
Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations

- Draft February 2017 -



“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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I. Introduction

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

In the New York Declaration for Refugees and Migrants¹, the General Assembly recognized 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.”² The Secretary-General has also noted 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 Convention relating to the Status of Refugees.³

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 precarious movements of people are a serious human rights concern.⁴ Although they might fall outside the specific legal category of refugee, migrants may need particular attention to be paid to the respect, protection and fulfilment of their human rights. Some will need specific protection as a result of the conditions they are leaving behind, the circumstances in which they are compelled to move and in which they are received, and/or according to specific characteristics such as age, gender, disability or health status. It is these people on the move and these situations of movement that are the focus of the current principles and guidelines.⁵

Recognizing 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 that are established in international law. Refugees and asylum seekers are entitled to specific protection under international refugee law.⁶ The human rights and particular needs of other groups of individuals, such as trafficked persons, migrant workers, stateless persons and persons with disabilities, have similarly been recognized in specific international

¹ The outcome document of the high-level plenary meeting on addressing large movements of refugees and migrants convened by the General Assembly, adopted by the Assembly in its resolution 71/1 of 19 September 2016.

² A/71/1, para.1. See also the preamble to the Paris Agreement under the United Nations Framework Convention on Climate Change.

³ A/70/59, para.18.

⁴ A/HRC/31/35

⁵ For further background on the rationale for the principles, see A/HRC/33/67.

⁶ Including the Convention relating to the Status of Refugees and its 1967 Protocol.

instruments.⁷ The development of principles and guidelines is thus without prejudice to the specific rights of particular groups who are part of such movements.

When the international community adopted the Universal Declaration of Human Rights 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. The International Bill of Human Rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the 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.

Human rights are universal, inalienable, indivisible and interdependent. The international human rights framework is clear that in order to give effect to those rights and to uphold the fundamental principle of non-discrimination, the unique and individual circumstances of each person must be considered by duty bearers.⁸ By becoming parties to international human rights treaties, States assume obligations under international law and undertake to put in place domestic measures and legislation compatible with their treaty obligations.⁹ Those 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 and private security contractors, if they fail to take appropriate steps to prevent human rights abuses they knew or should have known about, or to investigate and punish those abuses, and provide compensation.

A. 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, can coexist simultaneously and can influence and exacerbate each other. Situations of vulnerability may change over time as circumstances change or evolve. The factors that create a vulnerable situation for migrants might be what drives their migration from their countries

⁷ 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); ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Convention relating to the Status of Stateless Persons and the Convention on the Rights of Persons with Disabilities.

⁸ Article 2 of the International Covenant on Civil and Political Rights 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.

⁹ States assume obligations and duties under international law to respect, protect and 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.

of origin, occurs in transit and at reception or destination, and/or is related to a particular aspect of a person's identity or circumstance. Thus, vulnerability in this context can be understood as situational (external) and/or embodied (internal).¹⁰

❖ **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, and decent work, as well as xenophobia, violence, gender inequality, the wide-ranging consequences of natural disaster, climate change and environmental degradation, and separation from family. The New York Declaration for Refugees and Migrants emphasizes in addition that many people move, indeed, for a combination of these reasons.

❖ **A vulnerable situation occurring in the context of the circumstances encountered by migrants en route, at borders and at reception**

People are often compelled to utilize 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 in persons and other abuse. Such a journey can be marked by hunger, deprivation of water, a lack of personal security and lack of access to medical care. Many migrants can spend long periods of time in transit countries, often in irregular and precarious conditions, unable to access justice and at risk of a range of human rights violations and abuses. The inadequate and often harsh conditions in which they are received at borders can also violate rights and further exacerbate vulnerabilities. Responses, such as the arbitrary closure of borders, denial of access to asylum procedures, arbitrary push-backs, violence at borders committed by State authorities and other actors (including criminals and civilian militias), inhumane reception conditions, a lack of firewalls, and denial of humanitarian assistance, increase the risks to the health and safety of migrants, in violation of their human rights.

❖ **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 owing 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 in poor health, including those with HIV, persons with disabilities, older persons, or children (including unaccompanied or separated children), are more at risk because of their physical and/or psychological condition.

¹⁰ It is important to note that migrants often show considerable resilience and agency throughout their migration. The vulnerable situations that migrants face have often been created for them by others through law, policy and practice. A human rights-based approach to migrants in a vulnerable situation would therefore seek to ensure that responses aim above all to empower migrants, rather than stigmatizing them and denigrating their agency. See, for example, A/HRC/33/67, paras. 9-12 and A/71/285, paras. 59-61.

B. Principles and practical guidance

There is an international legal framework that specifically protects the rights of all migrants. However, more precise understanding of the human rights standards for migrants in vulnerable situations, as well as of how States (and other stakeholders) can operationalize those standards in practice, is lacking. The principles and guidelines are accordingly an attempt to provide guidance to States and other stakeholders on how to implement obligations and duties to respect, protect and fulfil the rights of migrants who are moving in vulnerable situations, including within large and/or mixed movements.

The principles are drawn directly from international human rights law and related standards, including international labour law, refugee law, criminal law, humanitarian law, the law of the sea, customary international law and general principles of law, including in relation to specific groups in such movements, such as children, persons with disabilities, women at risk, older persons, and lesbian, gay, bisexual, transgender and intersex individuals. The guidelines elaborate international best practice related to each principle in order to assist States (and other stakeholders) to develop, strengthen, implement and monitor measures to protect migrants in vulnerable situations. The guidelines are derived from international human rights law and other relevant branches of law, authoritative interpretations or recommendations by the international human rights treaty bodies and the special procedure mandate holders of the Human Rights Council, as well as other expert sources where relevant.¹¹ It should be noted that the principles and their associated guidelines are interrelated and inform each other; as such the principles and guidelines should be read holistically. Since many terms used in global discussions in this area have required clarification, a limited glossary of key terms used in the principles and guidelines has been included in the present document.

II. 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	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

¹¹ The guidance of the international human rights treaty bodies and the special procedure mandate holders of the Human Rights Council is legally binding to the extent that their work is based on binding international human rights law and enjoys the collaboration of States in the system; and also by the authority given on the one hand to the treaty bodies by their creation in accordance with the provisions of the treaty that they monitor, and on the other the authority provided to the special procedure mandate holders by the Human Rights Council. The recommendations of the treaty bodies and special procedure mandate holders are also considered authoritative by prominent international and regional judicial institutions.

	<p>assistance, including that provided to other States.¹²</p>
Firewalls	<p>Measures to effectively separate immigration enforcement activities from public service provision by State and non-State actors and from labour law enforcement, as well as from criminal justice measures for victims of crime, so as not to deny human rights to persons in an irregular status.¹³ 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.”¹⁴</p>
Human Rights Defenders	<p>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.¹⁵ A person or group need not necessarily self-identify as a human rights defender to constitute one.</p> <p>In the present principles and guidelines, “human rights defender” should be read as specifically including those working with migrants, including providing humanitarian assistance.</p>
Large movements	<p>“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.”¹⁶</p> <p>“‘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</p>

¹² See OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders* (2014), chap. I, para.10

¹³ See François Crépeau and Bethany Hastie, “The case for ‘firewall’ protections for irregular migrants: safeguarding fundamental rights”, *European Journal of Migration and Law*, vol. 17, Nos. 2-3 (2015); European Commission against Racism and Intolerance, general policy recommendation No. 16 on safeguarding irregularly present migrants from discrimination; and ILO, *Promoting Fair Migration: General Survey Concerning the Migrant Workers Instruments* (2016), paras. 480-482. See also European Union Agency for Fundamental Rights, “Apprehension of migrants in an irregular situation — fundamental rights considerations” (2012).

¹⁴ See Crépeau and Hastie, “The case for ‘firewall’ protections” p. 165.

¹⁵ The fourth preambular paragraph 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 refers to “individuals, groups and associations ... contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals”.

¹⁶ See A/70/59, para. 11.

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.”¹⁷

Migrants

In the present principles and guidelines, an international migrant (or 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”.¹⁸ There is no universal, legal definition of a migrant.

The term “migrant” within the present principles and guidelines refers throughout to a migrant in a vulnerable situation.¹⁹

Mixed migration

The term describes the cross-border movements of people with varying protection profiles, reasons for moving and needs, who are moving along the same routes, using the same transport or means of travel, often in large numbers.²⁰ There is no official or agreed definition of mixed migration.

Non-refoulement

The prohibition of refoulement under international human rights law generally applies to any form of removal or transfer of persons, regardless of their status, where there are substantial grounds for believing that the individual would be in danger of suffering torture or other irreparable harm in the place to which he or she is to be transferred or removed.²¹ As an inherent part of the prohibition of torture and other forms of ill-treatment, the principle of non-refoulement is characterized by its absolute nature.²²

¹⁷ New York Declaration for Refugees and Migrants, para. 6.

¹⁸ See Recommended Principles and Guidelines on Human Rights at International Borders, 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 (a) the person’s legal status; (b) whether the movement is voluntary or involuntary; (c) what the causes for the movement are; or (d) 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 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 2 (1); ILO Migration for Employment Convention (Revised) No. 97 (1949), art. 11; ILO Migrant Workers (supplementary provisions) Convention, No. 143 (1975), art. 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.

¹⁹ For an explanation of the term “migrant in a vulnerable situation”, see Introduction.

²⁰ See A/HRC/31/35, para. 10.

²¹ See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3; and Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation on States parties to the Covenant, para. 12.

²² See A/70/303, paras. 38 and 41.

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 [persecution] ... is unable or, owing to such fear, is unwilling to return to it.” ²³
Separated children	Children who have been separated from both parents or from their previous legal or customary primary caregiver, 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. ²⁴
Statelessness	A stateless person is defined in article 1 (1) of the 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”. ²⁵
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. ²⁶
Xenophobia	The term 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. ²⁷ There is no universal, legal definition of xenophobia.

²³ See Convention relating to the Status of Refugees, art. 1. A (2).

²⁴ See Committee on the Rights of the Child, general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, para. 8.

²⁵ The International Law Commission has considered the definition in article 1 (1) of the Convention to form part of customary international law (see A/61/10, Chap. II Natural Persons, Art. 8, Commentary (3), page 49). See also UNHCR, *Handbook on Protection of Stateless Persons Under the 1954 Convention relating to the Status of Stateless Persons* (Geneva, 2014).

²⁶ See Committee on the Rights of the Child, general comment No. 6, para. 7.

²⁷ See ILO, IOM and OHCHR, “International migration, racism, discrimination and xenophobia” (2001), p. 2.

III. The Principles

Principle 1:

Ensure that human rights are at the centre of addressing migration, including responses to 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.²⁸
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.²⁹ Undertake due diligence prior to

²⁸ 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. The International Covenant on Civil and Political Rights reserves to citizens the right to vote and take part in public affairs (article 25), and grants the right of freedom of movement to foreigners provided that they are lawfully present in a country (article 12). This said, the Human Rights Committee has made clear in General Comment No. 15 that all foreigner may enjoy the protection of the Covenant, including in relation to entry and residence, when issues of discrimination, inhuman treatment, or respect for family life arise. CPR, General Comment No. 15: The Position of aliens under the Covenant, 1986, para.2. Article 2(3) of the ICESCR also identifies an exception to the general rule of equal and universal access stating that "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." However, article 2(3) must be narrowly construed, may be relied upon only by developing countries, and refers only to economic rights. Under the ICESCR, State may not discriminate between nationals and non-nationals with respect to social and cultural rights. 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, General Assembly resolution 40/144, 13 December 1985, annex, article 1. See also Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), paras.58(k), 147(h); 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.

²⁹ 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

adopting new policies on migration including human rights impact assessments, and ensure consultation with all relevant stakeholders, including migrants themselves. Immediately suspend, review and amend or repeal any laws and other measures that have negative consequences or disproportionate impact on the human rights of migrants.³⁰

3. Ensure that leaving, entering and/or staying in a country irregularly is 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, necessary and reasonable, and should never include the detention of children.³¹ Ensure that migrants are not liable for criminal prosecution for having used the services of smugglers.³²
4. Ensure that there are appropriate laws and procedures in place to enable human rights and humanitarian actors to protect and assist migrants, and to document human rights violations. Adopt or amend legislation to ensure the effective accountability of private actors engaged by the State in migration governance.³³

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/97ced11dcecef85d41f74043195e5472836f6291?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 paras.29, 30, 73.

³⁰ 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); General Assembly, Violence against women migrant workers, Resolution 70/130 adopted on 17 December 2015, A/RES/70/130, 8 February 2016, para.6.

³¹ 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; CMW, Concluding observations on the combined second and third periodic reports of Senegal, CMW/C/SEN/CO/2-3, 20 May 2016, para.27(a); Committee against Torture, Concluding observations on the fourth report of Cyprus, CAT/C/CYP/CO/4, 16 June 2014, para.17(a); Commission on Human Rights, Report of the Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008, para. 53; 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, para. 13.

³² Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, Article 5.

³³ 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

5. Promote and support action in the context of migration to prevent statelessness, recognising inter alia that statelessness can be a gendered phenomenon, and ensure that all children are able to acquire a nationality.³⁴
6. Take necessary measures to achieve policy coherence on all human rights aspects of migration at the local, national, regional and international levels through a sustainable and whole-of-government approach.³⁵

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.

³⁴ 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; General Assembly, Status of the Convention on the Rights of the Child: Report of the Secretary-General, A/71/413, 27 September 2016, para.28, 29; <http://www.unhcr.org/ibelong/>; European Convention on Nationality (CETS 166, 1997); Committee of Ministers, Recommendation CM/Rec(2009)13 and explanatory memorandum of the Committee of Ministers to member states on the nationality of children, 9 May 2009, CM/Rec(2009)13.

³⁵ Programme of Action, International Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, para.13.5; UN, *Agenda for Humanity: Annex to the Report of the Secretary-General for the World Humanitarian Summit*, Core Responsibility 3B; Human Rights Council, Protection of the human rights of migrants: migrants in transit, A/HRC/RES/29/2, 22 July 2015, para.7(i); 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/RES/32/14, 15 July 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; 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, 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 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>).

Principle 2:

Counter discrimination against migrants in all its forms

Guidelines:

1. Elaborate and implement human rights-based legal measures that protect migrants, regardless of their gender, sexual orientation, gender identity, ethnicity, disability, religion, nationality, migration or residence status, age, their motives for seeking to cross international borders, or the circumstances in which they have travelled or are found. Protect migrants from multiple and intersecting forms of discrimination throughout their migration.³⁶ Ensure that non-discrimination provisions in law are applicable to all migration governance measures.

³⁶ 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. 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.11, 12, 24, 30, 39 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 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.12, 18; 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; CRPD 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; Beijing Declaration, para.32, and Platform for Action, para.225, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995); Durban Declaration, paras.2, 12, 48, 49, 51, and Programme of Action, paras.24, 26-27, 30, 31, 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,

2. Repeal or amend any laws or other measures that may give rise to any kind of discrimination against migrants.³⁷ 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, because they are non-citizens or migrants in an irregular status, and other intersecting forms of discrimination including age and gender. Hold 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.³⁸ Ensure serious and extreme instances
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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/RES/29/2, 22 July 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/RES/32/14, 15 July 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 the rights to freedom of peaceful assembly and of association, A/HRC/26/29, 14 April 2014, paras.25, 37, 30; 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.

³⁷ 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

³⁸ 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; Programme of Action, International Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, para.10.16(d); Durban Declaration, paras.48-50, and Programme of Action, paras.24, 29, 30(a),(b), 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 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

of hate speech and incitement to hatred are prohibited as criminal offences and brought for review by an independent court or tribunal.³⁹

3. Use correct and neutral terminology to describe migrants and migration, and promote evidence-based policies on migration that draw on research on the human rights of migrants, as well as on the fact-based impacts and contributions of migrants to countries of origin, transit and destination, including in terms of social and cultural life and diversity, economic growth, employment generation, social security policies, entrepreneurship and investment.⁴⁰
4. Introduce public education measures and conduct targeted awareness campaigns in order to combat prejudice against and the social stigmatization of migrants in general, and where

human rights 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>

³⁹ 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

⁴⁰ 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; 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

relevant especially those of particular nationalities or religions.⁴¹ Devise or support 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.⁴²

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.⁴³ Ensure all Ombudspersons with relevant mandates adequately consider the intersection of migration with their area of focus.

Principle 3:

Ensure access to justice for migrants

Guidelines:

1. Take measures to assist migrants, including those who are at particular risk of marginalization and exclusion, in gaining equal and effective access to justice,⁴⁴ Ensure that dependent migration status is not a barrier to seeking or obtaining protection, support, or justice.⁴⁵
2. Develop or strengthen measures to provide competent, independent, free and confidential legal and other assistance to migrants, including accessible information and interpretation services to enable them to:

⁴¹ 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

⁴² Programme of Action, International Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, para.11.11; Durban Programme of Action, para.27, in Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/12, 31 August - 8 September 2001; 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.

⁴³ 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)

⁴⁴ 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(l); 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.

⁴⁵ Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Article 59.

- understand their rights, obligations and any applicable procedures under criminal, administrative or labour justice processes
- access due process and justice, including the right to an individual examination, the right to seek asylum, the right to appeal and the right to a judicial and effective remedy, and
- access victim support services.⁴⁶

3. Strengthen or establish official mechanisms and/or procedures to monitor, receive and investigate allegations of human rights violations and abuse of migrants. Provide adequate, and effective, prompt and appropriate judicial and other remedies, including reparation, noting that reparation should be proportional to the gravity of the violations and the harm suffered.⁴⁷

⁴⁶ 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 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; Human Rights Council, 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, 6 July 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; Council of Europe, Recommendation CM/Rec(2012)2 of the Committee of Ministers to member States on the participation of children and young people under the age of 18, 28 March 2012, available at [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec\(2012\)2&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2012)2&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true); Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, available at [http://opac.minori.it/VSRV01_EOS03_Linked_Documents/Giuridico2/2012%20Sec.Trim.\(aprgiu\)/Europeo%20ed%20internazionale/Guidelines%20on%20child%20friendly%20justice.pdf](http://opac.minori.it/VSRV01_EOS03_Linked_Documents/Giuridico2/2012%20Sec.Trim.(aprgiu)/Europeo%20ed%20internazionale/Guidelines%20on%20child%20friendly%20justice.pdf).

⁴⁷ 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 196.

Ensure the gender balance of such mechanisms and procedures corresponds with that of the migrant population. Where relevant, include the family of migrants who went missing, were subject to an enforced disappearance, or were killed in the course of their migration.

4. Ensure migrants are able to access 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.⁴⁸
5. 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.⁴⁹
6. Develop clear and binding procedures and standards on the establishment of firewalls between law enforcement and criminal justice actors, and immigration enforcement authorities or private actors, and ensure their implementation in practice.⁵⁰ Ensure that immigration authorities do

⁴⁸ 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; Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010.

⁴⁹ OHCHR Recommended Principles and Guidelines on Human Rights at International Borders, A/69/CRP. 1, 23 July 2014, Guideline 2(13)

⁵⁰ 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; 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

not conduct enforcement operations at or near places of administration of justice such as court houses and community police stations.

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.⁵¹

Principle 4:

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

Guidelines:

1. Ensure that relevant legal frameworks, as well as international, multilateral, and bilateral agreements on competences on search and rescue zones, fully ensure the effectiveness of search and rescue operations.
2. Establish, operate and maintain adequate and effective services for search and rescue at sea. Ensure that 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 that they 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.⁵²

⁵¹ 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.

⁵² 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

3. Make every effort to protect the right to life of migrants, including at sea and inhospitable or dangerous land or other routes such as rivers or lakes. Ensure adequate resourcing of necessary assistance such as rescue services and equipment such as rescue beacons. Refrain from acts and omissions intended or expected to cause migrants' unnatural or premature death, as well as their legitimate expectation to enjoy a dignified existence.⁵³
4. Establish pre-identified and adapted places of arrival and disembarkation, including landing points for safe disembarkation, that allow for reception and assistance which meets human rights and humanitarian standards. This should include adequate medical screening and first psychological aid and vulnerability assessments, as well as adequate food and water, blankets, clothing, dignity kits, sanitary items, and opportunity to rest.⁵⁴ Provide assistance in a non-discriminatory, disability-, age- and gender-responsive, and culturally appropriate manner.⁵⁵ Humanitarian assistance must not be conditioned on border control, police or other enforcement procedures.
5. Develop guidelines and implement agreements with national protection bodies and other relevant actors to ensure timely and effective referrals for migrants to protection and assistance, in particular psychological and emotional support following their rescue. Ensure that specialised and priority support is provided to the most vulnerable migrants, including shipwreck survivors as well as victims of trauma, torture and sexual and gender-based violence. Put in place measures to respond to the special needs of children following rescue, whether they are travelling unaccompanied, have been separated from or are travelling with family/guardians.⁵⁶

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.

⁵³ 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.

⁵⁴ 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>

⁵⁵ In keeping with the principle of non-discrimination, which is central to all international human rights instruments, see references and annex under Principle 2.

⁵⁶ 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,

6. Provide training to those responsible for providing search, rescue or assistance on the primacy of their obligations to protect human rights including migrants' lives and safety, address specific needs, and ensure the human rights and dignity of all persons rescued.⁵⁷
7. Ensure those individuals and organisations providing search, rescue or assistance to migrants are not criminalised or otherwise punished for doing so, including through modifying existing legislation as necessary.⁵⁸
8. Establish and support public policies and other efforts at national, bilateral, regional and international levels 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, including granting relatives the right to access justice and, as appropriate, effective redress.⁵⁹

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; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, para.70(q); 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.

⁵⁷ OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guidelines 4.3 and 4.7

⁵⁸ 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; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 2, para.6; 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.

⁵⁹ 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.59; CMW, Concluding observations on the initial report of Honduras, CMW/C/HND/CO/1, 3 October 2016, para.33(d).

Principle 5:

Ensure that all border governance measures protect human rights, including the right to freedom of movement and the right of all persons to leave any country, including their own, recognizing 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 that migration and border-governance legislation, measures and practices are human rights-compliant, child-sensitive and gender-responsive and do not adversely impact on the human rights and dignity of migrants.⁶⁰
2. Ensure that no migrant is criminalised for crossing a border irregularly or with the help of a facilitator.⁶¹
3. Prohibit border governance measures that cause or risk human rights abuses.⁶² Prohibit excessive use of force and dangerous border control practices, such as water-hosing and the use

⁶⁰ 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.

⁶¹ The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organised Crime, Article 5; Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008, para. 53; 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; CMW, Concluding observations on the combined second and third periodic reports of Senegal, CMW/C/SEN/CO/2-3, 20 May 2016, para.27(a); CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, para.42(h); 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 Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, paras. 13, 14; 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.56; OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 2, paras.4, 5.

⁶² 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); General Assembly, Protection of Migrants, Resolution 66/172 adopted on 19

of dogs against migrants. Ensure there are no arbitrary and collective expulsions, including through tow-backs or push-backs, in all areas where the State exercises jurisdiction or effective control including outside the territory of the expelling State, at border areas and on the high seas.⁶³

4. 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, culturally appropriate food, and medical care with specific attention to the needs of children, pregnant women, older persons and persons with disabilities.
5. Implement individual screening and assessment procedures as soon as possible after arrival to ensure prompt identification of situations of vulnerability for all migrants without discrimination. Such screening should, as relevant, be prior to, apart from, or alongside interviews to establish an asylum claim. Ensure sufficient numbers of competent experts are present at borders to establish and deliver human rights-based screenings and referrals.⁶⁴

December 2011, A/RES/66/172, 29 March 2012, para.4(e); 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.55-68 on concerns about the human rights impacts of externalisation of borders; 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.22(a), 35-40.

⁶³ Note that push-backs would generally constitute collective expulsion, see *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012, available at <http://hudoc.echr.coe.int/eng-press#%22dmdocnumber%22:%22900989%22,%22itemid%22:%22001-109231%22>}. International Covenant on Civil and Political Rights, Article 13; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 22; Human Rights Council, Migrants and asylum-seekers fleeing from events in North Africa, A/HRC/17/L.13, 15 June 2011, paras.2, 5; 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.56; OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Principle C.11, Guidelines 4.5, 9.1, 9.4, 9.14; OHCHR, Sealing international borders is impossible, it only empowers smugglers – New expert report warns, 16 June 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16081&LangID=E>; OHCHR, “Using force will not stop the global migration crisis” – UN experts call for “smart mobility solutions, 23 October 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16645&LangID=E>.

⁶⁴ 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

6. Establish practical and effective mechanisms to assess the individual situation of all migrants at borders. Prevent or suspend any expulsion until such an assessment has been completed or an appeal against any negative decision has been completed.⁶⁵ Such a mechanism should⁶⁶

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; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, para.70(q); 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.

⁶⁵ 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>.

⁶⁶ 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; ILO Convention No. 143, Migrant Workers (Supplementary Provisions) Convention, para.9(3); 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; Human Rights Committee, Concluding observations on the third periodic report of Latvia, CCPR/C/LVA/CO/3, 11 April 2014, para.14(c); Committee on the Elimination of Racial Discrimination, Concluding observations – Spain, CERD/C/ESP/CO/18-20, 8 April 2011, para.13(a). 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.46; General Assembly,

- Be composed of properly qualified personnel
 - Be able to properly identify the individual situation of migrants in order to assess risks and rights including needs for protection
 - Work in a timely manner, including providing adequate time for the migrant to present his or her case and seek remedies where appropriate
 - Enable access to competent legal advice and representation
 - Be able to access all documents related to the case
 - Provide justification for the decision in writing in a language and format understandable to the migrant
 - Be able to exercise positive immigration discretion on humanitarian grounds where appropriate, including for migrants displaced by climate change and environmental factors
 - Provide information on the remedies available
 - Arrange appropriate referrals.
7. Ensure border authorities are only able to confiscate migrants' personal property when duly authorised by law and in accordance with international human rights standards in clearly defined, limited circumstances and establish clear procedures for their return.⁶⁷
 8. Provide training for border authorities 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 based on the evidence of migrants' experiences, that are border- specific and take into account the different risk factors and human rights violations that may be experienced by different groups of migrants.⁶⁸

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.

⁶⁷ 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

⁶⁸ 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; Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.232(i); General Assembly, Protection of Migrants, Resolution adopted on 19 December 2011, A/RES/66/172, 29 March 2012, para.4(e); General Assembly, Protection of Migrants, Resolution 66/172 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,

9. 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*.⁶⁹

Principle 6:

Ensure that all returns 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 expulsions and the right to seek asylum

Guidelines:

1. 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, risk to life including lack of necessary medical care, 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.⁷⁰ Ensure counter-smuggling measures and measures to manage irregular

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 International Borders*, A/69/CRP. 1, 23 July 2014; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, para.69; UNHCR, *Working with Persons with Disabilities in Forced Displacement*, 2011, available at <http://www.unhcr.org/4ec3c81c9.pdf>

⁶⁹ 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*. A/69/CRP. 1, 23 July 2014

⁷⁰ 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; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, paras.33, 70(r); 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

migration, such as the creation of special zones at airports or readmission agreements, do not breach the obligation of non-refoulement.⁷¹

2. Any consent given to voluntary return processes must be fully and meaningfully informed, based on up-to-date, accurate and objective information, including in relation to the place and circumstances to which migrants will be returning. Consent must be given free of any coercion, including violence and ill-treatment, the actual or imputed prospect of indefinite or arbitrary detention, or detention in inadequate conditions.⁷²
3. Make efforts to guarantee that returning migrants can choose the State to which they are returned, subject to the agreement of that State. 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.⁷³
4. Ensure that returns are only carried out in accordance with international law, in conditions of safety and dignity, and with due procedural guarantees. Children should be accompanied throughout the return process. Migrants who are being returned should not be subject to human rights violations and abuse by state or private actors, including arbitrary detention, violence and ill-treatment, and extortion.

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.

⁷¹ Anne T. Gallagher, *Migrant Smuggling*, in N. Boister and R.J. Currie (eds.) *Routledge Handbook on Transnational Criminal Law*, 2015.

⁷² OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*. A/69/CRP. 1, 23 July 2014, Guideline 9.3. See also UNHCR, *Handbook on Voluntary Repatriation*, 1996 where elements may apply by analogy.

⁷³ 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.56; Programme of Action, International Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, para.10.20; 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.

5. Make determinations on the return of children (including unaccompanied or separated children as well as children accompanied by their parents or other caregivers) in accordance with the principle of the best interests of the child.⁷⁴ Such determinations should
 - be reached in a formal procedure with competent officials
 - contain the necessary safeguards, including allowing for the fulfilment of the right of the child to be heard, and his or her right to competent and independent legal representation
 - ensure that all solutions available to the child are equally assessed
 - incorporate the component of adequate development and survival of the child,
 - take into account the socio-economic conditions in the child's country of origin and family environment, including whether there is adequate safe reception in their country of origin.⁷⁵
6. 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.⁷⁶ In cases of separation, States of origin and destination should cooperate to ensure that family tracing efforts continue after return.
7. 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 to ensure the equal enjoyment of human rights by all returning migrants, including with regard to social protection, health care, an adequate standard of living, education and decent work, and meaningful and tailored reintegration programmes that respond to the differing needs of women and men.⁷⁷

⁷⁴ 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.

⁷⁵ 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; 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).

⁷⁶ 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; Council of Europe, Recommendation CM/Rec(2007)9 of the Committee of Ministers to member states on life projects for unaccompanied migrant minors, adopted 12 July 2007.

⁷⁷ 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.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;

Ensure the effective reintegration of returning children, from a human rights perspective and through targeted measures which should include effective access to justice, education, health, family life, and protection against all forms of violence.⁷⁸ 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. 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.⁷⁹ Ensure returns are not to areas of repeated extreme weather and/or slow onset events.⁸⁰ Create long-term, independent reporting mechanisms that are able to monitor potential or actual human right violations after returns.⁸¹

8. Institute independent mechanisms for ongoing human rights monitoring post-return, which should⁸²

Programme of Action, International Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, para.10.2(c); 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); 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, Annex para.103 .

⁷⁸ 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; 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, Annex para.103.

⁷⁹ 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>

⁸⁰ For definitions of 'extreme weather' see, Intergovernmental Panel on Climate Change (IPCC), 2012: Glossary of terms. In: *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation* [Field, C.B., V. Barros, T.F. Stocker, D. Qin, D.J. Dokken, K.L. Ebi, M.D. Mastrandrea, K.J. Mach, G.-K. Plattner, S.K. Allen, M. Tignor, and P.M. Midgley (eds.)]. A Special Report of Working Groups I and II of the Intergovernmental Panel on Climate Change (IPCC). Cambridge University Press, Cambridge, UK, and New York, NY, USA, pp. 555-564, available at https://www.ipcc.ch/pdf/special-reports/srex/SREX-Annex_Glossary.pdf, and Section 3.1.2, pp.115-118 of the main report, at https://www.ipcc.ch/pdf/special-reports/srex/SREX_Full_Report.pdf; on 'slow onset events' see, UN Framework Convention on Climate Change, Slow onset events: Technical paper, FCCC/TP/2012/7, 26 November 2012, available at <http://unfccc.int/resource/docs/2012/tp/07.pdf>

⁸¹ 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.

⁸² 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; Human Rights Council, Report of

- ensure that the return did not violate the principle of non-refoulement, the right to seek asylum, and/or the prohibition of arbitrary and collective expulsions.
 - guarantee that all allegations of human rights violations during return processes are promptly and impartially investigated
 - monitor the human rights situation of migrants who have been returned in forced or voluntary processes
 - ensure access to effective complaints mechanisms and remedies where appropriate.
9. Grant temporary residence status or other temporary protected status to any migrants who cannot be returned, 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 migrants who cannot be returned in indefinite or protracted detention and protect against re-detention.⁸³
10. Ensure in all measures relevant to returns, whether forced or voluntary, that due consideration is given to the provisions on ‘human rights-based return or removal’ of OHCHR’s *Recommended Principles and Guidelines on Human Rights at International Borders*.⁸⁴

Principle 7:

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

Guidelines:

1. Take preventative and response measures to protect migrants from violence and exploitation, whether inflicted by State institutions and officials or by private individuals and entities or

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, Annex para.103.

⁸³ 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. OSCE, *Self-Assessment Tool for Nations to Increase Preparedness for Cross-Border Implications Of Crises*, OSCE 2013; UNHCR, *Guidelines on Temporary Protection or Stay Arrangements*, UNHCR 2014; Regional Conference on Migration (RCM), *A Guide to Effective Practices For RCM Member Countries: Protection for persons moving across borders in the context of disasters*, RCM 2016; The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change: Volume I*, December 2015.

⁸⁴ OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*. A/69/CRP. 1, 23 July 2014, Guideline 9.

groups.⁸⁵ Ensure that prevention and response measures prevent reoccurrence, are accessible to all migrants, and that measures to protect migrants from violence and exploitation are

⁸⁵ International Covenant on Civil and Political Rights, Article 7, 8; International Covenant on Economic, Social and Cultural Rights, Article 6,1, 7, 10.3; Convention on the Rights of the Child, Articles 19.1, 32.1, 34, 35, 36; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; Convention on the Rights of Persons with Disabilities, Article 16; Convention on the Elimination of All Forms of Discrimination against Women, Article 6; 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 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; Council of Europe Convention for the Protection of Children from Sexual Exploitation and Sexual Abuse (CETS No.201); 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); CRC, General comment No. 20 on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, paras.82, 83; 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; 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 14; Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), paras.58(k), 116, 126(d), 148(b); 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,

devised in consultation with migrants and their organizations, representative employers' and workers' organizations, and criminal justice actors. All immigration facilities should adhere to violence prevention and response standards, including for sexual and gender-based violence prevention, and provide safe accommodation and assistance to migrant victims of violence and exploitation.

2. Ensure that legislation, policies and practice reduce risks that migrants will be exploited by those offering services or work in the formal and informal sectors, including being subject to forced labour or trafficking in persons. Ensure that migrant children are protected against exploitation and abuse, including the worst forms of child labour.⁸⁶
3. Establish accessible and confidential services for migrant victims of violence and exploitation including care, counselling, reporting and complaints mechanisms, and functioning referral pathways.⁸⁷ Such services should include medical, sexual and reproductive healthcare, which can ensure access to essential medicines and services, as well as 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.⁸⁸ Service providers should be trained to

29-31; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, para.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; 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>.

⁸⁶ 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); ILO Protocol of 2014 to the Forced Labour Convention, 1930 (No.29); 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; Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.125(c); 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, 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); Human Rights Council, Report of the Special Rapporteur on the human rights of migrants: Labour exploitation of migrants, A/HRC/26/35, 3 April 2014.

⁸⁷ 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>

⁸⁸ 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,

understand and respond to the human rights and needs of migrants and their families who have been affected by violence, and to overcome anti-migrant bias.⁸⁹ Migrants' experiences of violence, including domestic violence and sexual and gender-based violence, should be addressed without causing further victimisation, trauma or harm. 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.

4. Strengthen law enforcement and criminal justice responses to violence and exploitation against migrants. Ensure the prompt, independent and effective investigation and prosecution of excessive use of force, including lethal force, and of any act of violence against migrants,

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; Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.125(f); 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 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>. 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.

⁸⁹ 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>

regardless of the status or situation of the migrant or whether the alleged perpetrator was acting in a public or private capacity.⁹⁰

5. Take measures to encourage migrants to report crimes committed against them, with clear and binding firewalls to ensure migrants are able to report crimes against them and to participate in criminal justice proceedings and access related assistance and support. Ensure that migrants are not deterred from doing so due to fears of arrest, detention and expulsion on the basis of their migration status.⁹¹ Ensure that sentences imposed on those who carry out violence against, or exploit, migrants are proportionate to any human rights violations committed against migrants.⁹²

⁹⁰ 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); General Assembly, United Nations Model Strategies and Practical measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, Resolution 69/194 adopted on 18 December 2014, A/RES/69/194, 26 January 2015, Annex para. 47; 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

⁹¹ 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*.

⁹² Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Article 6(3); 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.25(b), 27(b)(ii); 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; General Assembly, Violence against women migrant workers, Resolution 70/130 adopted on 17 December 2015, A/RES/70/130, 8 February 2016, paras.18, 21, 22; General Assembly, Protection of migrants, Resolution adopted on 17 December 2015, A/RES/70/147, 25 February 2016, para.4(d).

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.⁹³
2. Work towards progressively ending all forms of immigration detention.⁹⁴ Until then, ensure that immigration detention is implemented in line with international human rights law and its procedural safeguards. These include:
 - guarantees that detention can only be ordered by a court of law
 - ensuring that detention is always determined on a case-by-case basis as an exceptional and last resort measure and for the shortest period of time
 - respect for due process of law, including access to legal counsel and fair trial guarantees
 - ensuring detention is not mandatory, that it is necessary and proportionate, and that it is of limited scope and duration
 - ensuring that there are no suitable non-custodial alternatives available to meet the same legitimate aim⁹⁵

⁹³ 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(1); 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 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; Committee against Torture, Concluding observations on the fourth report of Cyprus, CAT/C/CYP/CO/4, 16 June 2014, paras.17(a); CAT, Concluding observations on the fifth periodic report of CAT/C/AUS/CO/4-5, 23 December 2014, para.16; Commission on Human Rights, Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, paras.73 and 74; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, paras.67, 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.108(b).

⁹⁴ Human Rights Council, 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, 6 July 2015, Principle 21, paras. 45, 46; Human Rights Council, Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008, para.53; 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.

- clearly defining in law the reasons for detention⁹⁶
- ensuring that these reasons are explained to migrants orally and in writing, in a language and format they understand with the assistance of an interpreter if necessary⁹⁷
- guaranteeing that information on the individual's rights in connection with the decision is included in the detention order⁹⁸

⁹⁵ 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, 39; CMW, Concluding observations on the initial report of Turkey, 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; CAT, Concluding observations on the fifth periodic report of Australia, 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); CERD, 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 Committee, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, 23 April 2014, para.15; 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(j); CEDAW General Recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, para.53(c); Commission on Human Rights, Report of the Working Group on Arbitrary Detention, Annex II: Deliberation No.5, Situation regarding immigrants and asylum-seekers, E/CN.4/2000/4, 28 December 1999, Principles 1, 6, 7; Human Rights Council, Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, paras.59, 64; Human Rights Council, Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, Report of the Working Group on Arbitrary Detention, A/HRC/30/37, 6 July 2015, para. 42 (Principle 21); 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>; Commission on Human Rights, Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, paras.20-34, 35, 74, 75; 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, 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.51, 52; 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.41-45; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, para.70(r); Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the situation of migrants in transit, A/HRC/31/35, 27 January 2015, paras.40-46.

⁹⁶ International Covenant on Civil and Political Rights, Article 9(1).

⁹⁷ 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, paras.24-30; Commission on Human Rights, Report of the Working Group on Arbitrary Detention, Annex II: Deliberation No.5, Situation regarding immigrants and asylum-seekers, E/CN.4/2000/4, 28 December 1999, Principles 1, 8.

⁹⁸ 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; ; Human Rights Council, Report of the Working Group on Arbitrary Detention, United Nations Principles and Guidelines on remedies and procedures

- guaranteeing the right to challenge the lawfulness of any deprivation of liberty in a timely manner before a court, independent of the detaining authority, and to be ordered promptly released if the detention is found unlawful.⁹⁹
3. 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.¹⁰⁰ Legislation should include the obligation of administrative or judicial bodies to start from a presumption of liberty and only if that is rejected for clear, articulated reasons to consider human rights-based alternatives to detention – one by one – including the obligation to provide adequate reasons at each step why each option is not applicable in the particular case.

on the right of anyone deprived of their liberty to bring proceedings before a court, A/HRC/30/37, 6 July 2015, Principle 21; Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 18; 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, para.34.

⁹⁹ 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, paras.39-48; 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.27, 30, 32, 33; Commission on Human Rights, Report of the Working Group on Arbitrary Detention, Annex II: Deliberation No.5, Situation regarding immigrants and asylum-seekers, E/CN.4/2000/4, 28 December 1999, Principles 3, 6.

¹⁰⁰ 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); Committee against Torture, Concluding observations on the fourth report of Cyprus, CAT/C/CYP/CO/4, 16 June 2014, paras.17(c); CAT, Concluding observations on the fifth periodic report of CAT/C/AUS/CO/4-5, 23 December 2014, para.16; General Assembly, Protection of migrants, Resolution 63/184 adopted on 18 December 2008, A /RES/63/184, 17 March 2009 resolution 63/184, para.9; UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, UNHCR 2012, Guideline 4.3; 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; Commission on Human Rights, Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, para.75(f); Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, paras.48-67, 73; 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.48, 92; 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.45, 65, 70, 88; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, para.37; Commission on Human Rights, 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; Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008, paras. 53, 54; Human Rights Council, Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para.65; Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the situation of migrants in transit, A/HRC/31/35, 27 January 2015, paras.47-49; UNHCR, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions*, July 2011, available at <http://www.unhcr.org/536a00576.pdf>; International Detention Coalition and La Trobe Refugee Research Centre, *There are Alternatives: A handbook for preventing unnecessary immigration detention*, IDC 2011.

4. 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.¹⁰¹ Conditions should reflect the administrative purpose for which migrants are being detained and migrants should never be held in criminal prisons or facilities designed for criminal corrections.¹⁰² Any restrictions imposed on individual autonomy should be applied only to the extent necessary to protect the rights of others and to maintain public order.¹⁰³ Ensure that migrants deprived of liberty have prompt access to independent

¹⁰¹ UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, 8 January 2016; also, International Covenant on Civil and Political Rights, Article 10; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 17, and United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules); UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules); Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines), UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, Guideline 8, paras.7-12; Committee on the Elimination of Racial Discrimination, Concluding observations – Spain, CERD/C/ESP/CO/18-20, 8 April 2011, para.13(b); 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 third periodic report of Latvia, CCPR/C/LVA/CO/3, 11 April 2014, para.14(e); 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.40, 42; 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 on women’s access to justice, CEDAW/C/GC/33, 23 July 2015, para.53(c); Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, in particular paras.25-32, 72; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, paras.32, 33, 70(s),(u); Association for the Prevention of Torture (APT) and United Nations High Commissioner for Refugees (UNHCR), *Monitoring Immigration Detention: Practical manual*, 2014, in particular sections 4.4 and 4.6 .

¹⁰² International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Articles 17.2, 17.3; Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, paras.14, 18; 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.24, 37-39; Human Rights Committee, Concluding observations on the sixth periodic report of New Zealand, CCPR/C/NZL/CO/6, 28 April 2016, para.38(b); Commission on Human Rights, Report of the Working Group on Arbitrary Detention, Annex II: Deliberation No.5, Situation regarding immigrants and asylum-seekers, E/CN.4/2000/4, 28 December 1999, Principle 9; Commission on Human Rights, Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, paras.17, 18, 41, 46, 53, 56, 63, 73, 75(i),(n); Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, paras.31, 33-35; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, Guideline 8, para.9; 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.

¹⁰³ UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, 8 January 2016; also, Human Rights Committee, General comment No. 35:

lawyers, including to receive visits and to 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.¹⁰⁴

5. Protect against the particular risks of exploitation, abuse and sexual or gender-based and other violence that immigration detention poses for migrants including children, lesbian, gay, bisexual, transgender, intersex (LGBTI) or gender non-conforming people, women, and persons with disabilities, and ensure that they receive the treatment and medication they require.
6. 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.¹⁰⁵ Ensure also that migrants with specific

Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, paras.14, 18; 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; 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.42; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, paras.35, 41; Association for the Prevention of Torture (APT) and United Nations High Commissioner for Refugees (UNHCR), *Monitoring Immigration Detention: Practical manual*, 2014, in particular sections 4.1, 4.2, 4.3, 4.5.

¹⁰⁴ 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; 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; Committee on the Elimination of Discrimination against Women, General Recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, paras.48, 49, 51(n) and generally; 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; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, paras.16-20, 31, 32, 34-36, 68, 70, 71; 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.

¹⁰⁵ 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 September 2016, para.56; General Assembly, Status of the Convention on the Rights of the Child: Report of the Secretary-General, A/71/413, 27 September 2016, paras.39-40, 62; 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, 80-83, 85 in particular paras.(j),(k),(m),(n),(p); Human Rights, Council, Report of the Special Rapporteur on the human rights of

protection needs including but not limited to pregnant or nursing women, older persons, persons with disabilities, survivors of torture or trauma, migrants with particular physical or mental health needs and stateless persons, are not placed in detention.¹⁰⁶

7. Ensure that centres of detention are effectively monitored by autonomous and independent mechanisms with a clear human rights mandate to prevent and address any act of torture and other form of violence, as well as to protect the rights of migrants deprived of liberty, including children. Ensure that monitoring mechanisms have clear roles and responsibilities and broad powers defined by law, including
 - the right to gain access to any place of deprivation of liberty, including through unannounced visits
 - the right to access any needed information, to request reports before, during and after the inspection and to receive a prompt response

migrants, A/HRC/20/24, 2 April 2012, paras.38-41; 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.44, 112; Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the situation of migrants in transit, A/HRC/31/35, 27 January 2015, paras.44-45; 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>; OHCHR, Children and families should never be in immigration detention – UN experts, 18 December 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21026&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>; UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, available at <http://www.refworld.org/docid/5885c2434.html>

¹⁰⁶ 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; 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.45, 46; 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; Human Rights, Council, Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, paras.41-51; Human Rights, Council, 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; 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, paras.48, 86(g); UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Guideline 9; 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, Principle 7, 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."

- the right to receive complaints directly from migrants; and the authority to make public the results of their inspections and recommendations, while preventing the public disclosure of information that may place a migrant at risk.¹⁰⁷
8. Take the necessary measures to ensure that consulates respond effectively to the needs of their citizens being held in immigration detention. Such measures should include ensuring legal aid, promoting access to justice and other guarantees of due process, the provision of assistance, the allocation of sufficient human and financial resources to implement consular duties in this regard, and the development of ongoing training programmes for consular officials on human rights law.¹⁰⁸ Detaining authorities should be made aware of the particular risks posed to certain

¹⁰⁷ Optional Protocol to the Convention against Torture, Article 19; 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.11; 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.36(b); 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, para.39; CERD, Concluding observations – Spain, CERD/C/ESP/CO/18-20, 8 April 2011, para.13(b); 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(n); General Assembly, Annual report of the Special Representative of the Secretary-General on Violence against Children, A/71/206, 25 July 2016, para.114; Commission on Human Rights, Report of the Working Group on Arbitrary Detention, Annex II: Deliberation No.5, Situation regarding immigrants and asylum-seekers, E/CN.4/2000/4, 28 December 1999, Principle 10; Commission on Human Rights, Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, para.75(i); Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, para.32; 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; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, paras.38, 39, 70(y); OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 8, paras.18, 19; Association for the Prevention of Torture (APT) and United Nations High Commissioner for Refugees (UNHCR), *Monitoring Immigration Detention: Practical manual*, 2014.

¹⁰⁸ Vienna Convention on Consular Relations, in particular Articles 5(a), 5(e), 36(1); Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, Article 16(5); 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), 39; ; Human Rights Council, Report of the Working Group on Arbitrary Detention, United Nations

groups, such as irregular migrants or LGBTI individuals, of being brought to the attention of consular authorities without their knowledge and informed consent.¹⁰⁹

9. 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 by State actors and private individuals, entities or security forces.¹¹⁰

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 detention and deportation. Ensure that children enjoy the right to express their views freely concerning decisions about their possible return to their families.¹¹¹ Family reunification should never be used to justify expedited return in the absence of due process.

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, 6 July 2015, para.110; 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, Principle 16(2); 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.4(k); General Assembly, Report of the Special Rapporteur on the human rights of migrants: A/71/40767, 20 July 2016, para.98; 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.126-128, 202-203, available (in English) at http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

¹⁰⁹ OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guidelines 4.11, 8.16.

¹¹⁰ 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.22; CMW, Concluding observations on the initial report of Honduras, CMW/C/HND/CO/1, 3 October 2016, para.29; Commission on Human Rights, Report of the Special Rapporteur - Migrant Workers, E/CN.4/2003/85, 30 December 2002, para.22; Human Rights Council, 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); Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the situation of migrants in transit, A/HRC/31/35, 27 January 2016, para.46.

¹¹¹ Convention on the Rights of the Child, Articles 3, 5, 9, 10, 12, 16, 22(2); Committee on the Rights of the Child, General Comment No. 6 on the Treatment of unaccompanied and separated children outside their

2. Take positive measures, both at the domestic level as well as in bilateral and regional processes, to facilitate the unity or reunification of families.¹¹² Enhance regular channels for family reunification without discrimination or disproportionate restrictions including in relation to age, income, or language. Ensure that requests for family reunifications entail no adverse consequences for the applicants and for members of their family.¹¹³
3. 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 always be in the child's best interests.¹¹⁴ Simplify and speed up procedures, without compromising human rights standards, to make it easier for children to reunite with their families. In particular, guarantee that applications by a child or his or her parents to enter or leave a State for the purpose of family reunification will be dealt with by States in a positive, humane and expeditious manner, without compromising standards.¹¹⁵
4. 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.¹¹⁶

country of origin, CRC/GC/2005/6, 1 September 2005, paras.79-83; 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.40; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E /2002/68/Add.1, 20 May 2002, Guidelines 8(4),(6); 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; General Assembly, Protection of migrants, GA70/147, adopted on 17 December 2015, paras.5(d); 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.47-49, 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>.

¹¹² Convention on the Rights of the Child, Article 5, 10, 22; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 44; 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; CEDAW General Recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para.26(e); 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, 13, 79-83, 92; 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; 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, requested by Argentina, Brazil, Paraguay, Uruguay, paras.84, 105, 167, available (in English) at http://www.corteidh.or.cr/docs/opinion/es/seriea_21_eng.pdf. See also, OHCHR, *Family Reunification, OHCHR Migration Papers*, November 2005

¹¹³ Convention on the Rights of the Child, Article 10.1

¹¹⁴ 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.79-83

¹¹⁵ Convention on the Rights of the Child, Article 10.1

¹¹⁶ Convention on the Rights of the Child, Articles 5, 9; 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;

5. Ensure, including through legal assistance and judicial and administrative protection, that parents who have been returned or otherwise removed are able to exercise their right to family unity and custody of their children, including of those children who have citizenship of the State that is carrying out the removal, before the courts of that country.¹¹⁷
6. Families with children should be 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 or guardians are detained; alternatives to detention should instead be applied to the entire family.¹¹⁸

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:

1. Ensure that all 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, the best interests of the child and the full participation of all children, and 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

Human Rights Committee, General Comment No. 16: Article 17 (Right to Privacy): The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, HRI/GEN/1/Rev.9 (Vol.I), 8 April 1998, para.5; Committee for the Elimination of Discrimination against Women, General recommendation No. 21: Equality in marriage and family relations, 1994, para. 13; Committee on the Rights of the Child, General Comment No. 7: Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006, para.15; Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.29; 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; 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.272.

¹¹⁷ Human Rights Committee, General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, 27 July 1990, para.5; 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, paras.55(d),(e); 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.280

¹¹⁸ 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.158, 160; 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.80; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, para.72(h); OHCHR, Children and families should never be in immigration detention – UN experts, 18 December 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21026&LangID=E>.

principle of the best interests of the child encompasses short, medium- and long-term effects of actions related to the development of the child.¹¹⁹

- uphold the principle that the child's best interest takes precedence over migration management objectives or other administrative considerations, guarantee that children in the context of migration are treated first and foremost as children, and ensure equal standards of protection are provided to all children regardless of age¹²⁰
- incorporate due process guarantees, including the right to qualified legal representation
- 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 maturity¹²¹
- ensure that all migrant children have access to age-appropriate and child sensitive information on their rights and any processes to which they will be subject.¹²²

¹¹⁹ 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, paras.4, 5, 16(e), 34, 42, 51, 71, 76, 84; General Assembly, Status of the Convention on the Rights of the Child: Report of the Secretary-General, A/71/413, 27 September 2016, para.34; Hirokazu Yoshikawa and Jenya Kholoptseva. *Unauthorized Immigrant Parents and Their Children's Development: A Summary of the 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.

¹²⁰ Committee on the Rights of the Child, General comment No. 20 on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, para.77; 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.73; General Assembly, Status of the Convention on the Rights of the Child: Report of the Secretary-General, A/71/413, 27 September 2016, paras.9, 55; OHCHR, Calais camp: French and UK Governments fell well short of their child rights obligations – UN experts, 2 November 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20815&LangID=E>.

¹²¹ Convention on the Rights of the Child, Articles 2, 3, 12; 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, including paras.19-22, 25, 31, 40, 63; CRC, General comment No. 12 (2009): The right of the child to be heard, CRC/C/GC/12, 20 July 2009; 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; 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; General Assembly, Status of the Convention on the Rights of the Child: Report of the Secretary-General, A/71/413, 27 September 2016, paras.9, 15, 20, 24, 31, 33-36, 38, 39-40, 45, 55, 56, 58, 62; OHCHR, Situation of migrants in transit, 27 January 2016, A/HRC/31/35, paras.17, 18, 44, 67(f).

¹²² Convention on the Rights of the Child, Articles 13, 17; 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.25, 37; General Assembly, Status of the Convention on the Rights of the Child: Report of the Secretary-General, A/71/413, 27 September 2016, paras.31, 57.

2. Provide guidance 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 Refugee Convention. This guidance should be based on international human rights law and best practice, and be directed at child protection officers and other relevant officials.¹²³
3. In case of reasonable doubt regarding the age of a migrant, provide gender-sensitive and multidisciplinary age determination procedures which draw on assessments by independent and qualified psychologists and social workers in a safe, age-appropriate and dignified manner. Establish a presumption in favour of the child in situations of ambiguity. Return should be suspended and children should not be detained while age-assessment takes place. Recall in this context the absolute prohibition on the detention of children based on their migration status.
4. Ensure that national child protection systems, in their design and implementation, take into account the distinctive needs and views of migrant children and children born to migrant parents. Coordinate child protection policies and systems internally and across borders that are in full compliance with international human rights law and ensure that officials who are likely to encounter migrant children are trained in good practices such as child-friendly communication. To the extent possible, ensure that there are adequate numbers of trained child protection officers at all stages of the migration journey.¹²⁴
5. Ensure screening of child migrants is conducted by a child protection officer, and not an immigration or border enforcement officer, who is empowered to refer the migrant child to child protection experts for further screening, interviewing, assistance and protection. Ensure that unaccompanied children are accommodated in separate reception facilities from adults.¹²⁵
6. Provide unaccompanied and separated migrant children with specific protection and assistance.¹²⁶ Establish or strengthen qualified, trained and independent guardianship mechanisms, to ensure they are promptly appointed to give the necessary protection and

¹²³ 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; General Assembly, Status of the Convention on the Rights of the Child: Report of the Secretary-General, A/71/413, 27 September 2016, para.45; 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 who are not making an asylum claim.

¹²⁴ Adapted from: UN General Assembly, Protection of migrants, GA70/147, adopted on 17 December 2015, para.9(c); see also OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 8.10; General Assembly, Status of the Convention on the Rights of the Child: Report of the Secretary-General, A/71/413, 27 September 2016, para.63.

¹²⁵ 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. 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.33, 36, 37, 39, 40, 69, 95; 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, in particular at paras.94-95; General Assembly, Status of the Convention on the Rights of the Child: Report of the Secretary-General, A/71/413, 27 September 2016, paras.27, 45, 63.

¹²⁶ 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.

assistance to all unaccompanied and separated children and child-headed households as soon as they are identified.¹²⁷ Develop national implementation plans to ensure that all migrant children are able to access competent guardians in a timely manner.

7. 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.¹²⁸

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.¹²⁹
2. In all reception facilities and any other centres for migrants, ensure women and girls are not discriminated against in asset allocation and control over resources. Women staff should be

¹²⁷ 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.21, 24, 25, 33-38, 55, 89, 95; General Assembly, Status of the Convention on the Rights of the Child: Report of the Secretary-General, A/71/413, 27 September 2016, paras.27, 35; 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.132-136, available (in English) at http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf; 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.

¹²⁸ Convention on the rights of the child, Article 7; Committee on the Rights of the Child, General Comment No. 7: Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006, para.25, 36(h); CRC, General comment No. 20 on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, para.41; 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.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).

¹²⁹ 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.5, 7, 12, 13-22, 23(a), 25, 26; 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, 50(b),(d),(f).

present wherever women or girls are accommodated. All such centres should provide well-lit, safe and private WASH (water, sanitation and hygiene) facilities, as well as multi-purpose culturally-appropriate and women-only and mother/baby areas that provide safe spaces for women to rest and receive information as well as other services.¹³⁰

3. Ensure the availability of trained staff at all sites to support women and girl migrants who have experienced trauma, including sexual and gender-based violence. Ensure that migrant women and girls are able to access specialised medical and psychosocial support, sexual and reproductive health services and information, as well as a range of gender-sensitive and targeted services including psychosocial support, trauma counselling, legal advice and health services.¹³¹

¹³⁰ 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; 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. Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.125(h),(i); 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

¹³¹ International Convention on the Rights of All Migrant Workers and Members of Their Families, Article. 16 (2); International Convention on the Elimination of All Forms of Racial Discrimination, Article. 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; Committee on the Elimination of Discrimination against Women, General recommendation No.19 on violence against women, A/47/38, 1992, paras.24(a),(k),(t)(iii); CEDAW, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013, para.81(k); CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, paras.46, 50(f); 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; Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.125(a),(b),(c); 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; Council of Europe, Convention on preventing and combating violence against women and domestic violence (The Istanbul Convention), Articles 4.1, 5.1, 12.2, 12.3, 18, 20, 22, 23, 25; 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; Women's Refugee Commission, *EU-Turkey Agreement*

4. Provide training, monitoring and supervision to ensure border police and immigration officials including contracted private actors are adequately equipped, trained, supervised and monitored for non-discriminatory practices and responsiveness to the needs and human rights of migrant women and girls.¹³²
5. Ensure a robust gender analysis of the differential impacts of migration policies and programmes on migrants of all genders, including in relation to access to visas, residence permits, employment, detention policies and labour rights as well as in the context of bilateral and multilateral agreements such as readmission agreements.¹³³ Give special attention to the ways in which women and girls can be understood only as victims in need of protection as this can be used to justify restricting the mobility of women and girls.¹³⁴ Review and amend any gender discriminatory restrictions on migration in law or practice that limit opportunities for women and girls or which do not recognise their capacity and autonomy to make their own decisions.¹³⁵
6. Involve a cross-section of migrant women of different nationalities, including adolescent girls, women-headed households, pregnant women and women with disabilities, in drafting and

Failing Refugee Women and Girls (2016), available at <https://www.womensrefugeecommission.org/images/zdocs/EU-Turkey-Refugee-Agreement-Failing.pdf>

¹³² Committee on the Elimination of Discrimination against Women, General recommendation No.26 on women migrant workers, paras.25(a), 26(g); CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, paras.34, 44; Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.232(i); Council of Europe, Convention on preventing and combating violence against women and domestic violence (The Istanbul Convention), Article 15; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, para.69

¹³³ Committee on the Elimination of Discrimination against Women, General recommendation No.26 on women migrant workers, paras.5, 23(a); Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.124(g); 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>.

¹³⁴ Committee on the Elimination of Discrimination against Women, General recommendation No.26 on women migrant workers, paras.5, 10, 13, 24(a), 26(a); 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

¹³⁵ Committee on the Elimination of Discrimination against Women, General recommendation No.26 on women migrant workers, paras.5, 10, 13, 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); 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; ILO Committee of Experts, Promoting fair migration: General Survey concerning the migrant workers instruments, ILC.105/III(1B), 2016, para.543.

regularly reviewing relevant laws, policies and programmes to ensure that they are adequate to their needs and human rights.¹³⁶

Principle 12:

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

Guidelines:

1. Ensure health systems and national plans of action on health are inclusive of migrants, regardless of their status, and create legal and administrative mechanisms that make inclusion 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.¹³⁷
2. Provide access to health facilities, goods, services and conditions, and ensure that they are delivered to migrants in a manner that is non-discriminatory, gender-responsive, culturally and linguistically appropriate.¹³⁸ These services should include clinical diagnosis, treatment and health promotion, and vaccinations for children¹³⁹, which are in line with human rights standards and tailored to the needs of migrants where relevant.¹⁴⁰

¹³⁶ 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; Beijing Declaration, paras.13, 19, and Platform for Action, including at paras.1, 60(d), 181, 185, 205(d), Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995); UN Women, *Closing the Gender Gap in Humanitarian Action: Agents of Change*, available at <http://interactive.unwomen.org/multimedia/infographic/humanitarianaction/en/index.html>

¹³⁷ Committee on Economic, Social and Cultural Rights, 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; 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; Programme of Action, International Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, paras.8.3(a), 8.4.

¹³⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the right to the highest attainable standard of health, paras.3, 12(b), 18-27, 34, 43(a), 50, 54, 57; 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, paras.8-11, 21, 72, 83, 94, 98, 104, 114; 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, paras. 62-63.

¹³⁹ 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.41; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 3.8; OHCHR, *Study on challenges and best practices in the*

3. Provide timely and accurate information to migrants on health issues and their health rights at all stages of their migration; along migratory routes, at reception points, and in communities where migrants live and work, in a language and format that migrants can understand.¹⁴¹ This should include information about universal access to health services including primary health care, as well as rehabilitative and emergency medical care that is available to migrants.
4. Provide access to rights-based, comprehensive and integrated sexual and reproductive health information and services. This should include inter alia, menstrual hygiene products, safe and effective methods of modern contraception; emergency contraception; maternal health care including emergency obstetric services and pre- and post-natal care; safe and accessible abortion care; prevention, treatment, care and support for sexually transmitted infections

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.

¹⁴⁰ 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 World Health Organization, International Health Regulations (IHR) (2005, third edition) in Article 42; see also, CESCR, General comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para.30; Convention on the Rights of the Child, Article 24(1); Committee on the Rights of the Child, General Comment No. 3 on HIV/AIDS and the rights of the child, CRC/GC2003/3, 17 March 2003, paras.21, 22, 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.73, 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, paras.10-15, 19, 20, 26, 29, 31, 33, 34, 37, 71, 72; 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.

¹⁴¹ Programme of Action, International Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, para..7.11 and Chapters VII and VIII generally; Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the right to the highest attainable standard of health, in particular paras.11, 12, 14, 18, 21, 22, 23, 34-37, 44(a),(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. 3, HIV/AIDS and the rights of the child, CRC/GC/2003/3, 17 March 2003, paras.6, 7, 11, 16, 17, 20, 23; CRC, 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, 58-61, 69, 114; Committee on the Elimination of Discrimination against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), A/54/38/Rev.1, chap.I, 1999, paras.11, 13, 14, 15(a), 16, 18, 21, 22, 24, 25, 28, 29, 31; 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; UN 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

including HIV; and specialised care for survivors of sexual violence and abuse.¹⁴² Provide, as a priority, a minimum initial service package for reproductive health.¹⁴³

5. Any HIV testing offered to migrants should be conducted in a voluntary manner, ensuring pre- and post-test counselling, informed consent and in privacy and guaranteeing that results will be confidential. There should be no negative consequences of testing HIV positive such as removal or return, 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.¹⁴⁴
6. Develop strategies in conjunction with relevant actors including civil society service providers to ensure adequate continuity of care for the management of long-term or chronic health needs. Make every effort to ensure this continuity through putting adequate arrangements in place, such as mechanisms to transfer medical records along the migratory route or when migrants are detained or relocated.¹⁴⁵
7. Recognise that migrants may have particular and often urgent mental health needs. Ensure their access to adequate mental health care, including at reception and through referrals to appropriate secondary services. Ensure that migrant children have access to specific care and psychological support, which takes into account that they experience stress differentially than

¹⁴² 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; 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, 30, 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, 70; 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, 24, 42(o),(p); 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, paras.30, 31; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 7.6

¹⁴³ Interagency Working Group (IAWG) on Reproductive Health in Crises, *Minimum Initial Service Package (MISP) for Reproductive Health in Crisis Situations*, available at <http://iawg.net/minimum-initial-service-package/>

¹⁴⁴ 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, 79, 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

¹⁴⁵ General Assembly, Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases, adopted 19 September 2011, in UN Doc. A/RES/66/2, 24 January 2012; 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>

adults and have lower coping levels. Provide the necessary counselling for migrants who have lost family members, and for migrant women who have suffered miscarriages, en route. Design and deliver mental health promotion programmes in partnership with migrants to ensure that they are culturally appropriate and avoid stigma.¹⁴⁶

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.¹⁴⁷ Ensure that immigration authorities do not conduct enforcement operations at or near medical facilities and premises.¹⁴⁸
9. Ensure that 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 and mental health conditions, free of charge and without discrimination.¹⁴⁹

¹⁴⁶ 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, 34, 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, paras.7, 26, 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, paras 51, 76; 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. Fasil 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>

¹⁴⁷ 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

¹⁴⁸ 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.

¹⁴⁹ 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 18, 19(1),

Principle 13:

Safeguard the right of migrants to an adequate standard of living

Guidelines:

1. Take measures to ensure that migrants are able to access an adequate standard of living, including in temporary locations such as reception facilities and informal camps. Ensure these are accessible to all migrants, including children, persons with disabilities, older persons and pregnant, new and breastfeeding mothers. An adequate standard of living would include
 - adequate safe food and nutrition in a quantity and quality sufficient to satisfy an individual's dietary needs
 - culturally acceptable, potable water and sanitation
 - appropriate and adequate clothing
 - adequate housing and the continuous improvement of living conditions.¹⁵⁰
2. Guarantee migrants access to shelter which includes sufficient facilities to meet their needs including their right to privacy and can protect them from threats to their safety.¹⁵¹ Ensure that

22, 24-35, 42, 46, 84(2), 92(2), 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, paras.36, 46; Human Rights Council, Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, para.65; Human Rights 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.

¹⁵⁰ Convention on the Rights of the Child, Article 27. International Covenant on Economic, Social and Cultural Rights, Article 11. See also Convention on the Rights of the Child 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, particularly paras.6, 7, 11, 12; 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. 4, 18, 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.13, 16, 28, 34, 60; 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. 3, 6, 8, ; 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.3, 44, 45; Committee on the Rights of Persons with Disabilities, General comment No. 2: Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014, para.42; CPRD, 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.11: “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>

¹⁵¹ The Commission on Human Settlements defines adequate shelter 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

they are able to carry out necessary improvements, including to temporary shelters and informal camps. Include migrants, regardless of their status, in national plans of action on housing.¹⁵²

3. Ensure any evictions or planned relocation of migrants are carried out in strict compliance with the relevant provisions of international human rights law and through full and effective consultation with affected individuals. Any such evictions should only take place with the full, prior and informed consent of those being evicted, in accordance with due process safeguards as well as general principles of reasonableness and proportionality, and only after alternatives to evictions have been duly considered. Establish or modify procedures and regulations to ensure prior to, during and after any eviction that migrants are promptly provided with relevant and accurate information about their situation, their rights, applicable legal procedures and remedies, possible consequences of their non-compliance with these procedures, location of and conditions in proposed reception centres or relocation sites, as well as contacts of legal aid providers, ombudspersons and relevant civil society organizations. Strictly ensure that migrants are not subjected to forced eviction.¹⁵³
4. Develop procedures and standards to establish clear and binding firewalls between public or private service providers as well as public or private housing providers, and immigration enforcement authorities. Ensure that irregular migrants are not criminalised for exercising their right to an adequate standard of living, and that private actors – such as landlords and civil society organisations – who facilitate their exercise of this right are also not criminalised.¹⁵⁴ Ensure that migrants, regardless of their status, are able to access homelessness shelters.¹⁵⁵

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, Habitat III: New Urban Agenda, Outcome document, Quito, 10 September 2016, paras.20, 28, 32, 33.

¹⁵² 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, para.12; CESCR, General Comment 6: The economic, social and cultural rights of older persons, 1995, para.32(2); UN, Habitat III: New Urban Agenda, Outcome document, Quito, 10 September 2016, paras.31, 21, 48.

¹⁵³ 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, including at paras.43, 56.

¹⁵⁴ 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

5. Ensure that residential facilities for migrants do not restrict their day-to-day movements unnecessarily, and that migrants are not obliged to stay in closed shelter facilities, jails or immigration detention centres, whether these are operated by government or private actors. This includes the de-facto restriction of movement, in particular of women, children, LGBTI migrants or persons with disabilities, due to fear of sexual, gender-based or other violence or other harms inside or outside the facility.¹⁵⁶

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 livelihood,¹⁵⁷ 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.¹⁵⁸

http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N16/REC-16-2016-016-ENG.pdf

¹⁵⁵ 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, 38, 46.

¹⁵⁶ Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/27/48, 30 June 2014, paras. 78-79, 91; Human Rights Council, 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, 6 July 2015, para.114; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, para.41; OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 6(1); Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197, Articles 3, 12.7.

¹⁵⁷ ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference at its 99th Session, Geneva, 10 June 2008, available at 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; Committee on Economic, Social and Cultural Rights, General Comment No. 18 (2005) on the right to work, paras.6, 23; 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), paras.62, 63; 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

¹⁵⁸ 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

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.¹⁵⁹ Ensure migrants are not discriminated against on the basis of occupation, recognising that many migrants, especially migrant women, are compelled to work in the informal economy and are often excluded from protection under national labour laws.¹⁶⁰
3. Strengthen or make provision for adequate supervision of working conditions for migrants in all sectors by the competent labour market authorities, such as labour inspection services. Establishing and publicise clear and binding firewalls between complaints mechanisms, labour inspection services and complaints mechanisms, and immigration enforcement authorities, and ensure their implementation in practice.¹⁶¹

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; 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(a); 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

¹⁵⁹ ILO Convention No. 143, Migrant Workers (Supplementary Provisions) Convention, para.14(b); Committee on Economic, Social and Cultural Rights, General Comment No. 23 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; 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); CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, para.58(a),(b); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Targets 1.3, 10.4; General Assembly, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/71/385, 14 September 2016, paras.11, 22, 27-28, 94, 98(iii), (v)(b), (viii), (ix), 100(iii), 101(ii), 102(i).

¹⁶⁰ Committee on Economic, Social and Cultural Right, General Comment No. 23 on the Right to just and favourable conditions of work, E/C.12/GC/23, 8 March 2016, paras.4, 5, 26, 47(iv),(v), 53, 56, 59, 62, 64; 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.58(b); Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), paras.158, 165(a),(b),(c),(r).

¹⁶¹ Specifically regarding labour inspectors, see Committee on Economic, Social and Cultural Rights, General Comment No. 23 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.54; 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.63; CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, paras.58(c),(d). 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

4. 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. Provide access to workers' compensation schemes in the case of occupational injuries or accidents to all migrants without discrimination.¹⁶²
5. Ensure the protection of all migrants from abusive and fraudulent recruitment practices, including by ensuring effective regulation of labour recruiters and guaranteeing that migrants are not compelled to pay recruitment fees or related costs. Ensure the effective application of ILO's *General Principles and Operational Guidelines for Fair Recruitment*.¹⁶³

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 effective access of all migrant children 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.¹⁶⁴ All aspects of

<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. 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.

¹⁶² ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), Article 1; Committee on Economic, Social and Cultural Rights, General Comment No. 23 on the Right to just and favourable conditions of work, E/C.12/GC/23, 8 March 2016, paras.29, 57.

¹⁶³ ILO, *General Principles and Operational Guidelines on Fair Recruitment*, 2016.

¹⁶⁴ International Covenant on Economic, Social and Cultural Rights, Articles 13.2(a),(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; Committee on the Rights of the Child, General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin, paras.41-43; CRC, General comment No. 20 on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, para.70; 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, 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, 14, 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

education should be provided on a non-discriminatory basis including examinations, qualification certification, vocational training, and financial subsidies. Develop and implement national plans of action on education and training that are inclusive of migrant students, without discrimination.

2. 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. Make 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.¹⁶⁵ Ensure that immigration authorities do not conduct enforcement operations on or near school or other education premises.¹⁶⁶
3. Implement or strengthen measures to recognise migrants' educational and vocational qualifications and transfer educational achievements.¹⁶⁷

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, paras.29,30; Committee on Migrant Workers, General Comment No. 1 on Migrant Domestic Workers, CMW/C/GC/1, 23 February 2011, para.57; 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, paras.75, 76, 79; General Assembly, Declaration of the High-level Dialogue on International Migration and Development, Resolution 68/4 adopted 3 October 2013, A/RES/68/4, 21 January 2014, para.13; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, paras.20, 25, 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 Assembly on addressing large movements of refugees and migrants, A/71/L.1, 13 September 2016, para.32; 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), Article 3(e).

¹⁶⁵ 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. See also *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.

¹⁶⁶ 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.

¹⁶⁷ 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(b), 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 Conventions on the Recognition of Qualifications.

4. Introduce inclusive curriculum content that fosters intercultural dialogue between migrant and host communities and promotes understanding of the situation and rights of migrants.¹⁶⁸ Provide targeted training to teaching personnel at all levels and forms of education with the objective of fostering respect for the human rights of migrants and for cultural diversity.
5. Support migrants' access to vocational training and lifelong learning opportunities that help them acquire the knowledge and skills needed to participate fully in society.¹⁶⁹

Principle 16:

Uphold migrants' right to information

Guidelines:

1. Ensure that migrants enjoy the freedom to seek, receive and impart information, in a language they understand and in accessible formats.¹⁷⁰ Make every effort to ensure migrants' effective access to accurate and reliable news and information about their rights and their situation through the media of their choice. Ensure the provision of child-friendly information in age-appropriate language and formats for migrant children.¹⁷¹

¹⁶⁸ International Covenant on Economic, Social and Cultural Rights Article 13(1); UNESCO Convention on Promotion of the Diversity of Cultural Expressions; Committee on the Rights of the Child, General Comment No.1 Article 29 (1): The Aims of Education, CRC/GC/2001/1, 17 April 2001, paras.2, 4, 11, 19, 24; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 4.7; UN Guidelines for the Prevention of Crime, Economic and Social Council resolution 2002/13, para.25(d).

¹⁶⁹ 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, paras.36, 37; Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.82(k); UN Principles for Older Persons, Principles 4, 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

¹⁷⁰ International Covenant on Civil and Political Rights, Article 19.2; Convention on the Rights of the Child, Article 13; 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 6; Human Rights Council, 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, paras.6, 8.

¹⁷¹ Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.233(i); 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, para.34; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 16.10; General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/69/335, 21 August 2014, paras.12, 13, 18, 19, 21, 62, 65, 83, 89; 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.

2. Provide migrants with all necessary information in order to make informed decisions about their migration, including on routes, means of travel, and conditions of entry and stay. Any campaigns that are developed and implemented in this respect should
 - be based on consultation with migrants and other affected individuals, local and community based organisations as well civil society organisations in countries of origin, transit and destination
 - as a primary aim provide information that is targeted to protecting human rights and promoting safe alternatives to dangerous migration routes, rather than solely focused on preventing movement¹⁷²
 - ensure that they do not, deliberately or unintentionally, foster an anti-migrant environment including by perpetuating negative stereotypes about migrants.
3. Provide access to the internet as a tool for migrants to exercise their human rights.¹⁷³ This could include new forms of information-sharing that migrants use to navigate their journeys, to stay in contact with families, and to 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.
4. 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, collecting, storing or sharing the following with the objective of limiting migrants' human rights; data of migrants' journeys, location data, or their communications through digital technologies and media, or data of those who provide assistance to migrants.¹⁷⁴

¹⁷² ILO Convention No. 97, Migration for Employment Convention (Revised), 1949, para.3(1); 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.89 recognising there little systematic evaluation of such campaigns; UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in action*, 2007 (Point 10, Information Strategy); OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 1(5); 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.gsdr.org/wp-content/uploads/2015/09/HQ1248.pdf>

¹⁷³ Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/26/29, 14 April 2014, para.22; Human Rights Council, The promotion, protection and enjoyment of human rights on the Internet, A/HRC/32/L.20, 27 June 2016, paras.1, 3; Human Rights Council, 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, paras.6, 8.

¹⁷⁴ International Covenant on Civil and Political Rights, Article 17; Human Rights Council, The promotion, protection and enjoyment of human rights on the Internet, A/HRC/32/L.20, 27 June 2016, para.8; 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; 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, in particular paras.23-25, 83, 88-90; Human

5. Promote a safe and enabling environment for all media professionals, citizen-journalists and journalistic sources to be able to perform their work without undue interference, in order to ensure independent and accurate reporting on issues related to the movement of migrants in a vulnerable situation. End impunity for attacks on media professionals who report on such issues.¹⁷⁵

Principle 17:

Guarantee monitoring and accountability in all responses to migration, including in large and/or mixed movements of migrants

Guidelines:

1. Establish or strengthen independent internal and external mechanisms to monitor the human rights impact of laws, policies and practices that are relevant to migrants.¹⁷⁶ Publish monitoring reports (while protecting confidentiality) in line with principles of accountability and transparency.
2. Ensure and facilitate the unrestricted access of independent monitoring bodies, including national human rights institutions, ombudspersons, national preventive mechanisms and other relevant bodies to all locations, including places of detention, and to all information that is

Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/29/32, 22 May 2015, paras.56, 57, 59, 61; Human Rights Council, 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, paras.8, 11; Global Network Initiative, Principles on Freedom of Expression and Privacy, available at <https://globalnetworkinitiative.org/principles/index.php>; 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 (on surveillance).

¹⁷⁵ 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; 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>. 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/>.

¹⁷⁶ 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, paras.29, 38, 45, 87, 93, 104, Annex paras.50, 63, 70, 102, 103, 104; 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.38, 40, 107, 117, 128, 138, 139

required to effectively monitor the human rights of migrants.¹⁷⁷ 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.¹⁷⁸ Ensure that mechanisms are put in place to implement recommendations by the national and international monitoring bodies.

3. Provide and publicise accessible complaints mechanisms that migrants can use without fear of retribution, including through the use of effective firewalls.¹⁷⁹ Ensure prompt, impartial, and independent investigations of violations of human rights against migrants and bring State and non-State actors found to be responsible to justice through a fair trial.¹⁸⁰

¹⁷⁷ 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.111(d); International Federation of Red Cross and Red Crescent Societies, Migration: Ensuring Access, Dignity, Respect for Diversity and Social Inclusion, Resolution, para.1, 31st International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 28 November-1 December 2011, available at http://www.ifrc.org/PageFiles/89794/R3_Migration_EN.pdf; World Humanitarian Summit, Migrants and Humanitarian Action: Special Session Summary, All Core Responsibilities of the Agenda for Humanity, Istanbul 23-24 May 2016, available at <https://www.worldhumanitariansummit.org/sites/default/files/keydocuments/SS04%20Migration.pdf>; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP.1, 23 July 2014, Guideline 5, para.9. On the monitoring detention of facilities see references at note 119.

¹⁷⁸ OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP.1, 23 July 2014, Guideline 1, para.9; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 16.6, 16(a)

¹⁷⁹ 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.36(c); 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)(i); Committee against Torture, General Comment No. 3: Implementation of article 14 by States parties, CAT/C/GC/3, 19 November 2012, paras.5, 23-28; General Assembly, Protection of migrants, Resolution 69/167 adopted on 18 December 2014, A/RES/69/167, 12 February 2015, para.3(b); OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP.1, 23 July 2014, Guideline 1, para.8.

¹⁸⁰ Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, including at para.14; 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; 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, including at paras.11, 14, 28; Committee on the Elimination of Discrimination against Women, General recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, including at paras.11, 18(e), 27, 51(a),(h); 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.21(b),(c), 36(d)(e); CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, paras.34, 42(b), 50(a), 54(a), 60(d); CMW, Concluding observations on the initial report of Honduras, CMW/C/HND/CO/1, 3 October 2016, paras.25(b), 33(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.7; OHCHR, *Recommended Principles and Guidelines on*

4. Investigate and prosecute corruption on the part of immigration authorities as well as the involvement or complicity of authorities in abuse of migrants' human rights, and ensure necessary legislation and resources for this purpose.¹⁸¹
5. Provide effective and timely remedies that respond to the different types of human rights abuse and violations experienced by migrants. Remedies must be provided by a judicial mechanism or a mechanism with equivalent independence, impartiality and effectiveness, and ensure the provision of adequate and comprehensive reparations.¹⁸²

Human Rights at International Borders, A/69/CRP.1, 23 July 2014, Principle 13 and Guidelines 1.10; 2.11, 3.17, 7.11, 8.20.

¹⁸¹ OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP.1, 23 July 2014, Guidelines 2.11 and 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

¹⁸² 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 and Other Cruel, Inhuman or Degrading Treatment or Punishment, 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, 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, Articles 1(1), 4(1); 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; 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, para.64; CESCR, 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)); CEDAW, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras.26(c),(l); CEDAW, General recommendation No. 27 on older women and protection of their human rights, CEDAW/C/2010/47/GC.1, 19 October 2010, para.33; CEDAW, 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. 30: Discrimination against non-citizens, CERD/C/64/Misc.11/rev.3 (2004), paras.18, 25; CERD, 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, 35, 53, 54; 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); CRC, General comment No. 16: On State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 15 March 2013, paras.4, 5, 14, 28, 44, 48, 61, 63, 67; Human Rights Committee, General Comment No. 15: The position of aliens under the Covenant (1986), para.10; General Assembly, *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

6. Ensure the effective accountability of non-State actors, including private security companies and military contractors as well as private transport companies, which are involved by States in responses to migration, including large and/or mixed movements of migrants. This would include private actors who are 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.¹⁸³ Concrete mechanisms should be established to ensure accountability, and to guarantee remedies in the case of human rights abuses.

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.¹⁸⁴ Ensure specific protection of human rights

March 2006; General Assembly, Protection of migrants: Resolution 70/147 adopted on 17 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, in particular para.4; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, 5 January 2016, paras.66,67; 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, Principles 7, 13, Guidelines 1(10), 2(12), 2(13); 4(6); 7(9); 8(14); 9(5), 9(8), 9(22); General Assembly, Report of the Special Rapporteur on trafficking in persons, especially women and children, A/69/269, 6 August 2014, Annex: *Basic principles on the right to an effective remedy for victims of trafficking in persons*.

¹⁸³ 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.40, 41; 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, 41; OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP.1, 23 July 2014.

¹⁸⁴ 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.34; CMW, Concluding observations on the initial report of Honduras, CMW/C/HND/CO/1, 3 October 2016, para.25; 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

defenders who work in defence of migrant women's rights, as well as migrants who defend the rights of other migrants. Do not criminalize the provision of support and assistance to migrants. Ensure that human rights defenders are not prevented from enjoying human rights owing to their work.¹⁸⁵

2. Develop and put in place sustainable public policies or programmes that support and protect human rights defenders at all stages of their work and do not place any limitations on their work that are contrary to international standards.¹⁸⁶ Ensure that legislation affecting the activities of human rights defenders, including any legislation and procedures governing the registration and funding of civil society organisations as well as legislation designed to guarantee public safety and public order, is consistent with international human rights law.¹⁸⁷
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 discrimination, threats of deportation or other kinds of pressure or arbitrary action, by State or non-State actors, as a consequence of their work.¹⁸⁸

the promotion and protection of the human rights of migrants, including in large movements, A/HRC/32/L.22, 28 June 2016, para.10.

¹⁸⁵ 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),(b),(c), 15; 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.385. 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.

¹⁸⁶ 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, para.12; 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, A/HRC/RES/22/6, 12 April 2013, paras.3, 4, 10; 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 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, paras.10(c),(d).

¹⁸⁷ Human rights defenders can also include trade unions, and thus 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(e)(ii); 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).

¹⁸⁸ 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; UN Guidelines

4. Investigate and pursue accountability for all attacks and threats by State and non-State actors against migrants' human rights defenders as well as against their family members, associates and legal representatives. Condemn publically all cases of violence, discrimination, intimidation and reprisals in this context.¹⁸⁹
5. Adopt or revise and implement national legal frameworks to protect any person who discloses information about the human rights of migrants 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 oversight mechanisms to protect, investigate and provide redress and compensation as appropriate.¹⁹⁰
6. Express public support for the important role of human rights defenders and the legitimacy of their work, including by condemning all cases of violence and discrimination against them and underlining that such practices can never be justified.¹⁹¹

against Intimidation or Reprisals (San José Guidelines), HRI/MC/2015/6, 30 July 2015; 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.34(a); 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

¹⁸⁹ 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, para.5; 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.25(b); 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.

¹⁹⁰ 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

¹⁹¹ 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 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, para.4

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 quantitative and qualitative research on migrants' experiences, with their consent and voluntary participation, to inform rights-based and evidence-based migration policies, to measure trends and raise awareness of risks, and to sanction and prevent abuse of the human rights of migrants. Priority subjects for research include, but are not limited to the following;
 - Data on the number and circumstances of migrants in vulnerable situations.
 - Analysing the root causes and drivers of the movement of migrants in vulnerable situations, including analysis of the decision-making factors and triggers for international migration.
 - 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 or enforced disappearances while attempting these crossings.¹⁹²
 - Quantitative and qualitative data and indicators on immigration detention, on the alternatives applied and the reasons for applying them and discounting other options.
 - Data on complaints, investigations, prosecutions, and convictions of all instances of human rights violations perpetrated by State or non-State actors against migrants.¹⁹³
2. Disaggregate data on the human rights situation of migrants by age and gender as well as other grounds as relevant, such as migratory status, religion, ethnicity, disability, sexual orientation or gender identity and minority status.¹⁹⁴

¹⁹² Programme of Action, International Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, paras.12.1, 12.9, 12.25; Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.206(i); OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 10(10); 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

¹⁹³ Beijing Platform for Action, adopted at the Fourth World Conference on Women, 4-15 September 1995, A/CONF.177/20 and A/CONF.177/20/Add.1 (1995), para.206(j); OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 10(10)

¹⁹⁴ 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 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.

3. Work collaboratively to collect reliable statistical data on international migration, including through developing international standardised approaches for monitoring indicators on and variables relating to migrants' human rights.¹⁹⁵
4. 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.¹⁹⁶ 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.¹⁹⁷ Ensure digital biometric technologies are never used to facilitate hi-tech forms of discriminatory profiling of migrants or to increase their vulnerability to surveillance, or are otherwise used, stored or processed in a way that can cause risks to individuals.¹⁹⁸
5. 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.¹⁹⁹ Personal data, including biometric data, should 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

¹⁹⁵ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 20 May 2002, Guideline 3.4

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

¹⁹⁷ Programme of Action, International Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, para.12.25; 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; Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/29/32, 22 May 2015, paras.12, 59; 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.

¹⁹⁸ Privacy International, International Women's Day 2016, p.20, available at https://www.privacyinternational.org/sites/default/files/iwd_2016.pdf, <https://www.privacyinternational.org/node/796>

¹⁹⁹ 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.67, 90; Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/29/32, 22 May 2015, para.55; Human Rights Council, 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, para.56; IOM, *Practical Guide on Information provision regarding return and reintegration in countries of origin*, IOM, 2010, p.13.

Guidelines:

1. Establish or strengthen multi-stakeholder partnerships and cooperation to uphold the human rights of all migrants. Stakeholders include national human rights institutions, intergovernmental, international and regional organisations, civil society organisations including representative migrants' associations, women's organisations, trade unions, representative employers' organizations and private sector actors, at the local, national, regional and international levels.²⁰⁰ Establish terms and conditions for cooperation and coordination among stakeholders with clear areas of responsibility, including referral procedures, and regular information exchange.²⁰¹
2. Build the capacity of all officials, including of law enforcement, municipal authorities and local governments, who are in contact with migrants to promote and protect the human rights of all migrants.
3. 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, such as for labour migration at all skills levels, that come from receiving societies as well as the necessity for migrants to seek protection of their rights, including the right to family life.²⁰²

²⁰⁰ Programme of Action, International Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, paras.10.2, 10.6, 15.3, 15.5; General Assembly, Protection of Migrants, Resolution 66/172 adopted on 19 December 2011, A/RES/66/172, 29 March 2012, para.9(f); 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, 23; 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, paras.39, 41, SDG Target 17.17; 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.7, 11, 24, 28, 37, 38, 40-43, 54, 58; 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.3, 5, 11, 14, 36, 59, 67, 88, 97, 105(a).

²⁰¹ UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, 2007, point 1.

²⁰² ILO Convention No. 143, Migrant Workers (Supplementary Provisions) Convention, 1975, Article 9(4); Durban Declaration, para.49, and Programme of Action, para.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(a),(e),(f); 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 migration; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, paras.12, 15, 21, 24, 35, 64, 72, 123; 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

4. Promote international cooperation to address the root causes and drivers of the movement of migrant in vulnerable situations in a rights-based and sustainable manner. Ensure that all responses to manage or mitigate such drivers, including those 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 and their communities in these responses.²⁰³
5. Consider regularising the situation of migrants in an irregular status within a reasonable period of time as the most effective measure to address the needs, and secure the rights, of such migrants.²⁰⁴

rights of migrants, A/HRC/23/46, 24 April 2013, paras.73-74, 83-85, 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.

²⁰³ Programme of Action, International Conference on Population and Development, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, paras.10.2(a), 10.7, 10.16(a),(b), 10.17, 12.25; 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, PP11; Committee on the Rights of the Child, General comment No. 20 on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, para.83; 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, 67-68; 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.59; 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, 55; the work of the Special Rapporteur on the human rights of migrants, including: General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/65/222, 3 August 2010; General Assembly, 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.

²⁰⁴ 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.51-53; 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 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.57; CMW, Concluding observations on the combined second and third periodic reports of Senegal, CMW/C/SEN/CO/2-3, 20 May 2016, para.61; CMW, Concluding observations on the initial report of Mauritania, CMW/C/MRT/CO/1, 31 May 2016, para.37; CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, para.86; CMW, Concluding observations on the initial report of Honduras, CMW/C/HND/CO/1, 3 October 2016, para.43; Committee on Economic, Social and Cultural Rights, Concluding Observations: Russian Federation, E/C.12/RUS/CO/5, 20 May 2011, para. 17(a); General Assembly, New York Declaration for Refugees and Migrants, Outcome document of the high-level

6. Promote the inclusion of migrants in receiving societies.²⁰⁵ Develop integration policies, practices, institutions and partnerships which aim to support inclusion and foster greater social and economic equality and cultural diversity. In this regard gather complementary skills across the public sector, private sector, civil society and migrant communities. Ensure that migrants are able to form and join trade unions and to participate in informal networks and associations as well as community and faith-based activities.²⁰⁶ Make efforts to ensure that migrants are able freely to practice their religion or belief and to worship in private and public, including in community with others.²⁰⁷
7. Improve knowledge, build capacity and sensitize media professionals and outlets on the situation and human rights of migrants.²⁰⁸ Strengthen the capacity of media professionals and journalists to report accurately and sensitively on migration issues with an emphasis on eliminating harmful stereotypes, upholding the rights of migrants and promoting recognition of the value of inclusive and diverse societies.
8. Ensure that migration policy-making at the national, regional and international levels, is subjected at all times to oversight including parliamentary scrutiny and rendered transparent and accountable by making public all bilateral agreements, readmission agreements and Memoranda of Understanding relevant to migration.²⁰⁹ Ensure that 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 unlawful and/or disproportionate restriction or containment of migration.

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).

²⁰⁵ 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 Declaration, para.46, and 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; UN, Quito Declaration on Sustainable Cities and Human Settlements for All and Implementation Plan for the New Urban Agenda (Habitat III), 10 September 2016, paras.10, 28; 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.

²⁰⁶ International Covenant on Civil and Political Rights, Article 22; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 26, 40

²⁰⁷ International Covenant on Civil and Political Rights, article 18; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 12; SG's report to the 70th session of the General Assembly, (A/70/259), para.79(f)

²⁰⁸ OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 1(2); Outcomes and Recommendations on *Covering Migration: Challenges Met and Unmet*, United Nations Alliance of Civilizations, Paris 25-26 January 2013.

²⁰⁹ See OHCHR *Recommended Principles and Guidelines on Human Rights at International Borders*, A/69/CRP. 1, 23 July 2014, Guideline 10(5); 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.88.

IV. Annex: International Law informing the Principles

The *Principles on the Human Rights Protection of Migrants in Vulnerable Situations* are derived directly from international and regional 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 migration, including responses to large and/or mixed movements of migrants

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.²¹⁰
- 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*’.²¹¹ 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 kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*’²¹²
- 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.*’²¹³

²¹⁰ Adopted 10 December 1948) UNGA Res 217 A (III) (UDHR)

²¹¹ Adopted 2 June 1945), 1 UNTS XVI

²¹² 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)

²¹³ Adopted 18 December 1990, United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

- 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’*.²¹⁴
- 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 international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons[...]*²¹⁵
- 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’*.²¹⁶

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.’*²¹⁷
- 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*

²¹⁴ Resolution adopted by the General Assembly, 24 January 2007

²¹⁵ Adopted 15 November 2000

²¹⁶ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

²¹⁷ European Convention on Human Rights, as amended, (ECHR)

*reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.’*²¹⁸

- 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.’*²¹⁹
- 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’.*²²⁰

Principle 2:

Counter discrimination against migrants in all its forms

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’.*²²¹
- 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 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

²¹⁸ Pact of San Jose, adopted 22 November 1969

²¹⁹ Banjul Charter, adopted 27 June 1981

²²⁰ Adopted on 15 September 1994

²²¹ UNGA Res 217 A (III) (UDHR), adopted 10 December 1948

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.'*²²²
- 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 [...].'*²²³
- 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.'*²²⁴
- 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"*²²⁵

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*

²²² Adopted on 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

²²³ Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

²²⁴ Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3.

²²⁵ 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

*as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'*²²⁶

- 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.'*²²⁷
- 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.'*²²⁸
- 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.'*²²⁹
- 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'*²³⁰

Principle 3:

Ensure access to justice for migrants

INTERNATIONAL NORMS

- 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).²³¹

²²⁶ European Convention on Human Rights, as amended (ECHR)

²²⁷ Rome, 4.XI.2000

²²⁸ Pact of San Jose, adopted 22 November 1969

²²⁹ Banjul Charter, adopted 27 June 1981

²³⁰ Adopted on 15 September 1994

²³¹ UDHR, adopted 10 December 1948) UNGA Res 217 A (III)

- 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.'*²³²
- 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 [...]*²³³
- 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 [...].'*²³⁴
- 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.'*²³⁵
- 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 [...].'*²³⁶
- 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.'*²³⁷
- 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

²³² Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

²³³ Adopted 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

²³⁴ Adopted 18 December 1990, United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

²³⁵ Adopted 20 December 2006

²³⁶ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

²³⁷ Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

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.'*²³⁸

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.²³⁹
- 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'*.²⁴⁰
- 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 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'*.²⁴¹

²³⁸ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

²³⁹ European Convention on Human Rights, as amended (ECHR)

²⁴⁰ Pact of San Jose, adopted 22 November 1969

²⁴¹ Banjul Charter, adopted 27 June 1981

- 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’*.²⁴²
- 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.”*²⁴³

Principle 4:

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 [...]’*.²⁴⁴
- 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).²⁴⁵
- 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.’*²⁴⁶
- 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’*.²⁴⁷
- 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’*.²⁴⁸ Article 16(3) states, *‘Each State Party shall afford*

²⁴² Adopted on 15 September 1994

²⁴³ Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197

²⁴⁴ UNGA Res 217 A (III) (UDHR), adopted 10 December 1948

²⁴⁵ Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

²⁴⁶ Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

²⁴⁷ Resolution adopted by the General Assembly, 24 January 2007

²⁴⁸ When the State Party is taking measures against a vessel in accordance with article 8 of the Protocol.

*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’.*²⁴⁹

- 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 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.’*²⁵⁰ 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 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’.*²⁵¹

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’.*²⁵²
- 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 [...]’.*²⁵³

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

²⁵⁰ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

²⁵¹ Adopted 10 December 1982

²⁵² European Convention on Human Rights, as amended (ECHR)

²⁵³ Pact of San Jose, adopted 22 November 1969

- 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'*.²⁵⁴
- 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."*²⁵⁵

Principle 5:

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

NORMATIVE FRAMEWORK

- Under Article 13 of the 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'*.²⁵⁶
- The 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'*.²⁵⁷
- 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"*.²⁵⁸
- 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

²⁵⁴ Banjul Charter, adopted 27 June 1981

²⁵⁵ Adopted on 15 September 1994

²⁵⁶ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

²⁵⁷ Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

²⁵⁸ United Nations, Treaty Series, vol. 660, p. 195, adopted 21 December 1965

79 *'Nothing in 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'*.²⁵⁹

- 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 [...]*'.²⁶⁰
- 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'*.²⁶¹
- 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'*.²⁶²
- 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'*.²⁶³
- 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'*.²⁶⁴

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,*

²⁵⁹ Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

²⁶⁰ Resolution adopted by the General Assembly, 24 January 2007

²⁶¹ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

²⁶² Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

²⁶³ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

²⁶⁴ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

*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 subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society’.*²⁶⁵

- 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’.*²⁶⁶
- 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’.*²⁶⁷
- 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*

²⁶⁵ 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

²⁶⁶ Pact of San Jose, adopted 22 November 1969

²⁶⁷ Banjul Charter, adopted 27 June 1981

*shall not be arbitrarily or illegally deprived from leaving any Arab country, including their own [...].*²⁶⁸

Principle 6:

Ensure that all returns 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 expulsions and the right to seek asylum

NORMATIVE FRAMEWORK

- 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’.²⁶⁹
- 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’.²⁷⁰
- 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’.²⁷¹
- 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’.²⁷²
- 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

²⁶⁸ Adopted on 15 September 1994

²⁶⁹ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

²⁷⁰ Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

²⁷¹ Adopted 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85

²⁷² Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

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’.

- 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’.*²⁷³
- 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.²⁷⁴
- 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’.*²⁷⁵
- 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’.*²⁷⁶

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.²⁷⁷ 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

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

²⁷⁴ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

²⁷⁵ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

²⁷⁶ Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

²⁷⁷ 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

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.²⁷⁸

- 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*'.²⁷⁹
- 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*'.²⁸⁰

Principle 7:

Protect migrants from all forms of violence and exploitation, whether inflicted by institutions or 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).²⁸¹
- 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).²⁸²
- 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*'.²⁸³
- 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*

²⁷⁸ Council of Europe, *Protocol 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 22 November 1984, ETS 117

²⁷⁹ Banjul Charter, adopted 27 June 1981

²⁸⁰ Adopted on 15 September 1994

²⁸¹ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

²⁸² Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

²⁸³ Adopted 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85

*violence or bodily harm, whether inflicted by government officials or by any individual group or institution’.*²⁸⁴

- 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.²⁸⁵ 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.’²⁸⁶
- 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 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.*’²⁸⁷
- 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*

²⁸⁴ United Nations, Treaty Series , vol. 660, p. 195, adopted 21 December 1965

²⁸⁵ Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

²⁸⁶ 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

²⁸⁷ Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

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.²⁸⁸

- 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.'*²⁸⁹
- 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.'*²⁹⁰

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".²⁹¹
- 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 slave trade and traffic in women. No one shall be required to perform forced or compulsory labour."*²⁹²
- 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'*.²⁹³

²⁸⁸ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

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

²⁹⁰ ILO Protocol of 2014 to the Forced Labour Convention, 1930

²⁹¹ European Convention on Human Rights, as amended (ECHR)

²⁹² Pact of San Jose, adopted 22 November 1969

²⁹³ Banjul Charter, adopted 27 June 1981

- 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 31.²⁹⁴

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).²⁹⁵
- 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'*.²⁹⁶
- 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'*.²⁹⁷
- 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'*.²⁹⁸
- 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

²⁹⁴ Adopted on 15 September 1994

²⁹⁵ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

²⁹⁶ Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

²⁹⁷ Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

²⁹⁸ Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

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).²⁹⁹

- 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 [...]'*.³⁰⁰
- 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.'*³⁰¹

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*

²⁹⁹ Adopted 20 December 2006

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

³⁰¹ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

*unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition’.*³⁰²

- 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.”*³⁰³
- 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.”*³⁰⁴
- Under Articles 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’.*³⁰⁵
- 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.”*³⁰⁶

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’.*³⁰⁷

³⁰² European Convention on Human Rights, as amended (ECHR)

³⁰³ Pact of San Jose, adopted 22 November 1969

³⁰⁴ Banjul Charter, adopted 27 June 1981

³⁰⁵ Adopted on 15 September 1994

³⁰⁶ Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197

³⁰⁷ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

- 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'*.³⁰⁸
- 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 [...]'*.³⁰⁹
- 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).³¹⁰
- 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)*.³¹¹
- 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'*.³¹²

REGIONAL NORMS

³⁰⁸ Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

³⁰⁹ Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

³¹⁰ Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

³¹¹ Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

³¹² ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

- 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 [...]’*.³¹³
- 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’*.³¹⁴
- 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’*.³¹⁵
- 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’*.³¹⁶
- 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’*.³¹⁷

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

- Under Article 26 of the Universal Declaration of Human Rights *‘[...] childhood are (is) entitled to special care and assistance’*.³¹⁸
- 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*

³¹³ European Convention on Human Rights, as amended (ECHR)

³¹⁴ Pact of San Jose, adopted 22 November 1969

³¹⁵ 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

³¹⁶ Banjul Charter, adopted 27 June 1981

³¹⁷ Adopted on 15 September 1994

³¹⁸ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

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.'*³¹⁹

- 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.'*³²⁰
- 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.³²¹
- 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.³²²
- 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.'*³²³
- 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*

³¹⁹ Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

³²⁰ Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

³²¹ Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

³²² Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

³²³ Resolution adopted by the General Assembly, 24 January 2007

disappearance or children born during the captivity of a mother subjected to enforced disappearance'.³²⁴

- 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*'.³²⁵
- 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(c),(d), 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.*".³²⁶

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*'.³²⁷
- 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*'.³²⁸
- 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.³²⁹

Principle 11:

Protect the human rights of migrant women and girls

NORMATIVE FRAMEWORK

- Under Article 26 of the Universal Declaration of Human Rights, '*Motherhood [...] are (is) entitled to special care and assistance*'.³³⁰

³²⁴ Adopted 20 December 2006

³²⁵ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

³²⁶ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

³²⁷ Pact of San Jose, adopted 22 November 1969

³²⁸ Banjul Charter, adopted 27 June 1981

³²⁹ Adopted on 15 September 1994

- See the entire Convention on the Elimination of All Forms of Discrimination Against Women.³³¹
- 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'*.³³²
- 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 [...]'*.³³³
- 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'*.³³⁴
- 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."*³³⁵

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'*.³³⁶
- 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'*.³³⁷
- 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

³³⁰ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

³³¹ 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

³³² Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

³³³ Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

³³⁴ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

³³⁵ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

³³⁶ Banjul Charter, adopted 27 June 1981

³³⁷ Adopted 11 July 2003

by the parties without discrimination on any ground such as, between the others, national origin, migrant or refugee status.³³⁸

- 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'*.³³⁹

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 [...]*'.³⁴⁰
- 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'*.³⁴¹
- 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.³⁴²
- 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*

³³⁸ Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, ("The Istanbul Convention"), 11 May 2011

³³⁹ 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

³⁴⁰ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

³⁴¹ Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

³⁴² 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

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'.³⁴³

- 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*'.³⁴⁴
- 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*'.³⁴⁵
- 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*'.³⁴⁶
- 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*'.³⁴⁷

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.³⁴⁸
- 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,

³⁴³ Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

³⁴⁴ Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

³⁴⁵ Adopted 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

³⁴⁶ Resolution adopted by the General Assembly, 24 January 2007

³⁴⁷ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

³⁴⁸ Adopted 11 July 2003

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'*.³⁴⁹

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.'³⁵⁰
- 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'*.³⁵¹
- 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).³⁵²
- 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 (Articles 21, 23,24).³⁵³
- 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*

³⁴⁹ 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

³⁵⁰ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

³⁵¹ Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

³⁵² UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

³⁵³ Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

*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’.*³⁵⁴

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’.*³⁵⁵
- 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.³⁵⁶

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 social protection. Everyone has the right to form and to join trade unions for the protection of his interests’.*³⁵⁷
- 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).³⁵⁸
- 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.’*³⁵⁹

³⁵⁴ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

³⁵⁵ Banjul Charter, adopted 27 June 1981

³⁵⁶ 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

³⁵⁷ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

³⁵⁸ Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

³⁵⁹ United Nations, Treaty Series , vol. 660, p. 195, adopted 21 December 1965

- 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.).³⁶⁰
- 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'*.³⁶¹
- The Convention Relating to the Status of Stateless Persons designates the entire chapter III to the right to a gainful employment for stateless persons.³⁶²

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'*.³⁶³
- 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'*.³⁶⁴

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*

³⁶⁰ Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

³⁶¹ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

³⁶² Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

³⁶³ Banjul Charter, adopted 27 June 1981

³⁶⁴ 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

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'.³⁶⁵

- 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*'.³⁶⁶
- 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 [...]*'.³⁶⁷
- 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*'.³⁶⁸
- 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*'.³⁶⁹
- 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*

³⁶⁵ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

³⁶⁶ United Nations, Treaty Series , vol. 660, p. 195, adopted 21 December 1965

³⁶⁷ Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

³⁶⁸ Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

³⁶⁹ Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

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: 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'.³⁷⁰

- 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*’.³⁷¹
- 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.³⁷²
- The UN Educational, Scientific and Cultural Organisation (UNESCO), Convention Against Discrimination in Education, 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.*’³⁷³

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.³⁷⁴
- 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*’.³⁷⁵

³⁷⁰ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

³⁷¹ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

³⁷² Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117

³⁷³ UN Educational, Scientific and Cultural Organisation (UNESCO), Convention Against Discrimination in Education, 14 December 1960

³⁷⁴ Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 9

³⁷⁵ Banjul Charter, adopted 27 June 1981

- 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 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’.*³⁷⁶

Principle 16:

Uphold migrants’ right to information

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’.*³⁷⁷
- 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’.*³⁷⁸
- 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*

³⁷⁶ 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

³⁷⁷ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

³⁷⁸ United Nations, Vienna Convention on Consular Relations, 24 April 1963

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'.³⁷⁹

- 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.³⁸⁰
- 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 safety of the person. In no case, restrictions are admitted if they could constitute a secret detention.³⁸¹
- 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'*.³⁸²
- 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'*.³⁸³

³⁷⁹ Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

³⁸⁰ United Nations, Treaty Series , vol. 660, p. 195, adopted 21 December 1965

³⁸¹ Adopted 20 December 2006

³⁸² Adopted 18 December 1990) United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

³⁸³ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

- 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*’.³⁸⁴

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*’.³⁸⁵
- 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*”.³⁸⁶

Principle 17:

Guarantee monitoring and accountability in all responses to migration, including in large and/or mixed movements of migrants

NORMATIVE FRAMEWORK

- 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*’.³⁸⁷
- 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).³⁸⁸

³⁸⁴ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

³⁸⁵ Pact of San Jose, adopted 22 November 1969

³⁸⁶ Banjul Charter, adopted 27 June 1981

³⁸⁷ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

³⁸⁸ Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

- 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)).³⁸⁹ 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).³⁹⁰
- 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 [...]"* Article 20 establishes an inquiry procedure to examine *"reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party"* (Article 20(1)). 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).³⁹¹
- 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, 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

³⁸⁹ Adopted 16 December 1966), United Nations, Treaty Series, vol. 993, p. 3

³⁹⁰ United Nations, Treaty Series , vol. 660, p. 195, adopted 21 December 1965

³⁹¹ Adopted 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85

same scope, each state party shall submit reports on the measures they have adopted (Articles 43 and 44).³⁹²

- 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 (Articles 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”*.³⁹³
- 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 (Articles 34 and 35).³⁹⁴
- 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 (Articles 26 and 29).³⁹⁵
- 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.’*³⁹⁶

³⁹² Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

³⁹³ Adopted 18 December 1990, United Nations Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158

³⁹⁴ Resolution adopted by the General Assembly, 24 January 2007

³⁹⁵ Adopted 20 December 2006

³⁹⁶ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

- 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 [...]’*.³⁹⁷

REGIONAL NORMS

- 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.”*³⁹⁸
- 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.”*³⁹⁹
- 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).⁴⁰⁰
- According to the Articles 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.’*⁴⁰¹

Principle 18:

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

³⁹⁷ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6

³⁹⁸ European Convention on Human Rights, as amended (ECHR)

³⁹⁹ Pact of San Jose, adopted 22 November 1969

⁴⁰⁰ Banjul Charter, adopted 27 June 1981

⁴⁰¹ Adopted on 15 September 1994

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’*.
- 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).⁴⁰²
- 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’*.⁴⁰³

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 11.⁴⁰⁴
- 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).⁴⁰⁵
- 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).⁴⁰⁶
- 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’*.⁴⁰⁷

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

⁴⁰² Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407

⁴⁰³ Adopted 20 December 2006

⁴⁰⁴ European Convention on Human Rights, as amended (ECHR)

⁴⁰⁵ Pact of San Jose, adopted 22 November 1969

⁴⁰⁶ Banjul Charter, adopted 27 June 1981

⁴⁰⁷ Adopted on 15 September 1994

NORMATIVE FRAMEWORK

- 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’.*
- 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’.*⁴⁰⁸

REGIONAL NORMS

- 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.’*⁴⁰⁹

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

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’.*⁴¹⁰
- 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,*

⁴⁰⁸ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

⁴⁰⁹ Banjul Charter, adopted 27 June 1981

⁴¹⁰ UDHR adopted 10 December 1948) UNGA Res 217 A (III)

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.⁴¹¹

- 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'.⁴¹²
- 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*'.⁴¹³
- 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*")⁴¹⁴
- 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. Such training shall include: The humane treatment of migrants and the protection of their rights as set forth in this Protocol*'. Article 18 concerning the "Return of

⁴¹¹ Adopted 24 October 1945, 1 UNTS XVI

⁴¹² Adopted 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

⁴¹³ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

⁴¹⁴ Adopted 15 November 2000, General Assembly resolution 55/25, A/RES/55/25, 8 January 2001

smuggled migrants” at its paragraph 6 affirms that ‘*States Parties may cooperate with relevant international organizations in the implementation of this article*’. Article 18 concerning the “Return of smuggled migrants” at its paragraph 6 affirms that ‘*States Parties may cooperate with relevant international organizations in the implementation of this article*’.⁴¹⁵

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⁴¹⁵ UN General Assembly, United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly, 8 January 2001, A/RES/55/25