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# Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations within large and/or mixed movements

**- Draft November 2016–**

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*“We take note of the work of the Global Migration Group to develop principles and practical guidance on the protection of the human rights of migrants in vulnerable situations.” (New York Declaration for Refugees and Migrants, para. 51)*

*“We will consider developing non-binding principles and voluntary guidelines, consistent with international law, on the treatment of migrants in vulnerable situations (especially unaccompanied and separated children) who do not qualify for international protection as refugees and who may need assistance. These guiding principles and guidelines will be developed using a State-led process with the involvement of all relevant stakeholders and with the input from the Special Representative of the Secretary General on International Migration, the International Organization for Migration, OHCHR, UNHCR and other relevant UN entities. These would complement national efforts to protect and assist migrants.” (New York Declaration for Refugees and Migrants, para. 52)*

Members of the GMG Working Group on Human Rights and Gender Equality include ILO, IOM, OHCHR, UNESCO, UNHCR, UNICEF, UNODC, UNU, UN Women and WHO. The group is co-chaired by OHCHR and UN Women.

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## Introduction

### Background

Around the world, many millions of migrants<sup>1</sup> and refugees are in a precarious human rights situation including in the context of large and/or mixed movements.

While migration can be a positive and empowering experience for individuals and communities and can benefit countries of origin, transit and destination, it is clear that perilous and unprotected movements of people are a serious human rights concern. Although they might fall outside the specific legal category of a refugee<sup>2</sup>, migrants in these large movements may need particular attention to the respect, protection and fulfilment of their human rights, including because of the conditions they are leaving behind and/or the circumstances in which they are compelled to move and to which they arrive.

The UN Secretary General notes in this regard that *“The gradual expansion of refugee protection notwithstanding, many people are compelled to leave their homes for reasons that do not fall within the refugee definition in the 1951 Convention”*.<sup>3</sup> The New York Declaration on refugees and migrants recognises the complex reasons for contemporary movement; *“Since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change) or other environmental factors. Many move, indeed, for a combination of these reasons.”*<sup>4</sup> It is these people on the move and these

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<sup>1</sup> In the absence of a universal, legal definition, OHCHR has defined an “international migrant” as “any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence.” See OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (2014) chap. I, para. 10. IOM defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. Some categories of migrants are defined in international instruments, particularly “migrant worker” or “migrant for employment” which are defined in the 1990 UN Convention on Migrant Workers (Article 2(1)); ILO Convention No. 97, Migration for Employment Convention (Revised), Article 11; ILO Convention No. 143, Migrant Workers (Supplementary Provisions) Convention, Article 11.

<sup>2</sup> As defined in Article 1 A(2) of the 1951 Refugee Convention: a refugee as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” Note in this respect that some individuals who are entitled to refugee status will not be able to prove their refugee status, including because they lack access to the procedure, because they lack legal representation, because of the consequences of accelerated asylum procedures, or other reasons. As refugee status is declaratory, however, they should be recognised as refugees, and are not the primary subjects of the present guidance.

<sup>3</sup> Report of the UN Secretary-General, *In Safety and Dignity: Addressing large movements of refugees and migrants*, A/70/59, 21 April 2016, para. 18.

<sup>4</sup> UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1,

situations of movement that are the focus of the current Principles and Guidelines supported by Practical Guidance.

For many migrants, the journey towards their intended destination could take weeks, months or even years. Some may not complete their migrations, for a range of reasons including substantial delays effectively turning transit into destination or fatalities en route. Their route, means of transportation, and even their intended destination can change at different phases along the migration trajectory and an individual's need for human rights' protection can change – often dramatically – in the course of their journey.

Recognising that all people on the move are rights-holders entitled to the equal protection of their rights under international human rights law and related standards, it is important to uphold existing protections for specific groups established in international law. Refugees are entitled to specific protection under international refugee law, including protection from return to persecution under Article 33 of the 1951 Refugee Convention.<sup>5</sup> The human rights and particular needs of other groups of individuals, such as trafficked persons, migrant workers and persons with disabilities have similarly been recognised in specific international instruments.<sup>6</sup> The development of principles, guidelines and practical guidance is thus without prejudice to the specific rights of particular groups who are part of such movements.<sup>7</sup>

When the international community adopted the Universal Declaration of Human Rights (UDHR) on 10 December 1948 it was accepted as *“a common standard of achievement for all peoples and nations”*, spelling out for the first time in human history the minimum civil, political, economic, social and cultural rights that all human beings should enjoy.<sup>8</sup> The international bill of rights (Universal

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13 September 2016, para.1, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/71/L.1>. See also, Paris Agreement under the United Nations Framework Convention on Climate Change, 2015, preamble.

<sup>5</sup> Article 33 provides: 1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country. See the 1951 Convention on the Status of Refugees and its 1967 Protocol.

<sup>6</sup> Specifically, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Convention on the Rights of Persons with Disabilities.

<sup>7</sup> See the 1951 Convention on the Status of Refugees and its 1967 Protocol, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>8</sup> Universal Declaration of Human Rights (UDHR), Preamble. In relation to large and/or mixed movements of migrants, States have affirmed in the New York Declaration that *“We are committed to protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status at all times,”* and that this applies *“support to those affected today as well as to those who will be part of future large movements”*, General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paras.41 and 11, respectively. See also OHCHR, “Human rights are for all, even for migrants” – Rights experts remind participants to upcoming UN Summit: UN Summit on Refugees and

Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights) makes exceptions between nationals and non-nationals in respect of only two rights, and even then only in limited circumstances.<sup>9</sup>

Human rights are universal, inalienable, indivisible and interdependent.<sup>10</sup> The international human rights framework is clear that in order to give effect to these rights and to uphold the fundamental principle of non-discrimination, the unique and individual circumstances of each person must be considered by duty-bearers.<sup>11</sup> By becoming parties to international human rights treaties, States assume obligations under international law and undertake to put into place domestic measures and legislation compatible with their treaty obligations.<sup>12</sup> These obligations have practical consequences for municipal authorities and local governments that may be required by domestic law to uphold them. States are also responsible for the human rights consequences of the actions, or failure to act, of private actors – including corporations, civil society actors, private security contractors – if they failed to take appropriate steps to prevent human rights abuses they knew or should have known about, or to investigate and punish these abuses, and provide compensation.

### **The concept of a ‘migrant in a vulnerable situation’**

The concept of a ‘migrant in a vulnerable situation’ may be understood as a range of factors that are often intersecting, that can co-exist simultaneously, and can compound and change migrants’ experiences. These inform migrants’ experiences through the movements that are the subject of these principles, guidelines and practical guidance.<sup>13</sup> The factors that create a vulnerable situation for migrants might be what drives the migration, occur in transit, or be related to a particular aspect of a person’s identity or circumstance:<sup>14</sup>

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Migrants, 16 September 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20518&LangID=E>

<sup>9</sup> The ICCPR makes clear that the duty-bearer in general is the state in whose territory a person is located, obliging states “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Article 25 of the ICCPR reserves to citizens the right to vote and take part in public affairs, and in article 12 reserves the right to freedom of movement within a country to foreigners who are lawfully present within the country. However, in its General Comment No. 15, the Human Rights Committee has guided that a foreigner may enjoy the protection of article 12 of ICCPR even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

<sup>10</sup> OHCHR, What are human rights? <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

<sup>11</sup> Duty-bearers are those obligated or responsible for making sure rights-holders are enjoying their rights.

<sup>12</sup> States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of human rights. (See OHCHR, International Human Rights Law, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>)

<sup>13</sup> Human Rights Council, Promotion and protection of the human rights of migrants in the context of large movements: Report of the United Nations High Commissioner for Human Rights, A/HRC/33/67, 13 October 2016.

<sup>14</sup> It is important to note that in migrating people show considerable resilience and agency to support themselves and their families. The vulnerable situations migrants face have often been created for them by others, on the basis of discriminations, and through law, policy and practice. See, Human Rights Council, Promotion and protection of the human rights of migrants in the context of large movements: Report of the

- A vulnerable situation arising from the reasons for leaving countries of origin: The drivers for ‘non-voluntary’ precarious movements are multiple and often intertwined, and should be assessed on an individual basis. They can include poverty, discrimination, lack of access to fundamental human rights, including education, health, food and water, decent work, as well as violence, gender inequality, the wide-ranging consequences of natural disaster, climate change and environmental degradation, and separation from family. The New York Declaration highlights in addition that “many move, indeed, for a combination of these reasons” (para 1).
- A vulnerable situation occurring in the context of the situation encountered by migrants en route, at borders and in the context of reception: People are often compelled to utilise dangerous means of transportation in hazardous conditions, and to resort to the use of smugglers and other types of facilitators which can place them in situations of exploitation, at risk of trafficking and other abuse. This journey can be marked by hunger, deprivation of water, a lack of personal security as well as of access to medical care. Many migrants can spend long durations in transit countries, often in irregular and precarious conditions, unable to access justice and at risk of a range of human rights violations and abuse. The inadequate and often harsh conditions in which they are received at borders can also violate rights and further exacerbate vulnerabilities. Responses such as arbitrary closure of borders, denial of access to asylum procedures, arbitrary push-backs, increasing violence at borders by State authorities and other actors (including criminals and civilian militias), inhumane reception conditions, and denial of humanitarian assistance increase risks to the health and safety of migrants.
- A vulnerable situation related to a specific aspect of a person’s identity or circumstance: As they move, some people are more at risk of human rights violations than others due to their persisting unequal treatment and discrimination based on factors including age, gender, ethnicity, nationality, religion, language, sexual orientation or gender identity, or migration status, singly or in combination. Certain people such as pregnant women, persons with poor health conditions including those with HIV, persons with disabilities, older persons, or children (including unaccompanied or separated children) are more at risk due to their physical and/or psychological conditions.

## **Principles and practical guidance**

This document provides a concise draft set of principles, guidelines, and practical guidance on protection of human rights in large and/or mixed movements, with a particular emphasis on the human rights protection gaps experienced by migrants in vulnerable situations. In other words, the framework below attempts to provide guidance to States and other stakeholders on how to implement obligations and duties to respect, protect and fulfil the rights of those persons who are moving in vulnerable situations within large and/or mixed movements who might not fulfil the conditions of the refugee definition.

The *principles* are drawn directly from international human rights law and related standards (including international labour law, refugee law, criminal law, humanitarian law, and the law of the

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United Nations High Commissioner for Human Rights, A/HRC/33/67, 13 October 2016, in particular paras.9-12; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, paras. 59-61.

sea), including in relation to the rights of specific groups in such movements including children, persons with disabilities, women at risk, and lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals. The *guidelines* are derived from international human rights law, authoritative interpretations or recommendations by the international human rights treaty bodies and special procedures of the Human Rights Council as well as other expert sources where relevant.<sup>15</sup>

The principles, guidelines, and practical guidance are designed to assist States and other stakeholders with regard to the development, strengthening, implementation and monitoring of measures to protect the rights of migrants in vulnerable situations and in large or mixed movements. Each principle identified below is followed by a set of related practical interventions that could be taken by States, and other stakeholders as relevant, to give practical effect to the principle and address protection gaps in this regard. These Principle and Guidelines are not necessarily exhaustive, and should be understood holistically: the principles and their associated guidelines are interrelated and inform each other.

The examples of practical guidance should be read as suggested ideas to encourage human rights-based practice based on the guidance provided in the principles and guidelines. The Global Migration Group has not independently assessed any of the examples included in this report and is not in a position to verify their human rights impact.

## Definitions

Asylum seeker	An asylum seeker is any person who has applied for protection as a refugee and is awaiting the determination of their status.
Border governance	The terms 'border governance' and 'border governance measures' include but are not limited to legislation, policies, plans, strategies, action plans and activities related to the entry into and exit of persons from the territory of the State, including detection, rescue, interception, screening, interviewing, identification, reception, detention, removal, expulsion, or return, as well as related activities such as training, technical, financial and other assistance, including that provided to other States. <sup>16</sup>
Firewalls	Measures to effectively separate immigration enforcement activities from public service provision by State and non-State actors as well as from criminal justice measures for victims of crime, so as not to deny

<sup>15</sup> The work of the UN international human rights treaty bodies and special procedures are legally-binding to the extent that their work is based on binding international human rights law and from the collaboration by States in the systems, and also by the authority given to the treaty bodies by their creation in accordance with the provisions of the treaty that they monitor and to the special procedures by the UN Human Rights Council. The recommendations of the treaty bodies and special procedures are also considered authoritative by prominent international and regional judicial institutions.

<sup>16</sup> OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014.

human rights to persons in irregular status.<sup>17</sup> They are “designed to ensure, particularly, that immigration enforcement authorities are not able to access information concerning the immigration status of individuals who seek assistance or services at, for example, medical facilities, schools, and other social service institutions. Relatedly, firewalls ensure that such institutions do not have an obligation to inquire or share information about their clients’ immigration status.”<sup>18</sup> They are also needed between labour law enforcement and immigration law enforcement to ensure access to remedy, including compensation for abuses of rights of migrant workers.<sup>19</sup>

Firewalls recognize that “other legitimate interests, such as fundamental rights, public health concerns, fighting crime, legal certainty, as well as social policy considerations, should also be taken into account when enforcing immigration law”.<sup>20</sup>

#### Human Rights Defenders

Human rights defender (HRD) is a term used to describe people who, individually or with others, act to promote or protect human rights. There is no specific definition of who is or can be a human rights defender.<sup>21</sup> A person or group need not necessarily self-identify as a “human rights defender” to constitute one.

In these Principles and Guidelines, “human rights defender” should be read as specifically including HRDs working with migrants within large and/or mixed movements, including those providing humanitarian assistance.

<sup>17</sup> See, F. Crépeau and B. Hastie, The Case for ‘Firewall’ Protections for Irregular Migrants: Safeguarding Fundamental Rights, *European Journal of Migration and Law* 17 (2015) 157–183; European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination, adopted on 16 March 2016, Council of Europe, Strasbourg, CRI(2016)16, available at [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N16/REC-16-2016-016-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N16/REC-16-2016-016-ENG.pdf)

<sup>18</sup> Crépeau and Hastie, *ibid.*, p.165

<sup>19</sup> ILO Committee of Experts, Promoting fair migration: General Survey concerning the migrant workers instruments, ILC.105/III(1B), 2016, paras.480-482: [http://www.ilo.ch/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS\\_453898/lang--en/index.htm](http://www.ilo.ch/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS_453898/lang--en/index.htm)

<sup>20</sup> EU Fundamental Rights Agency (2013), *Apprehension of migrants in an irregular situation*, available online at <https://fra.europa.eu>, preamble

<sup>21</sup> The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms refers to “individuals, groups and associations ... contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” (fourth preambular paragraph), see <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>



Large movements	<p>The Secretary General's report on addressing large movements of refugees and migrants asserts that "Whether a movement is characterized as 'large' depends less on the absolute number of people moving than on its geographical context, the receiving States' capacities to respond, and the impact caused by its sudden or prolonged nature on the receiving country."<sup>22</sup></p> <p>The New York Declaration for Refugees and Migrants elaborates further, that: "'Large movements' may be understood to reflect a number of considerations, including: the number of people arriving; the economic, social and geographical context; the capacity of a receiving State to respond; and the impact of a movement which is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another. 'Large movements' may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes."<sup>23</sup></p>
Migrants	<p>In the absence of a universal, legal definition, in these principles and guidelines "international migrant" refers to "any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence."<sup>24</sup></p> <p>In these Principles and Guidelines, "migrants" should be read with specific reference to migrants within large and/or mixed movements.</p>
Mixed migration	<p>There is no official/agreed definition of mixed migration. The term describes the reality of movements of people with varying protection profiles, reasons and needs – including refugees, asylum-seekers, other migrants including those who are in an irregular situation, trafficked persons, unaccompanied and separated children – moving along the same routes, using the same transport or means of travel,</p>

<sup>22</sup> Report of the UN Secretary-General, *In Safety and Dignity: Addressing large movements of refugees and migrants*, A/70/59, 21 April 2016, para. 11.

<sup>23</sup> General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/70/L.1, 13 September 2016, para.6

<sup>24</sup> This definition was established by OHCHR, see OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (2014) chap. I, para. 10. IOM defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. Some categories of migrants are defined in international instruments, particularly "migrant worker" or "migrant for employment" which are defined in the 1990 UN Convention on Migrant Workers (Article 2(1)); ILO Convention No. 97, Migration for Employment Convention (Revised), Article 11; ILO Convention No. 143, Migrant Workers (Supplementary Provisions) Convention, Article 11. UNHCR always refers to 'refugees' and 'migrants' separately, to maintain clarity about the causes and character of refugee movements and not to lose sight of the specific obligations owed to refugees under international law.

	often in large numbers. <sup>25</sup>
Non-refoulement	All individuals, regardless of migration status, have the right not to be returned to their country of origin or extradited to another State where there are substantial grounds for believing that a person risks being subject to serious violations of their human rights, either in the country to which they would be removed or in any country to which the person may subsequently be removed. International standards and jurisprudence of international bodies have identified breaches of this obligation in relation to the risk of being subject to torture, cruel, inhuman or degrading treatment or punishment, the death penalty, extrajudicial, summary or arbitrary executions, flagrant denial of justice and flagrant denial of the right to liberty. <sup>26</sup>
Refugee	A refugee is a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” <sup>27</sup>
Separated children	Children who have been separated from both parents or from their previous legal or customary primary care-giver, but not necessarily from other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Children may become separated at any point of their migration. <sup>28</sup>
Statelessness	A stateless person is defined in article 1 (1) of the 1954 Convention relating to the Status of Stateless Persons as someone who is “not considered as a national by any State under the operation of its law”. <sup>29</sup>

<sup>25</sup> OHCHR, Situation of migrants in transit, A/HRC/31/35, 27 January 2016, para.10; UN High Commissioner for Refugees (UNHCR), Inputs to the OHCHR Report on the Protection of the Rights of the Child in Migration Contexts.

<sup>26</sup> Non-refoulement is a jus cogens principle. See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3; Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para.12; Sir Elihu Lauterpacht and Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion*, UNHCR, 20 June 2001 and further discussion under Principle 6.

<sup>27</sup> Convention relating to the Status of Refugees, Article 1.A(2)

<sup>28</sup> Committee on the Rights of the Child, General Comment No.6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005, para 8.

<sup>29</sup> The International Law Commission has considered the definition in article 1 (1) of the 1954 Convention to form part of customary international law (A/61/10, chap. IV, para. 49). See also UNHCR, *Handbook on Protection of Stateless Persons: Under the 1954 Convention relating to the Status of Stateless Persons* (Geneva, 2014)

Unaccompanied children	Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Children may become unaccompanied at any point of their migration. <sup>30</sup>
Xenophobia	The term lacks a universal, legal definition and has commonly been used to describe attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the reality or perception that they are outsiders or foreigners to the community, society or national identity. <sup>31</sup>

## The Principles

- Principle 1: Ensure that human rights are at the centre of addressing large and/or mixed movements of migrants
- Principle 2: Counter discrimination in all its forms against migrants
- Principle 3: Protect the lives and safety of migrants and ensure rescue and immediate assistance to all migrants facing risks to life or safety
- Principle 4: Ensure access to justice for migrants
- Principle 5: Ensure that all border governance measures protect the human right to freedom of movement and the right of all persons to leave any country including their own, recognising that States have legitimate interests in exercising immigration controls
- Principle 6: Ensure that all returns, deportations, removals and readmissions are only carried out in full respect for the human rights of migrants and in accordance with international law, including upholding the principle of non-refoulement, the prohibition of arbitrary or collective expulsion, the right to private and family life, the best interests of the child, as well as the right to seek asylum
- Principle 7: Protect migrants from all forms of violence and exploitation, whether inflicted by institutions, officials, or by private individuals, entities or groups
- Principle 8: Uphold the right of migrants to liberty and prohibition of arbitrary detention through making efforts to end immigration detention of migrants. Never detain children on account of their migration status or that of their parents
- Principle 9: Ensure the widest protection of the family unity of migrants, facilitating family reunification, and preventing arbitrary or unlawful interference in the right of migrants to the enjoyment of private and family life
- Principle 10: Guarantee the human rights of all children in the context of migration, and ensure

<sup>30</sup> Committee on the Rights of the Child, General Comment No.6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005, para.7

<sup>31</sup> International Labour Organization (ILO), International Organization for Migration (IOM), Office of the United Nations High Commissioner for Human Rights (OHCHR), *International Migration, Racism, Discrimination and Xenophobia* (2001), p.2, available from [www.unesco.org/most/migration/imrdx.pdf](http://www.unesco.org/most/migration/imrdx.pdf)

that they are treated as children first and foremost

- Principle 11: Protect the human rights of migrant women and girls
- Principle 12: Ensure the enjoyment of the highest attainable standard of physical and mental health of all migrants
- Principle 13: Safeguard the right of migrants to an adequate standard of living
- Principle 14: Guarantee the right of migrants to work, in just and favourable conditions
- Principle 15: Protect the right of migrants to education, including primary and secondary education as well as higher education and vocational and language training
- Principle 16: Uphold migrants' right to information through ensuring they are provided accessible, reliable, relevant and accurate information on their situation and rights
- Principle 17: Guarantee monitoring and accountability in all responses to large and/or mixed movements of migrants, including through protecting the right of migrants to appropriate and effective remedies
- Principle 18: Respect and support the activities of human rights defenders and others working to rescue and provide assistance to migrants
- Principle 19: Improve the collection of disaggregated data on the human rights situation of migrants, while ensuring the right to privacy and protection of personal data
- Principle 20: Build capacity and promote cooperation amongst and between all relevant stakeholders to ensure a gender-responsive and human rights-based approach to migration governance and to understand and address the drivers of the movement of migrants in a vulnerable situation

### Principle 1: Ensure that human rights are at the centre of addressing large and/or mixed movements of migrants

#### Guidelines:

1. Ratify and implement all international and regional human right instruments and reaffirm in policy and practice the fundamental importance of respecting, protecting and fulfilling the human rights of all migrants who leave their countries, regardless of their migratory status.<sup>32</sup>

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<sup>32</sup> The international bill of rights (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) makes exceptions between nationals and non-nationals in respect of only two rights, and only then in limited circumstances, see discussion above at note 9. See also, Human Rights Council, Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements, A/HRC/32/L.22, 28 June 2016; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, paras.36, 42, 82. Similarly, there is acceptance in international law that international treaties apply to all individuals within the territory of a State, see Declaration on the Human Rights of Individuals Who are not Nationals of the Countries in which they Live,

2. Ensure legislation and other measures of migration governance are consistent with States' obligations under international human rights law and do not adversely affect the full enjoyment of the human rights and fundamental freedoms of migrants, without any kind of discrimination, including due to migration status.<sup>33</sup> Undertake due diligence prior to adopting new policies on migration including human rights impact assessments, including consultation with all relevant stakeholders, including migrants themselves. Immediately suspend, review and amend or repeal any laws or associated policies and practices that have negative consequences or disproportionate impact on the human rights of migrants in large and/or mixed movements.<sup>34</sup>
3. Promote and support action to prevent statelessness, recognising that statelessness can be a gendered phenomenon, and ensure that all children are able to acquire a nationality.<sup>35</sup>
4. Ensure that the irregular entry and/or stay of migrants are not considered a criminal offence, given that border crossing, management of residence and work permits are administrative issues. Any administrative sanctions applied to irregular entry should be proportionate,

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General Assembly resolution 40/144, 13 December 1985, annex, article 1. See also Durban Programme of Action, para.26, in Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/12, 31 August - 8 September 2001; General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.41.

<sup>33</sup> See Annex. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 14; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Article 19(1); General Assembly, Protection of migrants, Resolution adopted on 17 December 2015, A/RES/70/147, 25 February 2016, paras.3(c) and (d); General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/70/L.1, 13 September 2016, para.5; UN, Quito Declaration on Sustainable Cities and Human Settlements for All and Implementation Plan for the New Urban Agenda (Habitat III), 10 September 2016, para.28, available at <https://www2.habitat3.org/bitcache/97ced11dcecf85d41f74043195e5472836f6291?vid=588897&disposition=inline&op=view>; Human Rights Council, Human Rights of Migrants, A/HRC/RES/20/3, 16 July 2012, preambular para.4 and para.1; Human Rights Council, Human rights of migrants, A/HRC/23/L.12, 7 June 2013, para.3; Human Rights Council, Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements, A/HRC/32/L.22, paras.7, 9; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, generally but in particular para.30.

<sup>34</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.20; CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, para.42(h).

<sup>35</sup> 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; UN, *Guidance Note of the Secretary General: The United Nations and Statelessness*, June 2011; UNHCR, *Handbook on Protection of Stateless Persons*, 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>; CERD, General recommendation No. 30 (2004) on discrimination against non-citizens, para.16; CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013, paras.58-61; CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, paras.9-11, 51-58, 60, 63(e),(h),(i),(j). See also the "I Belong" campaign to end statelessness by 2024 by resolving existing major situations of statelessness and preventing new cases from emerging, *Agenda For Humanity: Annex to the Report of the Secretary-General for the World Humanitarian Summit*, Core responsibility 3.C: End statelessness in the next decade; <http://www.unhcr.org/ibelong/>

necessary and reasonable.<sup>36</sup> Ensure migrants are issued with identity documentation necessary to secure their rights, and do not punish migrants where they are unable to provide such documentation. Ensure that migrants are not liable for criminal prosecution for having used the services of smugglers.<sup>37</sup>

5. Ensure appropriate laws and procedures are in place and implemented for human rights and humanitarian actors to have the necessary access to all migrants to conduct assessments, provide assistance, and document human rights violations.
6. Take the measures necessary to achieve policy coherence on all human rights aspects of migration at the local, national, regional and international levels through a sustainable whole-of-government approach.<sup>38</sup>

## Principle 2:

### Counter discrimination in all its forms against migrants.

#### Guidelines:

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<sup>36</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.24; Human Rights Commission, Report of the Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008, para. 53; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, para. 13.

<sup>37</sup> Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, Article 5.

<sup>38</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para.5; Human Rights Council, Protection of the human rights of migrants: migrants in transit, A/HRC/29/L.3, 29 June 2015, para.7; Human Rights Council, Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements, A/HRC/32/L.22, 28 June 2016, paras.9, 11; General Assembly, Protection of migrants, Resolution 70/147 adopted on 17 December 2015, A/RES/70/147, 25 February 2016, para.9(a),(c); General Assembly, Protection of Migrants, Resolution adopted on 19 December 2011, A/RES/66/172, 29 March 2012, para.8; General Assembly, Violence against women migrant workers, Resolution 70/130 adopted on 17 December 2015, A/RES/70/130, 8 February 2016, para.24; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, generally but in particular paras.20, 24, 30, 52, 61; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 7.6; see OHCHR, Italy's migrant hotspot centres raise legal questions, 2 August 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/LegalQuestionsOverHotspots.aspx>; OHCHR, Addressing gender dimensions in large-scale movements of refugees and migrants: Joint Statement by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), the Committee on the Elimination of Discrimination against Women (CEDAW), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), 19 September 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20521&LangID=E>; OHCHR, Migration control is not only about keeping people out – UN experts call for vision and leadership, 24 October 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20744&LangID=E>. A whole of government approach refers to refers to government departments working collaboratively to ensure accessible and accountable public services (see for example, UN, *E-Government Survey 2012: E-Government for the People*, available at <https://publicadministration.un.org/egovkb/Portals/egovkb/Documents/un/2012-Survey/Chapter-3-Taking-a-whole-of-government-approach.pdf>).

1. Elaborate and implement legal measures, in conformity with international human rights standards, that protect migrants, regardless of their status or circumstance, from multiple and intersecting forms of discrimination throughout their migration.<sup>39</sup> Ensure that non-discrimination provisions in legislation are applicable to all migration governance measures for migrants in large and/or mixed movements, consistent with international human rights standards. Review these procedures to ensure compliance with international human rights standards including the principle of non-discrimination and adopt or amend legislation to ensure

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<sup>39</sup> The principle of non-discrimination is central to all international human rights instruments (see Annex). The rights guaranteed in international human rights treaties apply to everyone, including migrants and other non-nationals, without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including immigration status. It is also an important principle and right at work as expressed in two of the ILO fundamental Conventions: Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111). See also the Resolution concerning a fair deal for migrant workers in a global economy, International Labour Conference, 92nd Session, 2004, para. 28: "It is important to ensure that the human rights of irregular migrant workers are protected. It should be recalled that ILO instruments apply to all workers, including irregular migrant workers, unless otherwise stated", available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/genericdocument/wcms\\_178658.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/genericdocument/wcms_178658.pdf). See also, Human Rights Committee, General comment No. 15 (1986) on the position of aliens under the Covenant, paras. 1, 2; Human Rights Committee, General comment No.31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, paras. 3, 10; Committee on Economic, Social and Cultural Rights, General comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, paras.24, 30 and generally; Committee on the Elimination of Racial Discrimination, General recommendation No. 25: Gender Related Dimensions of Racial Discrimination; CERD, General recommendation No. 30 (2004) on discrimination against non-citizens, paras.7-9 and generally; Committee on the Elimination of Discrimination against Women, General recommendation No. 26 (2008) on women migrant workers, paras.1, 5; CEDAW, General comment No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, para.6; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, including at paras.2, 8, 12, 18-20, 76; Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014): Article 12: Equal recognition before the law, CRPD/C/GC/1, 19 May 2014, paras.4-7, 25, 32-35; CRPD, General comment No. 2 (2014), Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014, para.13; CPRD General comment No. 3 (2016) Article 6: Women and girls with disabilities, CRPD/C/GC/3, 2 September 2016; UN Principles for Older Persons, Principle 18; Durban Declaration, paras.2, 12, 48, 49, 51, and Programme of Action, paras.24, 26-27, 30, in Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/12, 31 August - 8 September 2001; Commission on the Status of Women, Session 60, Agreed Conclusions: Women's empowerment and the link to sustainable development, paras.16, 23(w); General Assembly, Measures to ensure the human rights and dignity of all migrant workers, Resolution 30/3449 (1975); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Targets 5.1; 10.2, 10.3, 16(b) and para.23; UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paras.13, 31; Human Rights Council, Protection of the human rights of migrants: migrants in transit, A/HRC/29/L.3, 29 June 2015, para.7(a); Human Rights Council, Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements, A/HRC/32/L.22, 28 June 2016, paras.9, 10; General Assembly, Special Rapporteur on violence against women, on the subject of race, gender and violence against women, for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/PC.3/5, 27 July 2001, in particular paras.76-116; Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/32/50, 13 May 2016.

the effective accountability of private actors engaged by the State in the response to these movements.<sup>40</sup>

2. Repeal or amend any laws or other measures that may give rise to any kind of discrimination against migrants or anyone perceived to be a migrant.<sup>41</sup> Strongly condemn and take effective measures against all acts, manifestations and expressions of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes applied to them, including on the basis of religion or belief, and other intersecting forms of discrimination including age and gender. Eradicate impunity by holding accountable those who commit such acts, including politicians, opinion-leaders and the media, and enable victims to access justice, including through accessible complaint mechanisms, and ensuring effective remedies.<sup>42</sup> Provide

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<sup>40</sup> Durban Declaration, paras.2, 12, 16, 38, 47, 48, 49, 51, and Programme of Action, paras.6, 27, 29, 30, in Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/12, 31 August - 8 September 2001; UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009, paras.38, 39; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.20, 21(f), 39; Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.23(a), 25(b); CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, paras.7, 8.

<sup>41</sup> Durban Declaration, para.12, 38, 47, and Programme of Action, para.30, in particular para.(b), in Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/12, 31 August - 8 September 2001; Committee on the Elimination of Racial Discrimination, General recommendation No. 30 (2004) on discrimination against non-citizens, para.9; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the initial report of Peru, CMW/C/PER/CO/1, 13 May 2015, para.27

<sup>42</sup> ILO Convention No. 97, Migration for Employment Convention (Revised), 1949, Article 6(1)(d); ILO Convention No. 143, Migrant Workers (Supplementary Provisions) Convention, Article 9(2); ILO Protocol 29, Protocol of 2014 to the Forced Labour Convention, 1930, Article 4; Committee on the Elimination of Racial Discrimination, General recommendation No. 35: Combating racist hate speech, CERD/C/GC/35, 26 September 2013; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.22; CMW, Concluding observations on the initial report of Peru, CMW/C/PER/CO/1, 13 May 2015, para.27; General Assembly resolution 55/2, Millennium Declaration (2000), para.25; General Assembly resolution 65/230, Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World (2010), 1 April 2011, para.38; General Assembly, Promoting efforts to eliminate violence against migrants, migrant workers and their families, Resolution 67/185 adopted on 20 December 2012, A/RES/67/185, 12 March 2013, para.5; General Assembly, Protection of migrants, Resolution 70/147 adopted on 17 December 2015, A/RES/70/147, 25 February 2016, para.3(a); Report of the UN Secretary-General, *In Safety and Dignity: Addressing large movements of refugees and migrants*, A/70/59, 21 April 2016, paras.37, 40, 101(c)(i); General Assembly, Report of the Special Rapporteur on the Human Rights of Migrants, A/65/222, 3 August 2010, paras.82-84; UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.14; Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants, A/HRC/17/33, 21 March 2011, paras.25, 78; Human Rights Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/HRC/32/50, 13 May 2016, para.34 and generally; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights



legal, medical and psychological assistance to those targeted for or affected by discriminations. Ensure serious and extreme instances of hate speech and incitement to hatred are prohibited as criminal offences and brought for review by an independent court or tribunal.<sup>43</sup>

3. Use correct and neutral terminology to describe migrants and promote evidence-based policies on migration drawing on research on the human rights of migrants and impacts and contributions of migrants to communities of residence, including in terms of economic growth, employment generation, social security policies, investment, among many others, as well as cultural life.<sup>44</sup>
4. Take immediate and effective public education measures and conduct targeted awareness campaigns in order to combat prejudice against and the social stigmatization of migrants in general, and where relevant especially those of particular nationalities.<sup>45</sup> Devise or support

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of migrants, A/HRC/29/36, 8 May 2015, paras.21, 57, 89; Inter-Parliamentary Union, ILO and OHCHR, *Migration, Human Rights and Governance: Handbook for Parliamentarians No. 24* (2015), p. 84; OHCHR, The spectre of nationalistic and xenophobic politics looms over migrants and refugees, 14 September 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/MigrationAndDiscrimination.aspx>; OHCHR, “Human rights are for all, even for migrants” – Rights experts remind participants to upcoming UN Summit, 16 September 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20518&LangID=E>

<sup>43</sup> The International Covenant on Civil and Political Rights stipulates in Article 19(3) that domestic law on hate speech must have the restriction provided by law and clear and accessible to everyone; it must be proven as necessary and legitimate to protect the rights or reputation of others; national security or public order, public health or morals; and it must be proven as the least restrictive and proportionate means to achieve the purported aim. See General Assembly, Promotion and protection of the right to freedom of opinion and expression: report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A /67/357, 7 September 2012

<sup>44</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.4; General Assembly, Measures to ensure the human rights and dignity of all migrant workers, Resolution 30/3449 (1975); General Assembly, Protection of migrants, Resolution 59/194 adopted on 20 December 2004, A/RES/59/194, 18 March 2005, preamble and para.23; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, paras.29, 36; Commission on the Status of Women, Session 60, Agreed Conclusions: Women’s empowerment and the link to sustainable development, paras.10, 23(i); Report of the UN Secretary-General, *In Safety and Dignity: Addressing large movements of refugees and migrants*, A/70/59, 21 April 2016, paras.40, 63; General Assembly, Special Rapporteur on the Human Rights of Migrants, A/65/222, 3 August 2010, paras.28-30; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, paras.19, 26, 31-34, 59, 60; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, paras.34, 35, 89; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, paras.72-74, 90; OHCHR, *The economic, social and cultural rights of migrants in an irregular situation*, 2014, p. 99, available at: [http://www.ohchr.org/Documents/Publications/HR-PUB-14-1\\_en.pdf](http://www.ohchr.org/Documents/Publications/HR-PUB-14-1_en.pdf); Migrants in Countries in Crisis Initiative, *Guidelines to protect migrants in countries experiencing conflict or natural disaster*, 2016, Principle 7, available at <https://micinitiative.iom.int>; OECD-ILO-World Bank, *The Contribution of Labour Mobility to Economic Growth*, presented to the G20 Labour and Employment Ministers’ meeting in October 2015, available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_398078.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_398078.pdf)

<sup>45</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the initial report of Peru, CMW/C/PER/CO/1, 13 May 2015, para.27

locally-rooted campaigns that focus on supporting migrants and host communities and which aim to build empathy and solidarity and to confront prejudice, stigmatisation, and the exclusion of migrants.<sup>46</sup>

5. Create or strengthen independent institutions and mechanisms, such as specialised national bodies, including National Human Rights Institutions or Ombudspersons, to monitor and report on all forms of discrimination against migrants.<sup>47</sup>

### Principle 3:

Protect the lives and safety of migrants and ensure rescue and immediate assistance to all migrants facing risks to life or safety.

#### Guidelines:

1. Establish, operate and maintain adequate, effective services for search and rescue at sea.<sup>48</sup> Ensure these search and rescue services operate under a broad understanding of distress, for example rescuing any unseaworthy vessels even if not in immediate danger of sinking, and are proactive, patrolling at-risk zones, with the sole objective to save lives. Ensure that all possible resources of the States are mobilised for search and rescue when the presence of migrants in international, contiguous and/or territorial waters, is considered likely according to informed risk assessments.
2. In keeping with the priority in this context to save lives, make every effort to protect the right to life of people who are migrating, including through inhospitable or dangerous land or other routes such as rivers or lakes, by resourcing the necessary assistance such as rescue services and equipment such as rescue beacons. Ensure individuals are free from acts and omissions intended

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<sup>46</sup> Report of the UN Secretary-General, *In Safety and Dignity: Addressing large movements of refugees and migrants*, A/70/59, 21 April 2016, para.61, 101(c)(i); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 16(b); General Assembly, UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.14.

<sup>47</sup> General Assembly, National institutions for the promotion and protection of human rights, A/RES/48/134, 20 December 1993, Annex: Principles relating to the status of national institutions (the Paris Principles), Chapter 1, para.3(g); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Targets 16.6, 16(a)

<sup>48</sup> UN Convention on the Law of the Sea (UNCLOS), Article 98; International Convention for the Safety of Life at Sea (SOLAS), Chapter V, Regulations 7 and 33.1; International Convention on Maritime Search and Rescue (SAR), Principles relating to administrative procedures for disembarking persons rescued at sea, adopted on 22 January 2009, Doc. No. FAL.3/Circ.194 (Disembarking Principles), Chapter 2.1.10; Article 3. See also, Guidelines on the Treatment of Persons Rescued at Sea, Maritime Safety Committee, IMO, Resolution MSC.167(78) (IMO Rescued Guidelines), adopted on 20 May 2004; The interception and rescue at sea of asylum seekers, refugees and irregular migrants, PACE, Resolution No. 1821(2011), approved on 21 June 2011. See also UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paras.10, 28; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, para.90; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, paras.103-106.

or expected to cause their unnatural or premature death, as well as their legitimate expectation to enjoy a dignified existence.<sup>49</sup>

3. Establish pre-identified and adapted places of arrival/disembarkation allowing for reception and assistance which meets human rights and humanitarian standards, including adequate medical screening, vulnerability assessments, first psychological aid.<sup>50</sup> Humanitarian assistance must not be conditioned on border control, police or other enforcement procedures.
4. Ensure assistance is provided free of any kind of discrimination, including on the basis nationality, status, the motives for seeking to cross international borders, or the circumstances in which migrants have travelled or are found.<sup>51</sup> Provide assistance without discrimination and in a disability-, age- and gender-responsive and culturally appropriate manner to migrants, including medical care, adequate food and water, blankets, clothing, dignity kits, sanitary items, and opportunity to rest.
5. Ensure that the legal frameworks and the international, multilateral, and bilateral agreements with neighbouring countries on competences on search and rescue zones fully ensure the effectiveness of search and rescue operations.
6. Provide training to those responsible for carrying out rescue and providing assistance to sensitize border authorities on the primacy of their obligations to protect human rights including migrants' lives and safety, address particular protection and assistance needs, and ensure the human rights and dignity of all persons rescued.<sup>52</sup>
7. Develop guidelines and implement agreements with national protection bodies and other relevant actors to ensure timely and effective referrals for migrants in particular situations of

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<sup>49</sup> A basic principle of international human rights law that States must guarantee, secure and protect the human rights of everyone within their jurisdiction, regardless of nationality, see International Covenant on Civil and Political Rights, Articles 2.1; Convention on the Rights of the Child, Article 2.1; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 7. See further, International Covenant on Civil and Political Rights, Article 6.1; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/25, 15 November 2000, Articles 16(1) and (3); see also, Human Rights Committee, Draft general comment No. 36 – Article 6: Right to life, CCPR/C/GC/R.36/Rev.2, 2 September 2015; Political Declaration. Valletta Summit, 11-12 November 2015, UN Working Group on Trafficking in Persons, CTOC/COP/WG.4/2015/CRP.1, 16 November 2015, para.2; UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paras.10, 27, 28; OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 4. On rescue beacons specifically, see Guideline 4.2; *Solomou and Others v. Turkey*, ECtHR, Application No. 36832/97, Judgment of 24 June 2008.

<sup>50</sup> International Maritime Organization (IMO), *Principles Relating to Administrative Procedures for Disembarking Persons Rescued at Sea*, 22 January 2009, FAL.3/Circ.194; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 28; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Articles 16(1)-(4); The Sphere Project, *Humanitarian Charter and Minimum Standards in Humanitarian Response*, available at <http://www.spherehandbook.org>

<sup>51</sup> In keeping with the principle of non-discrimination, which is central to all international human rights instruments, see references under Principle 2 in particular at note 39.

<sup>52</sup> OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guidelines 4.3 and 4.7

vulnerability, including prioritising shipwreck survivors and survivors of trauma, torture and sexual and gender-based violence, for access to protection and assistance, in particular psychological and emotional support following their rescue.<sup>53</sup> Put in place measures to respond to the special needs of children, whether they are travelling unaccompanied, have been separated from or are travelling with family/guardians.<sup>54</sup>

8. Ensure those individuals and organisations providing search and rescue assistance to migrants are not criminalised or otherwise punished for doing so, including through modifying existing legislation as necessary.<sup>55</sup>
9. Establish and support public policies and other efforts aimed at searching for people who have gone missing or died on their journey and facilitate recovery, identification and transfer of human remains and notification of families, both at the national and transnational levels, including granting relatives the right to access to justice and, if appropriate, effective redress.

#### Principle 4: Ensure access to justice for migrants

##### Guidelines:

1. Develop or strengthen existing measures to provide competent, independent, free and confidential legal and other material assistance to migrants, regardless of status. Ensure measures are gender-responsive and child-sensitive. Measures should include any necessary information and translation/interpretation services to enable migrants to: understand their rights, obligations and any applicable procedures under criminal, administrative or labour justice processes, access victim support services, and receive and follow due process and access justice, including the right to asylum, to an individual examination, a judicial and effective remedy, and the right to appeal.<sup>56</sup>

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<sup>53</sup> In the context of migrants in large and/or mixed flows this may include children, youth, minorities, indigenous peoples, refugees, stateless persons, trafficked persons, persons with disabilities, LGBTI people, older persons, and women and girls exposed to multiple risks [press release for the World Humanitarian Summit: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20003&LangID=E>]. On specific protection needs and referrals see, OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 2; UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, 2007, point 5.

<sup>54</sup> Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005, para.39; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Article 16 (4).

<sup>55</sup> Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, para.46; European Union Agency for Fundamental Rights, *Criminalisation of migrants in an irregular situation and of persons engaging with them*, 2014, in particular chapter 2 (“Délits de solidarité” – criminalisation of persons engaging with migrants in an irregular situation), available at [http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants_en.pdf).

<sup>56</sup> International human rights and labour treaties contain guarantees relating to the right of access to courts and tribunals and equality before them. See for example, Universal Declaration of Human Rights, Articles 7 and 8; International Covenant on Civil and Political Rights, Articles 2(1), 3, 14 and 26; the International Covenant on Economic, Social and Cultural Rights, Articles 2(2) and 3; Convention on the Elimination of All Forms of

2. Strengthen or establish official mechanisms and/or procedures to monitor, receive and investigate allegations, and provide adequate, and effective, prompt and appropriate judicial and other remedies, including reparation, for human rights violations and abuse to all migrants, irrespective of status, and including the family of migrants who went missing or were killed in the course of the migration. Ensure the gender balance of such mechanisms corresponds with that of the migrant population. Reparation should be proportional to the gravity of the violations and the harm suffered.<sup>57</sup>
3. Take measures to assist migrants who might be excluded, marginalized or stigmatized on the grounds of gender, sexual orientation, gender identity, ethnicity, disability, religion, migration or residence status, age, or other factors, in gaining equal and effective access to justice, and to prevent acts of discrimination or violence by the State or private actors against them on these

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Discrimination against Women, in particular Articles 1, 3, 15; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 18; Convention on the Rights of Persons with Disabilities, Article 5, also Article 13 on access to justice; ILO Convention No. 97, Migration for Employment Convention (Revised); ILO Convention No. 143, Migrant Workers (Supplementary Provisions) Convention; ILO Protocol 29, Protocol of 2014 to the Forced Labour Convention, 1930. Committee on the Elimination of Racial Discrimination, General recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, A/60/18, para.6-8, and generally; Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para.21, 26(l); CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para.50(b); CEDAW General Recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, para.11, and generally; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.2, 28, 30, 31; Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014): Article 12: Equal recognition before the law, CRPD /C/GC/1, 19 May 2014; Report of the Working Group on Arbitrary Detention, United Nations Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, A/HRC/30/37, May 2015, para. 42; UN Principles for Older Persons, Principle 12. See also Agenda 2030 including the SDGs, SDG Targets 16.3 and 16.10 (General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1); UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.39; Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, paras.46-48.

<sup>57</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A /RES/60/147, 21 March 2006, para.15. See further at note 181.

grounds.<sup>58</sup> Ensure that dependent migration status is not a barrier to seeking or obtaining protection, support, or justice.<sup>59</sup>

4. Develop clear and binding procedures and standards on the establishment of firewalls between law enforcement and criminal justice actors, labour inspectors and immigration enforcement authorities or private actors, and ensure their implementation in practice.<sup>60</sup>
5. Ensure migrants, including child migrants, have the right to independent and effective legal assistance and representation on an individual basis in legal proceedings that affect them, including during any related hearing, with quality legal aid made available without any cost to them as required by international standards, without discrimination and establishing special measures as necessary.<sup>61</sup>

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<sup>58</sup> Committee on the Elimination of Racial Discrimination, General recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, A/60/18; Committee on the Rights of the Child, General Comment No. 10 (2007): Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007; Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 on women migrant workers, Article 26(I); Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014): Article 12: Equal recognition before the law, CRPD /C/GC/1, 19 May 2014; Human Rights Committee, General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, para.8.

<sup>59</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Article 59.

<sup>60</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.64; Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, paras.47, 114; See also *definitions*, above, and European Union Agency for Fundamental Rights, *Apprehension of migrants in an irregular situation*, 2013, available online at <https://fra.europa.eu>, preamble; European Union Agency for Fundamental Rights, *Criminalisation of migrants in an irregular situation and of persons engaging with them*, 2014, available at [http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants_en.pdf); F. Crépeau and B. Hastie, The Case for 'Firewall' Protections for Irregular Migrants: Safeguarding Fundamental Rights, *European Journal of Migration and Law* 17 (2015) 157–183; European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination, adopted on 16 March 2016, Council of Europe, Strasbourg, CRI(2016)16; ILO Committee of Experts, Promoting fair migration: General Survey concerning the migrant workers instruments, ILC.105/III(1B), 2016, paras.480-482, available at [http://www.ilo.ch/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS\\_453898/lang--en/index.htm](http://www.ilo.ch/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS_453898/lang--en/index.htm)

<sup>61</sup> Right of all persons, regardless of status, to have access to a lawyer, and in certain circumstances to the provision of legal aid without cost: International Covenant on Civil and Political Rights Article 14(3)(d); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Article 18 (3) (b) and (d); Convention on the Rights of the Child, Article 40(2)(b)(ii); Committee on the Rights of the Child, General Comment No. 10 (2007): Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007, para. 49; CEDAW General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para.26(c)(iii); CEDAW General Recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, paras.13, 36, 37(a); UN Basic Principles on the Role of Lawyers (welcomed by General Assembly resolution 45/166, 1990), especially principles 1 to 4 and 6; United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, particularly principles 3 to 7 and 10; Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers*, A/HRC/23/43, 15 March 2013, para.82, citing United Nations *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, Principle 10. Equity in access to legal aid, para.32; CEDAW General Recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, para.13, 26-28.

6. Establish mechanisms to ensure migrants who are victims of or witnesses to crimes in the course of migration are able to participate in legal proceedings, give evidence and testify whether they are in the jurisdiction of the prosecuting State or not, and without fear of expulsion if they are.<sup>62</sup>
7. Ensure that judges, lawyers and prosecutors who are involved or may become involved in proceedings relating to migrants are aware of relevant international human rights law and standards, and respect and fulfil their roles to uphold and protect the human rights of migrants. Ensure that the judiciary, legal profession and prosecutorial services are enabled to fulfil this role, including through the legal and practical guarantees of independence and impartiality provided for by international human rights law and standards.<sup>63</sup>

### Principle 5:

Ensure that all border governance measures protect the human right to freedom of movement and the right of all persons to leave any country including their own, recognising that States have legitimate interests in exercising immigration controls.

#### Guidelines:

1. Protect the right of all persons to leave any country including their own, and ensure migration- and border- governance legislation, measures and practices are human rights-compliant and gender-responsive and do not adversely impact on the human rights and dignity of migrants, regardless of migration status or any other factor.<sup>64</sup>

<sup>62</sup> OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 2(13)

<sup>63</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/20, 2 July 2009, para.38; Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, Resolution 29/6, A/HRC/29/L.11, 30 June 2015, paras.6 and 9; UN Basic Principles on the Role of Lawyers, Principles 9 and 14; UN Guidelines on the Role of Prosecutors (welcomed by General Assembly resolution 45/166, 1990), Guidelines 2(b), 12, 13(a), 15, and 16.

<sup>64</sup> International Covenant on Civil and Political Rights, Article 12; Human Rights Committee, General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986; Human Rights Committee, General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para.29 and SDG Target 10.7; Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para.3; UN General Assembly, Protection of migrants, A/RES/70/147, 25 February 2016, para.3(c); UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.24; UN Human Rights Council, Human rights of migrants, A/HRC/RES/20/3, 16 July 2012, para.5; Human Rights Council, Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements, A/HRC/32/L.22, 28 June 2016, para.8; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, para.92.

- F vulnerability. Screening should, as n  
o establish an asylum claim. Ensurn

Council, Report of the Committee on the Protection of Human Rights, Document No. 2 on the rights of migrants, E/CN.HR/MW/C/GC/2, 28 August 2012, paras. 13, 14; and periodic reports of the High Commissioner on the initial report of the High Commissioner, including observations of the Human Rights Council, Report of the High Commissioner, 2012, paras. 13, 14; and the presence of the high-level representatives of the Government and migrants, A/71/L.1.

Rescue (SAR), Principles adopted on 22 January 1990, of the Special Representative of the European Council, paras.55-68 on conduct of the Special Representative, follow-up to the regional pact on the human rights of the selective expulsion, see *Human Rights*



numbers of competent experts present at borders to establish and deliver timely referral procedures.<sup>68</sup>

5. Ensure border authorities only confiscate migrants' personal property when duly authorised by law and in accordance with international human rights standards in clearly defined, limited circumstances. In the case that the confiscation of belongings is allowed, States should establish clear procedures for their return.<sup>69</sup>
6. Provide training for border authorities and other officials, including of municipal authorities and local governments, in contact with migrants on their obligations to respect, protect and fulfil the human rights of migrants and on migration experiences and abuses that can occur throughout the migration process. Use training materials that are human rights-based border- and migrant-specific and take into account the different risk factors and human rights violations that may be experienced by different groups of migrants.<sup>70</sup>

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<sup>68</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.50; Committee on the Elimination of Discrimination against Women, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013, para.41(b); CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para.44, 63(j); Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005, paras.13, 31, 52; CEDAW and the CRC, Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18, 4 November 2014, paras.18-29, 33, 48, 53, 54(m), 67, 69, 71, 72(a); General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paras.35, Annex I paras.5(a), 5(e), Annex II para.8(l); General Assembly, Protection of migrants, Resolution 70/147 adopted on 17 December 2015, A/RES/70/147, 25 February 2016, para.5(k); Human Rights Council, Protection of the human rights of migrants: migrants in transit, A/HRC/29/L.3, 29 June 2015, para.7(f); Human Rights Council, Trafficking in persons, especially women and children: protecting victims of trafficking and people at risk of trafficking, especially women and children in conflict and post-conflict situations, A/HRC/32/L.6, 29 June 2016, paras.2(f), 3; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/65/222, 3 August 2010, para.42, 46, 79; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, para.101; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Principle 10, Guidelines 2, 5.7, 8.2, 11.5; OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guidelines 3.1, 3, 12, 5.4, 6.1, 6.14, 6.17, 7.

<sup>69</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 21; OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 6.2

<sup>70</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.21(e); Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005, paras.13, 95, 96; General Assembly, Protection of Migrants, Resolution adopted on 19 December 2011, A/RES/66/172, 29 March 2012, para.4(e); General Assembly, Promoting efforts to eliminate violence against migrants, migrant workers and their families, Resolution 67/185 adopted on 20 December 2012, A/RES/67/185, 12 March 2013, para.10; General Assembly, Trafficking in women and girls, Resolution 69/149 adopted on 18 December 2014, paras.34, 35; Human Rights Council, Protection of the human rights of migrants: migrants in transit, A/HRC/29/L.3, 29 June 2015, para.7(d); OHCHR *Recommended Principles and Guidelines on Human Rights at*

7. Take all reasonable measures to minimise the duration for which migrants are delayed at borders or other crossing points on their journey. Provide adequate humanitarian assistance during border procedures and delays, including access to shelter, water and sanitation facilities, food and medical care.
8. Establish mechanisms in the context of entry and expulsion decisions to allow adequate time to assess the individual situation of all migrants, without discrimination, and with competent legal advice, representation, support, and access to all documents related to the case, including in order to properly identify individual protection needs and status and to arrange appropriate referral. Prevent or suspend any expulsion until such an assessment has been completed or an appeal against any negative decision has been completed.<sup>71</sup>
9. Ensure that the right of any person to return to their own country is respected in law and in practice and that nationality is not arbitrarily deprived or travel documents are not annulled in order to undermine the enjoyment of this right.<sup>72</sup>

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*International Borders*, A/69/CRP. 1, 23 July 2014; UNHCR, *Working with Persons with Disabilities in Forced Displacement*, 2011, available at <http://www.unhcr.org/4ec3c81c9.pdf>

<sup>71</sup> International Covenant on Civil and Political Rights, Article 13; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 22; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.49-59; see also, Human Rights Committee, General Comment No. 15: The position of aliens under the Covenant, 4 November 1986, para.10; Committee on the Elimination of Racial Discrimination, General Recommendation 30: Discrimination against non-citizens, CERD/C/64/Misc.11/rev.3 (2004), paras.25-28; CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, paras.45, 46; General Assembly, Protection of Migrants, Resolution 66/172 adopted on 19 December 2011, A/RES/66/172, 29 March 2012, para.5(h); General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paras.24, 58; Human Rights Council, Trafficking in persons, especially women and children: protecting victims of trafficking and people at risk of trafficking, especially women and children in conflict and post-conflict situations, A/HRC/32/L.6, 29 June 2016, para.2(f); General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, paras.88, 101; UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, 2007, point 3; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 2; OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guidelines 7 and 9; OHCHR, "Human rights are for all, even for migrants" – Rights experts remind participants to upcoming UN Summit, 16 September 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20518&LangID=E>.

<sup>72</sup> International Covenant on Civil and Political Rights, Article 12.4; Convention on the Rights of the Child, Article 10(2); Convention on the Rights of Persons with Disabilities, Article 18(1)(c); Human Rights Committee, General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, paras.19-21; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.83; 87; General Assembly, Declaration of the High-level Dialogue on International Migration and Development, Resolution 68/4 adopted on 3 October 2013, A/RES/68/4, 21 January 2014, para.24; General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.42; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para.29; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 9.9.

10. Ensure that human rights violations at the border are promptly and properly investigated and that migrants have access to complaints mechanisms and redress. In this and other border governance concerns, follow OHCHR's *Recommended Principles and Guidelines on Human Rights at International Borders*.<sup>73</sup>

#### Principle 6:

Ensure that all returns, deportations, removals and readmissions are only carried out in full respect for the human rights of migrants and in accordance with international law, including upholding the principle of non-refoulement, the prohibition of arbitrary or collective expulsion, the right to private and family life, the best interests of the child, as well as the right to seek asylum.

#### Guidelines:

1. Ensure any consent given to voluntary return processes is fully informed and given free of any coercion, including the actual or imputed prospect of indefinite or arbitrary detention or detention in inadequate conditions.<sup>74</sup>
2. Develop mechanisms in the context of entry and expulsion decisions for qualified personnel to substantively assess the individual situation of all migrants, without discrimination, in order to properly assess their risks, situation and rights, and allow adequate time to conduct this assessment.<sup>75</sup> Ensure adequate procedural safeguards are made available to migrants regarding these decisions, including the provision of justification for the removal order in writing in a language and format the migrant can understand, the provision of information on the remedies available, and time to challenge the decision and secure remedy.<sup>76</sup>
3. Ensure the relevant judicial and administrative authorities are made aware of and implement the legal obligation to ensure that no person is returned to a place where there are substantial grounds to believe that they would be at risk of torture or cruel, inhuman, or degrading treatment or punishment, or other serious human rights violations or irreparable harm, including: threats to their liberty and security of person, lack of necessary medical care or other

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<sup>73</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*. A/69/CRP. 1, 23 July 2014, available at <http://www.ohchr.org/EN/Issues/Migration/Pages/InternationalBorders.aspx>

<sup>74</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*. A/69/CRP. 1, 23 July 2014, Guideline 9.3

<sup>75</sup> CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para.46; General Assembly, Protection of migrants, Resolution 70/147 adopted on 17 December 2015, A/RES/70/147, 25 February 2016, para.5(k); General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paras.25, 30, 35, 58, Annex I para.5(a)(e), Annex II para.8(l); OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Principles on protection and assistance, para.10; Guidelines 2.1, 2.2, 2.3, 5.7, 8.2, 11.5; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*. A/69/CRP. 1, 23 July 2014, Principle A.5, Guidelines 3.12, 5.4, 6.1, 7.2, 7.4.

<sup>76</sup> International Covenant on Civil and Political Rights Article 13; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 22; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.52-59.

risk to life, living conditions contrary to human dignity in cases in which the person is unable to cater for their basic needs, serious forms of discrimination, where expulsions would constitute arbitrary interference with migrants' right to family and private life, or the risk of onward refoulement.<sup>77</sup> Ensure anti-smuggling measures and measures to manage irregular migration, from interdiction at sea, to the creation of special zones at airports, to 'safe third country' arrangements, do not breach the obligation of non-refoulement.<sup>78</sup>

4. Make every effort to secure the sustainability of returns by mitigating the risks returnees face upon arrival in countries of origin. Realise this by implementing measures including ensuring their equal enjoyment of human rights, including with regard to social protection, health care, an adequate standard of living, education and decent work, and diversity-responsive reintegration programmes.<sup>79</sup> Ensure returns are not to areas of high risk of repeated extreme weather or and slow onset events. Create independent reporting structures for potential or actual human right violations during and/or after returns.<sup>80</sup>
5. Make determinations on the return of children (including unaccompanied or separated children and children accompanied by their parents or other caregivers) in accordance with the principle

<sup>77</sup> See *definitions*, above. Convention Relating to the Status of Refugees, Article 33; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3; International Covenant on Civil and Political Rights, Article 7; International Convention for the Protection of All Persons from Enforced Disappearance, Article 16(1); Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), para.9; Human Rights Committee, General Comment No 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/ Add.13, 26 May 2004, para.12; Committee on the Rights of the Child, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, 1 September 2005, CRC/GC/2005/6 paras.27, 28, 58, 84; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.50; Committee on the Elimination of Discrimination against Women, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, paras.17-23; European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3; European Convention on Extradition, Article 3(2); Inter-American Convention on Extradition, Article 4(5); see also, Sir Elihu Lauterpacht and Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion*, UNHCR, 20 June 2001; IOM, *International Migration Law Information Note on the Principle of Non-Refoulement*, April 2014, and international and regional case law including, ECtHR, *M.S.S. v. Belgium and Greece*, Applica on No. 30696/09, Judgment 21 January 2011; Human Rights Committee, *Kaba and Kaba v. Canada*, Communication No.1465/2006, CCPR/C/98/D/1465/2006, 21 May 2010.

<sup>78</sup> Anne T. Gallagher, Migrant Smuggling, in N. Boister and R.J. Currie (eds.) *Routledge Handbook on Transnational Criminal Law*, 2015.

<sup>79</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, para.51; CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, para.82(a); CMW, Concluding observations on the initial report of Honduras, CMW/C/HND/CO/1, 3 October 2016, para.51; Committee on the Elimination of Discrimination against Women, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para.50(l); Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005, paras.84, 86; OHCHR, Situation of migrants in transit, A/HRC/31/35, 27 January 2016, para.27; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 6(8).

<sup>80</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 11(11); OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*. A/69/CRP. 1, 23 July 2014, Guidelines 9.21-9.22.

of the best interests of the child carried out by specifically trained officials and with primary consideration given to the views of the child but also to the views of his or her family or the child's legal guardian or caregiver.<sup>81</sup> This should be determined in a formal procedure containing the necessary safeguards, allowing for the fulfilment of the right of the child to be heard, having assessed all solutions available to the child and incorporated the component of adequate development and survival of the child, taking in to account the socio-economic conditions in the child's country of origin and family environment, and whether there is adequate safe reception in their country of origin.<sup>82</sup> Returns should not result in children being rendered homeless or housed in orphanages, residential care facilities, or other situations where they may face social exclusion or compromised development.<sup>83</sup> These do not constitute adequate safe reception and children should not be returned if these are the only reception options available. Children facing return should be provided competent and independent legal representation, without prejudice to any broader rights of access to legal representation.

6. Ensure that prior to return there is an adequate plan in place for the child's sustainable reintegration and adequate and ongoing post-return evaluation, and that the child will be accompanied throughout the return journey. Ensure the effective reintegration of returning children, from a human rights perspective and through targeted measures which should include effective access to education, health, family life, and protection against all forms of violence and justice.<sup>84</sup>
7. Ensure that families are kept together in the country of residence, rather than the parents being deported without their children, where return has been deemed not to be in the child's best interest.<sup>85</sup> In cases of separation, states of origin and destination should cooperate to ensure that family tracing efforts continue after return.

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<sup>81</sup> Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013, paras.36-40.

<sup>82</sup> Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005, paras.27, 28, 53, 58, 82-89, 92,93; Inter-American Court of Human Rights, *Rights and guarantees of children in the context of migration and/or in need of international protection*, Advisory Opinion of 19 August 2014, paras. 222 and 231-233, available (in English) at [http://www.corteidh.or.cr/docs/opiniones/seriea\\_21\\_eng.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf); UNHCR, *Protection Training Manual for European Border and Entry Officials*, 1 April 2011, Module 7; General Assembly, Declaration of the High-level Dialogue on International Migration and Development, Resolution adopted 3 October 2013, A/RES/68/4, 21 January 2014, para.13; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 8(5).

<sup>83</sup> Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, E/CN.4/2005/48 3 March 2005, paras.13, 50-56; Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/31/54, 30 December 2015, paras.2, 16, 17, 34, 43, 46; UNHCR, *Field Handbook for the Implementation of UNHCR BID Guidelines*, Section 3.11.5: Residential Care, available at <http://www.refworld.org/pdfid/4e4a57d02.pdf>

<sup>84</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the initial report of Honduras, CMW/C/HND/CO/1, 3 October 2016, para.51

<sup>85</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.50

8. Grant temporary residence status or other temporary protected status to any migrants who cannot be removed, including those who are refused admission into the territory of their country of origin or habitual residence, or for whom there are practical obstacles to return to their country of origin or residence. Do not hold individuals who are in such situations in indefinite or protracted detention and protect against re-detention.<sup>86</sup>
9. Institute mechanisms for independent human rights monitoring of violations of the principle of non-refoulement, the right to seek asylum, and the prohibition of arbitrary and collective expulsions also after the migrant has been returned. Put in place adequate and on-going mechanisms to monitor the human rights situation of migrants who have been forcibly returned. Ensure that all allegations of human rights violations during return processes are promptly and impartially investigated and that migrants have the right to effective remedies for those violations, regardless of nationality or migration or residence status.<sup>87</sup>

### Principle 7:

Protect migrants from all forms of violence and exploitation, whether inflicted by institutions, officials, or by private individuals, entities or groups.

#### Guidelines:

1. Take preventative measures to protect migrants from violence and exploitation, whether inflicted by State institutions, officials or by private individuals and entities or groups, including provision of measures to ensure the safety and protection of, or safe spaces for, migrants who have been subjected to violence, and special protection measures to prevent reoccurrence or further victimisation.<sup>88</sup>

<sup>86</sup> Committee on Migrant Workers, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.27; Committee on the Elimination of Discrimination against Women, General Recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, para.51(p); Human Rights Council, Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para.61; Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para.18; Committee against Torture, Concluding observations on the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee at its fiftieth session (6-31 May 2013), CAT/C/NLD/CO/5-6, 20 June 2013, para.15(a); Committee against Torture, Concluding observations on the fourth report of Cyprus, CAT/C/CYP/CO/4, 16 June 2014, paras.17(c); OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 8.5.

<sup>87</sup> International Covenant on Civil and Political Rights, Article 2(3); International Convention on the Elimination of All Forms of Racial Discrimination, Article 6; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 14; Convention on the Rights of the Child, Article 19.2; Committee against Torture, General Comment No. 3: Implementation of article 14 by States parties, CAT/C/GC/3, 19 November 2012; General Assembly, Resolution 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006.

<sup>88</sup> International Covenant on Civil and Political Rights, Article 8; International Covenant on Economic, Social and Cultural Rights, Article 10.3; Convention on the Rights of the Child, Articles 19.1, 32.1, 34, 35, 36; Convention on the Rights of Persons with Disabilities, Article 16; Declaration on the Elimination of Violence against Women; Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Article 6(3); ILO Convention concerning the Prohibition and Immediate Action

2. Establish accessible and confidential gender-based violence prevention and protection services, and functioning national and transnational referral pathways.<sup>89</sup> States should ensure that all migrants can report violations without fear of detention or deportation, and that sanctions imposed are proportionate to any human rights violations committed against migrants.<sup>90</sup>

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for the Elimination of the Worst Forms of Child Labour (No.182, 1999); Protocol of 2014 to the ILO Forced Labour Convention, 1930 (No.29), Article 2; Committee on the Elimination of Discrimination against Women, General recommendation No. 19 on violence against women, A/47/38 (1992); CEDAW General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.11, 12, 19, 20, 21, 26(j),(l); CEDAW, General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/2010/47/GC.1, 19 October 2010, paras.16, 18, 37, 38; CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, paras.15, 22, 23, 27, 28, 31, 46,; CEDAW, General recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, paras.8, 10, 16(b), 17(f), 19(f), 24, 26; Committee on the Rights of the Child, General Comment No. 3 (2003): HIV/AIDS and the rights of the child, CRC/GC/2003/3, 17 March 2003, paras.37-38; Committee on the Rights of the Child, General Comment No. 6 on the Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, paras.3, 23, 31, 40, 47, 50-54; CEDAW and the CRC, Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18, 4 November 2014, paras.18-29, 72(d), 85, 86(e); Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para.51; Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, 4 March 2016, paras. 29, 32,49(d), 59; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.21-22; General Assembly resolution 65/230, Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World (2010), 1 April 2011, para.38; General Assembly, Promoting efforts to eliminate violence against migrants, migrant workers and their families, Resolution 67/185 adopted on 20 December 2012, A/RES/67/185, 12 March 2013, paras.3, 11, 16; General Assembly, Protection of Migrants, Resolution adopted on 19 December 2011, A/RES/66/172, 29 March 2012, para.8; General Assembly, Violence against women migrant workers, Resolution 70/130 adopted on 17 December 2015, A/RES/70/130, 8 February 2016, para.6, 9, 10, 11, 24; General Assembly, Measures to enhance the promotion and protection of the human rights and dignity of older persons, resolution 70/164 adopted on 17 December 2015, A/RES/70/164, 22 February 2016, para.3; UN Principles for Older Persons, Principle 17; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, paras.8, 20, 27, and SDG Targets 5.2, 5.3, 8.7, 16.1, 16.2; UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paras.10, 29-31; Global Migration Group, *Exploitation and abuse of international migrants, particularly those in an irregular situation: a human rights approach*, 2013; and, in the context of trafficking in persons, UNODC, *The Concept of 'Exploitation' in the Trafficking in Persons Protocol*, 2015.

<sup>89</sup> UN Women, *Gender Assessment of the Refugee and Migration Crisis in Serbia and FYR Macedonia*, UN Women Europe and Central Asia Regional Office, January 2016, available at <http://www2.unwomen.org/~media/field%20office%20eca/attachments/publications/country/serbia/gender%20assessment%20of%20the%20refugee%20and%20migration%20crisis%20in%20serbia.pdf?v=1&d=20160112T163308>

<sup>90</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 9; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Article 6(3)(b); ILO Protocol of 2014 to the Forced Labour Convention, 1930 (No.29); Committee on the Elimination of Discrimination against Women, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.5, 10, 22, 26(c)(i); CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and

3. In consultation with representative employers' and workers' organizations, criminal justice actors and organizations representing migrants, ensure that legislation, policies and practice reduce risks that migrants will be exploited by those offering services or work in both formal and informal sectors, including being subject to forced labour or trafficking in persons. Ensure that child migrants, whether unaccompanied or separated or accompanied children, are shielded from exploitation and abuse, including human trafficking and the worst forms of child labour.<sup>91</sup>
4. Ensure that all immigration facilities adhere to violence prevention and response standards, including for sexual and gender-based violence prevention, providing safe accommodation and assistance, and services where migrants' experiences of violence, including domestic violence, can be addressed without causing further trauma or harm and uphold sexual and reproductive rights, including access to essential medicines and services.<sup>92</sup> Ensure that prevention and

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statelessness of women, CEDAW/C/GC/32, 14 November 2014, para.14, 28, 44, 55; General Assembly, Violence against women migrant workers, Resolution 70/130 adopted on 17 December 2015, A/RES/70/130, 8 February 2016, paras.6, 10, 18; General Assembly, Protection of migrants, Resolution adopted on 17 December 2015, A/RES/70/147, 25 February 2016, para.8; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para.8, SDG Targets 5.2, 8.7, 8.8, 16.2; Human Rights Council, Trafficking in persons, especially women and children: protecting victims of trafficking and people at risk of trafficking, especially women and children in conflict and post-conflict situations, A/HRC/32/L.6, 29 June 2016, para.2(b); Report of the Special Rapporteur on the human rights of migrants: Labour exploitation of migrants, A/HRC/26/35, 3 April 2014.

<sup>91</sup> Convention on the Rights of the Child, and its Optional Protocols (A/RES/54/263, 25 May 2000); ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182, 1999); Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Committee on the Rights of the Child, General Comment No. 6 on the Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, paras.50, 51; General Assembly, Violence against women migrant workers, Resolution 70/130 adopted on 17 December 2015, A/RES/70/130, 8 February 2016, para.10; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, paras.8, 27, SDG Targets 5.2, 5.3, 8.7, 16.2.

<sup>92</sup> References include: Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), paras.35, 36; CESCR, General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, 4 March 2016, including paras.29, 32, 45, 59; Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, Violence Against Women, contained in document A/47/38, 1992; CEDAW, General Recommendation No. 24: Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women - women and health, A/54/38/Rev.1, chap. I, 1999, paras.5, 12(d), 16, 25, 29; CEDAW, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.11, 18, 20, 26(i), 26(j); CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para.50(i); Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.21, 36; Committee on the Rights of the Child, General comment No. 15 (2013): The right of the child to the enjoyment of the highest attainable standard of health (Article. 24), CRC/C/GC/15, 14 March 2013, paras.10, 60, 88; Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on Article 6: Women and girls with disabilities, CRPD/C/GC/3, 2 September 2016, paras.10, 26, 41, 43, 45, 49, 50, 53; General Assembly, Declaration of the High-level Dialogue on International Migration and Development, Resolution 68/4 adopted on 3 October 2013, A/RES/68/4, 21 January 2014, para.11; General Assembly, International migration and development, Resolution 69/229 adopted on 19 December 2014, A/RES/69/229, 4 February 2015, paras.16; General Assembly, Trafficking in women and girls, Resolution 69/149 adopted on 18 December 2014, A/RES/69/149, 10 February 2015, paras.15, 29; General Assembly, Violence against women migrant workers, Resolution 70/130 adopted on 17 December 2015, A/RES/70/130, 8 February 2016, paras.4, 15, 19; UN



response measures for sexual and gender-based violence, are accessible for all persons, including migrants of all ages, sexual orientations, gender identities, and abilities.

5. Provide referrals to age- and gender-responsive and culturally-appropriate services including medical, sexual and reproductive healthcare, and psycho-social and other relevant support services to assist in recovery and rehabilitation, appropriate to the human rights violations to which they have been subjected.<sup>93</sup> Ensure service providers are trained to understand and respond to the human rights and needs of migrants and their families who have been affected by violence, whether on the basis of their identity or experience as migrants, or/and in combination with other factors, and to overcome any anti-migrant bias.<sup>94</sup> Ensure appropriately tailored information about protection, services and rights is made available to migrants in a format and language they understand and in an age appropriate manner.
6. Strengthen law enforcement and criminal justice responses to violence against migrants or their families, including through the use of firewalls, to ensure the investigation and prosecution of excessive use of force (including lethal force), any act of violence or violation of the human rights of migrants, regardless of the status or situation of the migrant or whether the alleged perpetrator was acting in a public or private capacity.<sup>95</sup> Take measures to encourage migrants to report crimes committed against them and ensure clear and binding firewalls between law enforcement and criminal justice actors and immigration enforcement authorities to ensure migrants are able to report crimes against them, participate in criminal justice proceedings and

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General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paras.26, 31, 59, Annex II para.8(o); Human Rights Council, Protection of the human rights of migrants: migrants in transit, A/HRC/29/L.3, 29 June 2015, preamble, para.7(a); Human Rights Council, Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements, A/HRC/32/L.22, 28 June 2016, preamble, para.10; Interagency Working Group (IAWG) on Reproductive Health in Crises, *Minimum Initial Service Package (MISP) for Reproductive Health in Crisis Situations*, available at <https://www.womensrefugeecommission.org/srh/emergency-response/misp>

<sup>93</sup> General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985, paras.14-17.

<sup>94</sup> General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985, para.16; UN, Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, ECOSOC resolution 1989/57, 24 May 1989, paragraph 3(b); UNHCR, *Age, Gender and Diversity Policy: Working with people and communities for equality and protection*, 2011, available at <http://www.unhcr.org/uk/protection/women/4e7757449/unhcr-age-gender-diversity-policy-working-people-communities-equality-protection.html>

<sup>95</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.21(b),(c), 36(d)(e); Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.21, 25(b); CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para.8; Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2, 24 January 2008, paras.18, 22; General Assembly, Protection of Migrants, Resolution adopted on 19 December 2011, A/RES/66/172, 29 March 2012, para.4(e); OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Principle 13, Guidelines including 1.10, 2.10, 2.11, 3.17, 5.9, 8.20

access related assistance and support, and are not deterred from doing so due to fears of arrest, detention and expulsion on the basis of their migration status.<sup>96</sup>

### Principle 8:

Uphold the right of migrants to liberty and prohibition of arbitrary detention through making targeted efforts to end immigration detention of migrants. Never detain children on account of their migration status or that of their parents.

#### Guidelines:

1. Establish a presumption against immigration detention in law.<sup>97</sup>
2. Work towards progressively ending all forms of immigration detention.<sup>98</sup> Until then, ensure that immigration detention is only ordered by a court of law as an exceptional and last resort measure determined on a case-by-case basis and implemented in line with international human rights law and its procedural safeguards. These must include respect for due process of law, access to legal counsel and fair trial guarantees, and ensuring detention is not mandatory, of limited scope and duration, necessary and proportionate, with no suitable non-custodial available to meet the legitimate aim.<sup>99</sup> The reasons for detention must be clearly defined in

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<sup>96</sup> Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system (2005), from A/60/18, pp.98-108, paras.2, 10; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.2; Committee on the Elimination of Discrimination against Women, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.21, 22; CEDAW General Recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, paras.10, 25(b), 51(d); General Assembly, Protection of migrants, Resolution adopted on 17 December 2015, A/RES/70/147, 25 February 2016, para.3(b); General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, paras.80-82; OSCE Recommendations on Policing in Multi-Ethnic Societies, Recommendation 20, February 2006, available at <http://www.osce.org/hcnm/32227?download=true>; Council of Europe, European Commission against Racism and Intolerance (ECRI), General Policy Recommendation 11: on combating racism and racial discrimination in policing, 29 June 2007, para.72. See also notes on *firewalls*.

<sup>97</sup> International Covenant on Civil and Political Rights, Article 9(1); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 16(1); Convention Relating to the Status of Refugees 1951, Article 31(2); Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, including paras 3 and 18. Whilst the Committee outlines the minimum legal obligations under the ICCPR, other instruments and experts call more clearly for ending immigration detention, see Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, paras.73 and 74; Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, para.68; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, paras.47-54; Human Rights Council, Promotion and protection of the human rights of migrants in the context of large movements: Report of the United Nations High Commissioner for Human Rights, A/HRC/33/67, 13 October 2016, para.82(b).

<sup>98</sup> Human Rights Council, Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para.58; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, para.111.

<sup>99</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.23-35, 38; CMW, Concluding observations on the initial report of Turkey,

law<sup>100</sup> and explained to migrants orally and in writing, in a language and format they understand with the assistance of an interpreter if necessary,<sup>101</sup> and that information on the individual's rights in connection with the decision is included in the detention order.<sup>102</sup> Ensure the effective enjoyment by migrants of their right to challenge the lawfulness of any deprivation of liberty, whatever its basis, before a court, and to be ordered released if the detention is found unlawful.<sup>103</sup>

3. Ensure detention conditions guarantee due respect for the dignity of the person by ensuring adherence to the UN Standard Minimum Rules on the Treatment of Prisoners and all other relevant international standards and reflect the administrative purpose of the deprivation of liberty for which migrants are being detained, imposing restrictions on individual autonomy only to the extent necessary to protect the rights of others and to maintain public order, and providing varied and appropriate activities to minimise the risks associated with immigration detention.<sup>104</sup> Protect against the particular risks of exploitation, abuse and sexual or gender-

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CMW/C/TUR/CO/1, 31 May 2016, para.48(a); Committee against Torture, Concluding observations of the fourth and fifth periodic report of Bulgaria, CAT/C/ BGR/CO/4-5, 14 December 2011, para. 9; Committee against Torture, Concluding observations on the fifth periodic report of CAT/C/AUS/CO/4-5, 23 December 2014, para 16; Committee on the Elimination of Racial Discrimination, Concluding observations – Spain, CERD/C/ESP/CO/18-220, 8 April 2011, para.13(b); Human Rights Committee, Concluding observations on the third periodic report of Latvia, CCPR/C/LVA/CO/3, 11 April 2014, para.14(c); Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, 23 April 2014, para 15; Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, paras.59, 61; Working Group on Arbitrary Detention: Preliminary Findings from its visit to the United States of America (11-24 October 2016), 24 October 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20746&LangID=E>.

<sup>100</sup> International Covenant on Civil and Political Rights, Article 9(1).

<sup>101</sup> See for example, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly resolution 43/173, Principle 14; Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para.18; Committee against Torture, Concluding observations on the fourth report of Cyprus, CAT/C/CYP/CO/4, 16 June 2014, para.17(c); Committee against Torture, Concluding observations on the fifth periodic report of CAT/C/AUS/CO/4-5, 23 December 2014, para.16.

<sup>102</sup> For instance, migrants should be provided with information on their right to challenge the decision, to seek legal aid, to communicate with consular authorities or other bodies, and to have interpretation/translation services. The decision should also be subject to judicial review. See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 13; Report of the Working Group on Arbitrary Detention, Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court (2015), A/HRC/30/37, para. 42; Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 18.

<sup>103</sup> International Covenant on Civil and Political Rights, Article 9(4). Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para.40.

<sup>104</sup> International Covenant on Civil and Political Rights, Articles 2(3), 9(1), (2), and (4); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 17; Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, Article 16(5); UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, 8 January 2016; Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014; CEDAW General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para.26(j); Committee on the Elimination of Discrimination against Women, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para.34; CEDAW General Recommendation 33

based and other violence that immigration detention poses for migrants including LGBTI or gender non-conforming people, women, people with a disability, and children and they ensure receive the treatment and medication they require. Ensure that migrants deprived of liberty have prompt access to independent lawyers, including to receive visits and communicate with such lawyers, both to make effective the right to challenge the lawfulness of detention, and as a safeguard against torture or other cruel, inhuman or degrading treatment.<sup>105</sup>

4. Enforce the principle of non-detention for immigration purposes of all children, regardless of their status or the status of their parents, and expeditiously and completely cease all such detention of children, even for short term periods.<sup>106</sup> Ensure also that migrants with special

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on women's access to justice, CEDAW/C/GC/33, 23 July 2015, para.53(c); Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.36-48; Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant Concluding Observations France, CCPR/C/FRA/CO/4, 31 July 2008, para.18; Human Rights Committee, Concluding observations on the sixth periodic report of New Zealand, CCPR/C/NZL/CO/6, 28 April 2016, para.38(b); Committee against Torture, Concluding observations of the Committee against Torture – Germany, CAT/C/DEU/CO/5, 12 December 2011, para.24(d); Committee against Racial Discrimination, Concluding observations on the nineteenth to twenty-first periodic reports of Cameroon, CERD/C/CMR/CO/19-21, 26 December 2014, 26 September 2014, para.18; Human Rights Council, Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, paras.59, 64; Human Rights Council, Migrants and asylum-seekers fleeing from events in North Africa, A/HRC/17/L.13, 15 June 2011, para.2; Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008, para. 53; Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, page 3 and paras.20, 35, 74, 75(c), (d), (g); Commission on Human Rights, Report of the Special Rapporteur on the human rights of migrants, E/CN.4/2003/85, 30 December 2002; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, in particular paras.8-12, 15-35, 72; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, paras.52, 92; Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, paras.41-45; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, guideline 8.7; Association for the Prevention of Torture (APT) and United Nations High Commissioner for Refugees (UNHCR), *Monitoring Immigration Detention: Practical manual*, 2014, 4.4 and 4.5. Where facilities are operated by private contractors, states are obligated hold them accountable for any human rights violations committed in their operations. See the Ruggie Principles: UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011.

<sup>105</sup> Human Rights Committee, No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para.46; Committee against Torture, General Comment no 2: Implementation of article 2 by States parties, CAT/C/GC/2, 24 January 2008, para.13; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, GA resolution 43/173, Principles 17 and 18.

<sup>106</sup> Convention on the Rights of the Child, Articles 2, 3, 9, 22, 37; Committee on the Rights of the Child, General Comment No. 6 on the Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, para.61; CRC, *General Day of Discussion 2012: The Rights of All Children in the Context of International Migration*, Report: Recommendations at paras.78 to 80; Committee against Torture, Concluding observations on the combined fourth and fifth periodic reports of Australia, CAT/C/AUS/CO/4-5, 23 December 2014, para.16; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.33; CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, para.48(b); UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13

protection needs including but not limited to pregnant or nursing migrants, elderly migrants, migrants with a disability, survivors of torture or trauma, migrants with physical or mental health needs, trafficked persons, stateless persons, are not placed in detention.<sup>107</sup> Ensure migrants are not liable for criminal prosecution for irregular entry or stay or for using the services of smugglers, and that trafficked persons are not detained, imprisoned, or criminalised for offences they were compelled to commit as a consequence of trafficking.<sup>108</sup>

5. Take the necessary measures to ensure that the consular services network responds effectively to the needs of migrants and their families in regard to the protection of their rights, with particular attention to those held in immigration detention, ensuring legal aid, and promoting access to justice and other guarantees of due process; the granting of assistance, and the compilation of data on migration. Such measures should include the allocation of sufficient human and financial resources and the development of ongoing training programmes for

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September 2016, para.56; Human Rights Council, Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para.60; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, 5 March 2015, generally, and specifically on child migrants at para.59-62, 66, 67, 80, 81, 85(m),(n),(o),(p); Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, paras.44, 112; OHCHR, "Human rights are for all, even for migrants" – Rights experts remind participants to upcoming UN Summit, 16 September 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20518&LangID=E>; UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Guideline 9.2; UNHCR, *Global Strategy – Beyond Detention 2014-2019*, UNHCR 2014, available at <http://www.unhcr.org/53aa929f6.pdf>

<sup>107</sup> CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para.34; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.45; Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the European Union, CRPD/C/EU/CO/1, 2 October 2015, paras.34, 35; Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, paras.41-51; Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, paras.36-47; Human Rights Council, Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para.56; UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Guideline 9.4; Standard No.2 in International Detention Coalition, *Legal framework and standards relating to the detention of refugees, asylum seekers and migrants: A guide*, IDC 2011; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guidelines 2(6), 6(1). Guideline 5(5) also calls on states to ensure "that law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation."

<sup>108</sup> Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, Article 5; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.2, 24; Committee against Torture, Concluding observations on the fourth report of Cyprus, CAT/C/CYP/CO/4, 16 June 2014, paras.16, 17(a); Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para.58; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, paras. 13, 14; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Principle 7, Guideline 2(5); Council of Europe Convention on Action against Trafficking in Human Beings, Article 26; EU directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU), Article 8; ILO Protocol of 2014 to the Forced Labour Convention, 1930 (No.29), Article 4(2).

consular officials on human rights law.<sup>109</sup> Authorities should be made aware of the particular risks posed to certain groups, such as irregular migrants or LGBTI individuals, of being brought to the attention of consular authorities without their knowledge and informed consent.<sup>110</sup>

6. Develop national plans to end immigration detention and to implement human rights-compliant, non-custodial, community-based alternatives to detention based on an ethic of care, not enforcement.<sup>111</sup> Legislation should include the obligation of administrative or judicial bodies to start from liberty as the first alternative and only if that is rejected for clear, articulated reason consider human rights-based alternatives to detention – one by one – including the obligation of

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<sup>109</sup> Vienna Convention on Consular Relations, in particular Articles 5(a), 5(e), 36(1), 37; Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para.58; Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, from A/60/18, pp. 98-108, paras.23, 26(d), 38(a); Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para.24(j); CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013, para.60; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 1 on migrant domestic workers, CMW/C/GC/1, 23 February 2011, paras.62-64; CMW General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.6, 30, 34, 59; CMW, Concluding observations on the initial report of Peru, CMW/C/PER/CO/1, 13 May 2015, para.35; CMW, Concluding observations on the combined second and third periodic reports of Senegal, CMW/C/SEN/CO/2-3, 20 May 2016, paras.19, 31; CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, paras.56(a), (b); CMW, Concluding observations on the initial report of Honduras, CMW/C/HND/CO/1, 3 October 2016, para.37(b); Report of the Working Group on Arbitrary Detention, United Nations Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, A/HRC/30/37, May 2015, para.129; UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, approved by the General Assembly in its resolution 43/173, 9 December 1988, Principles 16(2), 18(1),(2),(3); United Nations *Standard Minimum Rules for the Treatment of Prisoners* (the Mandela Rules), Rule 62; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guidelines 4.11, 5.5, and 8.16; General Assembly, Protection of migrants, Resolution 70/147 adopted on 17 December 2015, A/RES/70/147, 25 February 2016, para.5(k); General Assembly, Report of the Special Rapporteur on the human rights of migrants: A/71/40767, 20 July 2016, para.98.

<sup>110</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guidelines 4.11, 8.16.

<sup>111</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, para.48(c); General Assembly resolution 63/184, para.9; UNHCR, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers*, Guideline 4; Report of the UN Working Group on Arbitrary Detention. Addendum: report on the visit of the Working Group to the United Kingdom on the issue of immigrants and asylum seekers, 18 December 1998, E/CN.4/1999/63/Add.3, para.33; UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.33; Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, para.75(f); Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, paras.48-67, 73; Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, paras.45, 65, 70, 88; Human Rights Council, Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para.65; UNHCR, Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions, July 2011; International Detention Coalition and La Trobe Refugee Research Centre, *There are Alternatives: A handbook for preventing unnecessary immigration detention*, IDC 2011.

provide adequate arguments at each step why each option is not applicable in the particular case.

7. Ensure accountability and remedy for any instances of unlawful or arbitrary detention, deficiencies in detention standards and any violations or abuse of the human rights of detained migrants, or the use of the threat of detention as extortion for money or sex, by State actors and private individuals, entities or security forces.<sup>112</sup> Cooperate with independent monitoring of all places of deprivation of liberty including by competent international organisations and civil society.<sup>113</sup>

### Principle 9:

Ensure the widest protection of the family unity of migrants, facilitating family reunification, and preventing arbitrary or unlawful interference in the right of migrants to the enjoyment of private and family life.

#### Guidelines:

1. Develop measures to ensure the non-separation of migrant families, including in disembarkation and border control processing, reception and registration processes, as well as in the context of potential detention and deportation of parents. Make all efforts to trace and reunite unaccompanied or separated children with their parents, in accordance with the principle of the best interests of the child, noting that reunification in the country of origin may not be in the child's best interests. Family reunification should never be used to justify expedited return processes. Ensure that children enjoy the right to express their views freely in all matters affecting them, in particular concerning decisions about their possible return to the family, the views of the child being given due weight in accordance with his or her age and maturity.<sup>114</sup>

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<sup>112</sup> Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, paras.8 and 9; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.39; Committee on Migrant Workers, Concluding observations of the Committee on the second periodic report of Bosnia and Herzegovina, adopted at its seventeenth session (10–14 September 2012) Bosnia and Herzegovina, CMW/C/BIH/CO/2, 26 September 2012, para.16(d); Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, para.22; Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, para.35; UN Guiding Principles on Business and Human Rights (A/HRC/17/31, annex); OHCHR, *Situation of migrants in transit*, A/HRC/31/35, 27 January 2016, paras.46-54.

<sup>113</sup> CEDAW General Recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, para.51(n)

<sup>114</sup> Convention on the Rights of the Child, Articles 3, 9, 10, 12, 16, 22(2); CRC General Comment No. 6 on the Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, Section VII; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E /2002/68/Add.1, 20 May 2002, Guideline 8(6); General Assembly, Protection of migrants, GA70/147, adopted on 17 December 2015, paras.5(d),(h),(k); General Assembly, Declaration of the High-level Dialogue on International Migration and Development, Resolution 68/4 adopted on 3 October 2013, A/RES/68/4, 21 January 2014, para.13; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, para.72; Working Group on Arbitrary Detention: Preliminary Findings from its visit to the United States of America (11-24 October 2016), 24 October 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20746&LangID=E>.



2. Take positive measures, both at the domestic level and in cooperation with other States, to facilitate the unity or reunification of families, in either origin, transit or destination according to the best interests of the child, particularly when family members are separated for political, economic or similar reasons.<sup>115</sup> Simplify and speed-up procedures, without compromising standards, to make it easier for children to reunite with their families. Enhance regular channels for family reunification without discrimination or undue restrictions such as age, income, or language.
3. Ensure family registration and reunification processes recognise that various forms of family exist and do not practice gendered, heteronormative, or other stereotyped or prejudicial assumptions in registering family representatives.<sup>116</sup>
4. Ensure, through legal assistance and judicial and administrative protection, that parents who have been deported from a State are able to exercise their right to family unity and custody of their children, including those who have citizenship of the State, before the courts of that country.<sup>117</sup>
5. Ensure that families with children are accommodated together as a unit in safe and child friendly environments. Maintaining family unity should never form the justification for the detention of children whose parents/guardians are detained; alternatives to detention should instead be applied to the entire family.<sup>118</sup>

#### Principle 10:

Guarantee the human rights of all children in the context of migration, and ensure that they are treated as children first and foremost.

#### Guidelines:

<sup>115</sup> Convention on the Rights of the Child, Article 5, 10, 22; ILO Convention No. 143, Migrant Workers (Supplementary Provisions) Convention, Article 13(1); Human Rights Committee, General Comment No. 19 on the Protection of the family, the right to marriage and equality of the spouses (Art. 23), 27 July 1990, para. 5; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 44; CEDAW General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para.26(e); UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.57. See also, OHCHR, Family Reunification, *OHCHR Migration Papers*, November 2005

<sup>116</sup> Convention on the Rights of the Child, Article 5; Human Rights Committee, General Comment No. 19 on the Protection of the family, the right to marriage and equality of the spouses (Art. 23), 27 July 1990, para. 2; Beijing Platform for Action, para.29 (1995); General Assembly Special Session on Children, Resolution S-27/2. A world fit for children, A/RES/S-27/2, 11 October 2002, para. 15.

<sup>117</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the initial report of Honduras, CMW/C/HND/CO/1, 3 October 2016, para.55(d)

<sup>118</sup> Inter-American Court of Human Rights, *Rights and guarantees of children in the context of migration and/or in need of international protection*, Advisory Opinion of 19 August 2014, para.158, available (in English) at [http://www.corteidh.or.cr/docs/opiniones/seriea\\_21\\_eng.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf); Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, 5 March 2015, generally, and specifically on child migrants at para.80; Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, paragraph 71(h).



1. Ensure policy, practice and guidance on migrant children and other children affected by migration are based on international law, in particular the principles of non-discrimination and the best interests of the child and the full participation of all children in the context of migration as primary stakeholders.<sup>119</sup> Provide migrant children with opportunities to express their views freely in all matters affecting them and to have their views taken into account in accordance with their age and maturity. Ensure that children in the context of migration are treated first and foremost as children and that the principle of the child's best interest takes precedence over migration management objectives or other administrative considerations.<sup>120</sup>
2. In case of reasonable doubt regarding the age of a migrant, provide multidisciplinary age determination procedures which draw on assessments by psychologists, social workers, or qualified others, in a safe, child- and gender-responsive manner with due respect for human dignity and a presumption in favour of the child in situations of ambiguity. Ensure equal standards of protection are provided to all children regardless of age.<sup>121</sup> Return and detention should be suspended while age-assessment takes place.
3. In all cases involving children, ensure screening of child migrants is conducted by a child protection officer, and not an immigration/border enforcement officer, with immediate referral to child protection experts for further screening, interviewing and referral. All children (and families with children) should be provided with qualified legal representation, appropriate material and reception conditions, and full access to procedures to resolve their situation in accordance with the best interests of the child principle.
4. Provide unaccompanied and separated migrant children with special protection and assistance.<sup>122</sup> Ensure that unaccompanied children are accommodated in separate reception facilities from adults.<sup>123</sup> Establish or strengthen qualified and independent guardianship mechanisms to ensure they are promptly appointed to give the necessary assistance to all unaccompanied and separated children and/or child-headed households as soon as they are identified.<sup>124</sup> Work on national implementation plans to assign qualified and trained guardians, including with respect to cultural identity issues, to unaccompanied and separated children.

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<sup>119</sup> Convention on the Rights of the Child, Articles 3, 12; UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.32.

<sup>120</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Principle A.6; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, 5 March 2015, para.80

<sup>121</sup> Committee on the Rights of the Child, *Report of the 2012 Day of General Discussion on the Rights of all Children in the Context of International Migration*, para.49; Save the Children, *Submission for the Office of the High Commissioner for Human Rights (OHCHR) report on migrants in transit* (A/HRC/RES/29/2), November 2015, p.4.

<sup>122</sup> Convention on the rights of the child, Article 20; Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005.

<sup>123</sup> Convention on the rights of the child, Article 37(c); Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005, para.63.

<sup>124</sup> Save the Children, *Submission for the Office of the High Commissioner for Human Rights (OHCHR) report on migrants in transit* (A/HRC/RES/29/2), November 2015, p.5.

5. Ensure the effective provision of free birth registration for all children in the context of migration, irrespective of the migration or residence status of their parent/s or other guardians.<sup>125</sup>
6. Coordinate child protection policies and systems internally and across borders that are in full compliance with international human rights law and ensure that response teams are trained in good practices such as child-friendly communication, with an adequate number of trained child protection officers at all stages of the migration journey.<sup>126</sup> Ensure that national child protection systems, in their design and implementation, take into account the distinctive needs and views of child migrants and children born to migrant parents.
7. Provide guidance based on international law and best practice to national officials and child protection officers on the practical operationalization of the principle of the best interests of the child for all cases involving migrant children who may not be making a claim for asylum under the 1951 Convention.<sup>127</sup>
8. Ensure to the maximum extent possible the survival and physical, mental, spiritual, moral and social development of migrant children and children of migrants, keeping in mind that the principle of the best interests of the child encompasses short-, medium- and long-term effects of actions related to the development of the child over time and factors including the migration status and inclusion of the child's parents, legal guardians, or family members can contribute to the situation of vulnerability for the optimal development of children in the context of migration.<sup>128</sup>

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<sup>125</sup> CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, paras.56, 63(m); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 16.9; Human Rights Council, Birth registration and the right of everyone to recognition everywhere as a person before the law, A/HRC/28/L.23, 23 March 2015; Human Rights Council, Trafficking in persons, especially women and children: protecting victims of trafficking and people at risk of trafficking, especially women and children in conflict and post-conflict situations, A/HRC/32/L.6, 29 June 2016, para.2(c).

<sup>126</sup> Adapted from: UN General Assembly, Protection of migrants, GA70/147, adopted on 17 December 2015, para.9(c); OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 8.10; Save the Children, *Submission for the Office of the High Commissioner for Human Rights (OHCHR) report on migrants in transit* (A/HRC/RES/29/2), November 2015, p.8; OHCHR, *Situation of migrants in transit*, 2016, A/HRC/31/35, para.16, citing Daniela Reale, "Protecting and supporting children on the move: Translating principles into practice" in *Children on the Move* (Geneva, IOM, 2013), pp. 67 and 68.

<sup>127</sup> Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005, paras.19-22; For children applying for refugee status, UNHCR have developed guidance on how to operationalise the principle of the best interests of the child (UNHCR, *UNHCR Guidelines on Determining the Best Interests of the Child*, May 2008). Though developed specifically for refugee situations, it could be adapted to children in large/mixed movements who are not making an asylum claim.

<sup>128</sup> Convention on the Rights of the Child, Articles 6.2 and 27 as well as the preamble; Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, 27 November 2003, para.12; CRC, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005, paras.23, 40, 44; CRC, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013, para.16(e); Hirokazu Yoshikawa and Jenya Kholoptseva. *Unauthorized Immigrant Parents and Their Children's Development: A Summary of the*

## Principle 11:

### Protect the human rights of migrant women and girls.

#### Guidelines:

1. Ensure legislation, policy and programming is designed to meet the particular needs and rights of migrant women and girls. Provide adequately trained women case workers, lawyers, interviewers and independent interpreters and ensure childcare is made available during the interviews to ensure women are able to present their situation and any claim for human rights protection claims in a safe, culturally-appropriate and gender-responsive environment. Ensure women's reports of human rights abuses are not treated through the lens of male experiences.<sup>129</sup>
2. In all reception and any other centres for migrants, ensure women and girls are not discriminated against in asset allocation and control over resources, with processes adequately addressing the gendered needs of migrants and women staff present wherever women or girls are accommodated. Provide well-lit, safe and private gender-friendly WASH (water, sanitation and hygiene) facilities.<sup>130</sup>
3. Ensure the availability of women's protection and information point persons at all sites to support women and girl migrants who have experienced trauma including sexual and gender-based violence to access specialised medical and psychosocial support, sexual and reproductive health services and information, safe spaces including mother/baby-friendly spaces, and women's shelters that are linguistically and culturally appropriate.<sup>131</sup> Establish multi-purpose

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*Evidence.* Migration Policy Institute, 2013, available at <http://www.migrationpolicy.org/research/unauthorized-immigrant-parents-and-their-childrens-development>; Zlata Bruckauf, Yekaterina Chzhen and Emilia Toczydlowska, Bottom-end Inequality: Are children with an immigrant background at a disadvantage? Innocenti Research Brief 2016-07, available at [https://www.unicef-irc.org/publications/pdf/IRB\\_2016\\_07.pdf](https://www.unicef-irc.org/publications/pdf/IRB_2016_07.pdf).

<sup>129</sup> Committee on the Elimination of Discrimination against Women (CEDAW), General recommendation No.26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.21, 26(i); CEDAW, General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/2010/47/GC.1, 19 October 2010, para.50; CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, paras.16, 31, 34, 50(a),(b),(d),(f).

<sup>130</sup> See, UN Women, Closing the Gender Gap in Humanitarian Action, available at <http://interactive.unwomen.org/multimedia/infographic/humanitarianaction/en/index.html>; Women's Refugee Commission, *Unpacking Gender: The Humanitarian Response to the Syrian Refugee Crisis in Jordan*, March 2014, available at <https://www.womensrefugeecommission.org/resources/gender-issues/985-unpacking-gender-the-humanitarian-response-to-the-syrian-refugee-crisis-in-jordan>; Women's Refugee Commission, Protecting and empowering women and girls in situations of mass displacement, Understanding Large Movements of Refugees and Migrants: GMG multi-stakeholder meeting in preparation for the High-level Plenary Meeting of the General Assembly on addressing large movements of refugees and migrants, 25 April 2016, available at [http://www.un.org/en/development/desa/population/migration/events/other/other/documents/250416\\_WOMENS\\_REFUGEE\\_COMM\\_Marcy\\_Hersh.pdf](http://www.un.org/en/development/desa/population/migration/events/other/other/documents/250416_WOMENS_REFUGEE_COMM_Marcy_Hersh.pdf)

<sup>131</sup> International Convention on the Rights of All Migrant Workers and Members of Their Families, art. 16 (2); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (b); Committee Against Torture, General Comment No. 3: Implementation of article 14 by States parties, CAT/C/GC/3, 19 November 2012, para.18; CEDAW, General recommendation No.26 on women migrant workers, paras.21, 26(i); CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations,

women-only spaces that provide private spaces for women to rest, receive information and access a range of targeted services including psychosocial support, trauma counselling, legal advice, health services, and non-food items.<sup>132</sup>

4. Provide training, monitoring and supervision of Government agents and private sector actors to ensure border police and immigration officials are adequately equipped, trained, supervised and monitored for non-discriminatory practices and responsiveness to the gender-specific needs and human rights of women and girl migrants.<sup>133</sup>
5. Ensure a robust gender analysis of the differential impacts of migration policies and programmes on migrants of all genders and ages, including those regarding access to visas, residence permits, employment, and labour rights. Give special attention to the ways in which women and girls are understood only as victims in need of protection as this can be used to justify restricting the mobility of women and girls on the mistaken premise that this is a means of protection.<sup>134</sup> Review and amend any gender discriminatory restrictions on migration in law or practice that limit opportunities for women and girls or that do not recognise their capacity and autonomy to make their own decisions.<sup>135</sup> Ensure gender equity in relevant policies including those regarding access to residence permits, employment, and labour rights.

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CEDAW/C/GC/30, 18 October 2013, para.80(k); CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, paras.15, 22, 23, 46, 50(i); Committee on the Elimination of Racial Discrimination, General Recommendation 25: Gender Related Dimensions of Racial Discrimination (2000), para.2; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.21, 22; Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) Article 6: Women and girls with disabilities, CRPD/C/GC/3, 2 September 2016, para.49; General Assembly, Resolution 70/130 adopted on 17 December 2015: Violence against women migrant workers, A/RES/70/130, 8 February 2016; General Assembly, Report of the Secretary-General on violence against women migrant workers, A/70/205, 27 July 2015, para.67; Inter-Agency Standing Committee 2015, *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing risk, promoting resilience and aiding recovery*, available at: [gbvguidelines.org](http://gbvguidelines.org); Women's Refugee Commission, *EU-Turkey Agreement Failing Refugee Women and Girls* (2016), available at <https://www.womensrefugeecommission.org/images/zdocs/EU-Turkey-Refugee-Agreement-Failing.pdf>

<sup>132</sup> UN Women, *Gender Assessment of the Refugee and Migration Crisis in Serbia and FYR Macedonia*, UN Women Europe and Central Asia Regional Office, January 2016.

<sup>133</sup> CEDAW, General recommendation No.26 on women migrant workers, para.25(a); CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, paras.34, 44

<sup>134</sup> General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, para.123, see also para.59

<sup>135</sup> CEDAW, General recommendation No.26 on women migrant workers, paras.24(a), 26(a); CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, para.40; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para.8, SDG Targets 5.1, 5.5, 16(b); ILO Committee of Experts, Promoting fair migration: General Survey concerning the migrant workers instruments, ILC.105/III(1B), 2016, para.543.

6. Employ a gender lens through all stages and all aspects of the response to situations of mixed and/or large movements of migrants, including specific consideration of gender in the context of bilateral and multilateral agreements, detention, deportation as well as return or expulsion.<sup>136</sup>
7. Involve a cross-section of women migrants of different nationalities and including adolescent girls, women-headed households, pregnant women, women with disabilities, and other women and girls in drafting and regularly reviewing laws, policies and programmes to ensure they are adequate to their needs and human rights.<sup>137</sup>

## Principle 12:

Ensure the enjoyment of the highest attainable standard of physical and mental health of all migrants.

### Guidelines:

1. Ensure health systems are inclusive and create legal and administrative mechanisms that make this a reality in practice. Clearly reject the use of migration status as a basis to exclude people from accessing health care in the public system. Promote migrant-responsive health policies and programme interventions that can provide equitable, affordable and acceptable access to essential health promotion, disease prevention, access to medicines, and good quality care for migrants, regardless of status.<sup>138</sup> Ensure national plans of action on health are inclusive of migrants regardless of status.
2. Provide timely and accurate information on migrants' health issues, access to health services including primary health, and their health rights. This should include information on sexual and reproductive health services, access to water, sanitation, and food, and rehabilitative as well as

<sup>136</sup> General Assembly, Report of the Secretary-General on violence against women migrant workers, A/70/205, 27 July 2015, para.68; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, para.123; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para.20, SDG Target 1(b); UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.31; OHCHR, Addressing gender dimensions in large-scale movements of refugees and migrants: Joint Statement by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), the Committee on the Elimination of Discrimination against Women (CEDAW), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), 19 September 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20521&LangID=E>.

<sup>137</sup> Committee on the Elimination of Discrimination against Women, General recommendation No.26 on women migrant workers, General Assembly, para 23(b); CEDAW, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/2010/47/GC.2, 19 October 2010, para.27; Report of the Secretary-General on violence against women migrant workers, A/70/205, 27 July 2015, para.69; UN Women, *Closing the Gender Gap in Humanitarian Action*, available at <http://interactive.unwomen.org/multimedia/infographic/humanitarianaction/en/index.html>

<sup>138</sup> CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), contained in Document E/C.12/2000/4, para.34

emergency medical care that are available to migrants along migratory routes and at reception points in a language and format that migrants can understand.<sup>139</sup>

3. Provide access to rights-based health services, and ensure that necessary health and social services are delivered to migrants in a gender-responsive, culturally and linguistically appropriate way without stigma, through advocacy and the provision of cultural mediators; and by enforcing, when necessary, laws and regulations that prohibit discrimination. These health facilities, goods, services and conditions should include clinical diagnosis, treatment and health promotion, and timely vaccinations for children<sup>140</sup>, tailored to the needs of migrants and in line with human rights standards of non-discrimination, non-stigmatizing, voluntary testing, informed consent, adequate pre- and post-test counselling, confidentiality and privacy.<sup>141</sup> They should also be linked to accessing and continuing treatment, care and support.
4. Provide access to rights-based, comprehensive and integrated sexual and reproductive health information and services, including, inter alia, menstrual hygiene products, safe and effective methods of modern contraception; emergency contraception; maternal health care including emergency obstetric services, pre- and post-natal care; safe and accessible abortion care; prevention, treatment, care and support for sexually transmitted infections including HIV, and

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<sup>139</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the right to the highest attainable standard of health, paras.3, 11, 12(b), 14, 18, 21, 22, 23, 34, 35, 36, 37, 44(d), 50; CESCR, General Comment 6: The economic, social and cultural rights of older persons, 1995, para 34; Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, 1 July 2003, paras.26-33, 39(b), 40; CRC, General comment No. 15: The right of the child to the enjoyment of the highest attainable standard of health (Article. 24), CRC/C/GC/15, 14 March 2013, paras.10, 15, 54, 58, 59, 69, 114; CEDAW, General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/2010/47/GC.1, 19 October 2010, paras.18, 46; N Principles for Older Persons, Principles 11, 14; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para.26, SDG Target 3.8

<sup>140</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the right to the highest attainable standard of health, paras.36, 44(b); Committee on the Rights of the Child, General comment No. 15: The right of the child to the enjoyment of the highest attainable standard of health (Article. 24), CRC/C/GC/15, 14 March 2013, para.83; OHCHR, *Study on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration*, A/HRC/15/29, 5 July 2010, para. 63.

<sup>141</sup> The Committee on Economic, Social and Cultural Rights notes that States have an obligation to ensure that all migrants have equal access to preventive, curative and palliative health services, regardless of their migration or residence status and documentation, General Comment No. 14 (2000) on the right to the highest attainable standard of health, para. 34; The principle of non-discrimination when implementing health measures is also provided by the International Health Regulations (IHR) (2005) in Article 42; see also, CESCR, General comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 30; The Convention on the Rights of the Child, Article 24; CRC General Comment No. 3 on HIV/AIDS and the rights of the child, CRC/GC/2003/3, 17 March 2003, paras. 21 and 28; Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination against non-citizens, CERD/C/64/Misc.11/rev.3 (2004), paras.29, 36; Committee on Migrant Workers, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.72-74; Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) Article 6: Women and girls with disabilities, CRPD/C/GC/3, 2 September 2016, paras.39, 49; Report of the Special Rapporteur on the human rights of migrants, A/HRC/14/30, 16 April 2010; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (2014), Guidelines 6.6 and 6.7; Parliamentary Assembly of the Council of Europe, Europe's boat people: mixed migration flows by sea into southern Europe, Resolution 1637 (2008), para.9.13.

specialised care for survivors of sexual violence and abuse.<sup>142</sup> Provide, as a priority, a minimum initial service package for reproductive health.<sup>143</sup>

5. Any HIV testing offered should be conducted in a voluntary manner, with pre-and post-test counselling, informed consent and in privacy; results should be confidential. There should be no negative consequences of testing HIV positive such as expulsion, restriction of freedom of movement, or denial of access to care, as these represent a violation of rights and do not serve public health objectives.<sup>144</sup>
6. Develop strategies to ensure adequate information and adherence and continuity of care, especially during mobility, for the management of long-term or chronic health needs.<sup>145</sup>
7. Recognise migrants may have particular and often urgent mental health needs and ensure access to culturally-appropriate and gender-responsive mental health care, including at reception and through referrals to appropriate secondary services. Ensure children, both accompanied and unaccompanied, have access to specific care and psychological support, which takes into account that they experience very high stress levels and have lower coping levels.

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<sup>142</sup> Committee on Economic, Social and Cultural Rights, General comment No.22 on the Right to sexual and reproductive health, E/C.12/GC/22, 4 March 2016; Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, 1 July 2003, in particular, paras.20, 28, 31, 39(c), 40, 41(a); CRC, General comment No. 15: The right of the child to the enjoyment of the highest attainable standard of health (Article. 24), CRC/C/GC/15, 14 March 2013, paras.10, 54, 56, 60, 69; Commission on the Status of Women, 58th Session, Challenges and achievements in the implementation of the Millennium Development Goals for women and girls: Agreed conclusions, E/CN.6/2014/L.7, 25 March 2014, paras.23, 42(o); Commission on the Status of Women, Agreed conclusions on women's empowerment and the link to sustainable development, contained in the report of the session, UN Doc. E/2016/27-E/CN.6/2016/22, paras.23(k)(o); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para.26, SDG Targets 3.1, 3.7, 5.6; UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.30; *Agenda For Humanity: Annex to the Report of the Secretary-General for the World Humanitarian Summit*, Core responsibility 3.D: Empower and protect women and girls: Guarantee access to sustainable and dignified livelihoods and comprehensive sexual and reproductive health services, available at <https://sustainabledevelopment.un.org/content/documents/2282agendaforhumanity.pdf> and UN Secretary General, *Standing Up for Humanity: Committing to Action: Chair's Summary*, World Humanitarian Summit 2016, Section III: Leave No One Behind, available at <https://consultations.worldhumanitariansummit.org/bitcache/5171492e71696bcf9d4c571c93dfc6dcd7f361ee?vid=581078&disposition=inline&op=view>; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 7.6

<sup>143</sup> Interagency Working Group (IAWG) on Reproductive Health in Crises, *Minimum Initial Service Package (MISP) for Reproductive Health in Crisis Situations*, available at <https://www.womensrefugeecommission.org/srh/emergency-response/misp>

<sup>144</sup> General Assembly, Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS, A/RES/65/277, 8 July 2011, paras.39-41, 59(f), 60, 61, 77, 80, 84; Human Rights Council, The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), A/HRC/RES/16/28, 13 April 2011, paras.1, 8(e), 14, 16, 20; UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.30

<sup>145</sup> General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 3.3; UNHCR, *Working with Persons with Disabilities in Forced Displacement*, 2011, available at <http://www.unhcr.org/4ec3c81c9.pdf>

Provide the necessary counselling for migrants who have lost family members en route. Design and deliver mental health promotion programmes in partnership with migrants.<sup>146</sup>

8. Develop procedures and standards on the establishment of clear and binding firewalls between public health service providers and immigration enforcement authorities or private actors, and ensure their implementation in practice.<sup>147</sup>
9. Ensure migrants who are detained are held in conditions that meet all requirements of health, with access to necessary healthcare services including for sexual and reproductive health, mental health conditions, free of charge and without discrimination on the grounds of their migration or residence status.<sup>148</sup>

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<sup>146</sup> Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), para.17, 22, 26, 27, 36, 49, 53; Committee on the Rights of the Child, General Comment No. 4 (2003), Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, 1 July 2003, paras.6, 10, 35, 39(i), 41(a); Committee on the Rights of the Child, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, 2005, paras.22, 44, 48; Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, (General Assembly resolution 46/119 of 17 December 1991, annex); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 3.4; Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration, A/HRC/15/29, para 51; UNHCR, IOM and MHPSS.net and signatory agencies, *Mental Health and Psychosocial Support for Refugees, Asylum Seekers and Migrants on the Move in Europe: A Multi-Agency Guidance Note*; Inter-Agency Standing Committee, *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings*, IASC, 2007; Y. Fassil and A. Burnett, *Commissioning mental health services for vulnerable adult migrants: Guidance for commissioners*, MIND, with the support of the Faculty for Homeless and Inclusion Health/Pathway, August 2014, available at <http://www.crisiscareconcordat.org.uk/wp-content/uploads/2015/02/Vulnerable-Migrants-guidance-for-commissioners-August-2014-FINAL.pdf>; C. Bailey, Experts sound alarm over mental health toll borne by migrants and refugees, *The Guardian*, 8 June 2016, available at <https://www.theguardian.com/global-development/2016/jun/08/experts-sound-alarm-mental-health-toll-migrants-refugees-depression-anxiety-psychosis>

<sup>147</sup> With specific reference to health services, the Committee on Migrant Workers affirms: “States parties shall not require public health institutions to report or otherwise share data on the migration status of a patient to immigration authorities, and health care providers should also not be required to do so” – General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.74. See also more generally, *definitions* (this document), and EU Fundamental Rights Agency (2013), *Apprehension of migrants in an irregular situation*, available online at <https://fra.europa.eu>, preamble; F. Crépeau and B. Hastie, The Case for ‘Firewall’ Protections for Irregular Migrants: Safeguarding Fundamental Rights, *European Journal of Migration and Law* 17 (2015) 157–183; European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination, adopted on 16 March 2016, Council of Europe, Strasbourg, CRI(2016)16, available at [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N16/REC-16-2016-016-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N16/REC-16-2016-016-ENG.pdf)

<sup>148</sup> International Covenant on Civil and Political Rights, Article 10.1; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 17.1; United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), A/C.3/65/L.5, 6 October 2010, Rules 6-18, 25(2), 34, 35, 38, 39, 41(d), 48, 51(1); United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), E/CN.15/2015/L.6/Rev.1, Rules 13, 18, 19(1), 22, 24-35, 42, 46, 84(2), 92, 105, 109-110; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.78; Human Rights Council, Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para.65; Human Rights



## Principle 13:

### Safeguard the right of migrants to an adequate standard of living.

#### Guidelines:

1. Make provisions for the access of migrants, including in temporary locations including reception facilities, to an adequate standard of living for themselves and their families, including adequate safe food and nutrition in a quantity and quality sufficient to satisfy an individual's dietary needs and culturally acceptable, potable water and sanitation, clothing and adequate housing. Ensure these are accessible to all migrants including migrants with disabilities and pregnant, new and breastfeeding mothers.<sup>149</sup> Provide a standard of living adequate for the development of migrant children and the children of migrants.<sup>150</sup>
2. Ensure migrants have access to shelter with sufficient facilities to meet their needs including their right to privacy and adequate to protect them from threats to their safety.<sup>151</sup> Ensure migrants are included in national plans of action on housing, regardless of status.<sup>152</sup>

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Council, Report of the Special Rapporteur on the human rights of migrants, April 2012, A/HRC/20/24, paras.25 and 26; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, para.90.

<sup>149</sup> International Covenant on Economic, Social and Cultural Rights, Article 11(1). See also Convention on the Elimination of All Forms of Discrimination Against Women Article 14(2), Convention on the Rights of the Child Article 24(2), Article 27, Convention on the Rights of Persons with Disabilities, Article 28. Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), in E/1992/23, 13 December 1991; CESCR, General Comment 6: The economic, social and cultural rights of older persons, 1995, para 32; CESCR General Comment No. 12 on the right to adequate food, in E/C.12/1999/5, 12 May 1999, paras. 38, 39; CESCR General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), E/C.12/2002/11, 20 January 2003, para.34; CESCR, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009; Committee on the Rights of Persons with Disabilities, General comment No. 2: Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014, para.42; CRPD, General comment No. 3: Article 6: Women and girls with disabilities, CRPD/C/GC/3, 2 September 2016, paras.55, 59; UN Principles for Older Persons, Principle 14; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Targets 6.1, 6.2, 11.1. See also UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.10: “we stress [migrants’] need to live their lives in safety and dignity”; UN, Habitat III: New Urban Agenda, Outcome document, Quito, 10 September 2016, paras.28; UNHCR, *Working with Persons with Disabilities in Forced Displacement*, 2011, available at <http://www.unhcr.org/4ec3c81c9.pdf>

<sup>150</sup> Convention on the Rights of the Child, Article 27.

<sup>151</sup> According to the Commission on Human Settlements, adequate shelter is defined as “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.” UN General Assembly Global Strategy for Shelter to the Year 2000, A/RES/46/163 19 December 1991; General Assembly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/65/261, 9 August 2010, on migration and the right to adequate housing; see also General Assembly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/66/270, 5 August 2011, on the elements of a general framework of disaster response based on the right to adequate housing; L. Farha (2002) Is There a Woman in the House? Re/Conceiving the Human Right to Housing. *Canadian Journal of Women and the Law* 14(1), 118–41; Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination against non-citizens, CERD/C/64/Misc.11/rev.3 (2004), para.29, recommends States should respect the right of non-citizens to housing; OHCHR and UN Habitat, *The Right to Adequate Housing*, Fact Sheet No.21 (Rev.1), May 2014; UN,

3. Ensure any evictions or planned relocation of migrants considered to be justified are carried out in strict compliance with the relevant provisions of international human rights law, with the full, prior and informed consent of those being evicted, and in accordance with general principles of reasonableness and proportionality. Ensure that migrants are not subjected to forced eviction and are provided an effective remedy if their rights are violated.<sup>153</sup>
4. Develop procedures and standards to establish clear and binding firewalls between public or private service providers, public or private housing providers, and immigration enforcement authorities and ensure that irregular migrants, or private actors who facilitate them exercising their right to an adequate standard of living, are not criminalised.<sup>154</sup> Ensure migrants are able to access homelessness shelters regardless of status.<sup>155</sup>
5. Ensure facilities do not restrict the day-to-day movements of migrants unnecessarily, and that migrants are not unwillingly hosted, accommodated in closed shelter facilities operated by State or non-State actors, or jails or migration detention centres. This includes the de-facto restriction of movement, in particular of women, child, or LGBTI migrants or migrants with a disability, due to fear of sexual, gender-based or other violence inside or outside the facility.

#### Principle 14:

#### Guarantee the right of migrants to work, in just and favourable conditions

##### Guidelines:

1. Develop national policy, and national action plans as appropriate, to ensure the protection of the rights of all migrants in the labour market, including in respect of access to decent work and

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Habitat III: New Urban Agenda, Outcome document, Quito, 10 September 2016, paras.20, 28, 32, 33; UN Basic Principles and Guidelines on Development- Based Evictions and Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, para.43

<sup>152</sup> See for example, UN, Habitat III: New Urban Agenda, Outcome document, Quito, 10 September 2016, para.48.

<sup>153</sup> Committee on Economic, Social and Cultural Rights, General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions, 1997; UN, Basic Principles and Guidelines on Development-Based Evictions and Displacement. Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, para.56(e).

<sup>154</sup> See *definitions*, and EU Fundamental Rights Agency (2013), *Apprehension of migrants in an irregular situation*, available online at <https://fra.europa.eu>, preamble; F. Crépeau and B. Hastie, The Case for 'Firewall' Protections for Irregular Migrants: Safeguarding Fundamental Rights, *European Journal of Migration and Law* 17 (2015) 157–183; European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination, adopted on 16 March 2016, Council of Europe, Strasbourg, CRI(2016)16, available at [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N16/REC-16-2016-016-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N16/REC-16-2016-016-ENG.pdf)

<sup>155</sup> Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, E/CN.4/2005/48 3 March 2005, paras.13, 43; Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/31/54, 30 December 2015, paras.2, 16, 17, 34, 46.

livelihood,<sup>156</sup> given that everyone is entitled to the right to work and the right to just and favourable conditions of work, without discrimination on any basis.<sup>157</sup>

2. Ensure equality of treatment and non-discrimination of migrants with nationals and among all workers without distinction in respect of the terms and conditions of employment, including wages, rights in the workplace, social dialogue including trade union rights, recognition of skills and qualifications, and social protection.<sup>158</sup> Ensure migrants are not discriminated against on the basis of occupation, recognising that many migrants, especially women migrants, are restricted to work in the informal economy and are often excluded from legal protection under national labour laws and from national statistics and legal protection.<sup>159</sup>
3. Strengthen or make provision for adequate supervision by the competent labour market authorities/duly authorized bodies, such as labour inspection services, of working conditions for migrants. Establish effective complaints mechanisms to ensure that workers, regardless of nationality, migration or residence status, are able to take complaints against their employers, and access remedies including unpaid wages and compensation for violations of labour rights. Ensure unrestricted and effective access to judicial remedies and reparation for violations of their rights in the workplace without fear of reprisals and expulsions, and regardless of their migration status. Ensure these mechanisms are not used to check the migration status of workers by establishing and publicising clear and binding firewalls between complaints

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<sup>156</sup> See the ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference at its 99<sup>th</sup> Session, Geneva, 10 June 2008, available at [http://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS\\_099766/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang--en/index.htm). See also, International Covenant on Economic, Social and Cultural Rights, Articles 6.1 and 7; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 25; CESCR General Comment No. 18 (2005) on the right to work, para. 6; Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination against non-citizens (2004), paras. 33-35; Committee on Migrant Workers, General Comment No. 2 on the Rights of Migrant Workers in an Irregular Situation and Members of their Families (2013), para. 62; UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.57; Report of the UN Secretary-General, *In Safety and Dignity: Addressing large movements of refugees and migrants*, A/70/59, 21 April 2016, para.65

<sup>157</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 23 (2016) on the Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 8 March 2016, para.5. The Committee specifies this applies to migrant workers and goes on to clarify that migrant workers are not just those in the country through regular / documented means (para.47(v)) and also CESCR General Comment No. 18: The Right to Work (Art. 6 of the Covenant), E/C.12/GC/18, 6 February 2006, para.18; Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination against non-citizens, CERD/C/64/Misc.11/rev.3 (2004), para.29; ILO Decent Work framework; ILO Declaration on Fundamental Principles and Rights at Work Declaration, 1998; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, paras.9, 27, SDG Target 8.8

<sup>158</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 23, para.22; Committee on the Elimination of Discrimination against Women, General recommendation No.26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.13-15; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the combined second and third periodic reports of Senegal, CMW/C/SEN/CO/2-3, 20 May 2016, para.23(d); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Targets 1.3, 10.4

<sup>159</sup> Committee on Economic, Social and Cultural Right, General Comment No. 23, ch.1 para.4, ch.II, paras.1, 26, 47(iv), 54, 56, 59, 62, 64.

mechanisms, labour inspection services and immigration enforcement authorities, and ensure their implementation in practice.<sup>160</sup>

4. Provide access to workers' compensation schemes in the case of occupational injuries or accidents, irrespective of migration or residence status.<sup>161</sup>

### Principle 15:

Protect the right of migrants to education, including primary and secondary education as well as higher education and vocational and language training.

#### Guidelines:

1. Develop procedures, mechanisms and partnerships to ensure the access of all migrant children, including separated and unaccompanied children, as well as children in irregular status or children whose parents or guardians are in irregular status, to adequate and appropriate education at all levels, on the basis of equality of treatment with nationals and with primary education free of charge for all.<sup>162</sup> All aspects of education should be provided on a non-

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<sup>160</sup> Specifically regarding labour inspectors, see CESCR General Comment No. 23, para.54. On firewalls more generally, see *definitions*, and EU Fundamental Rights Agency (2013), *Apprehension of migrants in an irregular situation*, available online at <https://fra.europa.eu>, preamble; EU Fundamental Rights Agency (2013), *Apprehension of migrants in an irregular situation*, available online at <https://fra.europa.eu>, preamble; F. Crépeau and B. Hastie, The Case for 'Firewall' Protections for Irregular Migrants: Safeguarding Fundamental Rights, *European Journal of Migration and Law* 17 (2015) 157–183; European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination, adopted on 16 March 2016, Council of Europe, Strasbourg, CRI(2016)16, available at [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N16/REC-16-2016-016-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N16/REC-16-2016-016-ENG.pdf). With respect to the right to education, see Committee on Migrant Workers, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.77; ILO Committee of Experts, 2006 General Survey on the labour inspection instruments, paras.78 and 161, available at [http://www.ilo.ch/public/libdoc/ilo/P/09661/09661\(2006\)1B.pdf](http://www.ilo.ch/public/libdoc/ilo/P/09661/09661(2006)1B.pdf); ILO Committee of Experts, Promoting fair migration: General Survey concerning the migrant workers instruments, ILC.105/III(1B), 2016, paras.480-482; European Union Agency for Fundamental Rights (FRA), *Apprehension of migrants in an irregular situation*, 2013, principles 4 and 5.

<sup>161</sup> ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), Article 1; CESCR General Comment No. 23, paras.29, 57.

<sup>162</sup> ICESCR Articles 13.1(a) and (b), 14; Convention on the Rights of the Child, Articles 23(3), 28; Convention on the Rights of Persons with Disabilities Article 24; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 30; The Committee on the Rights of the Child, General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, paras.41, 42; Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant), 10 May 1999, E/1992/23, (1999), paras.6 and 7; CESCR, General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, in particular paras.9, 13, 24, 34; CESCR, General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, para. 30; Committee on the Elimination of Racial Discrimination, General Recommendation 30: Discrimination against non-citizens (2004), CERD/C/64/Misc.11/rev.3, para.30; Committee on Migrant Workers, General Comment No. 1 on Migrant Domestic Workers, CMW/C/GC/1, 23 February 2011, para.57; Committee on Migrant Workers, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.74-79; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para.20, SDG Targets 4.1, 4.5; General Assembly, Resolution GA70/147 adopted on 17 December 2015, Protection of migrants, A/RES/70/147, 25 February 2016, para.5(i); UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General

discriminatory basis, including regarding examinations, qualification certification, vocational training, and financial subsidies.

2. Support migrants' access to vocational training and lifelong learning opportunities that help them acquire the knowledge and skills needed to take advantage of opportunities and to participate fully in society.<sup>163</sup> Promote practical access by supporting migrants' care needs or requirements.
3. Develop and publicise procedures and standards on the establishment of clear and binding firewalls between schools and other education service providers and immigration enforcement authorities, making it clear to administrators, teachers and parents that they are not required to report or share data on the regular or irregular status of pupils or their parents.<sup>164</sup> Ensure immigration authorities do not conduct enforcement operations on or near school or other education premises.<sup>165</sup>
4. Implement or strengthen measures to recognise migrants' educational and vocational qualifications and transfer educational achievements.<sup>166</sup>
5. Introduce inclusive curriculum content that fosters intercultural dialogue and understanding and addresses discrimination.<sup>167</sup>

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Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, paras.32, 39; Human Rights Council, Human rights of migrants, A/HRC/RES/20/3, 16 July 2012, in particular paras.2 to 4; the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization (UNESCO), art. 3 (e).

<sup>163</sup> Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005, para.42; Committee on Economic, Social and Cultural Rights, General Comment 6: The economic, social and cultural rights of older persons, 1995, para 36; UN Principles for Older Persons, Principle 16; General Assembly, Resolution GA70/147 adopted on 17 December 2015, Protection of migrants, A/RES/70/147, 25 February 2016, para.5(j); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para.25, SDG Targets 4.3, 4.4

<sup>164</sup> See *definitions*, and EU Fundamental Rights Agency (2013), *Apprehension of migrants in an irregular situation*, available online at <https://fra.europa.eu>, preamble; EU Fundamental Rights Agency (2013), *Apprehension of migrants in an irregular situation*, available online at <https://fra.europa.eu>, preamble; F. Crépeau and B. Hastie, The Case for 'Firewall' Protections for Irregular Migrants: Safeguarding Fundamental Rights, *European Journal of Migration and Law* 17 (2015) 157–183; European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination, adopted on 16 March 2016, Council of Europe, Strasbourg, CRI(2016)16, available at [http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N16/REC-16-2016-016-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N16/REC-16-2016-016-ENG.pdf). With respect to the right to education, see Committee on Migrant Workers, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.77; European Union Agency for Fundamental Rights (FRA), *Apprehension of migrants in an irregular situation*, 2013, principles 4 and 5.

<sup>165</sup> Committee on Migrant Workers, General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.77.

<sup>166</sup> Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied or separated children outside their country of origin, 2005, para.42; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/69/302, 11 August 2014, paras.46(6), 64(f), 77(e), 96(o); General Assembly, Resolution 70/147: Protection of migrant, adopted on 17 December 2015, A/RES/70/147, 25 February 2016, paras.5(f) and 5(i); UNESCO's Conventions on the Recognition of Qualifications.

<sup>167</sup> UNESCO Convention on Promotion of the Diversity of Cultural Expressions Guidelines for the Prevention of Crime, Economic and Social Council resolution 2002/13, para.25(d); ICESCR Art.13.1 and the Committee on the

6. Develop and implement national plans of action on education and training that are inclusive of migrant students, without discrimination. Provide targeted training to teaching personnel at all levels and forms of education with the objective of fostering respect for cultural diversity.

#### Principle 16:

Uphold migrants' right to information through ensuring they are provided accessible, reliable, relevant and accurate information on their situation and rights.

#### Guidelines:

1. Provide migrants with reliable, relevant and accurate information on their situation, rights and how to avail themselves of such rights promptly, in a language they understand and in accessible formats.<sup>168</sup> Ensure the provision of child-friendly information in age-appropriate language and formats for migrant children.
2. Ensure that migrants enjoy freedom to seek, receive and impart information.<sup>169</sup> Make every effort to ensure migrants' easy, prompt, effective and practical access to accurate and reliable news and information through any media of their choice about their rights, situation, and practical matters.<sup>170</sup>
3. Develop and implement information campaigns based on consultation with affected individuals and communities to ensure that such information is targeted to protecting human rights and promoting safe alternatives to dangerous migration routes, helping individuals and their families in making informed individual decisions rather than solely focused on promoting an agenda intending to prevent movement.<sup>171</sup> Ensure information campaigns targeted at migrants do not foster an anti-migrant environment.
4. Provide access to the internet as a tool for migrants to exercise their human rights including the right to seek, receive and impart information and ideas of all kind, regardless of frontiers, and

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Rights of the Child, General Comment No.1 Article 29 (1): The Aims of Education, CRC/GC/2001/1, 17 April 2001; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 4.7.

<sup>168</sup> UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.42. And in the context of detention, see: UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. A/RES/43/173 (1988), Principle 13; Report of the Working Group on Arbitrary Detention, United Nations Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court (2015), A/HRC/30/37, para. 42 and 109.

<sup>169</sup> International Covenant on Civil and Political Rights, Article 19.2

<sup>170</sup> Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para.19; Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the European Union, CRPD/C/EU/CO/1, 2 October 2015, paras.34; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 16.10; UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, 2007, point 10: Information Strategy.

<sup>171</sup> Human Rights Council, Promotion and protection of the human rights of migrants in the context of large movements: Report of the United Nations High Commissioner for Human Rights, A/HRC/33/67, 13 October 2016, para.69 recognising there little systematic evaluation of such campaigns; see also, Evie Browne, Impact of communication campaigns to deter irregular migration, GSDRC Helpdesk Research Report 1248, University of Birmingham, July 2015, available at: <http://www.gsdrc.org/wp-content/uploads/2015/09/HQ1248.pdf>



through any media of their choice.<sup>172</sup> This should include new forms of information-sharing migrants are using to navigate their journeys, stay in contact with families, and share their experiences, including to safely report gender-based and sexual violence. Ensure migrants are able to retain and use their communication equipment at reception centres.

5. Ensure migrants' privacy online is protected as part of the realization of their right to information and in line with the protection of personal data. Commit to not tracking or collecting, storing or sharing data of migrants' journeys, location data, or communications through their use of digital technologies and media, or that of those providing assistance to migrants or reporting on the situation, to limit their human rights.<sup>173</sup>
6. Ensure greater protection for all media professionals, citizen-journalists and journalistic sources to promote a safe and enabling environment for journalists to perform their work reporting accurately on large or mixed movements independently and without undue interference. End impunity for attacks on media professionals.<sup>174</sup>

#### Principle 17:

Guarantee monitoring and accountability in all responses to large and/or mixed movements of migrants, including through protecting the right of migrants to appropriate and effective remedies.

#### Guidelines:

1. Establish or strengthen independent internal and external mechanisms to monitor the human rights impact of laws, policies and practices taken in response to or implemented in the context

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<sup>172</sup> Human Rights Council, The promotion, protection and enjoyment of human rights on the Internet, A/HRC/32/L.20, 27 June 2016.

<sup>173</sup> Human Rights Council, The promotion, protection and enjoyment of human rights on the Internet, A/HRC/32/L.20, 27 June 2016; see also, Human Rights Council, The right to privacy in the digital age, A/HRC/28/L.27, 24 March 2015, para.3: "Affirms that the same rights that people have offline must also be protected online, including the right to privacy"; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, paras.49-54; B. Frouws, M. Phillips, A. Hassan and M. Twigt, *Getting to Europe the 'WhatsApp' way: The use of ICT in contemporary mixed migration flows to Europe*, Danish Refugee Council and the Regional Mixed Migration Secretariat, Horn of Africa and Yemen, June 2016, available at [http://regionalmms.org/fileadmin/content/rmms\\_publications/RMMS%20Briefing%20paper%202\\_Social%20Media%20in%20Mixed%20MigrationUPLOAD.pdf](http://regionalmms.org/fileadmin/content/rmms_publications/RMMS%20Briefing%20paper%202_Social%20Media%20in%20Mixed%20MigrationUPLOAD.pdf) (on surveillance) and see also, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/32/38, 11 May 2016.

<sup>174</sup> Human Rights Council, Safety of journalists, A/HRC/21/L.6, 21 September 2012; Human Rights Council, Safety of journalists, A/HRC/33/L.6, 24 September 2016. See for example, Jean-Paul Marthoz, Journalists not welcome: Across Europe, press and migrants increasingly barred, *Committee to Protect Journalists*, 7 March 2016, <https://cpj.org/blog/2016/03/journalists-not-welcome-across-europe-press-and-mi.php>; Christina Vasilaki, Greece: The dangers of reporting on the refugee crisis, *Index on Censorship*, 19 July 2016, <https://www.indexoncensorship.org/2016/07/greece-dangers-reporting-refugee-crisis/>; OHCHR, *Summary of the Human Rights Council panel discussion on the safety of journalists*, A/HRC/27/35, 23 July 2014; UNESCO, UN Plan of Action on the Safety of Journalists and the Issue of Impunity, available at <http://en.unesco.org/partnerships/partnering/plan-action-safety-journalists-and-issue-impunity>.

of large and/or mixed movements of migrants.<sup>175</sup> Publish monitoring reports (while protecting confidentiality) in line with principles of accountability and transparency.

2. Ensure the accountability of State and non-State actors including private companies and military contractors involved in the response to large and/or mixed movements of migrants, such as those involved in search and rescue, implementing entry restriction measures such as pre-departure screening and decisions on access to transportation, providing services to migrants, or operating detention facilities.<sup>176</sup>
3. Ensure and facilitate unrestricted access of independent monitoring bodies, including national human rights institutions, ombudspersons, national preventive mechanisms and other relevant bodies to locations, including places of detention, and information required to effectively monitor human rights of migrants.<sup>177</sup> Enable civil society actors working with migrants to participate in monitoring and evaluating the human rights impact of governance measures. Share this information with the United Nations human rights treaty-monitoring bodies and special procedures and through the Universal Periodic Review process.<sup>178</sup> Ensure that mechanisms are put in place to implement recommendations by the national and international monitoring bodies.
4. Provide and publicise accessible complaints mechanisms that migrants can use without fear of retribution. Ensure prompt, impartial, and independent investigations of violations of human

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<sup>175</sup> See the Monitoring and accountability sections under each guideline in: OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, para.38; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, paras.117, 138, 139

<sup>176</sup> Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para.2; Human Rights Committee, General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para.8; Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 25 May 2009, paras.11, 12, 24, 37, 38, 39, 40; Committee against Torture, General Comment 2, Implementation of Article 2 by States Parties, CAT/C/GC/2, 24 January 2008, para. 18; Committee on the Elimination of Discrimination against Women, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para.25(b); CEDAW, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/2010/47/GC.2, 19 October 2010, paras.9, 10, 13, 17, 34, 36; CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013, paras.3, 10, 13, 15, 16, 17, 41; General Assembly, Protection of Migrants, Resolution 66/172 adopted on 19 December 2011, A/RES/66/172, 29 March 2012, para.4(e); OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, *Ibid.*

<sup>177</sup> Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Regional study: management of the external borders of the European Union and its impact on the human rights of migrants: Mission to Greece, A/HRC/23/46/add.4, 18 April 2013, para.102

<sup>178</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, *ibid.*; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 16.6, 16(a)



rights against migrants and bring State and non-State actors found to be responsible to justice through a fair trial.<sup>179</sup>

5. Ensure legislation and resources for the investigation and prosecution of corruption on the part of immigration authorities as well as the involvement or complicity of authorities in violations against migrants' human rights.<sup>180</sup>
6. Provide effective and timely remedies to migrants and their families that respond to the different types of violations experienced by migrants in large and/or mixed flows and ensure the provision of adequate and comprehensive reparations, irrespective of their migration status.<sup>181</sup>

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<sup>179</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, Guideline 1.10

<sup>180</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, Guidelines 2.11, 3.17; OHCHR, *Situation of migrants in transit*, A/HRC/31/35, 27 January 2016, paras.13, 14; United Nations Office on Drugs and Crime, *Corruption and the smuggling of migrants*, Issue paper, UNODC 2013; General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1, SDG Target 16.5

<sup>181</sup> References to the right to remedy applicable to migrants in large and/or mixed flows include: International Covenant on Civil and Political Rights, Articles 2.3, 9.5, 14.6; International Convention on the Elimination of All Forms of Racial Discrimination, Article 6; Convention Against Torture, Article 14; Convention on the Rights of the Child, Article 39; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Articles 15, 16.9, 18.6, 22.5; Declaration on the Elimination of Violence against Women, Article 4(d); Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 9.1, 9.2; ILO Convention No. 97, Migration for Employment Convention (Revised), 1949; ILO Convention No. 143, Migrant Workers (Supplementary Provisions) Convention; ILO Protocol 29, Protocol of 2014 to the Forced Labour Convention, 1930; Committee against Torture, General Comment No. 3: Implementation of article 14 by States parties, CAT/C/GC/3, 19 November 2012; Committee on Economic, Social and Cultural Rights, General Comment No. 20 on Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights); E/C.12/GC/20, 2 July 2009, para.40; Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, 4 March 2016, para.64; Committee on Economic, Social and Cultural Rights, General Comment No. 23 (2016) on the Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 8 March 2016, para.50, 57, 70, 75, 80; Committee on the Elimination of Discrimination against Women, General recommendation No. 19 on violence against women, A/47/38 (1992), para.24(i), (t(i)); Committee on the Elimination of Discrimination against Women, General recommendation No. 26 on women migrant workers, CEDAW /C/2009/WP.1/R, 5 December 2008, para.26(c),(l); Committee on the Elimination of Discrimination against Women, General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/2010/47/GC.1, 19 October 2010, para.33; Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination against non-citizens, CERD/C/64/Misc.11/rev.3 (2004), paras.18, 25; Committee on the Elimination of Discrimination against Women, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013, paras.79, 81(g); Committee on the Elimination of Racial Discrimination, General recommendation No. 35: Combating racist hate speech, CERD/C/GC/35, 26 September 2013, para.22; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, paras.28, 53; Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013, paras.15(c); Human Rights Committee, General Comment No. 15: The position of aliens under the Covenant (1986), para.10; General Assembly, Resolution 60/147: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A /RES/60/147, 21 March 2006; General Assembly, Protection of migrants: Resolution 70/147 adopted on 17

## Principle 18:

Respect and support the activities of human rights defenders and others working to rescue and provide assistance to migrants.

### Guidelines:

1. Provide a safe, accessible and enabling environment in which individuals and organizations working to support migrants can operate.<sup>182</sup> Ensure that the promotion and the protection of the human rights of migrants are not criminalised, and that human rights defenders are not prevented from enjoying human rights owing to their work, whether they operate individually or in association with others, while emphasizing that everyone shall respect the human rights of others.<sup>183</sup>
2. Develop and put in place sustainable public policies or programmes that support and protect human rights defenders at all stages of their work in a comprehensive manner.<sup>184</sup> Ensure legislation affecting the activities of human rights defenders, including any legislation and procedures governing the registration and funding of civil society organisations, is consistent with international human rights law.<sup>185</sup> This includes ensuring legislation designed to guarantee public safety and public order contains clearly defined provisions consistent with international human rights law, including the principle of non-discrimination, and that such legislation to

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December 2015, A/RES/70/147, 25 February 2016, paras.3(a), 4(o); Human Rights Council, Trafficking in persons, especially women and children: access to effective remedies for trafficked persons and their right to an effective remedy for human rights violations, A/HRC/20/L.1, 29 June 2012; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 9; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, para.II.A.7, II.C.13, Guidelines 1.10, 2.12, 2.13; 4.6; 7.9; 8.14; 9.5, 9.8, 9.22; OHCHR, *Basic principles on the right to an effective remedy for victims of trafficking in persons*, A/HRC/26/18, 2 May 2014, Annex.

<sup>182</sup> UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.61; Human Rights Council, Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements, A/HRC/32/L.22, 28 June 2016, para.10.

<sup>183</sup> Human Rights Council, Protecting human rights defenders, A/HRC/RES/22/6, 12 April 2013, para.11(a); General Assembly, Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Resolution adopted on 17 December 2015, A/RES/70/161, 10 February 2016, paras.1,2, 8, 10(a), 10(b), 15. See also, Special Rapporteur on the situation of human rights defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July 2011, pp.16-17.

<sup>184</sup> General Assembly, Human rights defenders, A/RES/70/161, para.12.

<sup>185</sup> Human rights defenders can also include trade unions, and so any legislation prohibiting or restricting the right to freedom of association (including forming or joining trade unions) would also be problematic in this context. See for example, International Covenant on Civil and Political Rights, Article 22; International Covenant on Economic, Social and Cultural Rights, Article 8; International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(d); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Articles 26, 40; ILO Declaration on Fundamental Principles and Rights at Work (1998); ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98); ILO Workers' Representatives Convention, 1971 (No. 135); ILO Collective Bargaining Convention, 1981 (No. 154).

impede or restrict the exercise of any human right or impose any limitations on the work and activities of human rights defenders.<sup>186</sup>

3. Take all necessary measures to ensure the protection of human rights defenders working with migrants, individually and in association with others, against any violence, threats, retaliation including threats of deportation, de facto or de jure adverse discrimination, pressure or any other arbitrary action, by State or non-State actors, as a consequence of their human rights work.<sup>187</sup>
4. End impunity by investigating and pursuing accountability for all attacks and threats by State and non-State actors against any individual, group or organ of society that is defending migrants' human rights, including against family members, associates and legal representatives, and by condemning publically all cases of violence, discrimination, intimidation and reprisals against them and provide effective compensation mechanisms to the defenders.<sup>188</sup>
5. Adopt or revise and implement national legal frameworks to protect any person who discloses information that they reasonably believe, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud or harm to the environment, public health or public safety. Ensure there are adequate internal institutional and external oversight mechanisms to provide effective and protective channels for such persons to motivate investigation and redress of the alleged wrongdoing.<sup>189</sup>

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<sup>186</sup> Human Rights Council, Protecting human rights defenders, A/HRC/RES/22/6, 12 April 2013, paras.3, 4, 10; General Assembly, National institutions for the promotion and protection of human rights, Resolution adopted on 17 December 2015, A/RES/70/163, 10 February 2016, para.5; Human Rights Council, Protecting human rights defenders addressing economic, social and cultural rights, A/HRC/31/L.28, 21 March 2016, para.11; General Assembly, Human rights defenders, A/RES/70/161, paras.10(c), (d).

<sup>187</sup> The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 12.2; Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders. Addendum: Observations on communications transmitted to Governments and replies received, A/HRC/31/55/Add.1, 22 February 2016, para.384; General Assembly, Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders, Resolution adopted on 18 December 2013, A /RES/68/181, 30 January 2014, paras.9, 21(d); General Assembly, Human rights defenders, A/RES/70/161, para.5; Human Rights Council, Protecting human rights defenders addressing economic, social and cultural rights, A/HRC/31/L.28, 21 March 2016, para.5

<sup>188</sup> General Assembly, Human rights defenders, A/RES/70/161, para.5; General Assembly, National institutions for the promotion and protection of human rights, Resolution adopted on 17 December 2015, A/RES/70/163, 10 February 2016, para.6; Human Rights Council, Protecting human rights defenders addressing economic, social and cultural rights, A/HRC/31/L.28, 21 March 2016, para.6; Special Rapporteur on the situation of human rights defenders, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July 2011, pp.14-15.

<sup>189</sup> Convention against Corruption, Article 33; Human Rights Council, Protecting human rights defenders addressing economic, social and cultural rights, A/HRC/31/L.28, 21 March 2016, para.13; General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/70/361, 8 September 2015; UN Office on Drugs and Crime, *Resource Guide on Good Practices in the Protection of Reporting Persons*, UNODC 2015, available at [https://www.unodc.org/documents/corruption/Publications/2015/15-04741\\_Person\\_Guide\\_eBook.pdf](https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf)

6. Express public support for the important role of human rights defenders and the legitimacy of their work, including by condemning, including publicly, all cases of violence and discrimination against migrants' human rights defenders, including women human rights defenders, underlining that such practices can never be justified.<sup>190</sup>

### Principle 19:

Improve the collection of disaggregated data on the human rights situation of migrants, while ensuring the right to privacy and protection of personal data.

#### Guidelines:

1. Produce and support qualitative research on migrants' experiences, with their consent and voluntary participation, to inform gender-responsive, human rights-based policies. Research should extend to the causes of, and decision-making of people in, these movements. Data should be permanently and irreversibly anonymised to ensure its use does not compromise privacy rights and that it cannot be used for immigration enforcement purposes.<sup>191</sup>
2. Work towards collating and sharing rights-based disaggregated data on migrants in vulnerable situations. Strengthen measures to collect specific data on the number, age and gender of migrants crossing maritime, land or air borders, including those who are killed, missing, injured, or victims of crime while attempting these crossings, to measure trends and raise awareness on risks.<sup>192</sup> Prioritise the collection of quantitative and qualitative rights-based disaggregated data and indicators on immigration detention, and on the alternatives applied and the reasons for applying them and discounting other options.
3. Gather data on complaints, investigations, prosecutions, and convictions of all instances of human rights violations perpetrated by State or non-State actors against migrants, with a view to sanctioning and preventing such abuses.<sup>193</sup>
4. Disaggregate data on the human rights situation of migrants by age and gender as well as other grounds as relevant, such as migratory status, disability, sexual orientation or gender identity, and/or minority status.<sup>194</sup>

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<sup>190</sup> Human Rights Council, Protecting human rights defenders, A/HRC/RES/22/6, 12 April 2013, paras.5, 18; Human Rights Council, Protecting human rights defenders addressing economic, social and cultural rights, A/HRC/31/L.28, 21 March 2016, para.4; General Assembly, Human rights defenders, A/RES/70/161, para.4

<sup>191</sup> OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 10.11; Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40, 17 April 2013, paras.47-49.

<sup>192</sup> UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.25

<sup>193</sup> OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 10.10

<sup>194</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/2010/47/GC.1, 19 October 2010, para.32; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, paras.57, 74(g), SDG Target 17.18; see also ECOSOC, Statistical Commission, Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, E/CN.3/2016/2/Rev.1, 19 February 2016, Annex IV: Final list of proposed Sustainable Development Goal indicators; UN General Assembly, New York Declaration for

5. Work collaboratively to develop international standardised approaches for monitoring indicators on and variables relating to migrants' human rights in order to obtain reliable statistical data on international migration. This data should inform the design of evidence-based policy- and decision-making in all relevant aspects of sustainable development and migration policy.<sup>195</sup>
6. Ensure research and data collection methodologies are firmly grounded in ethical principles, including an understanding of the need not to re-traumatize or otherwise harm migrants, as well as international standards and principles for the protection of personal data.<sup>196</sup> Ensure digital biometric technologies are never used to facilitate hi-tech forms of racial and gender profiling, increase vulnerability to surveillance, or are otherwise used, stored or processed in a way that can cause risks to individuals.<sup>197</sup>
7. Monitor collection of all data on migrants (including biometric data) to ensure it is obtained lawfully, stored, transferred and disposed of in accordance with international standards and best practice guidelines on data protection and privacy.<sup>198</sup> Personal data, including biometrics data, needs to be handled in a confidential manner and be subject to a high level of data security to prevent unauthorized access, loss, or damage.

#### Principle 20:

Build capacity and promote cooperation amongst and between all relevant stakeholders to ensure a gender-responsive and human rights-based approach to migration governance and to understand and address the drivers of the movement of migrants in a vulnerable situation.

#### Guidelines:

1. Establish or strengthen multi-stakeholder partnerships and cooperation including with national human rights institutions, intergovernmental organisations, international organisations, donors, civil society organisations including migrants' associations, women's organisations, trade unions,

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Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.40.

<sup>195</sup> General Assembly, Declaration of the High-level Dialogue on International Migration and Development, Resolution adopted 3 October 2013, A/RES/68/4, 21 January 2014, para.28; General Assembly, Protection of migrants, Resolution 70/147 adopted on 17 December 2015, A/RES/70/147, 25 February 2016, para.9(f); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Targets 16.7, 17.18; see also ECOSOC, Statistical Commission, Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators, E/CN.3/2016/2/Rev.1, 19 February 2016, Annex IV: Final list of proposed Sustainable Development Goal indicators; OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation*, OHCH 2012, available at [http://www.ohchr.org/Documents/Publications/Human\\_rights\\_indicators\\_en.pdf](http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf). See also O. Tulloch, F. Machingura and C. Melamed, *Health, migration and the 2030 agenda for sustainable development*, ODI Briefing papers, July 2016, available at <https://www.odi.org/publications/10477-health-move-impact-migration-health>

<sup>196</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 3.4

<sup>197</sup> Privacy International, International Women's Day 2016, p.20, Privacy International Global Network, available at [https://www.privacyinternational.org/sites/default/files/iwd\\_2016.pdf](https://www.privacyinternational.org/sites/default/files/iwd_2016.pdf), <https://www.privacyinternational.org/node/796>

<sup>198</sup> IOM, *Practical Guide on Information provision regarding return and reintegration in countries of origin*, IOM, 2010, p.13.

representative employers' organizations and private sector actors, at the local, national, regional and international levels to centre and uphold all the human rights of all migrants and avoid approaches that might increase the risks to migrants.<sup>199</sup> Establish terms and conditions for cooperation and coordination among stakeholders with clear areas of responsibility, including referral procedures, and regular information exchange.<sup>200</sup>

2. Cooperate in enhancing national and collective responses that are sound, equitable, humane, sustainable, and age-, gender- and disability-responsive, and that address the reasons people leave their homes, their need for safe passage and protection and both the immediate and long-term needs and rights of those who cross into other countries.<sup>201</sup> Enhance sufficient, accessible and safe migration pathways, through both extraordinary and permanent avenues, and promote holistic approaches that take into account the demand for such pathways that come both from receiving societies as well as the necessity for migrants to reunite with family and seek protection of their rights.<sup>202</sup>

<sup>199</sup> See General Assembly, Protection of Migrants, Resolution 66/172 adopted on 19 December 2011, A/RES/66/172, 29 March 2012, para.9(e); General Assembly, Declaration of the High-level Dialogue on International Migration and Development, Resolution adopted 3 October 2013, A/RES/68/4, 21 January 2014, paras.3, 10; General Assembly, Protection of migrants, A/RES/70/147, 25 February 2016, paras.1, 9; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para.39, SDG Target 17.17; Human Rights Council, Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements, A/HRC/32/L.22, 28 June 2016, para.1; Report of the UN Secretary-General, *In Safety and Dignity: Addressing large movements of refugees and migrants*, A/70/59, 21 April 2016, paras.36, 67; *The Grand Bargain – A Shared Commitment to Better Serve People in Need*, World Humanitarian Summit, 23 May 2016, para.10.2; General Assembly, Declaration of the High-level Dialogue on International Migration and Development, Resolution 68/4 adopted on 3 October 2013, A/RES/68/4, 21 January 2014, para.23; UN General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.7.

<sup>200</sup> UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, 2007, point 1.

<sup>201</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.17 (with reference to ICRMW Articles 64(1) and (2)); CMW, Concluding observations on the combined second and third periodic reports of Senegal, CMW/C/SEN/CO/2-3, 20 May 2016, para.59; Human Rights Council, Report of the High Commissioner for Human Rights on human rights and mass exoduses, A/HRC/4/105 14 March 2007, paras.86, 87; Human Rights Council, Protection of the human rights of migrants: strengthening the promotion and protection of the human rights of migrants, including in large movements, A/HRC/32/L.22, 28 June 2016, para.11; OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 10.3; Report of the UN Secretary-General, *In Safety and Dignity: Addressing large movements of refugees and migrants*, A/70/59, 21 April 2016, para.3.

<sup>202</sup> ILO Convention No. 143, Migrant Workers (Supplementary Provisions) Convention, 1975, Article 9(4); Durban Declaration, para.49, and Programme of Action, paras.27, 28, in Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/12, 31 August - 8 September 2001; Committee on the Elimination of Discrimination against Women, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.3, 19, 23(a), 26(e); General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, paras.12, 15, 21, 24, 64, 72, 123; General Assembly, Protection of migrants, Resolution 69/167 adopted on 18 December 2014, A/RES/69/167, 12 February 2015, PP20; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para.29 and SDG targets including 8.8, 10.7; Agenda For Humanity: Annex to the Report of the Secretary-General for the World Humanitarian Summit, Core responsibility 3.B: Address migrants' vulnerabilities and provide more regular and lawful opportunities for

3. Promote international cooperation to develop a holistic and sustainable rights-based approach to address the root causes and drivers of large and/or mixed movements of migrants. Ensure that all responses to manage or mitigate such drivers, including root causes related to the adverse consequences of climate change and environmental degradation, are carried out in accordance with international human rights law and standards in order to facilitate migration with dignity and to avoid human rights violations. Ensure the meaningful participation of migrants or potential migrants in all deliberations regarding their future.<sup>203</sup>
4. Consider regularising the situation of migrants in irregular status within a reasonable period of time as the most effective measure to address the needs of and secure the rights of migrants in vulnerable situations.<sup>204</sup>
5. Promote the inclusion of migrants in receiving societies by recognizing the value of cultural diversity and allowing for the unhindered expression of their identities.<sup>205</sup> Develop integration policies, practices, institutions and partnerships to establish a common social, rights-based framework to support greater social and economic equality and gather complementary skills across the public sector, the private sector, and civil society and in communities.

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migration; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, paras.73-74, 83, 84, 85, 87, 88, 91; Report of the Special Rapporteur on the human rights of migrants: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, paras.23, 34, 58, 61-75.

<sup>203</sup> The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change: Volume I*, December 2015; *Sendai Framework for Disaster Risk Reduction 2015-2030*, paras.7, 27(h), 36(a)(vi); UN Conference of the Parties, Adoption of the Paris Agreement, FCCC/CP/2015/L.9/Rev.1, 12 December 2015; Committee on the Elimination of Discrimination against Women, Draft General Recommendation No. 35 on the Gender-related dimensions of Disaster Risk Reduction in a Changing Climate, CEDAW/C/GC/35, 11 October 2016, para.14, 19(a), 22, 59, 65-68; Human Rights Council, Protecting human rights defenders addressing economic, social and cultural rights, A/HRC/31/L.28, 21 March 2016, para.4; General Assembly, Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/70/161, 10 February 2016, para.9; Human Rights Council, Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/32/23, 6 May 2016, paras.22, 23, 28, 37, 45; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/65/222, 3 August 2010.

<sup>204</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 69; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, General comment No. 1 on migrant domestic workers, CMW/C/GC/1, 23 February 2011, paras.51, 52; CMW, General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, CMW/C/GC/2, 28 August 2013, para.16; Committee on Economic, Social and Cultural Rights, Concluding Observations: Russian Federation, E/C.12/RUS/CO/5, 20 May 2011, para. 17; General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, Annex II para.8(p).

<sup>205</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Articles 17(1), 31, 45(2),(3),(4), 64(2), 65(2); Durban Programme of Action, para.30(c), in Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/12, 31 August - 8 September 2001; General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.14.



6. Improve knowledge, build capacity and sensitize media professionals and outlets on the situation and human rights of migrants in all their diversity.<sup>206</sup> Provide targeted training to media professionals and journalists with emphasis on the elimination of stereotypes and the recognition of the value of cultural diversity.
7. Ensure that migration policy-making at the national, as well as at the regional level, is subjected at all times to parliamentary scrutiny and rendered transparent and accountable by making the outcomes, including bilateral agreements, readmission agreements and Memoranda of Understanding, public.<sup>207</sup> Ensure international cooperation is always premised on the obligation to respect, protect and fulfil the human rights of migrants and never conditional on measures that prioritize the restriction or containment of migration.

### Annex: International Law informing the Principles

The *Principles on the Human Rights Protection of Migrants in Vulnerable Situations within Large and/or Mixed Movements* are derived directly from international law. The extracts listed below are further supplemented by various general comments of the international human rights law treaty bodies, UN resolutions and international and regional case law that are not listed here for reasons of space.

#### **Principle 1: Ensure that human rights are at the centre of addressing large and/or mixed movements of migrants, regardless of their status**

##### **NORMATIVE FRAMEWORK**

The Universal Declaration of Human Rights, in its Articles 1 and 2, outlines the fundamental norm that all human beings shall enjoy fundamental rights and freedoms without distinction of any kind.<sup>208</sup>

Article 1(3) on “Purpose of UN Charter” of the Charter of the United Nations, ‘*To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*’.<sup>209</sup> See also Article 55 (c) the UN Charter.

Article 2(1) of the International Covenant on Civil and Political Rights, ‘*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any*

<sup>206</sup> See Outcomes and Recommendations on *Covering Migration: Challenges Met and Unmet*, United Nations Alliance of Civilizations, Paris 25-26 January 2013, and UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, 2007 (Point 10, Information Strategy).

<sup>207</sup> See OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, Guideline 10.5

<sup>208</sup> Adopted 10 December 1948) UNGA Res 217 A (III) (UDHR)

<sup>209</sup> Adopted 2 June 1945), 1 UNTS XVI



*kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'*<sup>210</sup>

Article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, *'States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.'*<sup>211</sup>

Article 16 on "Protection and Assistant Measures" of the Protocol Against the Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime, *'In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons[...].'*<sup>212</sup>

Under Article 4 on "General Obligations" of the Convention on the Rights of Persons with Disabilities, *'States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability'*.<sup>213</sup>

The Statement of Purpose of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, according to Article 2(b), is *'To protect and assist the victims of such trafficking, with full respect for their human rights'*.<sup>214</sup>

A number of specific provisions in the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime pertain to human rights, including In the preamble, State parties note that they are *'convinced of the need to provide migrants with humane treatment and full protection of their rights'*; In Article 2, the purpose of the Protocol is given as *'to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants'*; Article 4 notes that the Protocol shall apply *'to the prevention, investigation and prosecution [of migrant smuggling] ... as well as to the protection of the rights of persons who have been the object of such offences'*; Article 14 paragraph 1, notes that training should be delivered in preventing migrant smuggling and in *'the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol'*; Article 14 paragraph 2, explicitly notes that cooperation among competent international organizations, non-governmental organizations, other relevant organizations and civil society actors should be undertaken in the delivery of such training, which shall include training on *'the humane treatment of migrants and the protection of their rights'*; and Article 16 on "Protection and Assistant Measures" states *'In implementing this Protocol, each State Party shall take, consistent with its obligations under*

<sup>210</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407, available at: Volume 1 [http://treaties.un.org/doc/Publication/UNTS/Volume 999/v999.pdf](http://treaties.un.org/doc/Publication/UNTS/Volume%20999/v999.pdf), Volume 2, [http://treaties.un.org/doc/Publication/UNTS/Volume 1057/v1057.pdf](http://treaties.un.org/doc/Publication/UNTS/Volume%201057/v1057.pdf)

<sup>211</sup> Adopted 18 December 1990, United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>212</sup> Adopted 15 November 2000

<sup>213</sup> Resolution adopted by the General Assembly, 24 January 2007

<sup>214</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

*international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons[...]*<sup>215</sup>

## **Regional Norms**

Article 1 on “Obligation to respect Human Rights” of the Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, *‘The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.’*<sup>216</sup>

Article 1 on “Obligations to Respect Human Rights” Organization of American States (OAS), American Convention on Human Rights, *‘The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.’*<sup>217</sup>

Article 2 of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, *‘Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.’*<sup>218</sup>

Article 3 of the League of Arab States, Arab Charter on Human Rights, *‘There will be no restriction of any basic human right which is recognised or existent in any State party to this Charter, by virtue of law, treaties or custom. Nor may [these rights] be derogated from under the pretext that they have not been recognised in this Charter, or recognised to a lesser degree. No State party to this Charter shall derogate from the basic freedoms contained in [this Charter] and from which the citizens of another state benefit, which affords those freedoms to a lesser degree’*<sup>219</sup>

## **Principle 2: Counter discrimination in all its forms against migrants**

### **NORMATIVE FRAMEWORK**

According to the Universal Declaration of Human Rights, *‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty’* (Article 2). Then, in particular, Article 7 sets out that anyone is *‘[...] entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination’*.<sup>220</sup>

The core UN human rights treaties enshrine a provision on the principle of non-discrimination, which guarantees that every right that the Convention provides for shall apply to every person without any

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<sup>215</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>216</sup> European Convention on Human Rights, as amended, (ECHR)

<sup>217</sup> Pact of San Jose, adopted 22 November 1969

<sup>218</sup> Banjul Charter, adopted 27 June 1981

<sup>219</sup> Adopted on 15 September 1994

<sup>220</sup> UNGA Res 217 A (III) (UDHR), adopted 10 December 1948

discrimination of any kind such as, for example, based on race, colour, sex language, religion, political opinion, national and social origin, birth and other status. See: International Covenant on Civil and Political Rights, Article 2; International Covenant on Economic, Social and Cultural Rights, Article 2.2; International Convention on the Elimination of All Forms of Racial Discrimination, Article 2; Convention on the Elimination of All Forms of Discrimination against Women, Article 2; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, Article 1; Convention on the Rights of the Child, Article 2; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 1.1; International Convention on the Rights of Persons with Disabilities, Articles 3(b), 5; International Convention for the Protection of All Persons from Enforced Disappearance, Article 2.

The main purpose of the International Convention on the Elimination of All Forms of Racial Discrimination, has been enshrined in Article 2 of the Convention which states that *'States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end.* See also Articles 4, 5 and 7.<sup>221</sup>

See Article 20 (2) of the International Covenant on Civil and Political Rights *'Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.'* Moreover, Article 26 states that *'All persons are equal before the law [...] the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground [...].'*<sup>222</sup>

Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights, *'The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'*<sup>223</sup>

Article 1 of the UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, provides that the term *"discrimination against women"* means *"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."* Article 2 then provides that *"States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women ...."*<sup>224</sup>

## Regional Norms

Article 14 on "Prohibition of discrimination" of the Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, *'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'*<sup>225</sup>

<sup>221</sup> Adopted on 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

<sup>222</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>223</sup> Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3.

<sup>224</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

<sup>225</sup> European Convention on Human Rights, as amended (ECHR)

Preamble to the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, *'Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950.'*<sup>226</sup>

Article 1 on "Obligations to Respect Human Rights" Organization of American States (OAS), American Convention on Human Rights, *'The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.'*<sup>227</sup>

Article 25 of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, *'States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.'*<sup>228</sup>

Article 2 of the League of Arab States, Arab Charter on Human Rights, *'Each State party to the present Charter undertakes to ensure that every individual located within its territory and subject to its jurisdiction, shall have the right to enjoy all the rights and freedoms recognised in this [Charter], without distinction on the basis of race, colour sex, language, religion, political opinion, national or social origin, wealth, birth or other status, and without any discrimination between men and women.'*<sup>229</sup>

### **Principle 3: Protect the lives and safety of migrants and ensure rescue and immediate assistance to all migrants facing risks to life or safety**

#### **NORMATIVE FRAMEWORK**

Under Article 3 of the Universal Declaration of Human Rights, *'Everyone has the right to life [...].'*<sup>230</sup>

Article 6 of the International Covenant on Civil and Political Rights, *'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'* No derogation are admitted for this principle, neither in times of public emergency (Article 4).<sup>231</sup>

Article 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, *'The right to life of migrant workers and members of their families shall be protected by law.'*<sup>232</sup>

According to Article 2 "Statement of purpose" of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations

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<sup>226</sup> Rome, 4.XI.2000

<sup>227</sup> Pact of San Jose, adopted 22 November 1969

<sup>228</sup> Banjul Charter, adopted 27 June 1981

<sup>229</sup> Adopted on 15 September 1994

<sup>230</sup> UNGA Res 217 A (III) (UDHR), adopted 10 December 1948

<sup>231</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>232</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

Convention against Transnational Organized Crime, the purposes of this Protocol are preventing and combat trafficking in persons, as well as protecting and assisting the victims of such trafficking. See also Article 6, including at paragraph 5: *'Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.'*<sup>233</sup> See also Article 6(3): *"Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences [...] (a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned'."*

Article 9(1(a)) on "Safeguard clauses" and Article 16 "Protection and measures" of the Protocol Against the Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime calls on States to *'Ensure the safety and humane treatment of the persons on board'*.<sup>234</sup> Article 16(3) states, *'Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol'*.<sup>235</sup>

Article 98 "Duty to render assistance" of the Convention on the Law of the Sea, *'Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him; (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call. 2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose'*.<sup>236</sup>

Under Article 11 "Situations of risk and humanitarian emergencies" of the Convention on the Rights of Persons with Disabilities, *'States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters'*.<sup>237</sup>

## Regional Norms

Article 2 "Right to life" of the Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, *"Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law'*. Paragraph 2 also considers few exceptions, such as when deprivation of life results from *'the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection'*.<sup>238</sup>

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<sup>233</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>234</sup> When the State Party is taking measures against a vessel in accordance with article 8 of the Protocol.

<sup>235</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>236</sup> Adopted 10 December 1982

<sup>237</sup> Resolution adopted by the General Assembly, 24 January 2007

<sup>238</sup> European Convention on Human Rights, as amended (ECHR)

Article 4 “Right to Life” Organization of American States (OAS), American Convention on Human Rights, *‘Every person has the right to have his life respected. This right shall be protected by law [...]’*.<sup>239</sup>

Article 4 of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, *‘Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right’*.<sup>240</sup>

Under Article 5 of the League of Arab States, Arab Charter on Human Rights, *“Every individual has the right to life, liberty and security of person. These rights shall be protected by law.”*<sup>241</sup>

#### **Principle 4: Ensure access to justice for migrants**

##### **NORMATIVE FRAMEWORK**

*Universal Declaration of Human Rights*, *‘All are equal before the law and are entitled without any discrimination to equal protection of the law [...]’* and *‘Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal [...]’* (Articles 7 and 10).<sup>242</sup>

According to Article 2(3(a),(c)) of the International Covenant on Civil and Political Rights, each State Party to the Convention shall *‘ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity’* and *‘ensure that the competent authorities shall enforce such remedies when granted’*. Article 14 grants *‘[...] everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.’*<sup>243</sup>

According to Article 5(a) International Convention on the Elimination of All Forms of Racial Discrimination, States Parties shall guarantee the right of everyone, without any distinction *‘to equal treatment before the tribunals and all other organs administering justice.’* Moreover, Article 6 declares that *‘States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions [...]’*<sup>244</sup>

Article 18 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, *‘Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals [...]’*.<sup>245</sup>

According to Article 16(1) “Access to courts” of the Convention Relating to the Status of Refugees, *‘A refugee shall have free access to the courts of law on the territory of all Contracting States’* and *‘A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts [...]’*.<sup>246</sup>

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<sup>239</sup> Pact of San Jose, adopted 22 November 1969

<sup>240</sup> Banjul Charter, adopted 27 June 1981

<sup>241</sup> Adopted on 15 September 1994

<sup>242</sup> UDHR, adopted 10 December 1948) UNGA Res 217 A (III)

<sup>243</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>244</sup> Adopted 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

<sup>245</sup> Adopted 18 December 1990, United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>246</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

Under Article 39(1.2) “Access to courts” of the Convention Relating to the Status of Stateless Persons, ‘A stateless person shall have free access to the courts of law on the territory of all Contracting States. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*’.<sup>247</sup>

Under Article 12 of the International Convention for the Protection of All Persons from Enforced Disappearance, ‘Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation’.<sup>248</sup>

Article 6(2) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, ‘Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.’ Article 6(3) provides, ‘Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: (a) [...] (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand’. Article 6(6) states ‘Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered’.<sup>249</sup>

## Regional Norms

Article 6 on the “Right to a fair trial” of the Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, ‘[...] everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’. Article 13 provides for the right to an effective remedy.<sup>250</sup>

Article 8 on the “Right to a Fair Trial” Organization of American States (OAS), American Convention on Human Rights,, ‘Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law [...]’ and Article 25 “Right to Judicial Protection” “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties’.<sup>251</sup>

Article 7 of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, ‘Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed

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<sup>247</sup> Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

<sup>248</sup> Adopted 20 December 2006

<sup>249</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>250</sup> European Convention on Human Rights, as amended (ECHR)

<sup>251</sup> Pact of San Jose, adopted 22 November 1969

*innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal’.*<sup>252</sup>

Under Article 9 of the League of Arab States, Arab Charter on Human Rights, ‘Everyone is equal before the judiciary, and the right to judicial recourse is guaranteed for every person, on the territory of a State’.<sup>253</sup>

Article 15(2) of the Council of Europe Convention on Action against Trafficking in Human Beings provides “Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.”<sup>254</sup>

**Principle 5: Ensure that all border governance measures protect the human right to freedom of movement and the right of all persons to leave any country including their own, recognising that States have legitimate interests in exercising immigration controls**

#### **NORMATIVE FRAMEWORK**

Under Article 13 of the UN General Assembly, *Universal Declaration of Human Rights*, ‘Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country’.<sup>255</sup>

UN General Assembly, *International Covenant on Civil and Political Rights*, Article 12 (1 and 2) ‘Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own’.<sup>256</sup>

With Article 5 the *International Convention on the Elimination of All Forms of Racial Discrimination* dictates that States Parties to the convention should guarantee that everyone, without discrimination of any type, enjoys ‘The right to freedom of movement and residence within the border of the State’ and ‘The right to leave any country, including one's own, and to return to one's country’. Equally, States shall ensure that ‘The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant’ and that “No one shall be arbitrarily deprived of the right to enter his own country’.<sup>257</sup>

See Article 8 (1) of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, ‘Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention’. See also Article 79 ‘Nothing in

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<sup>252</sup> Banjul Charter, adopted 27 June 1981

<sup>253</sup> Adopted on 15 September 1994

<sup>254</sup> Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197

<sup>255</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>256</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>257</sup> United Nations, Treaty Series, vol. 660, p. 195, adopted 21 December 1965



*the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families. Concerning other matters related to their legal situation and treatment as migrant workers and members of their families, States Parties shall be subject to the limitations set forth in the present Convention’.*<sup>258</sup>

The freedom of movement is guaranteed by Article 26 of the Convention Relating to the Status of Refugees, which ‘Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances’.<sup>259</sup>

Article 26 of the Convention Relating to the Status of Stateless Persons, ‘Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances’.<sup>260</sup>

Article 11 (1) on “Border measures” of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, ‘Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons’.<sup>261</sup>

Article 11 (1) on “Border measures” of Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, ‘Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants’.<sup>262</sup>

Article 18 “Liberty of movement and nationality” of the Convention on the Rights of Persons with Disabilities, ‘States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities [...]’.<sup>263</sup>

## **Regional norms**

Under Article 2 of the Council of Europe, Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto, ‘Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The rights set forth in paragraph 1 may also be

<sup>258</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>259</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

<sup>260</sup> Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

<sup>261</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>262</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>263</sup> Resolution adopted by the General Assembly, 24 January 2007

*subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society’.*<sup>264</sup>

See Article 22 “Freedom of Movement and Residence” of the Organization of American States (OAS), *American Convention on Human Rights*, ‘Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law. Every person has the right to leave any country freely, including his own. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions. The collective expulsion of aliens is prohibited’.<sup>265</sup>

Article 12 (1,2,3) of the Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights*, ‘Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions’.<sup>266</sup>

Under Article 4 of the League of Arab States, *Arab Charter on Human Rights*, it is prohibited to impose limitations on the rights and freedoms. ‘Limitations or derogations in case of public emergencies shall not affect the return to [one's] country. Moreover, under Article 21 ‘Citizens shall not be arbitrarily or illegally deprived from leaving any Arab country, including their own [...]’.<sup>267</sup>

**Principle 6: Ensure that all returns, deportations, removals and readmissions are only carried out in full respect for the human rights of migrants and in accordance with international law, including upholding the principle of non-refoulement, the prohibition of arbitrary or collective expulsion, the right to private and family life, the best interests of the child, as well as the right to seek asylum**

## **NORMATIVE FRAMEWORK**

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<sup>264</sup> Council of Europe, *Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto*, 16 September 1963, ETS 46

<sup>265</sup> Pact of San Jose, adopted 22 November 1969

<sup>266</sup> Banjul Charter, adopted 27 June 1981

<sup>267</sup> Adopted on 15 September 1994

According to Article 14 of the *Universal Declaration of Human Rights* ‘Everyone has the right to seek and to enjoy in other countries asylum from persecution’.<sup>268</sup>

Article 13 of the International Covenant on Civil and Political Rights, ‘An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority’.<sup>269</sup>

Article 3(1,2) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ‘No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights’.<sup>270</sup>

Article 22(1,2) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, ‘Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with law’.<sup>271</sup>

See Article 8(1,2) “Repatriation of victims of trafficking in persons” of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.<sup>272</sup>

Article 18(5) “Return of smuggled migrants” of the Protocol Against the Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime: ‘Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person’.<sup>273</sup>

Article 32 “Expulsion” of the Convention Relating to the Status of Refugees affirms ‘The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law [...]’. Meanwhile, Article 33 lays down the principle of *non-refoulement* as the prohibition of expulsion or return of a refugee “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion’.<sup>274</sup>

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<sup>268</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>269</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>270</sup> Adopted 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85

<sup>271</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>272</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>273</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>274</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

Article 31 (1) “Expulsion” of the Convention Relating to the Status of Stateless Persons, affirms ‘*The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order*’.<sup>275</sup>

Article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance, ‘*No State Party shall expel, return (“refouler”), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law*’.<sup>276</sup>

Article 18(5) of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime states, ‘*Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.*’<sup>277</sup>

### Regional Norms

The Article 4 Council of Europe, Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto, establishes that collective expulsions of aliens are prohibited.<sup>278</sup> This article 4 has been followed by Article 1 of the Council of Europe, Protocol 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, entitled “Procedural safeguards relating to expulsion of aliens” that provides for the rights of the person expelled., such as the right to submit reasons against his expulsion, to have his case reviewed, and to be represented for these purposes before the competent authority or a person or persons designated by that authority. These rights are guaranteed with the exception of reasons of public order and national security.<sup>279</sup>

Article 12 (4, 5) of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, ‘*A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups*’.<sup>280</sup>

Under Article 4 of the League of Arab States, Arab Charter on Human Rights, It is prohibited to impose limitations on the rights and freedoms. Limitations or derogations in case of public emergencies shall not affect political asylum. Moreover, under Article 23 ‘*Every citizen has the right to seek political asylum in other countries, fleeing persecution*’.<sup>281</sup>

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<sup>275</sup> Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

<sup>276</sup> Adopted 20 December 2006

<sup>277</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>278</sup> Council of Europe, *Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain Rights and Freedoms other than those already included in the Convention and in the First Protocol thereto*, 16 September 1963, ETS 46

<sup>279</sup> Council of Europe, *Protocol 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 22 November 1984, ETS 117

<sup>280</sup> Banjul Charter, adopted 27 June 1981

<sup>281</sup> Adopted on 15 September 1994

**Principle 7: Protect migrants from all forms of violence and exploitation, whether inflicted by institutions, officials, or by private individuals, entities or groups**

**NORMATIVE FRAMEWORK**

The Universal Declaration of Human Rights prohibits slavery or servitude as well as torture or other cruel, inhuman or degrading treatment or punishment (Articles 4 and 5).<sup>282</sup>

According to the International Covenant on Civil and Political Rights everyone has the right to security of person (Article 9.1), and *'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation'* (Article 7).<sup>283</sup>

See the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in particular Article 2 (1) which affirms that *'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'*.<sup>284</sup>

According to Article 5(b) International Convention on the Elimination of All Forms of Racial Discrimination, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee *'The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution'*.<sup>285</sup>

According to Article 19(1) of the Convention on the Rights of the Child, States Parties shall take all appropriate national, bilateral and multilateral measures to protect the child from all forms of violence, abuses, maltreatment or exploitation, such as: sexual exploitation and sexual abuse, sale or trafficking, forms of exploitation prejudicial to any aspects of the child's welfare, torture or other cruel, inhuman or degrading treatment or punishment.<sup>286</sup> See also, Articles 34, 35, 36, 37 of the Convention and the Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict.

Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women, imposes on States Parties to *'take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.'*<sup>287</sup>

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 10 *'No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'* and Article 11 (1,2 and 3) *"No migrant worker or member of his or her family shall be held in slavery or servitude. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court'*. And Article 16 (2) *"Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private*

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<sup>282</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>283</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>284</sup> Adopted 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85

<sup>285</sup> United Nations, Treaty Series, vol. 660, p. 195, adopted 21 December 1965

<sup>286</sup> Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

<sup>287</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

*individuals, groups or institutions” and (3) “Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.”<sup>288</sup>*

Article 6(3) of Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, *‘Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances: (a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or (b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.’* Article 16(2) “Protection and assistance measures”, *‘Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol’.*<sup>289</sup>

Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, defines trafficking of persons as *‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.* Article 9(5), *‘States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.’*<sup>290291</sup>

Article 1(1) of the ILO Protocol of 2014 to the Forced Labour Convention calls on each Member to *‘take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour.’*<sup>292</sup>

## **Regional Norms**

Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 “Prohibition of torture” and Article 4 “Prohibition of slavery and forced labour”.<sup>293</sup>

Article 5 (1 and 2) on the “Right to Humane Treatment” of the Organization of American States (OAS), American Convention on Human Rights, *“Every person has the right to have his physical, mental, and moral integrity respected. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment [...]’.* And Article 6 (1,2) “Freedom from Slavery” *“No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the*

<sup>288</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>289</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>290</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>291</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>292</sup> ILO Protocol of 2014 to the Forced Labour Convention, 1930

<sup>293</sup> European Convention on Human Rights, as amended (ECHR)

*slave trade and traffic in women. No one shall be required to perform forced or compulsory labour.”*<sup>294</sup>

Article 5 of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights states that '[...] All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited'.<sup>295</sup>

Under Article 4 of the League of Arab States, Arab Charter on Human Rights, it is prohibited to impose limitations on the rights and freedoms. Limitations or derogations in case of public emergencies shall not affect the prohibition from torture and degrading [treatment]. Moreover, under Article 13 *'State parties shall protect every person in their territory from physical or psychological torture, or from cruel, inhuman, degrading treatment. [The State parties] shall take effective measures to prevent such acts; performing or participating in them shall be considered a crime punished by law. No medical or scientific experimentation shall be carried-out on any person without his free consent'*, meanwhile forced labour is prohibited under Article 31.<sup>296</sup>

**Principle 8: Uphold the right of migrants to liberty and prohibition of arbitrary detention through making targeted efforts to end immigration detention of migrants. Never detain children on account of their migration status or that of their parents**

#### **NORMATIVE FRAMEWORK**

Under Universal Declaration of Human Rights, *'Everyone has the right to [...] liberty and security of person'* (Article 3) and *'No one shall be subjected to arbitrary arrest, detention or exile'* (Article 9).<sup>297</sup>

Article 9 (1) of the International Covenant on Civil and Political Rights provides explicitly that *'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law'*.<sup>298</sup>

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families Article 16 (1) *'Migrant workers and members of their families shall have the right to liberty and security of person'* and (4) *'Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law'*.<sup>299</sup>

Article 31 "Refugees unlawfully in the country of refugee" of the Convention Relating to the Status of Refugees, *'The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization [...]'*.<sup>300</sup>

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<sup>294</sup> Pact of San Jose, adopted 22 November 1969

<sup>295</sup> Banjul Charter, adopted 27 June 1981

<sup>296</sup> Adopted on 15 September 1994

<sup>297</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>298</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>299</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>300</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

Article 37 (b) of the Convention on the Rights of the Child, affirms that States Parties shall ensure that *'No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time'*.<sup>301</sup>

Under the International Convention for the Protection of All Persons from Enforced Disappearance, 'No one shall be subjected to enforced disappearance' (Article 1) which are considered to be *'arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law'* (Article 2.1) and 'No one shall be held in secret detention' (Article 17). Moreover, according to the Convention 'Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to: Prevent the involvement of such officials in enforced disappearances' (Article 23).<sup>302</sup>

Article 5 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime states, *'Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.'*<sup>303</sup>

### Regional norms

The Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms in its article 5 "Right to Liberty and security" establish that *'Everyone has the right to liberty and security of person. No one shall be deprived of his liberty [...]'* except for: (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition'.<sup>304</sup>

Article 7(1,2) "Right to Personal Liberty" of the Organization of American States (OAS), American Convention on Human Rights, *"Every person has the right to personal liberty and security. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto"* and point 3 *"No one shall be subject to arbitrary arrest or imprisonment."*<sup>305</sup>

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<sup>301</sup> Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

<sup>302</sup> Adopted 20 December 2006

<sup>303</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>304</sup> European Convention on Human Rights, as amended (ECHR)

<sup>305</sup> Pact of San Jose, adopted 22 November 1969



Article 6 of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, *"Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."*<sup>306</sup>

Under article 5 and 8 of the League of Arab States, Arab Charter on Human Rights, the law protects the right of everyone to liberty and security of person and *'no one shall be subjected to arrest or detention or stopped without legal basis and must be brought before the judiciary without delay'*.<sup>307</sup>

Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings, *"Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so."*<sup>308</sup>

**Principle 9: Ensure the widest protection of the family unity of migrants, facilitating family reunification, and preventing arbitrary or unlawful interference in the right of migrants to the enjoyment of private and family life**

#### **NORMATIVE FRAMEWORK**

According to Article 16 of the Universal Declaration of Human Rights, *'The family is the natural and fundamental group unit of society and is entitled to protection by society and the State'*, meanwhile, under Article 12 *'No one shall be subjected to arbitrary interference with his [...] family'*.<sup>309</sup>

Article 23 (1) of the International Covenant on Civil and Political Rights, *'The family is the natural and fundamental group unit of society and is entitled to protection by society and the State'*.<sup>310</sup>

Article 10 (1) of the International Covenant on Economic, Social and Cultural Rights, *'The States Parties to the present Covenant recognize that: The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children [...]'*.<sup>311</sup>

The Convention on the Rights of the Child, pointing out the fundamental role of the family in the child rights' protection, declares that States Parties shall: *'respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention'* (Article 2); respect the right of the child to preserve his or her identity, including family relations as recognized by law without unlawful interference (Article 8); favourite family reunifications (Articles 10 and 22). Moreover *'No child shall be subjected to arbitrary or unlawful interference with his or her family'* (Article 16).<sup>312</sup>

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<sup>306</sup> Banjul Charter, adopted 27 June 1981

<sup>307</sup> Adopted on 15 September 1994

<sup>308</sup> Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197

<sup>309</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>310</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>311</sup> Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

<sup>312</sup> Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

Within the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the family is placed at the centre of the Convention in itself. The rights enshrined in the Convention are guaranteed directly to the migrant worker and to his/her family. In particular the Convention guarantees that 'States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers (Article 44).'<sup>313</sup>

According to Article 13.1 of the International Labour Organization (ILO), Migrant Workers (Supplementary Provisions) Convention, '*A Member may take all necessary measures which fall within its competence and collaborate with other Members to facilitate the reunification of the families of all migrant workers legally residing in its territory*'.<sup>314</sup>

### Regional Norms

Article 8 "Right to respect for private and family life" of the Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, '*Everyone has the right to respect for his private and family life [...]*'.<sup>315</sup>

Article 17 "Rights of the Family" of the Organization of American States (OAS), American Convention on Human Rights, '*The family is the natural and fundamental group unit of society and is entitled to protection by society and the state*'.<sup>316</sup>

Under Article 15(1,2) of the Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, '*The family is the natural and fundamental element of society and ought to be protected by the State, which should see to the improvement of its spiritual and material conditions. Everyone has the right to form a family, which shall be exercised in accordance with the provisions of the pertinent domestic legislation*'.<sup>317</sup>

Article 18(1,2) of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, '*The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community*'.<sup>318</sup>

Under Article 17 of the League of Arab States, Arab Charter on Human Rights, Private life is sacred and its violation of that sanctity is a crime. '*Private life includes family privacy*'. Moreover, under Article 38 'The family is the fundamental unit of society, and enjoys its protection'.<sup>319</sup>

**Principle 10: Guarantee the human rights of all children in the context of migration, and ensure that they are treated as children first and foremost**

### NORMATIVE FRAMEWORK

<sup>313</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>314</sup> ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

<sup>315</sup> European Convention on Human Rights, as amended (ECHR)

<sup>316</sup> Pact of San Jose, adopted 22 November 1969

<sup>317</sup> Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), 16 November 1999, A-52

<sup>318</sup> Banjul Charter, adopted 27 June 1981

<sup>319</sup> Adopted on 15 September 1994

Under Article 26 of the Universal Declaration of Human Rights '[...] *childhood are (is) entitled to special care and assistance*'.<sup>320</sup>

All of the Convention on the Rights of the Child, which in Article 1, explicitly provides that the rights enshrined in the Convention shall apply to every child, meaning '*every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*' (Article 1), and that 'States Parties shall respect and ensure the rights set forth in the present Convention to each child *'within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.'*' (Article (1)). Article 3, in particular, is of fundamental importance for the entire Convention '*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision*'.<sup>321</sup>

Article 24 of the International Covenant on Civil and Political Rights, '*Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. Every child shall be registered immediately after birth and shall have a name. Every child has the right to acquire a nationality*'.<sup>322</sup>

Article 10 (3) of the International Covenant on Economic, Social and Cultural Rights, requires special measures of protection and assistance to be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.<sup>323</sup>

See Articles 12(4), 17(6), 29, 30, 45(2), 45(4) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.<sup>324</sup>

According to Article 18.2 "Liberty of movement and nationality" of the *Convention on the Rights of Persons with Disabilities*, '*Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents*'.<sup>325</sup>

Under Article 25(a) of the International Convention for the Protection of All Persons from Enforced Disappearance, '*Each State Party shall take the necessary measures to prevent and punish under its criminal law: The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance*'.<sup>326</sup>

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<sup>320</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>321</sup> Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

<sup>322</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>323</sup> Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

<sup>324</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>325</sup> Resolution adopted by the General Assembly, 24 January 2007

<sup>326</sup> Adopted 20 December 2006

According to Article 6(4), “Assistance to and protection of victims of trafficking in persons”, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, *‘Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care’*. As described in Article 3, the definition of trafficking as it pertains to children is different to that for adults. Article 10(2) on training for law enforcement, immigration and other relevant officials, *“The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with nongovernmental organizations, other relevant organizations and other elements of civil society.”*<sup>327</sup>

Article 16(4) “Protection and assistance measures” of the Protocol Against the Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime *‘In applying the provisions of this article, States Parties shall take into account the special needs of women and children’*.<sup>328</sup>

### **Regional norms**

Article 19 “Rights of the Child” of the Organization of American States (OAS), American Convention on Human Rights, *‘Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state’*.<sup>329</sup>

Article 18 (3) of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, *‘The State shall ensure [...] the protection of the rights of the woman and the child as stipulated in international declarations and conventions’*.<sup>330</sup>

Under Article 38.B of the League of Arab States, Arab Charter on Human Rights, the State shall ensure special care and protection to children.<sup>331</sup>

### **Principle 11: Protect the human rights of migrant women and girls**

#### **NORMATIVE FRAMEWORK**

Under Article 26 of the Universal Declaration of Human, *‘Motherhood [...] are (is) entitled to special care and assistance’*.<sup>332</sup>

See the entire Convention on the Elimination of All Forms of Discrimination Against Women.<sup>333</sup>

Article 3 of the International Covenant on Civil and Political Rights, *‘The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant’*.<sup>334</sup>

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<sup>327</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>328</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>329</sup> Pact of San Jose, adopted 22 November 1969

<sup>330</sup> Banjul Charter, adopted 27 June 1981

<sup>331</sup> Adopted on 15 September 1994

<sup>332</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>333</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

Article 10 (2) of the International Covenant on Economic, Social and Cultural Rights, *'The States Parties to the present Covenant recognize that: Special protection should be accorded to mothers during a reasonable period before and after childbirth [...]'*.<sup>335</sup>

Article 16(4) "Protection and assistance measures" of the Protocol Against the Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime *'In applying the provisions of this article, States Parties shall take into account the special needs of women and children'*.<sup>336</sup>

Article 10(2) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on training for law enforcement, immigration and other relevant officials, *"The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with nongovernmental organizations, other relevant organizations and other elements of civil society."*<sup>337</sup>

### Regional Norms

Article 18 (3) of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, *'The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions'*.<sup>338</sup>

The African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, including under Article 2 all States Parties commit to combat *'all forms of discrimination against women through appropriate legislative, institutional and other measures'*.<sup>339</sup>

According to the Council of Europe Convention on preventing and combating violence against women and domestic violence, the rights provided for from the Convention shall be guaranteed by the parties without discrimination on any ground such as, between the others, national origin, migrant or refugee status.<sup>340</sup>

According Article 9 of the Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, *'With respect to the adoption of the measures in this Chapter, the States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom'*.<sup>341</sup>

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<sup>334</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>335</sup> Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

<sup>336</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>337</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>338</sup> Banjul Charter, adopted 27 June 1981

<sup>339</sup> Adopted 11 July 2003

<sup>340</sup> Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, ("The Istanbul Convention"), 11 May 2011

<sup>341</sup> Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para"), 9 June 1994

## **Principle 12: Ensure the enjoyment of the highest attainable standard of physical and mental health of all migrants**

### **NORMATIVE FRAMEWORK**

According to Article 25 of the Universal Declaration of Human Rights *‘Everyone has 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 [...]’*.<sup>342</sup>

Article 12 of the International Covenant on Economic, Social and Cultural Rights, *‘The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness’*.<sup>343</sup>

According to Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties shall prohibit and eliminate racial discrimination in all its forms, in order to guarantee the right to public health and to medical care.<sup>344</sup>

According to Article 3.3. of the *Convention on the Rights of the Child*, *‘States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision’*.<sup>345</sup>

According to Article 28 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, *‘Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment’*.<sup>346</sup>

Under Article 12.1 *Convention on the Elimination of All Forms of Discrimination Against Women*, *‘States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning’*.<sup>347</sup>

According to Article 25 *Convention on the Rights of Persons with Disabilities*, *‘States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability’*.<sup>348</sup>

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<sup>342</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>343</sup> Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

<sup>344</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

<sup>345</sup> Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

<sup>346</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>347</sup> Adopted 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

<sup>348</sup> Resolution adopted by the General Assembly, 24 January 2007

According to Article 6 (3) “Assistance to and protection of victims of trafficking in persons” of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, *‘Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: Medical, psychological and material assistance’*.<sup>349</sup>

Under Article 28 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, *‘Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment’*.<sup>350</sup>

### Regional Norms

Article 16 of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, *‘1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.’*

Article 14 of the African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, all States Parties commit to protect women's right to health and reproductive rights.<sup>351</sup>

According to Article 10 (1) “Right to Health” of the Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, *‘Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being’*.<sup>352</sup>

### Principle 13: Safeguard the right of migrants to an adequate standard of living

#### NORMATIVE FRAMEWORK

Under the Universal Declaration of Human Rights everyone has: ‘the right of equal access to public service in his country’ (Article 21 (2)), ‘as a member of society[...] the right to social security’ (Article 22 (1)) ‘the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay’ (Article 24). Moreover, Article 25 (1) grants everyone ‘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.’<sup>353</sup>

<sup>349</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>350</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>351</sup> Adopted 11 July 2003

<sup>352</sup> Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), 16 November 1999, A-52

<sup>353</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

Article 9 of the International Covenant on Economic, Social and Cultural Rights, *'The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance'*. Article 11 (1) *'The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent'*.<sup>354</sup>

In the Convention Relating to the Status of Refugees, the right to an adequate standard of living is indirectly declared with the extension to refugees of citizens' social benefits, such as: the right to housing (Article 21), the right to public relief (Article 23), social security (Article 24).<sup>355</sup>

The Convention Relating to the Status of Stateless Persons, equally to the 1951 Convention Relating to the Status of Refugees, the right to an adequate standard of living is indirectly declared with the extension to refugees of citizens' social benefits (Article 21, 23,24).<sup>356</sup>

Article 6(4) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, *'Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care'*.<sup>357</sup>

### **Regional norms**

Article 13(2, 3) of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights *"Every citizen shall have the right of equal access to the public service of his country. Every individual shall have the right of access to public property and services in strict equality of all persons before the law"*.<sup>358</sup>

According to Article 9 of the Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights everyone shall have the right to social security.<sup>359</sup>

## **Principle 14: Guarantee the right of migrants to work, in just and favourable conditions**

### **NORMATIVE FRAMEWORK**

According to Article 23 of the Universal Declaration of Human Rights *'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*

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<sup>354</sup> Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

<sup>355</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

<sup>356</sup> Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

<sup>357</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>358</sup> Banjul Charter, adopted 27 June 1981

<sup>359</sup> Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), 16 November 1999, A-52



*social protection. Everyone has the right to form and to join trade unions for the protection of his interests’.*<sup>360</sup>

The International Covenant on Economic, Social and Cultural Rights, recognises the right to work for everyone (Article 6) and sets out the right of everyone of the enjoyment of just and favourable conditions of work (Article 7).<sup>361</sup>

The International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(e,i) ‘[...]States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.’<sup>362</sup>

See Article 25(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families which affirms that migrant workers shall enjoy treatment not less favourable than that which applies to nationals in respect to remuneration and others work condition (i.e., hours of work, weekly rest, holidays etc..).<sup>363</sup>

The Convention Relating to the Status of Refugees dedicates the entire chapter III to the refugees’ right to a gainful employment. In particular, Article 17 “Wage-earning employment” at its point 1 affirms: ‘The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage earning employment’.<sup>364</sup>

The Convention Relating to the Status of Stateless Persons designates the entire chapter III to the right to a gainful employment for stateless persons.<sup>365</sup>

### **Regional norms**

Article 15 of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, ‘Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work’.<sup>366</sup>

According to Article 6 “Right to Work” of the Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, ‘Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity. The State Parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects, in particular those directed to the disabled [...]. Moreover, under article 7 ‘Everyone shall enjoy that right under just, equitable, and satisfactory conditions’.<sup>367</sup>

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<sup>360</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>361</sup> Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

<sup>362</sup> United Nations, Treaty Series, vol. 660, p. 195, adopted 21 December 1965

<sup>363</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>364</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

<sup>365</sup> Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

<sup>366</sup> Banjul Charter, adopted 27 June 1981

<sup>367</sup> Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), 16 November 1999, A-52

**Principle 15: Protect the right of migrants to education, including primary and secondary education as well as higher education and vocational and language training**

**NORMATIVE FRAMEWORK**

Article 26 (1) of the Universal Declaration of Human Rights, *'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit'*.<sup>368</sup>

Article 5 (e, v) of the International Convention on the Elimination of All Forms of Racial Discrimination, *'In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: The right to education and training'*.<sup>369</sup>

Article 13 of the International Covenant on Economic, Social and Cultural Rights, sets out that *'States Parties to the present Covenant recognize the right of everyone to education [...]'*.<sup>370</sup>

According to Article 28 of the Convention on the Rights of the Child, *'States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries'*.<sup>371</sup>

See Article 30 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, *'Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment'*.<sup>372</sup>

According to Article 6(3) "Assistance to and protection of victims of trafficking in persons" of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, *'Each State Party shall consider implementing measures to provide for the physical, psychological and social*

<sup>368</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>369</sup> United Nations, Treaty Series, vol. 660, p. 195, adopted 21 December 1965

<sup>370</sup> Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

<sup>371</sup> Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

<sup>372</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

*recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: Employment, educational and training opportunities'. Article 6(4), 'Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care'.<sup>373</sup>*

Article 22 "Public education" of the Convention Relating to the Status of Refugees, *'The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships'.<sup>374</sup>*

With the Article 22 Public education of the Convention Relating to the Status of Stateless Persons, the Convention accords to stateless person the same treatment as is accorded to nationals with respect to elementary and other education.<sup>375</sup>

The UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960, has the scope of eliminating and preventing discrimination within education. According to its Article 1 *'Any discrimination that the 'purpose or effect of nullifying or impairing equality of treatment in education and in particular: a. Of depriving any person or group of persons of access to education of any type or at any level; b. Of limiting any person or group of persons to education of an inferior standard; c. [...] establishing or maintaining separate educational systems or institutions for persons or groups of persons; or d. Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.'<sup>376</sup>*

### **Regional norms**

Article 2 "right to Education" of the Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>377</sup>

Article 17 (1) of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights, *'Every individual shall have the right to education'.<sup>378</sup>*

Under Article 13(1,3) of the Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, *'Everyone has the right to education. [...] The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education: (a) Primary education should be compulsory and accessible to all without cost; (b) Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education; (c) Higher education should be made equally accessible to all, on the basis of individual capacity, by every*

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<sup>373</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>374</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

<sup>375</sup> Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

<sup>376</sup> UN Educational, Scientific and Cultural Organisation (UNESCO), *Convention Against Discrimination in Education*, 14 December 1960

<sup>377</sup> Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 9

<sup>378</sup> Banjul Charter, adopted 27 June 1981

*appropriate means, and in particular, by the progressive introduction of free education; (d) Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction’.*<sup>379</sup>

**Principle 16: Uphold migrants’ right to information through ensuring they are provided accessible, reliable, relevant and accurate information on their situation and rights**

## **NORMATIVE FRAMEWORK**

Under Article 19 of the Universal Declaration of Human Rights *‘Everyone has the right to freedom of opinion and expression; this right includes [...] to seek, receive and impart information and ideas through any media and regardless of frontiers’.*<sup>380</sup>

Under Article 36 subparagraph 1(b) of the Vienna Convention on Consular Relations *‘With a view to facilitating the exercise of consular functions relating to nationals of the sending State: if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph’.*<sup>381</sup>

Under Article 19(1,2) of the International Covenant on Civil and Political Rights *‘Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice’.* Moreover, according to Article 14 *‘All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’.*<sup>382</sup>

According to Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoys the right to equal treatment before the tribunals and all other organs administering justice. Article 5 also provides that everyone has the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association.<sup>383</sup>

Under Article 18 of the International Convention for the Protection of All Persons from Enforced Disappearance each State Party shall guarantee *‘to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representative or their counsel’* access to fundamental information. Article 20 provides that this right can be restricted, on an exceptional basis, when the transmission of the information would adversely affect the privacy or

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<sup>379</sup> Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), 16 November 1999, A-52

<sup>380</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>381</sup> United Nations, Vienna Convention on Consular Relations, 24 April 1963

<sup>382</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p.

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<sup>383</sup> United Nations, Treaty Series, vol. 660, p. 195, adopted 21 December 1965

safety of the person. In no case, restrictions are admitted if they could constitute a secret detention.<sup>384</sup>

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families invokes, in several articles, the necessity to provide information to migrants and their family on their rights in a language they understand. For example: Article 16(5) '*Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them*', and Article 18(3(a)) '*In the determination of any criminal charge against them, migrant workers and members of their families shall be entitled to the following minimum guarantees: To be informed promptly and in detail in a language they understand of the nature and cause of the charge against them*'. Moreover, in case of expulsion, according to Article 22(3) '*The decision shall be communicated to them in a language they understand*'.<sup>385</sup>

According to Article 6(2) "Assistance to and protection of victims of trafficking in persons" of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, '*Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: Information on relevant court and administrative proceedings*'. And also at point (3) '*Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand*'.<sup>386</sup>

Article 16(5) "Protection and assistance measures" of the Protocol Against the Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime '*In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers*'.<sup>387</sup>

### Regional norms

Article 7(4) "Right to Personal Liberty" of the Organization of American States (OAS), *American Convention on Human Rights*, '*Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him*'.<sup>388</sup>

Article 9(1) of the Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* provides for the right for every individual "to receive information".<sup>389</sup>

**Principle 17: Guarantee monitoring and accountability in all responses to large and/or mixed movements of migrants, including through protecting the right of migrants to appropriate and effective remedies**

### NORMATIVE FRAMEWORK

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<sup>384</sup> Adopted 20 December 2006

<sup>385</sup> Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>386</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>387</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>388</sup> Pact of San Jose, adopted 22 November 1969

<sup>389</sup> Banjul Charter, adopted 27 June 1981

Under Article 8 of the Universal Declaration of Human Rights *‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law’*.<sup>390</sup>

According to Article 2 (3.a, c) of the International Covenant on Civil and Political Rights each State Party to the Convention shall *‘ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity’* and *‘ensure that the competent authorities shall enforce such remedies when granted’*. The Covenant also establishes a body of independent experts, the Human Rights Committee, with the role of monitoring the implementation of the Covenant by the State Parties, and imposes on each States Party to submit reports on the measures they have adopted *‘to give effect to the rights recognized herein and on the progress made in the enjoyment of those rights’* (Article 40).<sup>391</sup>

The International Covenant on Economic, Social and Cultural Rights imposes on each States Party to submit reports on the *‘measures which they have adopted and the progress made in achieving the observance of the rights recognized herein’* (Article 16.1).<sup>392</sup> Moreover, the ECOSOC Resolution 1985/17 has established the Committee on Economic, Social and Cultural Rights (CESCR), a body of independent experts appointed to monitor the implementation of rights enshrined in the Convention.

Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, provide for *‘States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions [...] as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.’* The Convention also establishes a body of independent experts, the Committee on the Elimination of Racial Discrimination (CERD) with the role of monitoring the implementation of the Convention by the State Parties (Article 8), as well imposes on each States Party to submit reports to the Secretary-General of the United Nations, for consideration by the Committee, on the legislative, judicial, administrative or other measures which they have adopted in conformity to the provisions of the Convention (Article 9).<sup>393</sup>

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 14 (1) *“Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation’*. Article 19 *“The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention [...]”* Art 20 inquiry. The Convention also establishes a body of independent experts, the Committee against Torture, in order to monitor the implementation of the Convention, and with the same scope, each state party shall submit reports on the measures they have adopted (Article 17 and 19).<sup>394</sup>

Under Article 39 of the Convention on the Rights of the Child, *‘States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel,*

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<sup>390</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>391</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>392</sup> Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

<sup>393</sup> United Nations, Treaty Series , vol. 660, p. 195, adopted 21 December 1965

<sup>394</sup> Adopted 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85

*inhuman or degrading treatment or punishment; or armed conflicts. Such recovery Article 24 of the child'. The Convention also establishes a body of independent experts, Committee on the Rights of the Child, in order to monitor the implementation of the Convention, and with the same scope, each state party shall submit reports on the measures they have adopted (Article 43 and 44).*<sup>395</sup>

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families establishes a body of independent experts, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, in order to monitor the implementation of the Convention, and with the same scope, each state party shall submit reports on the measures they have adopted (Article 72 and 73). Article 83 provides for the right to remedy, including at paragraph (a) *"To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity"*.<sup>396</sup>

According to Article 33 "National implementation and monitoring" of the Convention on the Rights of Persons with Disabilities, *'States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights'*. The Convention also establishes the Committee on the Rights of Persons with Disabilities, in order to monitor the implementation of the Convention, and with the same scope, each state party shall submit reports on the measures they have adopted (Article 34 and 35).<sup>397</sup>

According to International Convention for the Protection of All Persons from Enforced Disappearance, *'Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation'* (Article 8 2.) as well as *'Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation (Article 24.4)*. The Convention also establishes the Committee on Enforced Disappearances, in order to monitor the implementation of the Convention, and with the same scope, each state party shall submit reports on the measures they have adopted (Article 26 and 29).<sup>398</sup>

Article 6(6) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, *'Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.'*<sup>399</sup>

Article 75 (1) "Reparations to victims" of the Rome Statute of the International Criminal Court affirms that *'The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation [...]'*.<sup>400</sup>

## Regional norms

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<sup>395</sup> Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

<sup>396</sup> Adopted 18 December 1990, United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

<sup>397</sup> Resolution adopted by the General Assembly, 24 January 2007

<sup>398</sup> Adopted 20 December 2006

<sup>399</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>400</sup> UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6

The Article 13 “Right to an effective remedy” of the Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms affirms *“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”*<sup>401</sup>

In its chapter VI the Organization of American States (OAS), *American Convention on Human Rights*, disciplines the creation, functions and mode of operation of two organs, the Commission that shall *“promote respect for and defense of human rights”* (Article 41) and the Court, which has the jurisdiction *“on all matters relating to the interpretation or application of this Convention”* (Article 62). Moreover, according to Article 10 on the “Right to Compensation” *‘Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice’*. Concerning remedies, Article 10 “Right to Compensation” sets out that *“Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.”*<sup>402</sup>

Article 26 (1) of the Organization of African Unity (OAU), *African Charter on Human and Peoples’ Rights*, establishes that States parties to the Charter *“shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.”* Moreover, the Charter create a dedicated Commission with the role of promoting and ensuring protection of the human rights that it enshrines (Article 45).<sup>403</sup>

According to the Article 40 and 41 of the League of Arab States, Arab Charter on Human Rights, *‘The member States of the [Arab] League Council, which are parties to the Charter, shall elect a Committee of human rights experts’* and *‘shall submit periodical reports to the Expert Human Rights Committee.’*<sup>404</sup>

## **Principle 18: Respect and support the activities of human rights defenders and others working to rescue and provide assistance to migrants**

### **NORMATIVE FRAMEWORK**

According to Article 19 of the Universal Declaration of Human Rights *‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’*. Moreover, under Article 20 (1) *‘Everyone has the right to freedom of peaceful assembly and association’*.

According to the International Convention for the Protection of All Persons from Enforced Disappearance each State Party shall *‘take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice’* (Article 3) as well as *‘shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness’*.<sup>405</sup>

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<sup>401</sup> European Convention on Human Rights, as amended (ECHR)

<sup>402</sup> Pact of San Jose, adopted 22 November 1969

<sup>403</sup> Banjul Charter, adopted 27 June 1981

<sup>404</sup> Adopted on 15 September 1994

<sup>405</sup> Adopted 20 December 2006



The International Covenant on Civil and Political Rights provides for the rights to hold opinions and freedom of expression, peaceful assembly and freedom of association, and participation in public life (articles 19, 21, 22, 25).<sup>406</sup>

### Regional norms

Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms provides for “Freedom of assembly and association” in its Article 11.<sup>407</sup>

The Organization of American States (OAS), American Convention on Human Rights grants the rights of freedom of thought and expression, the right of assembly and the freedom of association (Articles 13,15 and 16).<sup>408</sup>

The Organization of African Unity (OAU), African Charter on Human and Peoples' Rights provides for the right of freedom of association and the right to assemble freely with others (Articles 10 and 11).<sup>409</sup>

Under Article 26 of the League of Arab States, Arab Charter on Human Rights ‘*The freedom of thought, conscience and opinion is guaranteed to everyone*’. Moreover, under Article 28 ‘*Citizens have the freedom of assembly and association in peaceful manner*’.<sup>410</sup>

### **Principle 19: Improve the collection of disaggregated data on the human rights situation of migrants, while ensuring the right to privacy and protection of personal data**

#### **NORMATIVE FRAMEWORK**

According to Article 9 “Prevention of trafficking in persons” of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, ‘*States Parties shall endeavour to undertake measures such as research [...] to prevent and combat trafficking in persons*’.<sup>411</sup>

Under Article 31 “Statistics and data collection” the Convention on the Rights of Persons with Disabilities, ‘*States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. 1. The process of collecting and maintaining this information shall: (a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities; (b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics. 2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties’ obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights*’.<sup>412</sup>

### Regional norms

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<sup>406</sup> Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

<sup>407</sup> European Convention on Human Rights, as amended (ECHR)

<sup>408</sup> Pact of San Jose, adopted 22 November 1969

<sup>409</sup> Banjul Charter, adopted 27 June 1981

<sup>410</sup> Adopted on 15 September 1994

<sup>411</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>412</sup> Resolution adopted by the General Assembly, 24 January 2007

Article 45(1(a)) of the Organization of African Unity (OAU), African Charter on Human and Peoples' Rights provide for the Commission shall, within the promotion of human rights, *'Collect documents, undertake studies and researches on African problems.'*<sup>413</sup>

**Principle 20: Build capacity and promote cooperation amongst and between all relevant stakeholders to ensure a gender-responsive and human rights-based approach to migration governance and to understand and address the drivers of the movement of migrants in a vulnerable situation**

## **NORMATIVE FRAMEWORK**

Article 22(1) of the Universal Declaration of Human Rights affirms that everyone is entitled to realization of the economic, social and cultural rights indispensable for his dignity and the free development of his personality *'through national effort and international co-operation and in accordance with the organization and resources of each State'*.<sup>414</sup>

According to Article 1(3) of the Charter of the United Nations, one of the purpose of the United Nations is *'To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'*. Moreover, under Article 56 of the Charter, all Members of the United Nations *'pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55'*, that is the promotion of the respect and observance of human rights.<sup>415</sup>

Article 2(1) of the International Covenant on Economic, Social and Cultural Rights *'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'*.<sup>416</sup>

Article 18 of the Protocol Against the Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime concerning the "Return of smuggled migrants" at its point 6 affirms that *'States Parties may cooperate with relevant international organizations in the implementation of this article'*.<sup>417</sup>

Article 7, "Cooperation", of the Protocol Against the Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime, *'States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea'*. Moreover, under Article 14 "Training and technical cooperation" (2 (e)) *'States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct.'*

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<sup>413</sup> Banjul Charter, adopted 27 June 1981

<sup>414</sup> UDHR adopted 10 December 1948) UNGA Res 217 A (III)

<sup>415</sup> Adopted 24 October 1945, 1 UNTS XVI

<sup>416</sup> Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

<sup>417</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

*Such training shall include: The humane treatment of migrants and the protection of their rights as set forth in this Protocol’.*<sup>418</sup>

Under Article 35 “Co-operation of the national authorities with the united nations” of the Convention Relating to the Status of Refugees, *‘The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention’.*<sup>419</sup>

United Nations Convention Against Transnational Organized Crime, Article 1. The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively. Similar provisions are contained in Article 2 of the Trafficking Protocol (*“The purposes of this Protocol are: (a) To prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and (c) To promote cooperation among States Parties in order to meet those objectives”*) and Article 2 of the Smuggling of Migrants Protocol (*“ The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants”*)<sup>420</sup>

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<sup>418</sup> Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

<sup>419</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

<sup>420</sup> UN General Assembly, United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly, 8 January 2001, A/RES/55/25,