.

Migration presents additional dignity challenges for women and girls. The dignity of women and girls is an “inalienable, integral and indivisible part of universal human rights.” Yet women and girls who migrate are at particular risk of sexual violence insofar as they are physically vulnerable and often lack governmental or police protection: “Up to 80 percent of women and girls experience rape and sexual assault during migration.” Moreover, 35 percent of the victims trafficked for forced labor are women and girls.

Sexual violence and human trafficking objectify and dehumanize victims and survivors in violation of fundamental aspects of human dignity. In fact, courts have described these crimes of this nature as “inhumane acts” rising to the level of cruelty and constituting an attack on one’s human dignity. People who are in processes of migration are exposed to these acts of cruelty, in the form of sexual violation and exploitation on an extensive and persistent basis. Sexual violence in any form constitutes a violation of the core principle of dignity that demands equality among human beings. Ultimately, human trafficking, sexual assault, and rape violate a person’s dignity and the mark they leave behind is difficult to overcome. For example, in the case against Jean-Paul Akayesu, who was charged with sexual violence and rape during the genocide in Rwanda, the International Criminal Tribunal for Rwanda Trial Chamber defined rape as “a physical invasion of a sexual nature, committed on a person in circumstances which are coercive.” Many other courts have described rape as a crime against human dignity. In India, for instance, the High Court of Telangana has found that “Rape is an experience which shakes

89 See Kituo Cha Sheria, supra note 85.
92 See e.g., Sayeedee v. Government of Bangladesh, where Allama Delwar Hossain Sayeedie was sentenced to life imprisonment for committing crimes against humanity during the Bangladesh Liberation War. Sayeedie was found guilty of eight counts, including murder, abduction, torture, rape, and persecution. In discussing the nature of the crimes, the court said that “inhumane acts” have a nexus with cruelty, “that is to say there must be presence of mental violence or undermining the dignity of a person or an act which is inhumane in nature.” Allama Delwar Hossain Sayeedie v. Government of Bangladesh, Criminal Appeal (a) No. 39 of 2013, Sayedee Appeal Judgment (Sept. 17, 2014).
95 WRC, supra note 96, at Appendix B, Enabling Disclosure and Access to Services for Male Refugee and Migrant Survivors: Insights from Research Participants, “If people treat you like a human being with dignity and support, you can recover.”
the foundations of the lives of the victims. The offence of rape must be dealt with as the gravest crime against human dignity.”

2. Human Trafficking, Slavery, and Forced Labor

People who migrate are particularly susceptible to human trafficking and exploitation, the extent and nature of which varies on account of several factors, including but not limited to their sociodemographic characteristics. Human trafficking is a form of slavery, and it refers to the exploitation of individuals through threat or use of force, coercion, abduction, fraud, or deception. It includes practices of forced labor, debt bondage, domestic servitude, forced marriage, sex trafficking, child sex trafficking, and the recruitment and use of child soldiers, among others. According to the International Labour Organization (ILO), there are approximately 40.3 million victims of human trafficking globally. In 2011, the Inter-American Commission of Human Rights Special Rapporteur received several reports of migrants held captive in Mexico who were subjected to beatings, rape, extortions, sexual exploitation, and human trafficking.

Human trafficking violates human dignity in numerous ways: it eliminates a person’s agency over their own lives, it humiliates and degrades the person in the eyes of others and in their own view, and it objectifies individuals for another’s ends, be they physical, sexual, financial, or otherwise. It violates the fundamental principle of equal dignity by diminishing one’s ability to live with dignity. The Council of Europe Convention on Action against Trafficking in Human Beings emphasizes in its preamble that “trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being.”

Human trafficking involves the gross exploitation and control over an individual, and it becomes more likely and more extreme for vulnerable persons. Certain subgroups of migrants are at particular risk, including people who are fleeing violence and conflict; those who have been dislocated from community and family support structures without access to legitimate forms of employment, legal status, or social protection; and, those who move or work through irregular channels. The very factors that drive people to leave their home countries are often the factors

---

102 Fiona David, Katharine Bryant, & Jacqueline Joudo Larsen, Migrants and their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour, (IOM 2019),
that make them vulnerable to trafficking when they are in transit and when they arrive in a new destination. Their dignity is doubly exposed, unless governments take responsibility for protecting the most vulnerable members of their populations.

Trafficking runs afoul of “the broad category of universal principles of dignity and decency which, while not law in and of themselves, have historically informed our understanding of basic human rights from the Declaration of Independence to the United Nations Universal Declaration on Human Rights.” Dignity rights entail both positive and negative remedies such that governments have obligations not only to refrain from trafficking but also to protect vulnerable individuals from its occurrence with preventative and remedial measures.

In addition to laws against human trafficking, a range of international conventions protect people against slavery and forced labor. For example, the Forced Labour Convention of 1930 prohibits all forms of forced labor, defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” The Abolition of Forced Labor Convention of 1957 prohibits forced or compulsory labor as a means of political coercion or education or as a punishment for holding or expressing political views; as a means of labor discipline; as a punishment for having participated in strikes; and as a means of racial, social, national or religious discrimination.

In the same spirit, international tribunals have determined that it is an offence to subject an individual to working or living conditions that are incompatible with human dignity.

### 3. Arbitrary and Abusive Detention

Among the many challenges of migration, many migrants and refugees face the risk of being detained upon arrival in a new country and arbitrary and abusive detention is another affront to human dignity. Detention, even if not formally punishment, is a high price to pay for contesting deportation. For example, in a migrant detention center in Texas, outbreaks of scabies, shingles, and chickenpox spread among the hundreds of detained children. Several incidents of COVID-19 infections led to the death of migrant detainees, raising serious concerns about governmental


104 Lagon, *supra* note 105.


practices and the treatment of fellow human beings in detention. At another U.S. migration detention center, straitjackets and solitary confinement were used to punish people and deter them from reporting mental health concerns, thus criminalizing especially vulnerable people, including those who are suffering from mental health issues while migrating. The UN Special Rapporteur on Torture has affirmed that solitary confinement of 15 days or more can amount to torture, due to the risk of permanent psychological damage from such extended periods of isolation; yet people in migration detention are not entitled to the same level of state protection as those in the criminal justice system.

Some of the cases concerning treatment of detainees focus on the physical conditions of detention of the minimum core of comfort that is necessary to ensure that individuals live in dignity. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 emphasizes that the “equal and inalienable rights of all members of the human family, derive from the inherent dignity of the human person.” In Germany, the Constitutional Court has twice held that a sentence of life imprisonment without possibility of release (parole or pardon) implicates not only the right to liberty, but the right to dignity as well. The court explained “it would be incompatible with human dignity if the convicted person, regardless of the development of his or her personality, had to abandon all hope of ever regaining liberty.” Governments committed to treating those who migrate with dignity must recognize the importance to human dignity of fair procedures, including procedures that allow migrants to understand the proceedings and to have a chance of a fair outcome.

Individuals who are in detention are treated poorly because of their designation as “detainee,” “migrant,” or “alien,” as if they are no longer persons. There is no sound justification for treating people in cruel and inhumane ways in enforcing the law or for punishment. While “[s]everal human rights bodies have determined that the detention of migrant children under current conditions at the U.S. border violates international law as ‘cruel, inhuman or degrading treatment,’” the prohibition on humiliation and degradation applies equally to adults and children because every person’s dignity is inviolable. As is the case with other dignity rights violations, provisions for the creation of a uniform legal framework that would afford protections for individuals thus situated becomes imperative.

---


114 U.N. GAOR, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec. 1984, 1465 U.N.T.S. 85.

115 See DALY & MAY, CASEBOOK supra note 2.

Violations of a person’s security impair every aspect of human dignity. States have both negative and positive obligations to protect vulnerable people, including people who migrate, from threats both public and private to their security.

C. Equality

Equality is intrinsic in the idea of human dignity, as reflected in the UDHR, regional human rights law, and countless constitutions. Although dignity and equality are not the same thing, they are necessarily connected: if dignity were not equally recognized in all persons, any individual could diminish the dignity of another through discrimination, humiliation, or objectification. Thus, dignity cannot exist universally unless each person is born equal in dignity and retains a right to equal dignity throughout their life. Applying the principle of equality to migrant populations requires governments and others to treat people who migrate as they would treat members of the native-born population or others. Those who are in situations of migration should not be discriminated against in benefits, access to services, or legal protections, and no oppression or humiliation of migrants should be tolerated.

International law recognizes that every person is entitled to equal treatment under law as a basic reflection of human dignity. As noted, the UDHR recognizes the “inherent dignity and equal and inalienable rights of all members of the human family” and is a common standard of achievement “for all peoples and all nations.”117 The UN Declaration on the Elimination of All Forms of Racial Discrimination “solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of securing understanding of and respect for the dignity of the human person.”118 Additionally, the Convention on the Elimination of All Forms of Discrimination against Women emphasizes that discrimination against women “violates the principles of equality of rights and respect for human dignity.”119 All of these rights apply to people who migrate.

Countries have adopted a range of constitutional and statutory provisions to promote human dignity through equality under the law. For example, the South African Constitution provides that “South Africa is a democratic state founded on the values of human dignity, the achievement of equality and the achievement of human rights and freedoms.”120 The Canadian Charter of Rights and Freedoms, has established dignity as “the key concept of understanding equality. . . it prevents the violation of essential human dignity and freedom from the imposition of disadvantage, stereotyping, and promotes a society where all persons enjoy equal recognition at law as human beings.”121 In the United States, this right of equality has legal basis and

117 G.A. Res. 217, supra note 22, art. 11; see also ICCPR, arts. 9, 10.
120 S. AFIR. CONST., 1996 sec. 1.
enforceable mechanism in the 14th Amendment of the U.S. Constitution, which prohibits any state from denying “to any person within its jurisdiction the equal protection of the laws.” Violations of this right in the context of migration likely include, but are not limited to, detaining someone who does not speak English and not providing language interpreters or connecting them to consular offices or states adopting local laws that strip away benefits from migrants based on classification that do not serve a legitimate purpose of the state.

Some countries have sought to ensure the equal dignity of migrants. In 2012, Mexico adopted the “Reglamento de la Ley De Migración” ("Regulation of Migration Law"). The law is meant to reverse the pattern of calamities suffered by migrants in transit. It is also intended to comply with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Further, the law acknowledges the human rights of migrants and explicitly recognizes women who migrate as especially vulnerable. Germany has also attempted to provide benefits to asylum seekers comparable to those made available to the general population.

The right of equality, which is reflected in a number of international legal instruments, provides that a person should not be treated differently because of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth and other status." This basic human right is essential to ensuring migrants are treated with dignity before migration, during transit, and at point of settlement. Violations of this right in the context of migration likely include, but are not limited to, denial of entry into a country based on national origin, detention and deportation procedures, pathway to obtaining immigration status, and denial of state identification that are racially biased and treat other national groups differently.

---

123 U.S. CONST. amend. XIV, § 1.
124 Unavailability of language interpreter when a person is detained is described as "a significant impediment to the fair administration of justice, and is a blatant violation of the due process and civil rights of immigrants with limited English proficiency (LEP)" in a statement by the U.S. Commission on Civil Rights Denounces Replacement of Interpreters with a Video at Immigrants’ First Immigration Hearing (July 2019), https://www.usccr.gov/press/2019/Immigration-Interpreter-Statement.pdf
126 Id.
128 Benefits for Asylum Seekers, BVerfG, 1 BvL 10/10, July 18, 2012 (Ger.), https://www.bundesverfassungsgericht.de/ls20120718_1bv1001010en.
129 G.A. Res. 217, supra note 22, art. 2; ICCPR, arts. 2, 26; ICESCR, art 2(2); CRC, art. 2; CMW, art. 7; CEDAW, art. 1; CRPD, art. 5.
130 G.A. Res. 217, supra note 22, art. 2.
Discrimination can threaten human dignity by compromising a person’s sense of identity, which becomes more prominent upon a migrant’s arrival to the new country. Many people who migrate are confronted with discrimination, racism, and xenophobia, which can harm a person’s dignity by demeaning them, limiting their opportunities, and separating them from old and new communities. People who migrate can also face tensions between assimilating into a new society and holding on to their traditions, customs, and values, which can be central to identity.  

Because it is rooted in human dignity, the right of equality is a non-derogable human right. Nondiscrimination is both a general obligation and one that plays out in the context of other dimensions of Migration to Dignity. A government’s commitment to human dignity prohibits it from unfairly detaining individuals, from imposing undue punishment in a discriminatory manner, and from adopting local or national legislation that adversely impacts basic the rights of migrants including rights to life, liberty, and security of person.

D. Basic Quality of Life

Living with dignity includes economic security. Although dignity is an inherent right, many people struggle to live in conditions of dignity. The Supreme Court of Israel, for example, has held that “human dignity is violated if a person wishes to maintain his life as a human being within the society to which he belongs but finds that his means are poor and his strength is too weak to do so.” The Supreme Court of India has affirmed that the right to life is the right to live with necessaries that allow for a life of dignity “such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.” Dignity and the right to well-being involves the right to work and the right to economic security, discussed below.

1. Right to Work

For most people, the right to work is at the core of the ability to live with dignity. Employment is, for many people, the principal impetus for migration. The ILO estimated that more than 164 million workers left their home countries between 2013 and 2017 in search of a job across

---

133 G.A. Res. 217, supra note 22, art. 11; ICCPR, arts. 9, 10.
134 G.A. Res. 217, supra note 22, art. 5; ICCPR, art. 7.
135 G.A. Res. 217, supra note 22, art. 3; ICCPR, art. 6.
136 See Francis Coralie Mullin, supra note 61; see also UNHRC, General Comment 36, supra note 37.
138 Francis Coralie Mullin, supra note 61.
borders—due to poverty, displacement, or job scarcity among other reasons—and that number is increasing every year. Yet people who migrate are often paid lower wages and forced to work in subpar conditions. Thus, the right to work is an important element of the Migration with Dignity Framework.

Article 23 of the Universal Declaration of Human Rights provides:

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment . . . Everyone, without any discrimination, has the right to equal pay for equal work ... Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

The meaning of the right to work, often referred to as the “right to decent work” or the “right to fair work,” is often limited to the right of migrants to be paid minimum wages as set by labor laws in the host country, to not be paid less than anyone else with the same qualifications; and to be provided with a work environment that does not violate other human rights (for example, has access to private toilet and water, or has access to the necessary safety guards and tools to do their work safely without danger to themselves or health risks). In this context, women are often particularly vulnerable to employment-related sexual harassment and violence and they can be marginalized to domestic work, which usually provides pay below minimum wages and lack of legal protections. While employers, again within the boundaries of local labor laws, can determine criteria for work/jobs such as language requirement or minimum degree requirement, governments must ensure that such limitations do not disproportionately violate the rights of migrants to earn a living. In practice, migration status often influences whether a person is eligible for employment as well as the conditions of employment.

\[142\] G.A. Res. 217, \textit{supra} note 22, art. 23.
\[143\] In the U.S., discourse on the right to work often falls within the dialogue about unions and trade association. This is part of the discussion, but the right to work is broader and focuses particularly on eligibility to work and working conditions.
\[144\] \textit{See UNODC, Global Report on Trafficking in Persons, \textit{supra} note 92.}
\[147\] For example, in the United States, consideration is to be given to the purpose of migration whereby if a person is visiting the U.S. on vacation, s/he cannot assert the right to work.
In a number of instances, specific bilateral or regional instruments provide enhanced protections. This can be a double-edged sword, though. For instance, the United States has entered into Compacts of Free Association (COFAs) with the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.\textsuperscript{148} A COFA grants citizens of those countries the right to freely enter, live in, and leave the United States, without visas or quotas. However, this COFA explicitly categorizes people who migrate as nonimmigrants, thereby limiting the scope and applicability of laws that protect rights and freedoms of immigrants generally. In other ways, the COFAs provide a substantial legal framework that can (and in many ways, already does) support Migration with Dignity.

A limitation of international law instruments in asserting legal and institutional framework for dignity rights in the context of migration is that they often require domestic implementing legislation to provide the necessary specificity and procedures and to be enforceable in domestic courts.\textsuperscript{149} Nonetheless, here as elsewhere, attention to human dignity should ensure that people who migrate can at least live with dignity.

The constitutions of several countries contain express rights to dignity and employment, and courts have given force to these rights. Recently, for example, Germany developed a plan to provide 100,000 new jobs by relaxing labor laws so as to encourage German employers to hire migrants.\textsuperscript{150}

\textsuperscript{148} To compensate for long-term negative impacts of nuclear bomb testing on islands of the Republic of Marshall Islands and to retain strategic national security territories, the United States signed a treaty in 1986, the Compact of Free Association (COFA), with three Pacific Island countries – the Federated States of Micronesia, Palau, and the Republic of Marshall Islands. These states are commonly referred to as Micronesia states and the citizens from these states who migrate to the United States are referred to as COFA migrants. Exec. Order No. 12569, 3 C.F.R. 234 (Oct. 16, 1986), Management of the Compact of Free Association with the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

\textsuperscript{149} The United States has ratified (agreed to in its entirety: ICCPR, Convention against Torture (1987) and Convention on the Elimination of all forms of Racial Discrimination (1969)), and has signed to protocols of the CRC, CEDAW and ICESCR, but has not ratified or signed on to either the CRPD or CMW). Sosa v. Alvarez-Machain, 542 U.S. 692 (2004) is often cited as a case law in which case the court held that courts can resort to customary law (laws of nations) when they lacked guidance elsewhere. At the same time, the court has cautioned that international laws are not self-executory.

\textsuperscript{150} Victoria Rietig & Andreas Müller, The New Reality: Germany Adapts to Its Role as a Major Migrant Magnet, Migration Policy Institute (Aug. 31, 2016), https://www.migrationpolicy.org/article/new-reality-germany-adapts-its-role-major-migrant-magnet. On the other hand, while the U.S. Supreme Court has recognized rights of migrants by acknowledging that denying the opportunity to work is “akin to denying entrance and abode,” Takahashi v. Fish and Game Commission, 334 U.S. 410, 416 (1948) (involving a prohibition on issuing commercial fishing licenses to individuals of Japanese descent, the Court noted that “[t]he assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the state would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work”), more recent cases have allowed the government to restrict employment of non-U.S. citizens for jobs involving essential government functions. Foley v. Connelie, 435 U.S. 291 (1978) (allowing a state to discriminate in hiring of state troopers as policing is “one of the basic functions of government.”).
In the United States, labor laws generally apply to migrants regardless of status. Causes of action for violations are available under Title VII of the Civil Rights Act of 1964 and with the U.S. Equal Employment Opportunity Commission (EEOC) (treatment at work and equal pay). Nonetheless, violations are rarely acted upon, in large part because of the extreme vulnerability of those whose rights are violated.

An important dimension of the right to work relates to ensuring a safe working environment. Failure to do so not only deprives workers of dignity, but it can also generate reputational risk. For instance, in the late 1990s, many well-known brands such as H&M, Nike, Levi-Strauss, Apple, Adidas, Walmart, and Ikea were accused of facilitating abusive labor practices through supplier sweatshops. More recently, migrant workers’ exploitation has flourished with the increase of work-related migration and a largely unregulated recruitment industry, leading to violations in the extended supply chains of virtually every company.

Human rights advocates have attempted to eradicate human trafficking from global supply chains. For instance, the Interfaith Center on Corporate Responsibility encourages companies to take leadership roles that will serve as models for their sector peers, thus fostering corporate responsibility. Additionally, the Corporate Responsibility in Eliminating Slavery and Trafficking (CREST) is a regional partnership initiative of the UN’s International Organization for Migration working to uphold human and labor rights of migrant workers in business operations and supply chains. Despite the extensive progress by these initiatives and many leading companies promising to improve their practices, there is still work to be done.

---

154 One example of a domestic measure to operationalize the right to work is the U.S. REAL ID Act Modification for Freely Associated States Act, Public Law 115-323A, which provides a critical piece of identification to migrants (categorized as nonimmigrants) from Micronesia states. Identification is often necessary to secure a job, to rent or buy a place to live, to move within the host state, and to secure a driver’s license. The REAL ID legislation makes it easier for people from countries that have a compact of free association with the United States to secure the necessary identification.
157 See generally Corporate Responsibility in Eliminating Slavery and Trafficking (CREST), https://crest.iom.int/about.
flood of Syrian refugees to Turkey and other countries led to accusations of labor exploitation, such as low wages, lack of social security, and unhealthy, dangerous conditions.\textsuperscript{159}

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families protects migrant workers and their families against abusive labor practices.\textsuperscript{160} Nevertheless, labor rights violations have been documented in labor markets and industries where a substantial segment of workers are migrants who do not have access to worker protections and basic labor rights. That occurs either because the migrant workers do not possess work authorization or because they are migrants employed through nonimmigrant, temporary work visa programs (e.g., “temporary guestworkers” in the U.S.). The migrant workers’ lack of rights in such cases makes it difficult for them to bargain effectively for decent wages and fall prey to abusive labor practices\textsuperscript{161} which may violate their dignity rights.

Unethical recruiters often charge migrant workers sizeable amounts in fees to secure employment. Migrant workers in fear of being deported can become targets for exploitation as forced laborers in the form of debt bondage, collateral, illegal deductions from wages and confiscated or restricted access to travel documents like passports, permits and visas that limit workers’ freedom of movement among others.\textsuperscript{162} Worksite raids, such as happened recently in Mississippi poultry processing plants, served as a reminder that large industries still have substantial numbers of undocumented, vulnerable migrants in their workforce.\textsuperscript{163}

2. Shelter

Adequate shelter is essential to human dignity.\textsuperscript{164} Article 25(a) of the 1948 Universal Declaration of Human Rights enshrines the “right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”\textsuperscript{165} These rights are reiterated in article 11 of the 1966 International Covenant on

\textsuperscript{159} Kemal Kir\'isci & Gokce Uysal Kolasin, \textit{Syrian refugees in Turkey need better access to formal jobs}, Brookings (July 18, 2019), https://www.brookings.edu/blog/order-from-chaos/2019/07/18/syrian-refugees-in-turkey-need-better-access-to-formal-jobs.


\textsuperscript{162} See Interfaith Center on Corporate Responsibility (ICCR), \textit{supra} note 158.


\textsuperscript{164} See The Dignity in Practice Project, Dignity in Residential Real Estate Practice, https://www.americanbar.org/content/dam/aba/administrative/human_rights/dignity-rights/dignity-real-estate-law.pdf; \textit{Government of the Republic of South Africa and Others v Groothoom and Others} 2000 (1) SA 46 (CC) at para. 23 (S. Afr.): “There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter.”

\textsuperscript{165} G.A. Res. 217, \textit{supra} note 22, art. 25(1).
Economic, Social and Cultural Rights. In addition to the broad protections to an adequate standard of living, the United Nations General Assembly has recognized a human right to water and sanitation in Resolution 64/292.\footnote{U.N. Dept’t of Econ. & Soc. Affairs, The Human Right to Water and Sanitation, https://www.un.org/waterforlifedecade/human_right_to_water.shtml.}

In the United States, the Fair Housing Act provides for nondiscriminatory access to housing and accommodation, while the Equal Credit Opportunity Act protects against discrimination in financing for homes. These laws and others have provided protections for undocumented migrants\footnote{De Reyes v. Waples Mobile Home Park Ltd. P’ship, 251 F.Supp.3d 1006, 1013 (E.D. Va. 2017) (protection under federal FHA and Virginia state FHA for undocumented immigrants); Lozano v. City of Hazelton, 724 F.3d 297 (3d Cir. 2013) (Pennsylvania prohibited from passing anti-immigration laws that infringe on privilege of immigrants to housing where it can be proven treatment is different for non-citizens); Keller v. City of Fremont, 719 F.3d 931 (8th Cir. 2013) (same for Nebraska).} and access to housing information in languages other than English.\footnote{Cabrera v. Alvarez, 977 F. Supp. 2d 969, 977 (N.D. Cal. 2013) (English-only policies/denial of interpreter deemed in violation of FHA in California).}

In addition to being able to afford a place to live in, realizing an adequate standard of living requires access to utilities such as electricity. Utility companies often require account holders to have identification documents that may be difficult for noncitizens to obtain. National laws should ensure that private discrimination that impedes the ability to live in conditions of dignity is not tolerated and that effective redress is available for those whose right have been violated.

It is essential for all people, including people who migrate, to live with dignity. This includes adequate shelter as well as opportunities for employment that allow people to live decently and be self-sufficient and to participate in social and cultural life within their communities.

E. Access to Services

The human rights to services are protected under international law\footnote{World Health Organization [WHO], Constitution of the World Health Organization (Oct. 2006), https://www.who.int/governance/eb/who_constitution_en.pdf.} and national domestic laws in most countries of the world. We focus initially on education and healthcare because both are recognized dignity interests: protecting human dignity includes the protection of bodily integrity and control over one’s life choices (health) and the full development of one’s personality and one’s identity (education) and both are essential to living in a community with others and to exercise civil and political rights. In addition, access to welfare services and legal services are important to dignity. Because these are dignity-based rights and not merely grants made by sovereign grace, migrants are no less entitled to healthcare, education, welfare, and legal services than citizens.

1. Access to Healthcare
Access to healthcare services is a necessary pre-condition for all other human rights. Failure to provide healthcare produces a vicious cycle for both the people and the state: unwell people cannot work and therefore cannot provide food or shelter for themselves or their families; this also diminishes their sense of self-worth and isolates them from their communities, which compound the injuries to human dignity. At the same time, costs to the state for emergency health services increase while contributions to the tax base diminish.

Studies in Indonesia, the Philippines, Thailand, and Singapore illustrate that migrant workers can be denied access to social benefits by either their home state or destination country. For instance, many migrant workers from Cambodia to Thailand have limited if any access to health services. 170

The United States has established a program that could provide a model for accessing health care for migrants. Under the Compact of Free Association (COFA), the federal government has set aside funds to cover the costs incurred by U.S. states for providing healthcare to people who have migrated from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. 171 The program is imperfect both because the funds may not fully compensate the states and because there remains conflict with respect to the availability of additional services (including Medicare and Medicaid for certain elderly and unwell Americans). 172 And yet, it could be a model for other nations, particularly where a receiving nation has historical connections and obligations, as the United States does to Pacific Islanders.

2. Access to Education

Education is a fundamental dignity right. Article 26 of the Universal Declaration of Human Rights states that “everyone has the right to education … [and] education shall be directed to the full development of the human personality.” 173 Similarly, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights both state that the equal and inalienable rights of all members of the human family “derive from the inherent dignity of the human person” 174 and Article 13 of the ICESCR states that the “States Parties … recognize the right of everyone to education [and] agree that education […] shall strengthen the respect for human rights and fundamental freedoms.” 175 These instruments connect the right to education with the full development of the personality and the ability of each person to participate in society. Providing citizens and non-citizens with equal

171 Sheldon Riklon, Wilfred Alik, Allen Hixon & Neal A. Palafox, The “Compact Impact” in Hawai’i: Focus on Health Care, 69 HAWAI MED J. 7
175 ICESCR, art. 13.
access to education will ensure that all people within the society can live with dignity and contribute to society.

Many constitutional texts enshrine the right to education as a dignity right, thus committing to provide education on a comparable basis to citizens and non-citizens alike. The Constitution of Andorra furnishes one example: “All persons have the right to education, which shall be oriented towards the dignity and full development of the human personality, thus strengthening the respect for freedom and fundamental rights.”\textsuperscript{176} The Supreme Court of India has held that the right to education is a basic dignity right enshrined under the Constitution, while its decision in \textit{Mohini Jain v. State of Karnataka} focused on rights of citizens to education.\textsuperscript{177}

Even where a country has not recognized a constitutional right to education—as in the United States of America—courts have found that migrants must have nondiscriminatory access to education. In \textit{Plyler v. Doe}, the U.S. Supreme Court declared unconstitutional a Texas law that provided free public education to citizens and to children of documented immigrants but required undocumented immigrants to pay for their public education.\textsuperscript{178}

An additional dimension of education rights that has particular salience for migrants is the trans-jurisdictional acceptance of educational degrees and professional certifications. While receiving countries and states have the prerogative to establish and enforce standards for education and professional certifications, some have undertaken processes to compare the requirements from other jurisdictions to acknowledge degrees and certifications received from those jurisdictions. Where a degree or certification from another jurisdiction may be lacking required elements, knowledge of these gaps can drive reforms in those originating jurisdictions to meet those requirements.

In practice, access to educational loans are an important enabling condition that can empower people to access education once they have migrated.\textsuperscript{179} Relatively few countries have addressed this.

\section*{3. Access to Welfare and Other Benefits}

A growing number of states have recognized rights that people who migrate have to access to welfare and other benefits. The Peruvian Constitutional Tribunal has recognized that the unjustified denial of social security benefits, including pensions, “indubitably deprives a person of his right to the minimum necessities of life for his subsistence, impeding his satisfaction of

\textsuperscript{176} \textsc{Constitució D'Andorra [Constitution]} 1993, Title II, Chapter III, Article 20 (1) (Andorra). \textit{See also} 1975 \textsc{Synagoma [Syn.] [Constitution]} 6, art. 16(1) (Greece) (“Art, science, research, and teaching shall be free and their development and promotion shall be an obligation of the State.”).

\textsuperscript{177} \textit{Mohini Jain v. State of Karnataka and Ors}, (1992) 3 SCR 1858 (India).


\textsuperscript{179} \textit{See e.g.}, Scott Drinkall, Jackie Leung, Carl Bruch, Kapiolani Micky & Sandi Wells, \textit{“Migration with Dignity: A Case Study on the Livelihood Transition of Micronesians to Portland and Salem, Oregon,”} 14(9) \textsc{Journal of Disaster Research} 1267 (2019).
basic necessities, which is a direct threat to his dignity." The German Constitutional Court has said much the same:

Article 1.1 of the Basic Law in conjunction with the principle of the social welfare state in Article 20.1 of the Basic Law ensures a fundamental right to the guarantee of a dignified minimum existence Article 1.1 of the Basic Law establishes this right as a human right. It encompasses both the physical existence of a human being as well as the possibility to maintain interpersonal relationships and a minimal degree of participation in social, cultural and political life. German and foreign nationals who reside in the Federal Republic of Germany are both entitled to this fundamental right.

In the U.S., the Supreme Court has given deference to migrants as to welfare benefits. For example, in *Graham v. Richardson*, the Supreme Court held that the Fourteenth Amendment prohibited states from discriminating against residents with immigrant status as it pertained to welfare benefits.

Access of migrant workers to social security varies from country to country and even from employer to employer. In Malaysia, for example, many migrant workers in plantation industries are insured for occupational health and injuries; however, migrant workers’ families do not have access to health insurance or other services such as education. In contrast, migrant children in Thailand are eligible for public insurance schemes through purchasing a health insurance card issued by the Ministry of Public Health.

Other countries, especially in Europe, have historically made national healthcare free and accessible to people who have migrated, with some variations as compared to citizens. The welfare system in the UK is one example of recent retrenchment. Although originally free to all, recent amendment of the National Health Services Act 2006 and the Immigration Act 2014 imposed limitations and allowed the government to charge migrants for healthcare. Consequently, a person who has migrated to the UK can obtain health benefits without charge if their status is classified as lawful or “ordinarily resident.” Such classification has been the subject of legal actions; for example, in *R. (on the application of YA) v. Secretary of State for

---

180 EXP.N.° 05913-2007-PA/TC (2009) (Peruvian Constitutional Tribunal): “3. Que, en el presente caso, este Tribunal considera pertinente señalar que la suspensión de la pensión de la que ha sido objeto el demandante indudablemente lo priva de su derecho al mínimo vital necesario para su subsistencia, lo que impide que satisfaga sus necesidades básicas, atendándose de forma directa contra su dignidad. Por consiguiente, su pretensión se encuentra comprendida en el supuesto previsto en el fundamento 37. c) de la STC 1417-2005-PA/TC, motivo por el cual corresponde analizar el fondo de la cuestión controvertida.”
181 Benefits for Asylum Seekers, BVerfG, 1 BvL 10/10, supra note 129, at headnote 2.
185 National Health Service (Charges to Overseas Visitors), 2017 No. 756 (U.K.).
Health, the Supreme Court of Judicature Court of Appeal held that an asylum seeker who lost the designation of asylee was not lawfully a resident in the UK.\textsuperscript{186}

4. Access to Legal Services and Justice

Access to legal services refers to the ability of persons to make full use of the existing legal processes designed to protect their rights in accordance with fundamental standards of fairness and justice.\textsuperscript{187} This access can also be understood as ensuring that the legal and judicial processes are “just and equitable.”\textsuperscript{188} Access to legal services is all the more crucial for those who migrate, the vast majority of whom do not have the right to vote and thus can only rely on the judiciary to claim and protect their rights.\textsuperscript{189}

Due to lack of knowledge, language barriers, lack of time, or simply inability to secure legal representation, people who migrate often forfeit their right to pursue claims; this has been documented for migrant workers who do not protect their labor rights after returning to their country of origin.\textsuperscript{190} This is particularly evident for migrants who flee abuse, violence, and persecution are unable to remain due to lack of evidence to support their claims.

In the labor context, the United States-Mexico-Canada Agreement (USMCA) provides for some access to justice.\textsuperscript{191} Article 23.10 of the USMCA outlines each Party’s commitment to ensuring that “a person with a recognized interest under its law. . . has appropriate access to tribunals for the enforcement of its labor laws.”\textsuperscript{192}

Under the USMCA, each Country-Party agrees to ensure that proceedings before these tribunals are “(a) fair, equitable and transparent” and “(b) comply with due process of law […].” Furthermore, Article 23.8 states that “The Parties recognize the vulnerability of migrant workers with respect to labor protections. Accordingly, in implementing Article 23.3 (Labor Rights), each Party shall ensure that migrant workers are protected under its labor laws, whether they are nationals or non-nationals of the Party.”\textsuperscript{193}

\textsuperscript{186} R (on the application of YA) v. Secretary of State for Health, [2009] EWCA Civ 225.
\textsuperscript{188} JEREMY MCBRIDE, COUNCIL OF EUROPE, \textsc{ACCESS TO JUSTICE FOR MIGRANTS AND ASYLUM SEEKERS IN EUROPE} (Feb. 24, 2009).
\textsuperscript{189} Moreover, the invisibility of migrants in legislative processes reinforces the growing divide between the rights of the migrants and the legal prescriptions and channels in the justice systems that are practically available to them. \textit{See} UNDP, supra note 189, at 58.
\textsuperscript{192} United States-Mexico-Canada Agreement, U.S.-Mex-Can., art. 23, Nov. 30, 2018. The term “parties to the agreement” refers to the U.S., Canada, and Mexico. The provision continues: “These tribunals may include administrative tribunals, quasi-judicial tribunals, judicial tribunals or labor tribunals for the enforcement of the Party’s labor law.”
\textsuperscript{193} \textit{Id.}
Access to justice is fundamental in democratic societies and an integral aspect of Migration with Dignity. Access to other services should be made available to people who migrate on terms comparable to the access that citizens have. States have obligations to take both affirmative measures to protect the dignity of every human being within their jurisdiction and negative measures to ensure non-discrimination and appropriate access.

**F. Civil and Political Rights**

Civil and political rights – including freedom of speech, political participation, and religion – are essential dignity rights, for both intrinsic and instrumental reasons. These rights manifest a person’s desire and capacity to express themselves, communicate what their conscience dictates, and to have agency over their own lives both individually and in community with others. In addition, civil and political rights conduce to the adoption of policies and the implementation of programs that will enable people who migrate to live with dignity.

1. **Freedom of Speech**

People who migrate should be free to speak and assemble just as people who don’t migrate are. The freedom of speech advances dignity by protecting both the person’s ability to express themselves as they choose and their ability to interact in society with others. The freedom of speech is intimately linked to identity, equality, and political participation, among other things. Freedom of speech often includes expression, thought, and opinion and may include other rights related to dignity in migration, including the right to language, the right to culture, and the religious rights. There is extensive international law protecting the freedom of expression, including UDHR Article 18, ICCPR Article 18, CEDAW Articles 7 and 8, CRC Article 13, ICESCR Article 1, and CMW Article 12. Nonetheless, in every country, there are some restrictions on freedom of speech (e.g., hate speech, defamation, trade secrets, and obscenity), and in certain countries, speech and access to information is censored; this is typically without regard to immigration status.

In the United States, the First Amendment to the Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The First Amendment does not distinguish between citizens and non-citizens; the U.S. Supreme Court has held that immigrants enjoy its protections. Furthermore, the International Religious Freedom Act of 2016 protects immigrants from being denied admission to the U.S. because of their religion or lack of religious beliefs.

---

194 U.S. CONST. amend. I.
2. Political Participation

Migrants should be entitled to participate in decision making that affects them. Political participation is an important element of integration to a community, as manifested by people’s ability to elect those who govern them. Courts have affirmed that human dignity entails participatory dignity, what the Constitutional Court of South Africa has called “civic dignity.” In a case about the recognition of political associations, the Constitutional Court of Argentina observed:

The constitutional protection of the right to dignity gives legitimacy to this persecuted group. The protection of human dignity implies that the law recognizes an ambit of liberty that is intimate and impassable, that can lead to personal realization (self-fulfillment), such as is required in a healthy society. … the way in which this freedom of association is enshrined in national legislation and applied in practice by the authorities, is one of the safest indicators of the institutional health of democracy.

In the UK, the right of prisoners to vote was denied by the Representation of the People Act of 1983. However, in Hirst v. United Kingdom, the European Court of Human Rights ruled that a blanket ban was contrary to the European Convention on Human Rights. Most countries in the developed world provide non-citizens with a wide range of civil and political rights, with some exception for voting.

3. Freedom of Religion

Religion is, for many, an intrinsic part of their identity. People who migrate are especially likely to face religious discrimination, which burdens their dignity rights in several respects. First, as noted above, any form of discrimination violates the principle of intrinsic equal worth. Second, Article 18 of the Universal Declaration on Human Rights provides that “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion.”

197 See DALY, “Judicial activity/democratic activity: The democratising effects of dignity” in HUMAN DIGNITY AND DEMOCRACY IN EUROPE: IDENTITY, CITIZENSHIP AND SOLIDARITY (Daniel Bedford, Catherine Dupre, Gabor Halmai & Panos Kapotas, eds., Edward Elgar 2020); Daly & May, CASEBOOK, supra note 2. (internal citations omitted).
198 See August and Another v. Electoral Commission and Others 1999 (3) SA 1 (CC) (S. Afr.).
199 Asociación Lucha por la Identidad Travesti -Transexual v. Inspección General de Justicia, (2006), www.cpacf.org.ar/gris/X_jurispru/AsocTravesti.doc.; “[8°) Que en igual sentido el voto disidente del juez Fayt (Fallos: 314:1531) subrayó que frente a la existencia de un grupo de personas que desea organizarse a efectos de preservar su dignidad ante posibles afectaciones, la protección constitucional de ese derecho legitima la asociación perseguida. Con esa comprensión,] se enfatizó que la protección de un valor rector como la dignidad humana implica que la ley reconozca, en tanto no ofenda el orden y la moral pública, ni perjudique a un tercero, un ámbito íntimo e infranqueable de libertad, de modo tal que pueda conducir a la realización personal, posibilidad que es requisito de una sociedad sana. La protección del ámbito de privacidad, se concluyó, resulta uno de los mayores valores del respeto a la dignidad del ser humano y un rasgo de esencial diferenciación entre el estado de derecho y las formas autoritarias de gobierno.”
200 Hirst v. United Kingdom (No. 2), [2005] ECHR 681.
or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Third, religious freedom is a particularly important form of dignity for many people, as it synthesizes multiple strands of the dignity braid. Courts have long recognized the dignity right to fully develop one’s personality, to express oneself according to one’s conscience, and to engage with others in social and cultural community—all of which implicates religious freedom.

Although religious freedom is widely considered a human dignity right, religious expression—especially though religious clothing and symbols—has been a contentious matter. As a result, courts have often been called upon to protect the exercise of religious expression. In Eweida v. United Kingdom, the European Court of Human Rights held that the UK government had failed to protect an employee’s right to wear a Christian cross in the workplace. The court cited Article 9 of the ECHR, which echoes Article 18 of the UDHR. However, the European practices and cases on the right to wear Muslim clothing are mixed. In Achbita v. G4S Secure Solutions, the European Court of Justice allowed a company to proscribe the wearing of a hijab. Relying on the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, the UDHR, the UN Convention on the Elimination of All Forms of Discrimination against Women, UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the International Labour Organisation, the Court held that companies may prescribe religious symbols (including a hijab) if their policies are neutral (e.g. prohibiting all religious symbols). Nonetheless, such a ruling could adversely affect the dignity rights of religious minorities, including people who migrate to a country with a different dominant religion, depending on how the concept of neutrality is applied.

The claims of religious minorities may be strengthened when they are buttressed by cultural imperatives or practices. In Center for Minority Rights Council v. Kenya, the African Commission on Human Rights found that the government of Kenya violated the Endorois’ rights under the African Charter (Articles 8, 14, 17, 21, and 22) when it evicted hundreds of Endorois families from their land, preventing the community from using ceremonial and religious sites.

Civil and political rights are no less important to the dignity of people who migrate than other kinds of rights. States must assure that people who migrate have comparable opportunities as

201 G.A. Res. 217, supra note 22, art.18.
203 Corte cost., 8 Nov. 2017, Decision No. 258, Issued in a Constitutional Legitimacy Case by Incidental Procedure, G.U. 2017 (It.).
204 See HC 82.424-QO, Rel. p/ o ac. Min. Maurício Corrêa.
205 Eweida v. United Kingdom, [2013] ECHR 37.
206 JIM MURDOCH, COUNCIL OF EUROPE, FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION: A GUIDE TO THE IMPLEMENTATION OF ARTICLE 9 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (June 2007).
209 Id.
those who do not migrate to exercise civil and political rights including rights to freedom of speech, political participation, and freedom of religion.

III. Application of Migration with Dignity

This section considers how migration with dignity can be applied to improve the lives of people who migrate. It first considers application across the migration cycle, starting in the country of origin, through transit, to the country of destination. It then considers application in the specific context of climate change. In both instances, the analysis applies to international and domestic migration.

A. Migration with Dignity across the Migration Life Cycle

In many instances, migration policies and practices focus on specific economic and social aspects of immigration or emigration, leaving a complex and disjointed legal architecture. This fragmented landscape often fails to adequately account for the various and interdependent aspects of health, education, justice, gender, welfare, social protections, employment, and culture related to migration. To effectively manage these multidimensional aspects of migration with dignity, focus should turn to how dignity rights (and the attendant obligations of states and non-state actors) are implicated at particular phases of movement.

Figure 1 highlights the various dimensions of Migration with Dignity that are implicated at different stages of migration. It also suggests the respective priority of each dimension at that particular stage, although particular contexts may elevate or diminish the importance of particular dimensions at particular points in the migration lifecycle. Further research is needed to validate or refine the priorities posited in Figure 1.
In parallel with the development of this conceptual framework, the authors have developed an analytic tool to examine how the different dimensions of Migration with Dignity are or are not addressed across the migration lifecycle. This analytic tool is being pilot tested with analyses of Pacific Island migrants in various U.S. states.

Use of the analytic tool—and the underlying conceptual framework—can assist countries, communities, and advocates to identify and develop better policies and practices that enable free movement, access to services, and promote circulation and socialization of migrants within and across societies. Implementation of the Migration with Dignity framework across the migration cycle can also spur complementary development of multilevel governance instruments to improve cooperation among cities, states, and regional bodies. Moreover, the application of the framework can have the added benefit of further strengthening the legal and normative frameworks protecting human rights.

**B. Dignity Rights of Climate Migrants**
Climate change is widely recognized as contributing to and exacerbating migration and conflict, although there are relatively few documented cases where climate change is the sole factor driving migration. Analysis of climate change and migration is challenging due to the timing of sudden shocks versus longer-term stresses, as well as the perceptions around perceived or imminent threats to a person’s dignity. Moreover, migration decisions tend to have multiple motivations that can span livelihoods, education, access to services, and personal security—many of which may have linkages to climate change that are real but difficult to objectively ascertain. Protections exist for those displaced by a sudden-onset disaster, yet there are few protections for slow-onset events that can equally threaten human health, welfare, and dignity. Additionally, it can be difficult to untangle the combination of motivations for migration to ascribe responsibility to climate change. And yet, recent evidence suggests that the world will experience global warming of at least 4°C, which could have much more dramatic impacts on both internal and international migration that previously projected.

People who migrate because of a changing environment have the right to be treated with dignity and respect, including the right to choose when to move, particularly when their lives and livelihoods are threatened. When people migrate from one country to another or from one region to another within a country, they often leave everything behind—their culture, their community, and their sense of identity—to build their life anew. The lack of choice and lack of control over one’s life can compromise a person’s own sense of dignity. And it may compromise their dignity in the eyes of others, including their own family and their community, and the state.

As yet, there is no legal framework designed to protect this growing group of more than 200 million human beings. The Global Compact on Orderly and Safe Migration recognizes environmental and climate-related migration, while acknowledging myriad other reasons for moving. The United Nations High Commission for Refugees (UNHCR) has not granted people who move for climate-related reasons refugee status; it has rather designated them as “environmental migrants.” Further, the countries including the United States have addressed individuals fleeing violence, political turmoil, and natural disasters—many of which may be

linked to climate change – by the granting of Temporary Protected Status (TPS). Yet, in most instances, the designation of TPS is only assigned for a specific period of time, with the option of renewal, and may be limited.216

Analyses of migration of Pacific Islanders shows how complicated “climate migration” can be. While both the academic and gray literature argues that Pacific Islanders, particularly those living on low-lying atolls such as the Marshall Islands and the outer islands of the Federated States of Micronesia, are on the front lines of sea level rise and are being forced to migrate, interviews with actual migrants paints a more complex picture. Interviews with migrants from the three COFA countries in Arkansas, Oregon, and Hawaii show that the primary reasons for migration are education, jobs, family, and health.217 Climate change is often a secondary reason or contextual factor, but rarely the primary reason that people migrate. Of note, however, once settled in the United States, most of the citizens from the COFA countries (up to 80 percent) indicate that they do not intend to return migrate, citing climate change as the primary reason.218 In short, even among populations who are thought to be most at risk of climate change and are migrating, (1) the reasons for migration are often complex, (2) climate change is not yet the primary reason for migration, but (3) climate change is the primary reason they do not expect to return to their home countries.

The Kiribati experience illustrates measures that a country can take to operationalize Migration with Dignity. The average highest elevation of the islands is 1.8 m (6 feet). To ensure that its citizens can migrate with dignity, the government of Kiribati—under the leadership of then-President Anote Tong—provided its citizens with opportunities to build skills that they would need if they relocate in a new country while attempting to maintain cultural integrity.219 The Kiribati government also sought to create connections with the receiving countries so that the latter would better support climate migrants in the longer-term, while also enhancing opportunities for use of remittances.220

However, despite the fact that climate change is at the forefront of the Kiribati experience, the international community has not been as quick to accept the idea that people who migrate in such circumstances are climate refugees. In 2018, the United Nations Human Rights Committee heard the case of a Kiribati migrant who had relocated to New Zealand in 2007.221 The New Zealand court had held that although Kiribati was facing steadily rising sea water levels as a result of

218 McClain et al., supra note 6.
220 Id.
221 Teitiota, supra note 212.
climate change and environmental degradation was forcing inhabitants of Kiribati to leave their islands, Mr. Teitiota did not have a reasonable fear of persecution and was therefore not awarded refugee status under New Zealand’s Immigration Act. Mr. Teitiota then brought his case to the UN Human Rights Committee, which found that the New Zealand Court’s ruling did not violate Mr. Teitiota’s right to life.

This was the first case before the Human Rights Committee of a complaint by an individual seeking asylum from the effects of climate change. The Committee began its analysis by recalling “that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures. The Committee also recalls its general comment No. 36 (2018) on the right to life, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para. 3). This affirms two important points. First, the right to life protected under the ICCPR is the right to life with dignity; dignity denied violates the right to life. Second, state governments are under affirmative obligations to protect the right to live with dignity; refraining from interfering is not enough and allowing another to interfere with the right to live with dignity may be a violation of international law. In the context of climate change, the Committee acknowledged that without robust national and international efforts, the effects of climate change in receiving states may “expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending states.” The Committee further noted that, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in “such a country may become incompatible with the right to life with dignity before the risk is realized.”

The Committee, however, then held that the application had failed to furnish sufficient evidence to support the claim that such right had, in his case, been violated:

“While recognizing the hardship that may be caused by water rationing, the Committee notes that the author has not provided sufficient information indicating that the supply of fresh water is inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death.”

---

222 Id.
223 Id.
224 U.N. Hum. Rts. Comm., Portillo Cáceres et al. v. Paraguay, U.N. Doc. CCPR/C/126/D/2751/2016, para. 7.3., (Sept. 20, 2019). The Committee further said: “Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.”
225 Teitiota, supra note 212 at para. 9.11
226 Id.
227 ICCPR, U.N. Doc. CCPR/C/127/D/2728/2016, para. 9.8 (Sept. 23, 2020). And further, “The information made available to the Committee does not indicate that when the author’s removal occurred, there was a real and reasonably foreseeable risk that he would be exposed to a situation of indigence, deprivation of food and extreme
Although the climate claim failed, the ruling did provide “new standards that could facilitate the success of future climate change-related asylum claims.” Specifically, the Committee’s decision suggests that future claims might be successful where the evidence shows “the effects of climate change in receiving states may expose individuals to a violation” of the right to live with dignity.

This illustrates how the claim to dignity could succeed even where other claims fail: the Committee in this case may have been reluctant to create a new protected class of climate migrants or to expand the definition of refugee which, under current international law, requires a showing of well-established fear of persecution which does not exist where people flee for reasons relating to climate, not persecution. But the right to live with dignity is protected for all people under all circumstances under fundamental principles of international and domestic law. It is therefore through the concept of dignity rights that people who migrate for climate-related reasons may gain legal protections, including protections to affirmative steps that states must take in order to ensure that every person, including persons who migrate, are able to live life with dignity.

People who migrate for climate-related reasons may be especially vulnerable to abuse and exploitation due to lack of alternative resources. Migration with Dignity provides a particularly powerful approach to managing climate-induced and climate-influenced migration in a way that respects human integrity and thereby reduces the potential risks of inequity and conflict.

Conclusion

Internal and international migration rates continue to increase at an unpredictable pace due to their connections to acute events and longer-term trends, including climate change. Major migration events have been driven by conflict and extreme violence, severe economic instability, and environmental change and weather-related hazards. There is no comprehensive and cohesive set of measures for how to both manage migration and protect the movement of migrants. The Global Compact for Safe, Orderly, and Regular Migration offers one approach for reframing the migration narrative and for enhancing cooperation on international migration; however, it largely focuses on providing policy options and considerations by national governments for how to improve integration of migrants into their communities. International law, and in particular, the globally accepted right to life, interpreted as the right to live with dignity, is another, applying to all human beings, whether migrating or not.

The Migration with Dignity Framework incorporates the foundational recognition of inviolable, intrinsic, and equal dignity and applies for the benefit of people who migrate. It reflects the precarity that could threaten his right to life, including his right to a life with dignity.” ICCPR, U.N. Doc. CCPR/C/127/D/2728/2016, para. 9.9 (Sept. 23, 2020).

228 Id.
229 Id.
unique experiences and perspectives of those who migrate and—based upon these experiences—provides six key dimensions central to supporting human rights and dignity rights across the migration cycle. Dignity not only reflects a fundamental aspect of humanity; it is protected throughout the legal system in both international and domestic law, at least for the last 75 years, when the international community committed to a human rights architecture centered around human dignity. It is particularly relevant for people who migrate, whether across or within national boundaries, because of the risk of losing the legal and social protections provided by the structures and cultures of their home communities; those who migrate are exceptionally vulnerable to threats and violations of their dignity and dignity rights are the one thing they will always carry with them, wherever they go. Receiving states and communities therefore have heightened obligations to protect the dignity of those who migrate, whether transiting or settling.

The Conceptual Framework also presents policy options that can be integrated into and complement the 23 objectives of the Global Compact, which can collectively support the better management of migration issues at local, national, regional, and global levels. This Conceptual Framework draws upon the established dignity rights literature to explore the contours of Migration with Dignity. It examines the centrality of human dignity to the migration experience, provides an overview of relevant dignity rights, highlights six key dimensions of dignity that may be affected by migration, and provides examples of dignity-protecting responses. As this Framework shows, viewing migration through the lens of human dignity ensures that migrants live with dignity wherever they are: it protects their freedom of movement, enhances their personal security, protects them from discrimination, promotes their well-being, enhances their access to services, and protects their civil and political rights.

This Conceptual Framework aspires to be broadly relevant across geographies, scales, reasons for migration, legal systems, and capacities. We invite further dialogue and engagement—particularly of affected communities and individuals, as well as governmental authorities and service providers—to ensure that the Migration with Dignity Framework addresses their priorities, realities, and capacities. Moreover, to move from theory to practice, it is essential to test the Migration with Dignity Framework in different contexts and different stages of the migration cycle: pre-emigration, during, post-immigration, and return to origin or settlement.

While focusing on the needs and experiences of those whose dignity is most at risk, Migration with Dignity provides an approach to ensuring that all people are treated with dignity.

*****