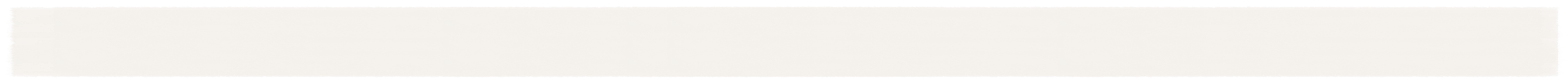
**Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations**

**- Draft October 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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# Introduction

Around the world, the human rights of millions of migrants, including many involved in large movements or mixed movements, are insufficiently protected or at risk of abuse.

In the New York Declaration for Refugees and Migrants,[[1]](#footnote-2) the United Nations General Assembly recognized the complex nature of 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]](#footnote-3) The United Nations Secretary-General has also noted that, notwithstanding the gradual expansion of refugee protection, many people are compelled to leave their homes for reasons that do not fall within the refugee definition. [[3]](#footnote-4)

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 movement which places people in precarious situations is a serious human rights concern.[[4]](#footnote-5) Where migrants fall outside the specific legal category of ‘refugee’, it may be especially important to ensure that their human rights are respected, protected and fulfilled. Some will need specific protection because of the situations they left behind, the circumstances in which they travel, or the conditions they face on arrival, or because of personal characteristics such as their age, gender, disability or health status. These *Principles and guidelines* focus on the human rights situation of those migrants who may not qualify as refugees under the Convention relating to the Status of Refugees, yet who are in vulnerable situations and thus in need of the protection of the international human rights framework.[[5]](#footnote-6)Recognizing that all persons, including non-nationals, have rights under international human rights law and related standards, it is important to uphold these rights, including the rights of persons entitled to specific protection under international instruments. Refugees and asylum seekers are entitled to specific protection under international and regional refugee law.[[6]](#footnote-7) The human rights and particular needs of other persons, including trafficked persons, migrant workers, stateless persons, and persons with disabilities, have also been recognized in specific international instruments.[[7]](#footnote-8) The development of these *Principles and guidelines* is without prejudice to the specific rights accorded to these and other groups of people on the move.

When the international community adopted the Universal Declaration of Human Rights on 10 December 1948, the Declaration was accepted as a common standard for all peoples and nations. It spelled 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) permits a distinction to be made between nationals and non-nationals in respect of only two rights, and only in certain circumstances.

Human rights are universal, inalienable, indivisible and interdependent. The international human rights framework makes clear that, to give effect to these rights and uphold the fundamental principle of non-discrimination, duty bearers must consider the unique and individual circumstances of each person.[[8]](#footnote-9) By becoming parties to international human rights treaties, States assume obligations under international law and undertake to establish domestic measures and legislation reflecting those obligations.[[9]](#footnote-10) As a result, there may also be practical consequences for municipal authorities and local governments. States may also be responsible for the human rights consequences of actions, or failures to act, by private actors, including corporations, members of civil society and private security contractors. They have a duty to take appropriate steps to prevent human rights abuses that they are in a position to be aware of, to investigate and punish such abuses, and provide effective remedies and reparation.

1. The concept of ‘migrants in vulnerable situations’

The vulnerable situations that migrants face can arise from a range of factors that may intersect or coexist simultaneously, influencing and exacerbating each other, and also evolving or changing over time as circumstances change. The concept of vulnerability is a foundational element of the human rights framework. Together with the requirement to uphold human dignity, the need to recognise and address vulnerability underpins the legal obligation of states to respect, protect and fulfil human rights.[[10]](#footnote-11) A migrant ‘in vulnerable situations’ is thus someone who is unable effectively to enjoy his or her human rights and who, accordingly, is entitled to call on a duty-bearer’s heightened duty of care.

Factors that generate vulnerability may cause a migrant to leave his or her country of origin in the first place, may occur during transit or at destination regardless of whether the original movement was freely chosen or not, or may be related to a migrant’s identity or circumstances.[[11]](#footnote-12) Vulnerability in this context should therefore be understood as both situational (external) and personal (internal).[[12]](#footnote-13) As a matter of principle and in order to ensure that every migrant is able to access appropriate protection of their rights, the situation of each person must be assessed individually.

* Vulnerability associated with the reasons for leaving the country of origin

Amongst the many drivers of human movement are those that force people to move because they are unable to access their rights. In some circumstances, the resulting movement will not give rise to protection under international refugee law, but nonetheless will mean that the person is in need of the protection provided by international human rights law. Some migrants who move in these circumstances will be unable or unwilling to return to their country of origin. Such drivers could include; extreme poverty, natural disasters, climate change and environmental degradation, gender inequality, separation from family, and lack of access to the right to education, health, decent work, or food and water. Migrants who are compelled to move are at greater risk of human rights violations throughout their migration.[[13]](#footnote-14)

* Vulnerability associated with situations that migrants encounter during their journey and at destination

Migrants are often obliged to employ dangerous forms of transport or to travel in hazardous conditions. Many will make use of smugglers and other types of facilitator, some of whom may place them in situations of exploitation or subject them to other forms of abuse. Some may be at risk of trafficking as they move. During their journeys, migrants may lack water or adequate food, face violence or have no access to medical care. Many migrants spend long periods 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, including sexual and gender-based violence and treatment which may amount to torture and other cruel, inhuman or degrading treatment or punishment. A range of practices may put the health and safety of migrants at risk and expose them to human rights violations. These include: closure of borders; denial of access to effective screening and identification; arbitrary rejection at the border; collective expulsion; violence by State officials and other actors (including criminals and civilian militias); cruel, inhumane or degrading reception conditions; denial of humanitarian assistance; and failure to separate the delivery of services from immigration enforcement.

* Vulnerability associated with a person’s identity, condition or circumstances

As they move, some migrants are more at risk of human rights violations and abuses than others. Some will experience discrimination due, inter alia, to their age, gender, ethnicity, race, nationality, religion, language, sexual orientation, gender identity, or migration status. Some experience discrimination on several grounds. People who are living in poverty, including because they are subject to discrimination due to their economic position, are particularly vulnerable in the context of migration. Generally, pregnant or nursing women, persons in poor health (including those with HIV-AIDS), persons with disabilities, older people, and children (including unaccompanied or separated children), are specifically at risk because of their physical or psychological condition.

1. Principles and practical guidance

The international human rights framework that States have put in place provides protection to all persons, including to all migrants. However, the framework’s application to migrants who are in situations of vulnerability is less clearly understood. States (and other stakeholders) therefore lack complete guidance on how to operationalize the framework in such situations. The *Principles and guidelines* attempt to meet this need. They provide advice to States and other stakeholders on how they should implement their obligations to respect, protect and fulfil the human rights of migrants who are in vulnerable situations, including in the course of large or mixed movements.

The Principles are drawn directly from international human rights law and related standards including international labour law, as well as from refugee law, criminal law, humanitarian law, and the law of the sea and are enshrined in treaty law, customary international law and general principles of law.

The guidelines that follow each Principle elaborate international best practice and are designed to assist States (and other stakeholders) to develop, strengthen, implement and monitor measures to protect and promote the human rights of migrants in vulnerable situations. They are derived from authoritative interpretations or recommendations by international human rights treaty bodies and special procedure mandate holders of the Human Rights Council, as well as other expert sources.[[14]](#footnote-15)

It should be noted that the Principles and the guidelines inform one another; they should therefore be read together.

# Glossary of key terms

|  |  |  |
| --- | --- | --- |
| Asylum seeker | An asylum seeker is any person is seeking protection as a refugee, but whose claim has not been finally determined. | |
| Border authorities  Border governance  Discrimination | Border guards, consular and immigration officials, border police, staff at border detention facilities, immigration and airport liaison officers, coast guard officials and other front line officers and staff performing border governance roles.[[15]](#footnote-16)  Legislation, policies, plans, strategies, action plans and activities related to the entry of persons into, and the exit of persons from, the territory of a State. It covers detection, rescue, interception, screening, interviewing, identification, reception, detention, removal, expulsion, non-admittance, and return, as well as related activities such as training, technical, financial and other assistance, including that provided to other States.[[16]](#footnote-17)  Any distinction, exclusion, restriction or preference based on race, colour, descent, ethnic origin, sex, age, gender, sexual orientation, gender identity, disability, religion, nationality, migration or residence status, or other status, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.[[17]](#footnote-18)  Intersectional discrimination refers to a situation of discrimination which is based on multiple grounds, such as race, ethnicity, religion and gender that interact with one another, and produce a compound dimension of disempowerment.[[18]](#footnote-19) | |
| Firewall | Measures to separate immigration enforcement activities from public service provision, labour law enforcement, and criminal justice processes to protect victims of crime, that States and non-State actors implement to ensure that persons in an irregular status are not denied their human rights.[[19]](#footnote-20) Firewalls 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.”[[20]](#footnote-21) | |
| Human rights defender | A person who, individually or with others, acts to promote or protect human rights. There is no specific definition of who is or can be a human rights defender.[[21]](#footnote-22) A person or group does not need to self-identify as a human rights defender to be one. National human rights institutions which operate in compliance with the Paris Principles relating to the Status of National Institutions can be considered human rights defenders.[[22]](#footnote-23)  In these *Principles and guidelines*, ‘human rights defender’ includes individuals who work with migrants, including those who provide humanitarian assistance to migrants. | |
| Immigration detention  Large movement | In these *Principles and guidelines*, ‘immigration detention’ includes any deprivation of liberty for the purposes of border governance and migration governance.  Deprivation of liberty refers to any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.[[23]](#footnote-24)  “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.”[[24]](#footnote-25)  “‘Large movements’ may be understood to reflect a number of considerations, including: the number of people arriving, the economic, social and geographical context, the capacity of a receiving State to respond and the impact of a movement which is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another..”[[25]](#footnote-26) |
| Migrant | In these *Principles and guidelines*, an international migrant (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”.[[26]](#footnote-27) There is no universal legal definition of ‘migrant’.  Throughout the *Principles and guidelines*, ‘migrant’ refers to migrants in vulnerable situations.[[27]](#footnote-28) | |
| Migration governance  Mixed migration | A process in which the combined framework of legal norms and organizational structures regulate and shape how states act in response to international migration, addressing rights and responsibilities and promoting cooperation within and among countries.[[28]](#footnote-29)  Describes the cross-border movement of people who have a variety of protection profiles, reasons for moving and needs, but who move along the same routes, use the same forms of transport or means of travel, and often travel irregularly.[[29]](#footnote-30) There is no official or agreed definition of ‘mixed migration’. | |
| Non-refoulement | Under international human rights law, the prohibition of refoulement entails an obligation not to extradite, deport, expel, return or otherwise remove a person, whatever his or her status, when there are substantial grounds for believing that he or she would be at risk of being subject to serious violations of human rights, including torture or cruel, inhuman and degrading treatment or punishment, in the place to which he or she is to be transferred or removed.[[30]](#footnote-31) Human rights mechanisms have underlined that, under international human right law, the prohibition of refoulement is absolute.[[31]](#footnote-32)  Under international refugee law ‘No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion’.[[32]](#footnote-33) | |
| Refugee | A refugee is a person who ‘owing to a 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’.[[33]](#footnote-34) | |
| Regularization  Separated child | A range of legislative and administrative measures employed by States to grant legal status which would enable migrants in an irregular situation to stay lawfully in their territory.[[34]](#footnote-35)  As a related measure, complementary forms of protection describe legal mechanisms used by States to extend protection and grant status based on international human rights instruments to persons who do not qualify for protection under international refugee law, but whose removal from the territory would be contrary to obligations under international human rights law, including the principle of non refoulement.  A child who has been separated from both parents or from his or her legal or customary primary caregiver, but not necessarily from other relatives, and is not being cared for by an adult who, by law or custom, is responsible for his or her care. A child may become separated at any point during his or her migration.[[35]](#footnote-36) | |
| 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’.[[36]](#footnote-37) | |
| Unaccompanied child | A child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for his or her care. A child may become unaccompanied at any point during his or her migration.[[37]](#footnote-38) | |
| Xenophobia | Commonly used to describe attitudes, prejudices and behaviour that reject, exclude and often vilify persons based on the fact or the perception that they are outsiders or foreign with respect to a community, society or national identity.[[38]](#footnote-39) There is no universal legal definition of ‘xenophobia’. | |

# The Principles

## Principle 1

Ensure that human rights are at the centre of efforts to address migration, including responses to large and mixed movements.

**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.[[39]](#footnote-40)
2. Ensure that legislation and other measures of migration governance are consistent with States’ obligations under international human rights law and permit migrants to enjoy fully all their human rights and fundamental freedoms.[[40]](#footnote-41) Before adopting new policies on migration, undertake due diligence, including human rights impact assessments, and consult migrants and other relevant stakeholders. Immediately review and suspend, amend or repeal any laws or other measures that have a negative or disproportionate impact on the human rights of migrants.[[41]](#footnote-42)
3. Ensure that national, regional and international policy making on migration is subject to oversight, including parliamentary scrutiny; publish all bilateral agreements, readmission agreements and memoranda of understanding relevant to migration.[[42]](#footnote-43) Ensure that international cooperation consistently complies with the obligation to respect, protect and fulfil human rights, including migrants’ rights, and that such cooperation is never made conditional on measures that unlawfully or disproportionately restrict or penalize migration or migrants.
4. Undertake systematic and continuous efforts to sensitize and build the capacities of professional bodies, including the judiciary, police, border authorities, health and education personnel, civil servants, municipal and local government officials, and others, to promote and protect migrants’ human rights, address discriminatory attitudes and stereotypes, and apply rights-based methods that are sensitive to culture and gender.
5. Ensure that it is not a criminal offence to leave, enter or stay in a country irregularly, given that border crossing and the 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.[[43]](#footnote-44) Ensure that migrants are not subject to criminal prosecution for having used the services of smugglers.[[44]](#footnote-45)
6. Make sure that appropriate laws and procedures are in place to enable human rights and humanitarian actors to protect and assist migrants and document human rights violations. Adopt or amend legislation to ensure that public and private actors engaged by the State in migration governance are properly accountable for human rights violations and abuses.[[45]](#footnote-46)
7. Act to prevent statelessness, recognizing inter alia that statelessness is not a gender neutral phenomenon, and ensure that all children are able to acquire a nationality.[[46]](#footnote-47)

## **Principle 2**

Counter all forms of discrimination against migrants.

**Guidelines**

1. Elaborate and implement human rights-based legal measures that protect migrants from all forms of discrimination regardless of their sex, gender, sexual orientation, gender identity, race, ethnicity, language, religion, political or other opinion, social origin, disability, 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. Ensure that legal provisions to prevent discrimination apply across all aspects of migration governance.[[47]](#footnote-48)
2. Repeal or amend all laws or measures that may give rise to discrimination against migrants, including direct and indirect discrimination that is based on multiple grounds.[[48]](#footnote-49) Condemn and take effective measures against all acts and expressions of racism, racial discrimination, xenophobia and related intolerance, against stereotyping of migrants (including on the basis of religion or belief) because they are non-citizens or have an irregular status, and against other intersecting forms of discrimination such as age and gender. Hold those who commit such acts accountable, including politicians, opinion-leaders and the media, and enable victims to access justice, including through accessible complaint mechanisms; provide effective remedies.[[49]](#footnote-50) Make sure that serious and extreme instances of hate speech and incitement to hatred are criminal offences that are brought before an independent court or tribunal.[[50]](#footnote-51)
3. Ensure that, regardless of their status, migrants are able to enjoy their right to freedom of association including through forming and joining trade unions and participating in informal networks and associations as well as community and faith-based activities.[[51]](#footnote-52) Take steps to ensure that migrants can freely practice their religion or beliefs and worship in private and public, including in community with others.[[52]](#footnote-53)
4. Use correct and neutral terminology to describe migrants and migration, and promote migration policies that draw on evidence-based research that considers the human rights of migrants as well as their impacts on and contributions to countries of origin, transit and destination. Research should examine, inter alia, impacts on and contributions to social and cultural life and diversity, economic growth, employment generation, social security programmes, entrepreneurship, and taxation and investment.[[53]](#footnote-54)
5. To combat prejudice and the social stigmatization of migrants, introduce public education measures and run meaningful and targeted awareness campaigns. Focus as required on nationalities or religions that are subject to particular discrimination.[[54]](#footnote-55) Promote local campaigns that support migrants and host communities, that build empathy and solidarity, and reinforce notions of a shared humanity, and that confront prejudice, stigmatisation, and exclusion.[[55]](#footnote-56)
6. Improve knowledge, build capacity and sensitize media professionals and outlets on the situation and human rights of migrants.[[56]](#footnote-57) Strengthen the capacity of media professionals and journalists to report migration issues accurately and sensitively, avoiding harmful stereotypes, valuing inclusive and diverse societies, and promoting migrants’ human rights.
7. Create or strengthen independent institutions and mechanisms, including specialized national bodies such as national human rights institutions or ombudspersons, to monitor and report on discrimination against migrants.[[57]](#footnote-58) Ensure that all ombuds offices that have relevant mandates consider the intersection of migration with their areas of focus.

## **Principle 3**

Ensure that migrants have access to justice.

**Guidelines**

1. Take measures that will enable migrants, including migrants at particular risk of marginalization and exclusion, to enjoy effective and equal access to justice, without discrimination on any basis.[[58]](#footnote-59) Ensure that migration status that depends on a single employer or a partner is not a barrier to seeking or obtaining protection, support, or justice.[[59]](#footnote-60)
2. Take steps to provide competent, independent, free and confidential legal and other assistance to migrants, including accessible information and interpretation services, enabling them to:

* Understand their rights and obligations as well as relevant criminal, administrative, civil and labour justice procedures.
* Obtain due process and justice, including the rights to an individual examination, to seek asylum, to appeal, and to an effective judicial remedy.
* Access victim support services.[[60]](#footnote-61)

1. Strengthen or establish official mechanisms and procedures to receive, investigate and monitor allegations of human rights violations and abuse of migrants. Provide adequate, effective, prompt and appropriate gender-responsive judicial remedies, and reparation, noting that reparation should be proportional to the gravity of the violations and the harm suffered.[[61]](#footnote-62) Ensure that the gender balance of such mechanisms and procedures corresponds with that of the migrant population. Where relevant, ensure that the families of migrants who are missing, were victims of enforced disappearance, or were killed during migration, can use such mechanisms and procedures.[[62]](#footnote-63)
2. Ensure that migrants have effective access to qualified, independent and competent lawyers, and can obtain legal advice and representation during legal proceedings that affect them, including during related hearings. Good quality legal aid should be made available to migrants without cost, in accordance with international standards.[[63]](#footnote-64)
3. Ensure that migrants who have been victims of crimes, or witnessed crimes, can participate, give evidence and testify in legal proceedings, whether or not they are in the jurisdiction of the prosecuting State; and can do so without fear of expulsion.[[64]](#footnote-65)
4. Establish explicit and binding procedures and standards (firewalls) separating the criminal justice system and immigration officials, and ensure they are applied.[[65]](#footnote-66) Ensure that immigration authorities do not conduct enforcement operations in or near places where justice is administered, such as courts and community police stations.
5. 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 empower them to respect and fulfil their responsibility to uphold and protect the human rights of migrants. Ensure that the judiciary, legal profession and prosecutorial services are enabled to fulfil their roles and uphold the legal and practical guarantees of independence and impartiality that international human rights law and standards require.[[66]](#footnote-67)

## **Principle 4**

Protect the lives and safety of migrants and ensure that all migrants facing risks to life or safety are rescued and offered immediate assistance.

**Guidelines**

1. Ensure that relevant national legal frameworks as well as arrangements for cooperation and coordination between States uphold and strengthen the effectiveness of the search and rescue regime, in accordance with international human rights and refugee law, the international law of the sea, and other relevant standards.
2. Establish, operate and maintain adequate and effective services for search and rescue at sea regardless of the nationality or status of migrants who are in distress at sea or the circumstances in which they are found. Ensure that search and rescue services and coordinating authorities operate under a broad understanding of distress, so that timely and necessary assistance is provided to migrants in unseaworthy vessels even if they are not in immediate danger of sinking. Ensure that all possible State and other resources are mobilized, including by means of cooperation between States where appropriate, for search and rescue responses including proactive patrolling when informed risk assessments suggest that migrants who may require assistance are likely to be present along a particular sea route.[[67]](#footnote-68)
3. Make every effort to protect migrants’ right to life, wherever they are at risk on water or on land. Ensure that rescue services are adequately resourced and provided with all necessary equipment such as rescue beacons. Avoid acts and inaction that are likely or expected to cause the unnatural or premature death of migrants, or deny them a dignified existence.[[68]](#footnote-69)
4. Prepare safe places for arrival and disembarkation that meet human rights standards for reception and assistance. Arrival and disembarkation points should be staffed by trained personnel who are able to screen arrivals for medical needs and provide emergency assistance, assess vulnerability, offer initial psychological assistance, and provide basic information to migrants including information on their rights. Arrival points should provide adequate shelter and the opportunity to rest, and distribute food and water, blankets, clothing, hygiene or dignity kits, and sanitary items.[[69]](#footnote-70) Assistance should be non-discriminatory, culturally appropriate, and sensitive to disability, age and gender.[[70]](#footnote-71) Such assistance must be provided unconditionally, where necessary taking priority over border control or police or other enforcement procedures.
5. Establish operational guidelines and agreements with national protection bodies and other relevant actors that ensure timely and effective referral of migrants who need protection and assistance, especially those who need psychological and emotional support after rescue. Ensure provision of information about asylum procedures and effective referral pathways. Make sure that specialized support is provided as a priority to the most vulnerable, including survivors of shipwreck, trauma, torture or sexual and gender-based violence. Respond specifically to the special needs of children who have been rescued, whether they are travelling with their family or guardians, have been separated from them, or are travelling unaccompanied.[[71]](#footnote-72)
6. Make sure that those responsible for search and rescue or for providing assistance are properly trained and understand their primary obligation to save life, uphold the principle of non-refoulement including in the context of rescue operations and disembarkation arrangements, ensure the human rights, safety and dignity of persons rescued, and address their specific needs.[[72]](#footnote-73)
7. Ensure that the organizations and individuals who rescue or provide assistance to migrants are not criminalized or otherwise punished for doing so. Where necessary, legislation should be modified accordingly.[[73]](#footnote-74)
8. Promote national, bilateral, regional and international efforts and cooperation, to search for people who have disappeared or died on their journey, facilitate the recovery, identification and transfer of their remains, and safely and appropriately notify their families. Grant relatives access to justice and, when appropriate - such as in the context of enforced disappearances or deaths caused by arbitrary or abusive use of force, to effective redress.[[74]](#footnote-75)

## **Principle 5**

Ensure that all border governance measures protect human rights.

**Guidelines**

1. Protect the right of all persons to leave any country, including their own. Ensure that legislation, measures and practices relevant to migration governance and border governance comply with human rights standards, are child- and gender-sensitive, and do not adversely affect the human rights and dignity of migrants.[[75]](#footnote-76)
2. Ensure that no migrant is criminalized for crossing a border irregularly or with the help of a facilitator.[[76]](#footnote-77)
3. Prohibit border governance measures that cause human rights violations or abuses or make them more likely.[[77]](#footnote-78) Prohibit excessive use of force and dangerous border control practices, such as water-hosing and use of dogs against migrants.
4. Take all reasonable measures to minimize the time during which migrants are delayed at borders or other crossing points on their journey. Provide adequate humanitarian assistance during border procedures and delays. Humanitarian assistance includes the provision of shelter, water and sanitation facilities, medical care, and culturally appropriate food, and should meet the specific needs of migrants including children, pregnant or nursing women, older persons and persons with disabilities.
5. Implement individual screening and assessment procedures as soon as possible after migrants arrive, so that those in vulnerable situations can be identified promptly and without discrimination, and can be referred to appropriate services and protection bodies. Ensure that enough competent experts are present at borders to complete human rights-based screenings and referrals.[[78]](#footnote-79)
6. Establish practical and effective mechanisms to assess the individual human rights situation of all migrants and prevent or suspend any expulsion until assessment and appeal processes have been completed.[[79]](#footnote-80) As necessary, such assessment can take place prior to, alongside or at the same time as interviews to establish asylum claims. Such assessments should operate without prejudice to a person’s right to seek asylum. An assessment mechanism should:[[80]](#footnote-81)

* Be implemented by qualified personnel.
* Be able to assess the risks and rights of individual migrants, including their need for protection of any kind.
* Work in a timely manner, while giving interviewees adequate time to present their case and seek remedies where appropriate.
* Make competent legal advice and representation available to migrants.
* Have power to access all documents related to a case.
* Justify its decisions in writing in a language and format understood by the migrant in question.
* Have authority to exercise immigration discretion on humanitarian grounds where appropriate, including for migrants displaced by climate change and environmental factors.
* Provide information on the remedies available.
* Be able to arrange appropriate referrals.

1. Ensure that border authorities do not confiscate migrants’ personal property except when duly authorized to do so by law. Legal authorization to confiscate should comply with international human rights standards, limit and clearly define the circumstances in which confiscation may be authorized, and establish clear procedures for the return of confiscated property.[[81]](#footnote-82)
2. Ensure that border authorities are properly trained, and understand their obligation to respect, protect and fulfil the human rights of migrants as well as the abuses that migrants may experience during the migration process. Training materials should draw on real experiences of migrants when crossing borders, and should analyse the different risk factors and human rights violations that different groups of migrants may experience.[[82]](#footnote-83)
3. When human rights violations and abuses occur at a border, ensure they are promptly and properly investigated and that migrants have access to effective complaint mechanisms and redress without discrimination on any basis. In this and other border governance concerns, follow OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*.[[83]](#footnote-84)

## **Principle 6**

Ensure that all returns fully respect the human rights of migrants and comply with international law.

**Guidelines**

1. Ensure that relevant judicial and administrative authorities are made aware of and implement legal obligations to ensure that no person is returned to a place where there are substantial grounds to believe that he or she would be at risk of torture or other cruel, inhuman, or degrading treatment or punishment, or other serious human rights violations or irreparable harm, including: enforced disappearance; threats to the liberty and security of the person; risks to their life (including absence of necessary medical care); living conditions contrary to human dignity, where a person cannot meet basic needs; serious forms of discrimination; arbitrary interference (as a result of the expulsion) with the right to a family and private life; or the risk of onward refoulement.[[84]](#footnote-85) Counter-smuggling measures and measures to manage irregular migration (such as the creation of special zones at airports or readmission agreements) must not breach the prohibition of refoulement and must respect, protect and fulfil the human rights of migrants.[[85]](#footnote-86)
2. Ensure that no arbitrary or collective expulsions occur, for example by tow-backs or push-backs, in any area over which the State exercises jurisdiction or effective control, including areas outside the territory of the expelling State, border areas, and on the high seas.[[86]](#footnote-87)
3. Any migrant who is asked to consent to a voluntary return process must be fully and meaningfully informed of the choice he or she makes, having access to up-to-date, accurate and objective information, including in relation to the place and the circumstances to which he or she will be returning. Consent must be given free of any coercion. This means, inter alia, that the migrant must not be subject to violence or ill-treatment intended to force compliance, to an actual or implied threat of indefinite or arbitrary detention, or to detention in inadequate conditions.[[87]](#footnote-88)
4. Make efforts to enable returning migrants to choose the State to which they return, subject to the agreement of that State. Make sure that the right of a migrant (and any person) to return to his or her own country is respected in law and practice. This right implies among other things that no migrant should be deprived arbitrarily of his or her nationality or travel documents.[[88]](#footnote-89)
5. Ensure that returns are only carried out in accordance with international law, in safe conditions and with dignity. Respect procedural guarantees. Children should be accompanied throughout the return process. Migrants who are being returned should not be subject to human rights violations or abuse by State or private actors; this means inter alia that they should not experience arbitrary detention, violence or ill-treatment, or extortion.
6. The best interests of the child should be a primary consideration in decisions relating to return. This means that children should only be returned when it has been determined that is in their best interests. Considerations such as those relating to general migration control, cannot override best interests considerations such as, *inter alia*, family unity, survival and development.[[89]](#footnote-90) Where it is necessary to complete a formal best interests determination procedure, for example for separated and unaccompanied children, the following safeguards may apply:

* Be a formal procedure involving competent officials.
* Contain appropriate safeguards. These include, inter alia, the rights of the child to be heard, and to have competent and independent legal representation.
* Assess fairly and equally all the solutions that are available to the child.
* Give full consideration to factors affecting the child’s development and survival and whether he or she can return to safe and adequate conditions, including socio-economic conditions in the child’s country of origin.
* Take into account the family environment and whether he or she can be provided proper care and custody.[[90]](#footnote-91)

1. Where return is deemed not to be in the child’s best interests, keep families together in the country of residence rather than remove parents without their children.[[91]](#footnote-92) When unaccompanied and separated children are returned, States of origin and destination should cooperate to continue family tracing efforts after return.
2. Ensure that return is sustainable by mitigating the risks that returnees face in their countries of origin. Implement all possible measures that could enable all returning migrants to enjoy all their human rights, including their entitlements to social protection, health care, an adequate standard of living, decent work, education, and justice.[[92]](#footnote-93) Provide effective and tailored reintegration programmes that address the different needs of women and men and girls and boys. As far as possible for all returns, and as a matter of course for each child being returned, prepare a plan for sustainable reintegration and continued evaluation. Such a plan should include targeted measures such as effective access to justice, education, health, family life, and protection against all forms of violence.[[93]](#footnote-94) Return should not cause children to become homeless; nor should they be housed in orphanages, residential care facilities, or any situation that will compromise their development or lead to social exclusion.[[94]](#footnote-95) Migrants should not be returned to areas that are experiencing extreme weather or slow onset climate events.[[95]](#footnote-96) After migrants return, put long-term, independent reporting mechanisms in place to monitor the risk and occurrence of human right violations.[[96]](#footnote-97)
3. Establish independent mechanisms to monitor human rights in pre-removal and return processes and after migrants return. These should:[[97]](#footnote-98)

* Confirm that returns do not violate the principle of non-refoulement, the right to seek asylum, or the prohibition of arbitrary and collective expulsion.
* Guarantee that all allegations of human rights violations during the process of return are promptly and impartially investigated.
* Monitor the human rights situation of migrants, both those who returned voluntarily and those who returned involuntarily.
* Ensure that all returned migrants have access to effective complaint mechanisms and remedies.

1. Put in place appropriate administrative and legislative mechanisms to grant legal status to migrants who cannot return, including those who cannot be removed on grounds related to the fundamental prohibition of non refoulement or other obligations under international human rights law, or those who are refused admission to the territory of their country of origin or habitual residence as well as those who are prevented by practical obstacles from returning to their country of origin or residence. Do not hold migrants who cannot be returned in indefinite or protracted detention.[[98]](#footnote-99)
2. Whether return is forced or voluntary, give due consideration to the provisions on ‘human rights-based return or removal’ in OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*.[[99]](#footnote-100)

## **Principle 7**

Protect migrants from torture and all forms of violence and exploitation, whether inflicted by State institutions, officials, private bodies or individuals.

**Guidelines**

1. Take measures to prevent and respond to torture and all forms of exploitation and violence against migrants, whether by State institutions, officials, private bodies or individuals.[[100]](#footnote-101) Ensure that the measures taken will prevent the recurrence of abuse and are accessible to all migrants. When devising them, consult migrants and their organizations as well as experts in the criminal justice system and representatives of employers’ and workers’ organizations. All immigration facilities should adhere to standards for preventing and responding to violence, including sexual and gender-based violence. Immigration facilities should provide safe accommodation and assistance to migrants who are victims of torture, violence and exploitation.
2. Ensure that legislation and policy, as well as practice, reduce the risk that migrants will be exploited by those who offer them services or work in the formal or informal sectors, including the risk of being subject to forced labour or trafficking in persons. Ensure that migrant children are protected from exploitation and abuse, including the worst forms of child labour.[[101]](#footnote-102)
3. Establish accessible and confidential services for migrants who are survivors of violence and exploitation. These should include healthcare, counselling, reporting and complaints mechanisms, and effective referral arrangements.[[102]](#footnote-103) Migrants should have access to medical, sexual and reproductive healthcare, and essential medicines, as well as psycho-social and other forms of support to assist their recovery and rehabilitation.[[103]](#footnote-104) Service providers should be trained to understand the human rights of migrants and migrant families who have been affected by violence, to respond to their needs, and to overcome anti-migrant bias.[[104]](#footnote-105) Migrants’ experiences of violence, including domestic violence and sexual and gender-based violence, should be addressed without causing further victimization, trauma or harm. Ensure that relevant information on 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 against migrants and to their exploitation. Ensure that any alleged use of excessive force, including lethal force, and any alleged act of violence against migrants, regardless of their status or situation and whether the alleged perpetrator acted in a public or private capacity, is promptly, independently and effectively investigated and prosecuted.[[105]](#footnote-106)
5. Take measures to encourage migrants to report crimes committed against them. To facilitate this, establish explicit and binding firewalls enabling migrants to report crimes, participate in criminal justice proceedings, and receive related assistance and support without fear that they will be arrested, detained or expelled because of their migration status.[[106]](#footnote-107) Ensure that sentences imposed on those who exploit migrants, or commit violence against them, are proportionate to the seriousness of the offence.[[107]](#footnote-108)

## **Principle 8**

Uphold the right of migrants to liberty and protect them for all forms of arbitrary detention. Make targeted efforts to end unlawful or arbitrary immigration detention of migrants. Never detain children because of their migration status or that of their parents.

**Guidelines**

1. Establish in law a presumption against immigration detention and require administrative and judicial bodies to presume in favour of liberty.[[108]](#footnote-109) Work progressively, including through the development of national plans to end all forms of immigration detention.[[109]](#footnote-110).
2. Prioritize the implementation of non-custodial, community-based alternatives to detention that fully respect the human rights of migrants and that are based on an ethic of care rather than enforcement.[[110]](#footnote-111)
3. Avoid the immigration detention of persons who have specific needs or who are particularly vulnerable to the risk of exploitation, abuse, sexual and gender-based violence, or other forms of violence. Such people include, inter alia, pregnant and nursing women, older persons, persons with disabilities, survivors of torture or trauma, migrants with particular physical or mental health needs, and stateless persons.[[111]](#footnote-112)

Children should never be detained for immigration purposes, even for short periods, whatever their status or the status of their parents.[[112]](#footnote-113) Prioritize the right to liberty and the right to family life of children by finding alternatives to detention for the whole family. Children whose parents or guardians are detained should never be detained for the purpose of preserving family unity.[[113]](#footnote-114)

1. In the exceptional circumstances where immigration detention is used, ensure that procedural safeguards are fully implemented. These safeguards:

* Clearly define in law the reasons for detention.[[114]](#footnote-115)
* Require those reasons to be explained to migrants orally and in writing, in a language and format they understand, if necessary with the assistance of an interpreter.[[115]](#footnote-116)
* Provide that detention can only be ordered by a court of law.
* Stipulate that detention is to be determined case-by-case, is an exceptional measure of last resort, and should last for the shortest period of time.
* Require detention orders to include information on the individual’s rights in connection with the decision.[[116]](#footnote-117)
* Require due process of law, including access to legal counsel and fair trial guarantees.
* Prohibit all mandatory or indefinite detention, ensuring that any use of detention is necessary, proportionate and limited in duration
* Permit detention only when no suitable non-custodial alternatives are available that meet the same legitimate aim, with justification provided in relation to each individual case as to why detention is the only measure available.[[117]](#footnote-118)
* Guarantee detainees the right to challenge the lawfulness of any deprivation of liberty in a timely manner before a court. That court must be independent of the detaining authority and empowered to order a detainee’s prompt release if detention is found to be unlawful.[[118]](#footnote-119)

1. Detention conditions should respect the fundamental dignity of the person and meet minimum standards of international law, including the following;[[119]](#footnote-120)

* Facilities are clearly designated for the purposes of immigration detention and the conditions reflect its administrative purpose. Migrants are never held in criminal prisons, jails or other prison-like facilities for immigration reasons.[[120]](#footnote-121)
* Any restrictions imposed on freedom of movement or personal autonomy within the detention environment are applied only to the extent necessary to protect the rights of others and to maintain public order.[[121]](#footnote-122)
* Migrants deprived of liberty have prompt access to an independent lawyer, who should be able to visit and communicate with his or her clients, both to make effective a migrant’s right to challenge the lawfulness of his or her detention, and as a safeguard against torture and other cruel, inhuman or degrading treatment and enforced disappearance.[[122]](#footnote-123)

1. Ensure that all places where immigration detention might occur are effectively monitored by independent mechanisms which have an explicit human rights mandate to protect the rights of migrants deprived of liberty, including children, and prevent and address any act of torture or other form of ill treatment and violence. Ensure that the roles and responsibilities of monitoring mechanisms are defined clearly and that they exercise appropriate powers defined by law. Their powers should include the authority to:

* Visit any place where immigration detention might occur, and do so unannounced.
* Choose the places they want to visit and the persons they want to interview.
* Obtain any information they need, request reports before, during and after their inspection visits, and receive a prompt response.
* Conduct private interviews (where necessary assisted by a translator) with migrants and any other person who may supply relevant information.
* Make public the results of their inspections and recommendations (while preventing the disclosure of information that might put a migrant at risk).[[123]](#footnote-124)

1. Take steps to ensure that consulates respond effectively to the needs of their citizens in immigration detention. Such measures should include legal aid, help to access justice and obtain due process, and material assistance. To meet these needs, consulates should set aside sufficient human and financial resources, and should train consular staff in human rights law.[[124]](#footnote-125)
2. Detaining authorities should be made aware that drawing a detained migrant to the attention of a consular authority without that person’s knowledge and informed consent may put him or her at risk (for example, irregular migrants and LGBTI individuals) .[[125]](#footnote-126)
3. State and private actors, including the security forces, should be held accountable for unlawful or arbitrary detention, poor standards of detention, or other violations or abuses of human rights. Any detained migrant who suffers such abuses or ill-treatment is entitled to obtain an effective remedy and reparation.[[126]](#footnote-127)

## **Principle 9**

Ensure the widest protection of the family unity of migrants; facilitate family reunification; prevent arbitrary or unlawful interference in the right of migrants to enjoy private and family life.

**Guidelines**

1. Take steps to ensure that migrant families are not separated during disembarkation and border controls, at reception or registration, or in the course of detention and deportation. Ensure that children are entitled to express their views freely when decisions are taken about possible reunification with their families.[[127]](#footnote-128) Family reunification should never be used to justify expedited return in the absence of due process.
2. Domestically and in bilateral and regional processes, facilitate efforts to reunite families and keep them together.[[128]](#footnote-129) Strengthen regular channels for family reunification; these should not discriminate and should include no disproportionate restrictions with respect to age, income, or language. Ensure that migrants and members of their families who request family reunification do not suffer adverse consequences for doing so.[[129]](#footnote-130)
3. Make every effort to trace and reunite unaccompanied or separated children with their parents, in accordance with the best interests of the child, noting that reunification in the country of origin may not always be in the child’s best interests.[[130]](#footnote-131) Without compromising human rights standards, simplify and speed up procedures that assist children to reunite with their families. In particular, guarantee that applications by a child or a child’s parents to enter or leave a State for the purpose of family reunification will be dealt with in a positive, humane and expeditious manner.[[131]](#footnote-132)
4. Family registration and reunification processes should recognize that various forms of family exist. Gendered, heteronormative, or other stereotyped or prejudicial assumptions should not influence the registration or reunification of family representatives.[[132]](#footnote-133)
5. Ensure, inter alia by providing legal assistance and judicial and administrative protection, that parents who have been removed can exercise their rights to family unity and to custody of their children, including children who are citizens of the State that is removing them, before the courts of that country.[[133]](#footnote-134)
6. Families with children should be accommodated together in a safe and child-friendly environment.

## **Principle 10**

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

**Guidelines**

1. Base all legislation and policies on migrant children and other children affected by migration, such as those that are left behind in countries of origin as well as those who are born to migrant parents, as well as practice and guidance, on:

* International human rights law, and in particular the principles of non-discrimination, the best interests of the child, the full participation of all children, and the survival and physical, mental, spiritual, moral and social development of migrant children and children of migrants. Keep in mind that the best interests principle considers the short-, medium- and long-term effects of actions related to the development of the child.[[134]](#footnote-135)
* The child’s best interests should always take precedence over migration management objectives or other administrative considerations. Children in the context of migration must be treated first and foremost as children. All children, regardless of age, should enjoy equal standards of protection.[[135]](#footnote-136)

Children are entitled to:

* Due process guarantees, including the right to qualified legal representation.
* Opportunities to express their views freely in all matters that affect them and to have their views taken into account in accordance with their age and maturity.[[136]](#footnote-137)
* Age-appropriate and child-sensitive information about their rights and any processes that will involve them.[[137]](#footnote-138)

1. Provide guidance on how to operationalize the principle of the best interests of the child for migrant children who may not be making a claim for asylum under the 1951 Refugee Convention. Guidance should be based on international human rights law and best practice, and should be made available to child protection officers and other relevant officials.[[138]](#footnote-139)
2. Where reasonable doubt arises about the age of a migrant, age determination procedures should be gender-sensitive and multidisciplinary, drawing on assessments by independent and qualified psychologists and social workers; they should be conducted in a safe, age-appropriate and dignified manner.[[139]](#footnote-140) In situations of ambiguity or doubt, decisions should presume in favour of the child.[[140]](#footnote-141) Returns should be suspended and children should not be detained while their age assessments take place. Never detain children because of their migration status or that of their parents.
3. Ensure that, in their design and implementation, national child protection systems take into account the distinctive needs and views of migrant children and children born to migrant parents. Both domestically and across borders, coordinate child protection policies and systems to ensure they comply fully with international human rights law; ensure that officials who are likely to encounter migrant children are trained in good practices such as child-friendly communication. As far as possible, make sure that adequate numbers of trained child protection officers are available at all stages of the migration journey.[[141]](#footnote-142)
4. Wherever possible, ensure that child protection officers, not immigration or border enforcement officials, screen child migrants. Where this is not possible, ensure that immigration or border enforcement authorities who do screen children have specific training on child protection and child-friendly communication. Child protection officers should be empowered to refer migrant children to relevant experts for further screening, interview, assistance and protection. Unaccompanied children who are not in adequate family-based care arrangments must be accommodated in their own reception facilities, separate from adults.[[142]](#footnote-143)
5. Provide unaccompanied and separated migrant children with specific protection and assistance.[[143]](#footnote-144) Establish or strengthen guardianship mechanisms. Ensure that qualified, trained and independent guardians are appointed promptly to provide gender-sensitive protection and assistance to all unaccompanied children and child-headed households as soon as they are identified.[[144]](#footnote-145) Develop national implementation plans to ensure that all unaccompanied migrant children have swift access to competent guardians.
6. Provide adequate follow-up, support and transition measures for migrant children when they reach 18 years of age, particularly those leaving a care context. Ensure they are given access to information, have possibilities to attain a regular long-term migration status, receive welfare assistance, and have opportunities to complete their education and integrate in the labour market.[[145]](#footnote-146)
7. Ensure that every child born in in a migration context is properly registered, without charge and regardless of the migration or residence status of his or her parent/s or other guardians.[[146]](#footnote-147)

## **Principle 11**

Protect the human rights of migrant women and girls.

**Guidelines**

1. Design legislation, policy and programming to meet the specific needs and rights of migrant women and girls. Train and make available sufficient female case workers, lawyers, interviewers and independent interpreters. In all screening and assessment situations, migrant women and girls must be able to present their circumstances and claims in a safe, culturally-appropriate and gender-responsive environment. Ensure that childcare is also available during interviews. Ensure that women’s reports of human rights abuses are not viewed through the lens of male experiences.[[147]](#footnote-148)
2. In all reception facilities and other centres for migrants, ensure that women and girls do not suffer discrimination in the allocation or control of resources. Women staff should be present wherever women or girls are accommodated. All centres should provide well-lit, safe and private gender-responsive water, sanitation and hygiene (WASH) facilities, separate housing for women and men (except where families want to stay together), safe and culturally-appropriate spaces for women where they can rest and receive information and other services, and women-only mother/baby areas.[[148]](#footnote-149)
3. Develop effective mechanisms for the timely identification of vulnerable women and girls, including survivors of gender-based and sexual violence. Ensure that trained staff are available at all sites to support migrant women and girl who have experienced trauma, including sexual and gender-based violence. Migrant women and girls should be able to obtain specialized medical and psychosocial support, sexual and reproductive health services and information, and other relevant gender-sensitive services such as trauma counselling and legal advice.[[149]](#footnote-150) Establish and implement national referral mechanisms which can provide appropriate procedural guarantees and protection.
4. Make sure that border police and immigration officials, including contracted private actors, are trained to recognize and respect the needs and human rights of migrant women and girls and to fulfil their duties without discrimination. To this end, ensure that such staff are adequately equipped, trained, supervised and monitored.[[150]](#footnote-151)
5. Apply a robust gender analysis to all migration policies and programmes, including, inter alia, those relevant to employment, detention, labour rights, the provision of passports, visas and residence permits, and bilateral and multilateral agreements such as readmission agreements.[[151]](#footnote-152) Identify in particular policies or practices that frame women and girls as victims in need of protection, because such an approach can be used to restrict their mobility.[[152]](#footnote-153) Review and amend any laws or practices that discriminate, inter alia, on grounds of sex, civil status and pregnancy, do not recognize the autonomy of women and girls or their capacity to take decisions, or otherwise limit their opportunities.[[153]](#footnote-154)
6. Eliminate sex-specific bans and discriminatory restrictions on women’s migration which limit the mobility of women migrants, including on the basis of age, marital status, migration status, pregnancy and/or maternity status. Lift restrictions that ban out-migration for women migrants to specific regions or States, as well as those that require women to obtain permission from a spouse or male guardian to obtain a passport to travel. Further, ensure that visa schemes do not discriminate against women, such as by restricting their employment to specific job categories or by excluding female-dominated occupations from visa schemes.
7. When drafting and regularly reviewing migration laws, policies and programmes, consult a cross-section of migrant women of different nationalities, including adolescent girls**,** women who head households, pregnant and nursing women, and women with disabilities, to ensure that these meet their needs, comply with human rights and do not discriminate on grounds of gender.[[154]](#footnote-155)

## **Principle 12**

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

**Guidelines**

1. Ensure that health systems and national plans of action on health include migrants, regardless of their status, and establish legal and administrative mechanisms to ensure that migrants are included in fact. Make clear in explicit terms that migrants cannot be denied access to public health care services because of their migration status. Promote health policies and programmes that ensure migrants enjoy equitable, affordable and acceptable access to health care,[[155]](#footnote-156) including preventive, curative and palliative health services, essential drugs and medicines, and child vaccinations.[[156]](#footnote-157)
2. Make sure that the care migrants receive (in health facilities and with respect to goods, services and conditions) meets human rights standards, is non-discriminatory[[157]](#footnote-158) and gender-responsive, culturally and linguistically appropriate, and tailored to migrants’ needs.[[158]](#footnote-159)
3. Timely and accurate information on health and health rights should be made available to migrants at all stages of their journey, along migratory routes, at reception points, and in communities where migrants live and work. It should be provided in a language and format that migrants can understand[[159]](#footnote-160) and should state clearly that migrants are entitled to universal health services, including primary health care and rehabilitative and emergency medical care.
4. Provide access to comprehensive rights-based sexual and reproductive health information and services. These should include, inter alia: menstrual hygiene products; safe and modern methods of contraception; emergency contraception; maternal health care, including emergency obstetric services and pre- and post-natal care; safe and accessible abortion care; prevention and treatment of sexually transmitted infections (including HIV-AIDS), and associated care and support; and specialized care for survivors of sexual violence and abuse.[[160]](#footnote-161) Provide as a priority a minimum initial service package for reproductive health.[[161]](#footnote-162)
5. All HIV-AIDS testing of migrants should be voluntary, on the basis of informed consent. It should take place in private and guarantee the confidentiality of results, and should include pre- and post-test counselling. Migrants who test positive for HIV-AIDS should not be denied access to care or suffer other negative consequences, such as removal or return, or restriction of their freedom of movement; such outcomes would not serve public health objectives and would violate their rights.[[162]](#footnote-163)
6. In conjunction with relevant actors, including civil society service providers, develop strategies that will provide continuity of care for migrants who have long-term or chronic health needs. To this end, make every effort to ensure, inter alia, that mechanisms are in place to transfer medical records at all stages of migration and to wherever migrants are detained or relocated.[[163]](#footnote-164)
7. Recognize that migrants may experience severe emotional distress and may have particular and often urgent mental health needs. Ensure they have access to adequate mental health care, including at reception, and can be referred to appropriate secondary services. Provide psychosocial support for migrants who have lost family members and for migrant women who have suffered miscarriages during their journey. Migrant children must have access to specific care and psychological support, recognizing that children experience stress differently from adults. To ensure that mental health programmes are culturally appropriate and avoid stigma, design and deliver them in cooperation with migrants.[[164]](#footnote-165)
8. Establish binding and effective firewalls between public health service providers on one hand and immigration enforcement authorities and other security actors on the other, and make sure that firewalls are respected.[[165]](#footnote-166) Ensure that immigration authorities do not carry out enforcement operations in or near medical facilities or premises.[[166]](#footnote-167)
9. Ensure that detained migrants are held in conditions that satisfy essential health standards and that they have access to essential healthcare services free of charge and without discrimination, including services that address sexual and reproductive health needs and mental health conditions.[[167]](#footnote-168)

## **Principle 13**

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

**Guidelines**

1. Take measures to ensure that migrants enjoy an adequate standard of living, including when they are in temporary locations such as reception facilities and informal camps. Ensure that such facilities are accessible to all migrants, including children, persons with disabilities, older persons, and pregnant, new and nursing mothers. An adequate standard of living implies: [[168]](#footnote-169)

* Adequate and safe food sufficient in quantity and quality to satisfy an individual’s dietary needs, including the specific dietary needs of pregnant women, nursing mothers and children.
* Safe drinking water and culturally acceptable sanitation.
* Adequate and appropriate clothing.
* Adequate housing.
* The continuous improvement of living conditions.

1. Guarantee migrants access to shelter. Shelter facilities should be adequate to meet migrants’ needs, including the right to privacy, and should protect them from threats to their safety.[[169]](#footnote-170) Migrants should be entitled to carry out necessary improvements, including to temporary shelters and informal camps. National housing action plans should take migrants into account, regardless of their status.[[170]](#footnote-171)
2. Ensure that any evictions or planned relocations of migrants comply fully with international human rights law and only occur after through effective consultation with those who will be affected. Evictions should seek the full, prior and informed consent of those who are being evicted, should respect due process safeguards as well as general principles of reasonableness and proportionality, and should only take place after alternatives to eviction have been explored in consultation with the affected persons. Take steps to ensure that, before as well as during and after an eviction, migrants are formally entitled to receive prompt and accurate information about, inter alia: their situation; their rights; applicable legal procedures and remedies; possible consequences if they fail to comply with these procedures; the location of proposed reception centres or relocation sites and their condition; and the contact addresses of institutions that can advise them, including legal aid providers, ombuds offices and other relevant civil society organizations. Strictly ensure that migrants are not subjected to forced evictions, which have been recognised as gross violations of human rights.[[171]](#footnote-172)
3. Establish effective and binding firewalls between public and private service providers and public or private housing providers on one hand, and immigration enforcement authorities on the other. Ensure that irregular migrants are never criminalized for exercising their right to an adequate standard of living, and that private actors such as landlords or civil society organizations are also not criminalized when they assist migrants to exercise this right.[[172]](#footnote-173) Ensure that migrants, regardless of their status, can access shelters for the homeless.[[173]](#footnote-174)
4. Migrants should not be obliged to stay in closed shelter facilities, jails or immigration detention centres, whether these are operated by government or private actors. Residential facilities for migrants should not restrict migrants’ day-to-day movements unnecessarily. It is not permissible to restrict the movement of women, children, LGBTI migrants, persons with disabilities, or other groups of migrants on the grounds that they might face sexual, gender-based or other violence or harm inside or outside a facility. Take steps to avoid and prevent migrants – especially women, children, LGBTI migrants and persons with disabilities – from being de facto restricted in their movements due to fear of sexual, gender-based or other violence or harms, inside or outside the facility .[[174]](#footnote-175)

## **Principle 14**

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

**Guidelines**

1. Ensure that every person has the right to work and is entitled to just and favourable conditions of work, without discrimination of any kind.[[175]](#footnote-176) Develop appropriate and gender responsive policies and interventions to protect the rights of all migrants in the labour market, including their access to decent work and livelihoods.[[176]](#footnote-177)
2. Ensure that migrants do not suffer discrimination and enjoy equality of treatment with nationals. All workers without distinction should enjoy equal terms and conditions of employment with respect, inter alia, to wages, workplace rights, social representation including trade union rights, recognition of skills and qualifications, and social protection.[[177]](#footnote-178) Take steps to ensure that migrants do not suffer occupational discrimination, recognizing that many, especially migrant women, are compelled to work in the informal economy and are often excluded from the protection of national labour laws.[[178]](#footnote-179) Take appropriate measures to prevent discrimination against women migrant workers on the grounds of family status, marital status, legal partnership status, or pregnancy, including the prohibition of dismissal on such grounds.
3. Strengthen the authority and/or capacity of labour inspectorates and labour inspection services as required to ensure that they are able to supervise the working conditions of migrants in all sectors. Establish binding and effective firewalls between complaint mechanisms and labour inspection services on one hand, and immigration enforcement authorities on the other, and ensure firewalls are respected.[[179]](#footnote-180)
4. Establish effective complaint mechanisms to ensure that workers, regardless of their nationality, and migration and residence status, can lodge complaints against employers and obtain remedy (including unpaid wages or compensation) if violations of labour rights have been committed. Ensure that migrants, regardless of their migration status, have unrestricted and effective access to judicial remedies, and to reparation for any violation of their workplace rights, without fear of reprisals or expulsion. All migrants should be entitled to contribute to and benefit from workers’ compensation schemes (for occupational injuries or accidents) without discrimination.[[180]](#footnote-181)
5. Act to protect all migrants from abusive and fraudulent recruitment practices. Regulate labour recruiters effectively and guarantee that migrants are not compelled to pay recruitment fees or related costs. Ensure that the ILO’s General Principles and Operational Guidelines for Fair Recruitment are disseminated and implemented.[[181]](#footnote-182)

## **Principle 15**

Protect the right of migrants to education.

**Guidelines**

1. Develop procedures, mechanisms and partnerships to ensure that all migrant girls and boys enjoy effective access to adequate and appropriate education at all levels, including early childhood, free and compulsory primary education, secondary and higher education, as well as vocational and language training, on equal terms with nationals.[[182]](#footnote-183) Discrimination on recognized grounds should be absent from all aspects of education, including, inter alia, examinations, qualification certification, vocational training, and financial subsidies. National plans on education and training should address the needs of all migrant students
2. Establish binding and effective firewalls between schools and other education service providers on one hand, and immigration enforcement authorities on the other. Instruct 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.[[183]](#footnote-184) Ensure that immigration authorities do not carry out enforcement operations in or near schools or other education premises.[[184]](#footnote-185)
3. Introduce or extend recognition of migrants’ educational and vocational qualifications as well as measures that enable migrants to transfer their educational achievements.[[185]](#footnote-186)
4. Include in school and college curricula content that promotes intercultural awareness and dialogue between migrant and host communities, as well as understanding of the situation and rights of migrants.[[186]](#footnote-187) Provide targeted training to educational personnel at all levels with the objective of fostering respect for cultural diversity and the human rights of migrants.
5. Assist migrants to obtain vocational training and benefit from lifelong learning opportunities that help them acquire the knowledge and skills they need to participate fully in society.[[187]](#footnote-188)

## **Principle 16**

Uphold migrants’ right to information**.**

**Guidelines**

1. Migrants have the right to seek, receive and impart information, in a language they understand and in formats they can access.[[188]](#footnote-189) Make every effort to ensure that migrants are able to obtain accurate and reliable news and information about their rights and their situation via media of their choice. Ensure that information for migrant children is provided in age-appropriate language and formats.[[189]](#footnote-190)
2. Migrants need information in order to take informed decisions, inter alia about migration routes, means of travel, and conditions of entry and stay. Information campaigns for migrants should:

* Be developed in consultation with migrants, other affected individuals, and civil society and community organizations in countries of origin, transit and destination.
* Provide information that protects human rights and promotes safe migration routes. Campaigns should not focus mainly on preventing movement.[[190]](#footnote-191)
* Never deliberately or unintentionally foster an anti-migrant environment or perpetuate negative stereotypes about migrants.

1. Provide access to the internet as a tool for migrants to exercise and protect their human rights.[[191]](#footnote-192) Promote new forms of information sharing that migrants can use to plan their journeys in safety and dignity, keep in touch with relatives, share their experience, and access complaints mechanisms to report violence and other forms of human rights violations and abuse confidentially. Ensure that at reception centres migrants can retain and access their communication equipment.
2. To safeguard the right to information and the protection of personal data, respect and protect migrants’ online privacy. It is not permissible to track, collect, store or share data on migrants’ journeys, their location, their digital communications, or those who assist them, with the objective of limiting migrants’ human rights.[[192]](#footnote-193)
3. Promote a safe and enabling environment for all media professionals, citizen journalists and other news sources. They should be allowed to collect and broadcast independent and accurate information and analysis on the movements and situation of migrants without undue interference. End impunity for attacks on amateurs and professionals who report on such issues.[[193]](#footnote-194)

## **Principle 17**

Ensure that all responses to migration, including large or mixed movements, are monitored and accountable.

**Guidelines**

1. Establish or strengthen independent internal and external mechanisms to monitor the human rights impact of laws, policies and practices relevant to migrants.[[194]](#footnote-195) Publish monitoring reports that reinforce transparency and accountability (while protecting migrants’ confidentiality).
2. Ensure that the mandate of independent monitoring bodies is adequate to achieve this purpose. National human rights institutions, ombuds’ offices, national preventive mechanisms and other relevant investigative and monitoring bodies should be empowered to visit all locations, including places of detention, to interview migrants as well as officials privately, and obtain promptly all the information they need to monitor the human rights of migrants and the conduct of institutions that are responsible for their management and care.[[195]](#footnote-196) Permit civil society actors working with migrants to participate in monitoring and evaluating the human rights impact of governance measures. Communicate the information gathered to United Nations human rights treaty-monitoring bodies and special procedures and to the Universal Periodic Review process.[[196]](#footnote-197) Ensure that mechanisms are put in place to implement the recommendations of national and international monitoring bodies.
3. Establish complaint mechanisms for migrants and inform migrants of their existence. They should protect migrants from retribution, inter alia by means of firewalls.[[197]](#footnote-198) Ensure that all alleged violations of migrants’ human rights are investigated promptly, impartially and independently; prosecute State or non-State actors who have committed crimes.[[198]](#footnote-199)
4. Investigate and prosecute corruption by immigration officials as well as the involvement or complicity of officials in abuses of migrants’ human rights, and ensure that legislation and resources are in place for these purposes.[[199]](#footnote-200)
5. Provide effective, independent and timely remedies and reparation. These should reflect the variety of human rights violations that migrants experience. Remedies must be awarded by a judicial or similarly independent, impartial and effective mechanism, and should provide adequate and comprehensive reparation.[[200]](#footnote-201)
6. Ensure that non-State actors are accountable. This includes non-state actors who may be engaged by States such as private security companies, military contractors, private transport companies, as well as other private actors who participate in: search and rescue activities; the application of entry restriction measures; pre-departure screening; decisions on access to transportation; service provision; and the operation of detention facilities.[[201]](#footnote-202) Specific mechanisms should be established to ensure their accountability and guarantee that migrants who are victims of human rights abuses receive judicial remedy.

## **Principle 18**

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

**Guidelines**

1. Provide a safe, accessible and enabling environment for individuals and organizations that work to support and provide assistance to migrants.[[202]](#footnote-203) Specifically protect human rights defenders who work to defend the rights of migrant women, and migrants who defend the rights of other migrants. Do not criminalize or otherwise penalize the provision of support and assistance to migrants.[[203]](#footnote-204) Ensure that the rights of human rights defenders are not violated or curtailed because of the work they do.[[204]](#footnote-205)
2. Establish public policies and programmes that sustainably support and protect human rights defenders in all stages of their work. Any limitations placed on their activities must be in accordance with international standards.[[205]](#footnote-206) Ensure that legislation which affects the activities of human rights defenders is consistent with international human rights law, including legislation on public safety and public order and legislation and procedures for registering and funding civil society organizations.[[206]](#footnote-207)
3. Take all necessary measures to ensure that human rights defenders who work individually or in association with others to support migrants are protected from violence, retaliation, threats including threats of deportation, discrimination, and other kinds of pressure or arbitrary action by State or non-State actors as a consequence of their work.[[207]](#footnote-208)
4. Investigate and prosecute any attacks by State or non-State actors against migrants’ human rights defenders or against their families, associates or legal representatives.[[208]](#footnote-209)
5. Protect in law any person who discloses information about migrants’ human rights that at the time of disclosure he or she reasonably believes is (a) true and (b) threatens or harms a specific public interest. Threats to a public interest might include, inter alia, a violation of national or international law, an abuse of authority, waste, fraud, or harm to the environment, public health or public safety. Ensure oversight mechanisms exist that are adequate to protect, investigate, and provide redress and compensation, as appropriate.[[209]](#footnote-210)
6. Publicly endorse the important role of human rights defenders and the legitimacy of their work. Condemn publicly all instances of violence, discrimination, intimidation or reprisals against them and underline that such practices can never be justified.[[210]](#footnote-211)

## **Principle 19**

Improve the collection of disaggregated data on the human rights situation of migrants while protecting personal data and their right to privacy.

**Guidelines**

1. Undertake and support quantitative and qualitative research on migrants’ experiences to: provide a sound evidence base for migration policies; measure trends; raise awareness of risks; and prevent and sanction abuses of migrants’ human rights. Seek the consent of migrants when their situation and experiences are being included in research and involve them in research that is undertaken. Research priorities include, inter alia:

* Data on the number and circumstances of migrants in situations of vulnerability.
* Analysis of why migrants move from and into situations of vulnerability, including the factors that trigger migration and influence migrants’ decision-making.
* Quantitative data, inter alia on: the number, age and sex of migrants who cross maritime, land or air borders; the number of migrants who are killed, injured, or go missing; the number of migrants who are victims of crime or enforced disappearance while on the move.[[211]](#footnote-212)
* Quantitative and qualitative data and indicators on immigration detention and alternatives to detention that have been explored and the reasons why specific alternatives have been adopted or discarded.
* Data on complaints, investigations, prosecutions, and convictions with regard to all human rights violations perpetrated by State or non-State actors against migrants.[[212]](#footnote-213)
* Data, including qualitative data, on the lawfulness and sustainability of returns, including the experiences and intentions of migrants who have been returned to their homes or to third countries.

1. Disaggregate data on the human rights situation of migrants, by age and sex and by other relevant variables as required, such as migratory status, religion, ethnicity, disability, sexual orientation or gender identity, or minority status.[[213]](#footnote-214)
2. Work collaboratively to collect reliable data on respect for migrants’ human rights, inter alia by standardizing the indicators and variables used internationally to monitor this issue.[[214]](#footnote-215)
3. Ensure that research and data collection methodologies are firmly grounded in ethical principles. Research and data collection should not re-traumatize or otherwise harm migrants, and should comply with international standards and principles on protection of personal data.[[215]](#footnote-216) Information should be permanently and irreversibly anonymized both to protect privacy rights and to ensure that it cannot be used for immigration enforcement purposes. Ensure that digital biometric technologies are never employed to facilitate discriminatory profiling of migrants, or to increase their vulnerability to surveillance, and that information is not used, stored or processed in a manner that can put individuals at risk. [[216]](#footnote-217)
4. Uphold the right of all migrants to privacy and ensure protection from arbitrary or unlawful interference with their privacy, family, home or correspondence.[[217]](#footnote-218) Monitor the collection of all data on migrants (including biometric data) to ensure they are obtained lawfully, and that their storage, transfer and disposal comply with international standards and best practice on data protection and privacy.[[218]](#footnote-219) Personal data, including biometric data, should be handled in a manner that protects confidentiality and gathering and holding of personal information on computers, data banks or other devices, whether by public authorities or private individuals or bodies must be regulated by law. The security of such data must be strongly protected to prevent unauthorized access, loss, or damage and measures should be developed to ensure the access of all migrants to their personal data, including data that are stored in automatic data files, and to enable migrants to request rectification or elimination of incorrect or wrongly held data. [[219]](#footnote-220)

## **Principle 20**

Ensure human rights-based and gender-responsive migration governance.

**Guidelines**

1. Take steps to ensure that all policies that bear on human rights aspects of migration are coherent, by requiring all departments and offices of government to adopt an integrated and coordinated approach, locally, nationally, regionally and internationally.[[220]](#footnote-221)
2. Establish or strengthen multi-stakeholder partnerships and cooperation for the purpose of upholding the human rights of all migrants. Stakeholders include national human rights institutions, intergovernmental, international and regional organizations, States, civil society organizations including representative migrants’ associations, women’s organizations, trade unions, representative employers’ organizations, and private sector actors, at local, national, regional and international level.[[221]](#footnote-222) Establish terms and conditions for cooperation and coordination, and allocate to stakeholders clear areas of responsibility, inter alia with respect to referral procedures and information exchange.[[222]](#footnote-223)
3. Promote international cooperation in order to address the root causes and drivers of migration in a rights-based and sustainable manner. Ensure that all responses designed to manage or mitigate the drivers of migration, including those associated with climate change and environmental degradation, comply with international human rights law and standards. Develop and monitor these responses with the participation of migrants and their communities.[[223]](#footnote-224)
4. Promote safe and accessible pathways for migration. Develop migration policies through holistic approaches that take into account the demand for labour migration at all skill levels in receiving societies, family reunification and education-related opportunities amongst others, and ensure the availability of humanitarian pathways to entry for migrants including private sponsorship.[[224]](#footnote-225)
5. Establish effective mechanisms to provide a durable legal status to migrants who are unable to return, including on international human rights grounds.[[225]](#footnote-226) Consider regularizing within a reasonable period of time the status of migrants in an irregular situation, in order to address their needs and secure their rights.[[226]](#footnote-227)
6. Promote the inclusion of migrants in receiving societies.[[227]](#footnote-228) Develop integration policies, practices, institutions and partnerships that support inclusion, promote social and economic equality, and foster cultural diversity. To this end, pool skills across the public and private sector, in civil society and in migrant communities.

# Annex: How international law informs the Principles

The Principles in this document are derived from international and regional law. Selected extracts of relevant law are listed in the Annex that follows.

The Principles also draw on the general comments of international human rights law treaty bodies, UN resolutions, and international and regional case law. These documents are not referenced in the Annex for reasons of space.

## **Principle 1**

Ensure that human rights are at the centre of efforts to address migration, including responses to large and mixed movements. **Normative framework**

* Articles 1 and 2 of the Universal Declaration of Human Rights affirm the fundamental norm that all human beings shall enjoy fundamental rights and freedoms without distinction of any kind*.*[[228]](#footnote-229)
* Article 1(3) of the Charter of the United Nations states that the UN’s ‘purpose’ is ‘*to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*’.[[229]](#footnote-230) See also Article 55(c).
* Article 2(1) of the International Covenant on Civil and Political Rights affirms that ‘*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*’.[[230]](#footnote-231)
* Article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families affirms that ‘*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*’.[[231]](#footnote-232)
* Article 4 of the Convention on the Rights of Persons with Disabilities, on ‘General obligations’, affirms that ‘*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*’.[[232]](#footnote-233)
* Several provisions in the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, address human rights. In the preamble, States Parties affirm that they are ‘*convinced of the need to provide migrants with humane treatment and full protection of their rights*’. In Article 2, the Protocol affirms that its purpose 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*’. Article 4 affirms 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(1) affirms that training should be undertaken for the purpose of preventing migrant smuggling and to secure ‘*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(2) affirms that States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and civil society actors, inter alia, to provide training on ‘*the humane treatment of migrants and the protection of their rights*’. Article 16, on ‘Protection and assistance measures’, affirms that‘*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*’.[[233]](#footnote-234)
* Article 2(b) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, affirms that its ‘purpose’ is ‘*to protect and assist the victims of such trafficking, with full respect for their human rights*’.[[234]](#footnote-235)

**Regional norms**

* Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, on the ‘Obligation to respect human rights’, affirms that ‘*The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention*’.[[235]](#footnote-236)
* Article 1 of the American Convention on Human Rights of the Organization of American States (OAS), on ‘Obligations to respect human rights’, affirms that ‘*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*’.[[236]](#footnote-237)
* Article 2 of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms that ‘*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, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status*’.[[237]](#footnote-238)
* Article 1 of the Arab Charter on Human Rights of the League of Arab States affirms that ‘T*he present Charter seeks … to place human rights at the centre of the key national concerns’.*[[238]](#footnote-239) Article 3 affirms that ‘*Each State party … undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein*’. [[239]](#footnote-240)

## **Principle 2**

Counter all forms of discrimination against migrants.

**Normative framework**

* Article 2 of the Universal Declaration of Human Rights affirms: ‘*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 7 further affirms that all persons are ‘[…] *entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination*’.[[240]](#footnote-241)
* The core UN human rights treaties include a provision prohibiting discrimination. The provision affirms that every right set out in the Convention concerned shall apply to every person without discrimination of any kind, with respect to race, colour, sex language, religion, political opinion, national and social origin, birth and other status. See: Article 2 of the International Covenant on Civil and Political Rights; Article 2.2 of the International Covenant on Economic, Social and Cultural Rights; Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women; Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment; Article 2 of the Convention on the Rights of the Child; Article 1(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Articles 3(b) and 5 of the International Convention on the Rights of Persons with Disabilities; and Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance.
* Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination states that ‘racial discrimination’ means ‘*any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*’.[[241]](#footnote-242) Article 2, on its main purpose, affirms 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*’. See also Articles 4, 5 and 7.[[242]](#footnote-243)
* Article 20(2) of the International Covenant on Civil and Political Rights affirms that ‘*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*’. Article 26 affirms 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*’.[[243]](#footnote-244)
* Article 2(2) of the International Covenant on Economic, Social and Cultural Rights affirms that ‘*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*’.[[244]](#footnote-245)
* Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women states that ‘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 affirms that ‘*States Parties condemn discrimination against women in all its forms’ [and] ‘agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women*’.[[245]](#footnote-246)

**Regional norms**

* Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, on ‘Prohibition of discrimination’, affirms that ‘*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*’.[[246]](#footnote-247)
* The Preamble to Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe affirms that the Parties are: ‘*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*’.[[247]](#footnote-248)
* Article 1 of the American Convention on Human Rights of the Organization of American States, on ‘Obligations to respect human rights’, affirms that ‘*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*’.[[248]](#footnote-249)
* Article 25 of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms that ‘*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*’.[[249]](#footnote-250)
* Article 3 of the Arab Charter on Human Rights of the League of Arab States affirms that ‘*Each State Party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability’*.[[250]](#footnote-251)
* Article 21(1) of the Charter of Fundamental Rights of the European Union affirms that ‘*Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited*’.[[251]](#footnote-252)

## **Principle 3**

Ensure that migrants have access to justice**.**

**International norms**

* Article 7 of the Universal Declaration of Human Rights affirms: ‘*All are equal before the law and are entitled without any discrimination to equal protection of the law* […]’. Article 10 affirms: ‘*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal*’.[[252]](#footnote-253)
* Article 2(3)(a) of the International Covenant on Civil and Political Right affirms that 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*’. Article 2(3)(c) affirms that each State Party will ‘*ensure that the competent authorities shall enforce such remedies when granted*’. Article 14 affirms that ‘[…] e*veryone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law*’.[[253]](#footnote-254)
* Article 5(a) of the International Convention on the Elimination of All Forms of Racial Discrimination affirms that States Parties shall guarantee the right of everyone, without any distinction, ‘*to equal treatment before the tribunals and all other organs administering justice*’. Article 6 affirms that ‘*States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions*’.[[254]](#footnote-255)
* Article 18 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families affirms that ‘*Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals*’.[[255]](#footnote-256) Article 83 affirms that ‘*any person whose rights or freedoms as herein recognized are violated shall have an effective remedy*’; that ‘*any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy*’; and that ‘*the competent authorities shall enforce such remedies when granted*’.[[256]](#footnote-257)
* Article 12 of the International Convention for the Protection of All Persons from Enforced Disappearance affirms that ‘*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*’.[[257]](#footnote-258)
* Article 39(1.2) of the Convention Relating to the Status of Stateless Persons, on ‘Access to courts’, affirms that ‘*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*.’[[258]](#footnote-259)
* Article 6(2) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, affirms that ‘*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) affirms that ‘*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: […] (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) affirms that ‘*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*’.[[259]](#footnote-260)

**Regional norms**

* Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, on the ‘Right to a fair trial’, affirms that ‘*everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*’*.* Article 13 affirms the right to an effective remedy.[[260]](#footnote-261)
* Article 8 of the American Convention on Human Rights of the Organization of American States, on the ‘Right to a fair trial’, affirms that *‘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*’. Article 25, on the ‘Right to judicial protection’ affirms that ‘*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*’.[[261]](#footnote-262)
* Article 7 of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms that ‘*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 defence, 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*.’[[262]](#footnote-263)
* Article 11 of the Arab Charter on Human Rights of the League of Arab States affirms that ‘*All persons are equal before the law and have the right to enjoy its protection without discrimination*’.[[263]](#footnote-264) Article 12 affirms that States ‘*shall … guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels’*.[[264]](#footnote-265)
* Article 20 of the Charter of Fundamental Rights of the European Union affirms that ‘*Everyone is equal before the law*’. Article 47 affirms that: ‘*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice*’.[[265]](#footnote-266)
* Article 15(2) of the Convention on Action against Trafficking in Human Beings of the Council of Europe affirms that ‘*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*’.[[266]](#footnote-267)

## **Principle 4**

Protect the lives and safety of migrants and ensure that all migrants facing risks to life or safety are rescued and offered immediate assistance.

**NORMATIVE FRAMEWORK**

* Article 3 of the Universal Declaration of Human Rights affirms that ‘*Everyone has the right to life*’.[[267]](#footnote-268)
* Article 6 of theInternational Covenant on Civil and Political Rights affirms that ‘*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*.’ Article 4 affirms that no derogation of this principle is admissible, even during public emergencies.[[268]](#footnote-269)
* Article 6 of the Convention on the Rights of the Child affirms that ‘*Every child has the inherent right to life*.’
* Article 9 of theInternational Convention on the Protection of the Rights of All Migrant Workers and Members of their Families affirms that ‘*The right to life of migrant workers and members of their families shall be protected by law*’.[[269]](#footnote-270)
* Article 11 of the Convention on the Rights of Persons with Disabilities**,** on ‘Situations of risk and humanitarian emergencies’, affirms that ‘*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*’.[[270]](#footnote-271)
* Article 9(1)(a) of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, on ‘Safeguard clauses’, calls on States to ‘*Ensure the safety and humane treatment of the persons on board*’.[[271]](#footnote-272)Sub-clause 3 ofArticle 16, on ‘Protection and assistance measures’, affirms that ‘*Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol*’.[[272]](#footnote-273) Article 6(3) affirms that ‘*Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences* […] *circumstances (a) that endanger, or are likely to endanger, the lives or safety of the migrants concerned* […]’.[[273]](#footnote-274)
* Article 2 of theProtocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, on ‘Statement of purpose’, affirms that the Protocol’s purposes are to prevent and combat trafficking in persons, and to protect and assist the victims of such trafficking. Article 6(5) affirms that ‘*Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory*’.[[274]](#footnote-275)
* Article 98 of the Convention on the Law of the Sea, on the ‘Duty to render assistance’, affirms that ‘*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*.’[[275]](#footnote-276)

**Regional norms**

* Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, on the ‘Right to life’, affirms that ‘*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 allows certain exceptions, 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*’.[[276]](#footnote-277)
* Article 4 of the American Convention on Human Rights of the Organization of American States, on the ‘Right to life’, affirms that ‘*Every person has the right to have his life respected. This right shall be protected by law*.’[[277]](#footnote-278)
* Article 4 of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms: ‘*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*.’[[278]](#footnote-279)
* Article 5 of the Arab Charter on Human Rights of the League of Arab States affirms: ‘*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.*’[[279]](#footnote-280)
* Article 2(1) of the Charter of Fundamental Rights of the European Union affirms that ‘Everyone has the right to life. No one shall be condemned to the death penalty, or executed’.[[280]](#footnote-281)

## **Principle 5**

Ensure that all border governance measures protect human rights.

**Normative framework**

* Article 13 of the Universal Declaration of Human Rights affirms: ‘*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.*’*[[281]](#footnote-282)*
* Article 12(1) of the International Covenant on Civil and Political Rights affirms: ‘*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*’*.* Article 12(2) affirms: ‘*Everyone shall be free to leave any country, including his own*’*.*[[282]](#footnote-283)
* Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination affirms that every person, without discrimination of any type, shall enjoy‘*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*’. It affirms 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*’.[[283]](#footnote-284)
* Article 8(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families affirms:‘*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*.’ Article 79 affirms that ‘*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*.’[[284]](#footnote-285)
* Article 18 of the Convention on the Rights of Persons with Disabilities, on ‘Liberty of movement and nationality’, affirms that ‘*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*’.[[285]](#footnote-286)
* Article 26 of the Convention Relating to the Status of Stateless Persons affirms that ‘*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*’*.*[[286]](#footnote-287)
* Article 11(1) 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 ‘Border measures’, affirms that ‘*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*’*.*[[287]](#footnote-288)
* Article 11(1) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, on ‘Border measures’, affirms that ‘*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*’*.*[[288]](#footnote-289)

**Regional norms**

* Article 2 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe affirms that ‘*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society*.’[[289]](#footnote-290)
* Article 22 of the American Convention on Human Rights of the Organization of American States, on ‘Freedom of movement and residence’, affirms: ‘*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*.’[[290]](#footnote-291)
* Article 12 of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms: ‘1. *Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. 2. 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.*’[[291]](#footnote-292)
* Article 27 of the Arab Charter on Human Rights of the League of Arab States affirms that ‘*No one may be arbitrarily or unlawfully prevented from leaving any country, including his own*’.[[292]](#footnote-293)

## **Principle 6**

Ensure that all returns fully respect the human rights of migrants and comply with international law.

**Normative framework**

* Article 14 of the Universal Declaration of Human Rights affirms that ‘*Everyone has the right to seek and to enjoy in other countries asylum from persecution*’.*[[293]](#footnote-294)*
* Article 7 of the International Covenant on Civil and Political Rights affirms that ‘*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*’.[[294]](#footnote-295) Article 13 affirms that ‘*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*’.[[295]](#footnote-296)
* Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment affirms: ‘*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*.’[[296]](#footnote-297)
* Article 22 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families affirms: ‘*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*.’[[297]](#footnote-298)
* Article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance affirms: ‘*No State Party shall expel, return (“refouler”), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law*.’
* Article 18(5) of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, on the ‘Return of smuggled migrants’, affirms that ‘*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’.*[[298]](#footnote-299)
* Clause 2 of Article 8 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 ‘Repatriation of victims of trafficking in persons’, affirms: ‘*When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary*’.[[299]](#footnote-300)
* Article 31(1) of the Convention Relating to the Status of Stateless Persons, on ‘Expulsion’, affirms that ‘*The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order*’.[[300]](#footnote-301)

**Regional norms**

* Article 4 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe affirms that ‘*Collective expulsion of aliens is prohibited*’.[[301]](#footnote-302) Article 1 of Protocol 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, entitled ‘Procedural safeguards relating to expulsion of aliens’, affirms that ‘*An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed to submit reasons against his expulsion, to have his case reviewed, and to be represented for these purposes before the competent authority or a person or persons designated by that authority’*.[[302]](#footnote-303)

Article 22 of the American Convention on Human Rights of the Organization of American States, affirms: ‘*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*.’[[303]](#footnote-304)

* Article 12 of the African Charter on Human and Peoples' Right*s* of the Organization of African Unity affirms that: ‘*3. 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*. *4. 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. 5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups*.’[[304]](#footnote-305)
* Article 26 of the Arab Charter on Human Rights of the League of Arab States affirms that ‘*Collective expulsion is prohibited under all circumstances’*. Article 28 affirms that ‘*Everyone has the right to seek political asylum in another country in order to escape persecution’*.[[305]](#footnote-306)
* Article 18 of the Charter of Fundamental Rights of the European Union on ‘Right to asylum’ affirms that ‘*The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community’*. Article 19 on ‘Protection in the event of removal, expulsion or extradition’, affirms that: ‘*Collective expulsions are prohibited. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment*’.[[306]](#footnote-307)

## **Principle 7**

Protect migrants from torture and all forms of violence and exploitation, whether inflicted by State institutions, officials, private bodies or individuals.

**Normative framework**

* Articles 4 and 5 of the Universal Declaration of Human Rights prohibit slavery or servitude as well as torture or other cruel, inhuman or degrading treatment or punishment.*[[307]](#footnote-308)*
* Article 9(1) of the International Covenant on Civil and Political Rights affirms that every person has the right to security of person. Article 7 affirms: ‘*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*.’[[308]](#footnote-309) Article 8 prohibits slavery, servitude, and forced or compulsory labour.
* Article 2(1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 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*’.[[309]](#footnote-310)
* Article 5(b) of the International Convention on the Elimination of All Forms of Racial Discrimination prohibits racial discrimination in all its forms and affirms ‘*The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution*’.[[310]](#footnote-311)
* Article 19(1) of the Convention on the Rights of the Child affirms that States Parties are obliged to take appropriate national, bilateral and multilateral measures to protect the child from all forms of violence, abuse, maltreatment or exploitation, including sexual exploitation and sexual abuse, sale and trafficking, forms of exploitation prejudicial to a child's welfare, and torture or other cruel, inhuman or degrading treatment or punishment.[[311]](#footnote-312) Articles 34, 35, 36 and 37 of the Convention and its Optional Protocols prohibit the sale of children, child prostitution and child pornography, and the involvement of children in armed conflict.
* Article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women affirms that States Parties are obliged to ‘*take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women*’.[[312]](#footnote-313)
* Article 10 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families affirms that ‘*No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*’. Clauses 1-3 of Article 11 affirm that:‘*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*’.Article 16(2) affirms that ‘*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*’. Article 16(3) affirms that ‘*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*’.[[313]](#footnote-314)
* Article 6(3) of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, affirms that ‘*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) on ‘Protection and assistance measures’, affirms that ‘*Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol*’.[[314]](#footnote-315)
* 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) affirms that ‘*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*’.[[315]](#footnote-316)
* Article 1(1) of the Protocol of 2014 to the Forced Labour Convention of the ILO 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*’.[[316]](#footnote-317)

**Regional norms**

* Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe prohibits torture. Article 4 prohibits slavery and forced labour.[[317]](#footnote-318)
* Clauses 1 and 2 of Article 5 of the American Convention on Human Rights of the Organization of American States, on the ‘Right to humane treatment’, affirm that ‘*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* […]’. Clauses 1 and 2 of Article 6, on ‘Freedom from slavery’, affirm that ‘*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*’.[[318]](#footnote-319)
* Article 5 of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms that ‘*All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited*’.[[319]](#footnote-320)
* Article 8 of the Arab Charter on Human Rights of the League of Arab States affirms that ‘*No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment*’.[[320]](#footnote-321) Article 10 prohibits slavery and trafficking in human beings, forced labour, the exploitation of children in armed conflicts and any other forms of exploitation.
* Article 3 of the Charter of Fundamental Rights of the European Union on ‘Right to the integrity of the person’ provides that ‘*Everyone has the right to respect for his or her physical and mental integrity’*. Article 4 prohibits torture and inhuman or degrading treatment or punishment and Article 5 affirms that ‘*No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labour. Trafficking in human beings is prohibited*’. Article 6(1 on ‘Right to liberty and security’ affirms that ‘*Everyone has the right to liberty and security of person*’.[[321]](#footnote-322)

## **Principle 8**

Uphold the right of migrants to liberty and protect them for all forms of arbitrary detention. Make targeted efforts to end unlawful or arbitrary immigration detention of migrants. Never detain children because of their migration status or that of their parents.

**Normative framework**

* Article 3 of the Universal Declaration of Human Rights affirms that ‘*Everyone has the right to […] liberty and security of person*’. Article 9 affirms that ‘*No one shall be subjected to arbitrary arrest, detention or exile*’.[[322]](#footnote-323)
* Article 9(1) of the International Covenant on Civil and Political Rights affirms 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*.’[[323]](#footnote-324) Article 10(1) affirms that ‘*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person*’.[[324]](#footnote-325)
* Article 16(1) of theInternational Convention on the Protection of the Rights of All Migrant Workers and Members of their Familiesaffirms that ‘*Migrant workers and members of their families shall have the right to liberty and security of person*’. Article 16(4) affirms that *‘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*’.[[325]](#footnote-326)
* Article 37(b) of the Convention on the Rights of the Child affirms that 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*.’[[326]](#footnote-327)
* Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance affirms that ‘*No one shall be subjected to enforced disappearance*’. Article 2.1 defines enforced disappearance as ‘*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 17 affirms that *‘No one shall be held in secret detention*’. Article 23 affirms that ‘*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*’.[[327]](#footnote-328)
* Article 5 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, affirms that ‘*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*’.[[328]](#footnote-329) Article 16(5) affirms that, ‘*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*’.[[329]](#footnote-330)
* Article 36(1)(b) of the Vienna Convention on Consular Relations affirms that, ‘*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*.’[[330]](#footnote-331)

**Regional norms**

* Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, on the ‘Right to liberty and security’, affirms that ‘*Everyone has the right to liberty and security of person. No one shall be deprived of his liberty* […] *except for:* *(a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition*.’[[331]](#footnote-332)
* Clauses 1 and 2 of Article 7 of the American Convention on Human Rights of the Organization of American States, on the ‘Right to personal liberty’, affirms that ‘*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*’. Article 7(3) affirms that ‘*No one shall be subject to arbitrary arrest or imprisonment*’.[[332]](#footnote-333) Article 7(4) affirms that ‘*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*’.

* Article 6 of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms that‘*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*.’[[333]](#footnote-334)
* Article 14 the Arab Charter on Human Rights of the League of Arab States affirms the right of every person to liberty and security of person and that ‘*no one shall be subjected to arbitrary arrest, search or detention without a legal warrant’.*[[334]](#footnote-335)
* Article 26 of the Convention on Action against Trafficking in Human Beings of the Council of Europe affirms that ‘*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*’.[[335]](#footnote-336)
* Article 6 of the Charter of Fundamental Rights of the European Union on the ‘Right to liberty and security’ affirms that ‘*Everyone has the right to liberty and security of person’*.[[336]](#footnote-337)

## **Principle 9**

Ensure the widest protection of the family unity of migrants; facilitate family reunification; prevent arbitrary or unlawful interference in the right of migrants to enjoy private and family life.

**Normative framework**

* Article 16 of the Universal Declaration of Human Rights affirms that‘*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State*’. Article 12affirms that‘*No one shall be subjected to arbitrary interference with his* […] *family*’.[[337]](#footnote-338)
* Article 23(1) of the International Covenant on Civil and Political Rights affirms that ‘*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State*’.[[338]](#footnote-339) Article 17 affirms that ‘*No one shall be subjected to arbitrary or unlawful interference with his* […] *family*’.
* Article 10(1) of the International Covenant on Economic, Social and Cultural Rights affirms that‘*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*’.[[339]](#footnote-340)
* Article 5 of the Convention on the Rights of the Child affirms the fundamental role of the family in the protection of a child’s rights and 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 8 affirms the right of the child to preserve his or her identity, including family relations as recognized by law without unlawful interference. Article 16 affirms that ‘*No child shall be subjected to arbitrary or unlawful interference with his or her family*’.[[340]](#footnote-341) Article 9 affirms that ‘*States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine … that such separation is necessary for the best interests of the child*’. Article 10 affirms that ‘*Family reunification shall be dealt with* […] *in a positive, humane and expeditious manner*’ and that the submission of such request shall entail no adverse consequences for the applicants or members of their family.
* The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families places the family at the centre of the Convention. The rights it sets out are held directly by migrant workers and their families. Article 44 affirms 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.*’[[341]](#footnote-342)
* Article 13.1 of the Migrant Workers (Supplementary Provisions) Convention of the International Labour Organization affirms that‘*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*’.[[342]](#footnote-343)

**Regional norms**

* Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, on the ‘Right to respect for private and family life’, affirms that *‘Everyone has the right to respect for his private and family life*’.[[343]](#footnote-344)
* Article 17 of the American Convention on Human Rights of the Organization of American States, on ‘Rights of the family’, affirms that ‘*The family is the natural and fundamental group unit of society and is entitled to protection by society and the state*’.[[344]](#footnote-345)
* Clauses 1 and 2 of Article 15 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of the Organization of American States affirm that ‘*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*.’[[345]](#footnote-346)
* Clauses 1 and 2 of Article 18 of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirm that ‘*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*.’[[346]](#footnote-347)
* Article 21 of the Arab Charter on Human Rights of the League of Arab States affirms that ‘*No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation*’.[[347]](#footnote-348)
* Article 7 of the Charter of Fundamental Rights of the European Union on ‘Respect for private and family life’ affirms that ‘*Everyone has the right to respect for his or her private and family life, home and communications’*.[[348]](#footnote-349)

## **Principle 10**

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

**Normative framework**

* Article 25(2) of the Universal Declaration of Human Rights affirms that ‘*Motherhood and childhood are entitled to special care and assistance*’.[[349]](#footnote-350)
* Article 1 of the Convention on the Rights of the Child declares that the rights the Convention sets out 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 2 affirms that States Parties shall respect and ensure the convention rights ‘*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 3 affirms, critically, that ‘*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*.’[[350]](#footnote-351) Article 6 affirms that States ‘*shall ensure to the maximum extent possible the survival and development of the child*’. Article 12 affirms that States shall assure ‘*to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child*’.
* Article 24 of the International Covenant on Civil and Political Rights affirms that‘*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*.’[[351]](#footnote-352)
* Article 10(3) of the International Covenant on Economic, Social and Cultural Rights affirms that ‘*Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions*’.[[352]](#footnote-353)
* Article 29 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families affirms that ‘*Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality*’. Article 17(6) affirms that ‘*Whenever a migrant worker is deprived of his or her liberty, the competent authorities of the State concerned shall pay attention to the problems that may be posed for members of his or her family, in particular for spouses and minor children*’.
* Article 18(2) of the Convention on the Rights of Persons with Disabilities, on ‘Liberty of movement and nationality’, affirms that ‘*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*’.[[353]](#footnote-354)
* Article 25(a) of the International Convention for the Protection of All Persons from Enforced Disappearance affirms that ‘*Each State Party shall take the necessary measures to prevent and punish under its criminal law: The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance*’.[[354]](#footnote-355)
* Article 16(4) of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, on ‘Protection and assistance measures’, affirms that, ‘*In applying the provisions of this article, States Parties shall take into account the special needs of women and children*’.[[355]](#footnote-356)
* 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, on ‘Assistance to and protection of victims of trafficking in persons’, affirms that ‘*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’.* Clauses (c) and (d) of Article 3 distinguish the trafficking of children from the trafficking of adults. Article 10(2), ontraining of law enforcement, immigration and other relevant officials, affirms that “*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*’.[[356]](#footnote-357)

**Regional norms**

* Article 19 of the American Convention on Human Rights of the Organization of American States, on ‘Rights of the child’, affirms that ‘*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*’.[[357]](#footnote-358)
* Article 18(3) of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms that ‘*The State shall ensure* […] *the protection of the rights of the woman and the child as stipulated in international declarations and conventions*’.[[358]](#footnote-359)
* Article 33(2) of the Arab Charter on Human Rights of the League of Arab States affirms that ‘*The State* […] *shall also ensure the necessary protection and care for* […] *children and* […] *shall provide* *adolescents and young persons with the best opportunities for physical and mental development’*.[[359]](#footnote-360)
* Article 24 of the Charter of Fundamental Rights of the European Union on ‘The rights of the child’ affirms that ‘*Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests*’.[[360]](#footnote-361)

## **Principle 11**

Protect the human rights of migrant women and girls.

**Normative framework**

* Article 25(2) of the Universal Declaration of Human Rights affirms that ‘*Motherhood* [is] *entitled to special care and assistance*’.[[361]](#footnote-362)
* The entire Convention on the Elimination of All Forms of Discrimination Against Women is relevant*.*[[362]](#footnote-363)
* Article 3 of the International Covenant on Civil and Political Rights affirms that ‘*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*’.[[363]](#footnote-364)
* Article 10(2) of the International Covenant on Economic, Social and Cultural Rights affirms that ‘*The States Parties to the present Covenant recognize that: Special protection should be accorded to mothers during a reasonable period before and after childbirth* […]’.[[364]](#footnote-365)
* Article 16(4) of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, on ‘Protection and assistance measures’, affirms that, ‘*In applying the provisions of this article, States Parties shall take into account the special needs of women and children*’.[[365]](#footnote-366)
* 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, affirms that ‘*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*’.[[366]](#footnote-367) Article 10(2) on training for law enforcement, immigration and other relevant officials, affirms that *‘training should also take into account the need to consider human rights and child- and gender-sensitive issues*’.[[367]](#footnote-368)

**Regional norms**

* Article 18(3) of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms that‘*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*’.[[368]](#footnote-369)
* Article 2 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa of the African Union affirms that all States Parties commit to combat ‘*all forms of discrimination against women through appropriate legislative, institutional and other measures*’.[[369]](#footnote-370)
* Article 4(3) of the Convention on preventing and combating violence against women and domestic violence of the Council of Europe affirms that the parties will guarantee the convention rights, in particular measures to protect the rights of victims, without discrimination on any ground, including national origin or migrant or refugee status.[[370]](#footnote-371)
* Article 9 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women of the Organization of American States affirms that, ‘*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*.’[[371]](#footnote-372)
* Article 23 of the Charter of Fundamental Rights of the European Union on ‘Equality between men and women’ affirms that ‘*Equality between men and women must be ensured in all areas, including employment, work and pay*’.[[372]](#footnote-373)

## **Principle 12**

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

**Normative framework**

* Article 25 of the Universal Declaration of Human Rights affirms that ‘*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*’.[[373]](#footnote-374)
* Article 12 of the International Covenant on Economic, Social and Cultural Rights affirms that ‘*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*.’[[374]](#footnote-375)
* Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination affirms that 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.[[375]](#footnote-376)
* Article 3(3) of the Convention on the Rights of the Child affirms that ‘*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*’.[[376]](#footnote-377) Article 24 affirms ‘*the right of the child to the enjoyment of the highest attainable standards of health and to facilities for the treatment of illness and rehabilitation of health*’.[[377]](#footnote-378)
* Article 28 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families affirms that ‘*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*.’[[378]](#footnote-379)
* Article 12(1) of the Convention on the Elimination of All Forms of Discrimination Against Women affirms that ‘*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*’.[[379]](#footnote-380)
* Article 25 of the Convention on the Rights of Persons with Disabilities affirms that ‘*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*’.[[380]](#footnote-381)
* Article 6(3) 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 ‘Assistance to and protection of victims of trafficking in persons’, affirms that ‘*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*’.[[381]](#footnote-382)

**Regional norms**

* Article 16 of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms: *‘Every individual shall have the right to enjoy the best attainable state of physical and mental health. 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*.’[[382]](#footnote-383)
* Article 14 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa of the African Union affirms that States Parties will protect ‘*the right to health of women, including sexual and reproductive health*’.[[383]](#footnote-384)
* Article 10(1) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of the Organization of American States, on the ‘Right to health’, affirms that *‘Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being*’.[[384]](#footnote-385)

## **Principle 13**

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

**Normative framework**

* The Universal Declaration of Human Rights affirms that every ‘*member of society*’ has ‘*the right of equal access to public service in his country*’, including ‘[…] *the right to social security*’ (Article 22(1)) and ‘[…] *the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay*’ (Article 24). Article 25(1) affirms that every member of society 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, 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*’.[[385]](#footnote-386)
* Article 9 of the International Covenant on Economic, Social and Cultural Rights affirms that ‘*The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance*’. Article 11(1) affirms that ‘*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*.’[[386]](#footnote-387)
* The Convention Relating to the Status of Stateless Persons indirectly extends the right to an adequate standard of living by extending citizens’ social benefits to refugees (Articles 21, 23, and 24).[[387]](#footnote-388)
* 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, affirms that ‘*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*’.[[388]](#footnote-389)

**Regional norms**

* Clauses 2 and 3 of Article 13 of the African Charter on Human and Peoples' Rights of theOrganization of African Unity affirm that ‘*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*.’[[389]](#footnote-390)
* Article 9 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of the Organization of American States affirms that everyone shall have the right to social security.[[390]](#footnote-391)

## **Principle 14**

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

**Normative framework**

* Article 23 of the Universal Declaration of Human Rights affirms that ‘*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*.’[[391]](#footnote-392)
* Article 6 of the International Covenant on Economic, Social and Cultural Rights affirms ‘*the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts*’.[[392]](#footnote-393) Article 7 affirms ‘*the right of everyone to the enjoyment of just and favourable conditions of work*’.[[393]](#footnote-394)
* Article 5(e)(i) of the International Convention on the Elimination of All Forms of Racial Discrimination affirms that ‘*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*’.[[394]](#footnote-395)
* Article 25(1) of theInternational Convention on the Protection of the Rights of All Migrant Workers and Members of their Familiesaffirms that migrant workers shall enjoy treatment not less favourable than that which applies to nationals with respect to remuneration and other conditions of work (such as overtime, hours of work, weekly rest, holidays, termination of employment, etc.) as well as other principles (such as the minimum age of employment).[[395]](#footnote-396) Article 25(3) affirms that ‘*States Parties shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. In particular, employers shall not be relieved of any legal or contractual obligations, nor shall their obligations be limited in any manner by reason of such irregularity*’.[[396]](#footnote-397)
* Chapter III of the Convention Relating to the Status of Stateless Persons affirms the right of stateless persons to gainful employment.[[397]](#footnote-398)

**Regional norms**

* Article 15 of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms that‘*Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work*’.[[398]](#footnote-399)
* Article 6 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of the Organization of American States, on the ‘Right to work’, affirms that ‘*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 States 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* […].’ Article 7 affirms that ‘*Everyone shall enjoy that right under just, equitable, and satisfactory conditions*’.[[399]](#footnote-400)
* Article 34(2) of the Arab Charter on Human Rights of the League of Arab States affirms that ‘*Every worker has the right to the enjoyment of just and favourable conditions of work’*.[[400]](#footnote-401)
* Article 15(1) of the Charter of Fundamental Rights of the European Union affirms that ‘*Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation*’. Article 31 affirms that ‘*Every worker has the right to working conditions which respect his or her health, safety and dignity*. *Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to annual period of paid leave’*.[[401]](#footnote-402)

## **Principle 15**

Protect the right of migrants to education.

**Normative framework**

* Article 26(1) of the Universal Declaration of Human Rights affirms that ‘*Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit*.’[[402]](#footnote-403)
* Article 5(e)(v) of the International Convention on the Elimination of All Forms of Racial Discrimination affirms that, ’*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*’.[[403]](#footnote-404)
* Article 13 of the International Covenant on Economic, Social and Cultural Rights affirms that ‘*States Parties to the present Covenant recognize the right of everyone to education. They agree that education* […] *shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.’*[[404]](#footnote-405)
* Article 28 of theConvention on the Rights of the Child affirms that ‘*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*.’[[405]](#footnote-406)
* Article 30 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families affirms that ‘*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*.’[[406]](#footnote-407)
* Article 6(3) 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 ‘Assistance to and protection of victims of trafficking in persons’, affirms that ‘*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:* *Employment, educational and training opportunities.’* Article 6(4) affirms that ‘*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*.’[[407]](#footnote-408)
* Article 22 of the Convention Relating to the Status of Stateless Persons, on public education, affirms that stateless person shall receive the same treatment as nationals with respect to elementary and other education.[[408]](#footnote-409)
* Article 1 of the Convention Against Discrimination in Education of the UN Educational, Scientific and Cultural Organization prohibits any discrimination that has 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)* […] *of 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*.’[[409]](#footnote-410)

**Regional norms**

* Article 2 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, on the ‘Right to education’, affirms that ‘*No person shall be denied the right to education*’.[[410]](#footnote-411)
* Article 17(1) of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms that‘*Every individual shall have the right to education*’.[[411]](#footnote-412)
* Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of the Organization of American States affirms that ‘*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*.’[[412]](#footnote-413)
* Article 41 of the Arab Charter on Human Rights of the League of Arab States affirms that ‘*The eradication of illiteracy is a binding obligation upon the State and everyone has the right to education*’.[[413]](#footnote-414)
* Article 14 of the Charter of Fundamental Rights of the European Union on the ‘Right to education’ affirms that ‘*Everyone has the right to education and to have access to vocational and continuing training. This right includes the possibility to receive free compulsory education*’.[[414]](#footnote-415)

## **Principle 16**

Uphold migrants’ right to information.

**Normative framework**

* Article 19 of the Universal Declaration of Human Rights affirms that‘*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*’.[[415]](#footnote-416)
* Clauses 1 and 2 of Article 19 of the International Covenant on Civil and Political Rights affirm that ‘*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.*’Article 17 affirms that ‘*No one shall be subjected to arbitrary or unlawful interference with his privacy*’.
* Article 19 of the International Convention for the Protection of All Persons from Enforced Disappearance affirms that ‘*Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person.* […] *The collection, processing, use and storage of personal information, including medical and generic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individua*l.’ Article 18 affirms that ‘*any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representative or their counsel*’ shall have access to essential information. Article 20 affirms that this right may be restricted, on an exceptional basis, when transmission of the information would adversely affect the privacy or safety of the person. In no case are restrictions admitted if they could constitute a secret detention.[[416]](#footnote-417)
* Several articles of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families invoke the obligation to provide information to migrants and their families about their rights in a language they understand. Article 13 affirms that ‘*migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds*’. Article 14 affirms that ‘*No migrant worker or member of his family shall be subjected to arbitrary or unlawful interference with his or her privacy*’. Article 16(5) affirms that ‘*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*’. Article 18(3)(a) affirms that, ‘*In the determination of any criminal charge against them* […][migrant workers and members of their families] *shall be entitled to the following minimum guarantees: (a) to be informed promptly and in detail in a language they understand of the nature and cause of the charge against them* […]*’.* Article 22(3) affirms that in cases of expulsion, ‘*the decision shall be communicated to them in a language they understand*’.[[417]](#footnote-418)
* Article 6(2) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, on ‘Assistance to and protection of victims of trafficking in persons’, affirms that ‘*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*’. Article 6(3) affirms the right of trafficked persons to receive ‘*counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand*’.[[418]](#footnote-419)

**Regional norms**

* Article 13 of the American Convention on Human Rights of theOrganization of American States affirms that everyone shall have the right ‘*to seek, receive, and impart information*’. Article 11 affirms the right to privacy. [[419]](#footnote-420)
* Article 9(1) of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms the right of every individual ‘*to receive information*’.[[420]](#footnote-421)

Article 11(1) of the Charter of Fundamental Rights of the European Union on ‘Freedom of expression and information’ affirms that ‘*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers*’.[[421]](#footnote-422)

## **Principle 17**

Ensure that all responses to migration, including large or mixed movements, are monitored and accountable.

**Normative framework**

* Article 8 of the Universal Declaration of Human Rights affirms that ‘*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*’.[[422]](#footnote-423)
* Article 2(3)(a) of the International Covenant on Civil and Political Rights affirms that 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*’. Article 2(3)(c) affirms that States Parties will ‘*ensure that the competent authorities shall enforce such remedies when granted*’. TheCovenant also established a body of independent experts, the Human Rights Committee, to monitor implementation of the Covenant by States Parties, and required each State Party to submit reports on the measures it adopted ‘*to give effect to the rights recognized herein and on the progress made in the enjoyment of those rights*’ (Article 40).[[423]](#footnote-424)
* Article 16(1) of the International Covenant on Economic, Social and Cultural Rights requires States Parties to submit reports on the ‘*measures which they have adopted and the progress made in achieving the observance of the rights recognized herein*’.[[424]](#footnote-425) ECOSOC Resolution 1985/17 established the Committee on Economic, Social and Cultural Rights (CESCR), a body of independent experts appointed to monitor implementation of the Convention.
* Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination affirms that 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*.’ Article 8 establishes a body of independent experts, the Committee on the Elimination of Racial Discrimination (CERD), to monitor implementation of the Convention by States Parties. Article 9 requires each State Party to submit reports to the Committee, on legislative, judicial, administrative or other measures they have adopted that meet provisions of the Convention.[[425]](#footnote-426)
* Article 14(1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment affirms that ‘*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 affirms that ‘*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(1) 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 17 establishes a body of independent experts, the Committee against Torture (CAT), to monitor implementation of the Convention. Article 19 requires each State Party to submit reports on measures it has adopted.[[426]](#footnote-427)
* Article 39 of the Convention on the Rights of the Child affirms that ‘*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*’. Article 43 established a body of independent experts, the Committee on the Rights of the Child (CRC), to monitor implementation of the Convention. Article 44 requires each State Party to submit reports on measures it has adopted.[[427]](#footnote-428)
* Article 83 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families affirms the right to remedy, ‘*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*’.[[428]](#footnote-429) Article 72 established a body of independent experts, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), to monitor implementation of the Convention. Article 73 required each State Party to submit reports on measures it has adopted.
* Article 33 of the Convention on the Rights of Persons with Disabilities*,* on ‘National implementation and monitoring’, affirms that‘*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.*’ Article 34 established the Committee on the Rights of Persons with Disabilities (CRPD) to monitor implementation of the Convention. Article 35 requires each State Party to submit reports on the measures it has taken.[[429]](#footnote-430)
* Article 8(2) of the International Convention for the Protection of All Persons from Enforced Disappearance affirms that ‘*Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation*’. Article 24(4) affirms that ‘*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 26 established the Committee on Enforced Disappearances (CED) to monitor implementation of the Convention. Article 29 requires each State Party to submit reports on the measures it has adopted.[[430]](#footnote-431)
* 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, affirms that ‘*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*’.[[431]](#footnote-432)
* Article 75(1) of the Rome Statute of the International Criminal Court, on ‘Reparations to victims’, affirms that ‘*The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation*’.[[432]](#footnote-433)

**Regional norms**

* Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, on the ‘Right to an effective remedy’, affirms that ‘*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*’.[[433]](#footnote-434)
* Chapter VI of the American Convention on Human Rights of the Organization of American States creates and sets out the functions and mode of operation of two organs: the Commission of Human Rights, which shall ‘*promote respect for and defense of human rights*’ (Article 41); and the Court, which has jurisdiction ‘*on all matters relating to the interpretation or application of this Convention*’ (Article 62). Article 10, on the ‘Right to compensation’, affirms 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*’.[[434]](#footnote-435)
* Article 26(1) of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms 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*’. Article 45 created a Commission to promote and ensure protection of the human rights the Charter affirms.[[435]](#footnote-436)
* Article 45 of the Arab Charter on Human Rights of the League of Arab States establishes an ‘*Arab Human Rights Committee’*. Article 48(1) affirms that States Parties ‘*undertake to submit reports to the Secretary-General of the League of Arab States.* […] *The Secretary General shall transmit these reports to the Committee for its consideration.*’[[436]](#footnote-437)

Article 47 of the Charter of Fundamental Rights of the European Union on ‘Right to an effective remedy and to a fair trial’ affirms that ‘*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article*’.[[437]](#footnote-438)

**Principle 18**

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

**Normative framework**

* Article 19 of the Universal Declaration of Human Rights affirms that ‘*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*’. Article 20(1) affirms that ‘*Everyone has the right to freedom of peaceful assembly and association*’.
* Article 19 of the International Covenant on Civil and Political Rights affirms ‘*the right to hold opinions without interference*’ and ‘*the right to freedom of expression*’. Article 21 affirms that ‘*the right to peaceful assembly shall be recognized*’. Article 22 affirms the right to freedom of association and Article 25 the right to participation in public life.[[438]](#footnote-439)
* Article 3 of the International Convention for the Protection of All Persons from Enforced Disappearance affirms that 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*’ and ‘*shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness*’.[[439]](#footnote-440)

**Regional norms**

* Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe affirms the right to ‘*freedom of peaceful assembly and to freedom of association with others*’.[[440]](#footnote-441)
* Articles 13, 15 and 16 of the American Convention on Human Rights of the Organization of American States affirms the rights of freedom of thought and expression, the right of assembly, and freedom of association.[[441]](#footnote-442)
* The African Charter on Human and Peoples' Rights of the Organization of African Unity affirms the right of freedom of association (Article 10) and the right to assemble freely with others (Article 11).[[442]](#footnote-443)
* Article 30 of the Arab Charter on Human Rights of the League of Arab States affirms that ‘*Everyone has the right to freedom of thought*’. Article 32 affirms the right to ‘*freedom of opinion and expression*’.[[443]](#footnote-444)
* Article 11(1) of the Charter of Fundamental Rights of the European Union on ‘Freedom of expression and information’ affirms that ‘*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers*’. Article 12 of the Charter on ‘Freedom of assembly and of association’ affirms that ‘*Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests*’.[[444]](#footnote-445)

## **Principle 19**

Improve the collection of disaggregated data on the human rights situation of migrants while protecting personal data and their right to privacy.

**Normative framework**

* Article 17(1) of the International Covenant on Civil and Political Rights affirms that ‘*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not o unlawful attacks on his honour and reputation’*.[[445]](#footnote-446)
* Article 16(1) of the International Convention on the Rights of the Child affirms that ‘*No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation*’.[[446]](#footnote-447)
* Article 31 of the Convention on the Rights of Persons with Disabilities, on ‘Statistics and data collection’, affirms that ‘*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*.’
* Article 9 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 ‘Prevention of trafficking in persons’, affirms that ‘*States Parties shall endeavour to undertake measures such as research* […] *to prevent and combat trafficking in persons*’.[[447]](#footnote-448)

**Regional norms**

* Article 8 of the European Convention on Human Rights on the ‘Right to respect for private and family life’ affirms that ‘*Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others’*.[[448]](#footnote-449)

Article 11 of the American Convention on Human Rights of the Organization of American States on the ‘Right to privacy’ affirms that ‘*Everyone has the right to have his honor respected and his dignity recognized. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. Everyone has the right to the protection of the law against such interference or attacks*’.[[449]](#footnote-450)

* Article 45(1)(a) of the African Charter on Human and Peoples' Rights of the Organization of African Unity affirms that the Commission shall ‘c*ollect documents, undertake studies and researches on African problems*’.[[450]](#footnote-451)

Article 21 of the Arab Charter on Human Rights of the League of Arab States affirms that ‘*No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation*’.[[451]](#footnote-452)

Article 7 of the Charter of Fundamental Rights of the European Union on ‘Respect for private and family life’ affirms that ‘*Everyone has the right to respect for his or her private and family life, home and communications’*. Article 8 on ‘Protection of personal data’ affirms that ‘*Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. Compliance with these rules shall be subject to control by an independent authority*’.[[452]](#footnote-453)

## **Principle 20**

Build the capacity of all relevant stakeholders and promote their cooperation in order to ensure human rights-based and gender-responsive migration governance.

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*’.[[453]](#footnote-454)

Article 1(3) of the Charter of the United Nations affirms that one of the purposes of the United Nations is ‘To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion’. Article 56 affirms that 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’, which states that the United Nations will promote, inter alia, ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’.[[454]](#footnote-455)

Article 2(1) of the International Covenant on Economic, Social and Cultural Rights affirms that ‘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’.[[455]](#footnote-456)

Article 1 of the Convention against Transnational Organized Crime states that the purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

Article 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, affirms that ‘*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*’.

Article 2 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, affirms that ‘*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*’.[[456]](#footnote-457) Article 7, on ‘Cooperation’, affirms that ‘*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’.* Article 14(2)(e), on ‘Training and technical cooperation’, affirms that ‘*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(6), on the ‘Return of smuggled migrants’, affirms that ‘*States Parties may cooperate with relevant international organizations in the implementation of this article*’.[[457]](#footnote-458)

Regional norms

Article 12 of the ASEAN Convention Against Trafficking in Persons Especially Women and Children states provides for a range of areas of Cooperation between the respective Parties to the Convention. Chapter VI also addresses international cooperation including mutual legal assistance (article 18), extradition (article 19), law enforcement cooperation (article 20), international cooperation for purposes of confiscation (article 21) and disposal of confiscated proceeds of crime or property (article 22).

1. General Assembly, New York Declaration for Refugees and Migrants, A/RES/71/1, adopted by the UN General Assembly in its resolution 71/1 of 19 September 2016. (Outcome document of a UN General Assembly’s high-level plenary meeting on addressing large movements of refugees and migrants.) [↑](#footnote-ref-2)
2. See General Assembly, New York Declaration for Refugees and Migrants, A/RES/71/1, para. 1. See also the preamble to the Paris Agreement under the United Nations Framework Convention on Climate Change, FCCC/CP/2015/L.9/Rev.1. [↑](#footnote-ref-3)
3. Report of the UN Secretary-General, In safety and dignity: addressing large movements of refugees and migrants, A/70/59, para. 18 [↑](#footnote-ref-4)
4. See 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. [↑](#footnote-ref-5)
5. For background on the rationale for the *Principles and guidelines*, see OHCHR, Report on the promotion and protection of the human rights of migrants in the context of large movements, A/HRC/33/67. [↑](#footnote-ref-6)
6. All persons who meet the refugee criteria under international refugee law are refugees for the purposes of international law, whether or not they have been formally recognized as such. See, notably, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, and the Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984. [↑](#footnote-ref-7)
7. ### See specifically: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Adopted by General Assembly Resolution 45/158 of 18 December 1990; 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, United Nations, Treaty Series , [vol. 360](http://treaties.un.org/doc/Publication/UNTS/Volume%20360/v360.pdf), p. 117; and the Convention on the Rights of Persons with Disabilities, adopted by the UN General Assembly on 13 December 2006.

   [↑](#footnote-ref-8)
8. Article 2 of the International Covenant on Civil and Political Rights makes clear that, with respect to all rights recognized by the Convention, the duty bearer is usually the State under whose jurisdiction a person is located. It obliges States to respect the rights recognized in the Covenant and ensure they are enjoyed by all individuals who are within its territory and/or subject to its jurisdiction, 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. [↑](#footnote-ref-9)
9. States assume obligations and duties under international law to respect, protect and fulfil human rights. The obligation to respect means that States must not interfere with or curtail the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses committed by third parties. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of human rights. [↑](#footnote-ref-10)
10. The preamble to the Universal Declaration of Human Rights recognizes in its first two paragraphs the primary concepts of dignity and vulnerability; that the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, but also that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. [↑](#footnote-ref-11)
11. The Human Rights Council has expressed serious concern about the particular vulnerable situations and risks faced by migrants, which can arise from the reasons for leaving their country of origin, circumstances encountered by migrants en route, at borders and at destination, specific aspects of a person’s identity or circumstance or a combination of those factors. See Human Rights Council resolution 35/17. [↑](#footnote-ref-12)
12. It is important to note that migrants often show considerable resilience and agency. Their vulnerability is frequently created by others, by means of law, policy and practice. A human rights-based approach to migrants in a vulnerable situation therefore seeks above all to empower migrants and does not stigmatize or deny them agency. See, for example, OHCHR, Report on the promotion and protection of the human rights of migrants in the context of large movements, A/HRC/33/67, paras. 9-12, and UN General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/285, paras. 59-61. [↑](#footnote-ref-13)
13. See 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.11. [↑](#footnote-ref-14)
14. The guidance of international human rights treaty bodies and special procedure mandate holders has authority on several grounds. It is legally binding, first of all, to the extent that it is based on binding international human rights law. In addition, the treaty bodies were formally mandated and created under the provisions of the treaty they monitor; while the mandates of special rapporteurs are created and defined by States through the Human Rights Council. Both groups of experts benefit from their close collaboration with States in the system. Finally, the recommendations of treaty bodies and special procedure mandate holders acquire authority when international and regional judicial institutions reference them. [↑](#footnote-ref-15)
15. OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, A/69/CRP.1, 23 July 2014, Chapter 1, para 10(d). [↑](#footnote-ref-16)
16. OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, A/69/CRP.1, 23 July 2014, Chapter I, para. 10 (e). [↑](#footnote-ref-17)
17. Convention on the Elimination of All Forms of Racial Discrimination, Article 1(1); Convention on the Elimination of All Forms of Discrimination against Women, Article 1. [↑](#footnote-ref-18)
18. Durban Declaration, Article 2, and Programme of Action, Articles 49, 79, 104(c), and 172; CERD, General Recommendation No. 30 on Discrimination against non-citizens; and CERD, General Recommendation No. 32 on the Meaning and scope of special measures. [↑](#footnote-ref-19)
19. 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; 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). [↑](#footnote-ref-20)
20. Crépeau and Hastie, ‘The case for “firewall” protections’, p. 165. [↑](#footnote-ref-21)
21. 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’ (General Assembly Resolution 53/144, 9 December 1998). [↑](#footnote-ref-22)
22. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/22/47, 16 January 2013, para. 23. [↑](#footnote-ref-23)
23. Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Arts. 4(1) and 4(2). [↑](#footnote-ref-24)
24. Report of the UN Secretary-General, In safety and dignity: addressing large movements of refugees and migrants, A/70/59, para. 11. [↑](#footnote-ref-25)
25. General Assembly, New York Declaration for Refugees and Migrants, A/RES/71/1, para. 6. [↑](#footnote-ref-26)
26. See OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, A/69/CRP.1, 23 July 2014, Chapter I, para. 10. UNHCR consistently distinguishes between refugees and migrants, both to be clear about the causes and character of refugee movements, and to keep in view the specific entitlements of refugees in international law. International instruments define some categories of migrant. ‘Migrant workers’ or ‘migrants for employment’ are defined in: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 2(1); ILO, Migration for Employment Convention (Revised) No. 97 (1949), Article 11; and ILO, Migrant Workers (supplementary provisions) Convention, No. 143 (1975), Article 11. [↑](#footnote-ref-27)
27. For an explanation of the term ‘migrant in a vulnerable situation’, see the Introduction. [↑](#footnote-ref-28)
28. See OHCHR, Migration and human rights: improving human rights-based governance of international migration, 2013. [↑](#footnote-ref-29)
29. See 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. 10. [↑](#footnote-ref-30)
30. See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 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. [↑](#footnote-ref-31)
31. See Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/70/303, paras. 38 and 41; Human Rights Committee, Communication No. 2024/2011, Israil v. Kazakhstan, para 9.4; Nikolai Valetov v Kazakhstan, Comm. N. 2104/2011, CCPR/C/110/D/2104/2011, 17 March 2014 [↑](#footnote-ref-32)
32. Convention relating to the Status of Refugees, Article 33(1). [↑](#footnote-ref-33)
33. Convention relating to the Status of Refugees, Article 1.A(2), as amended by the 1967 Protocol. Also see the UN General Assembly Note on International Protection where a refugee is defined as someone who is outside their country of origin who is in need of protection because of a serious threat to their life, physical integrity or freedom in their country of origin as a result of persecution, armed conflict, violence or serious public disorder against which the authorities in their home country cannot or will not protect them. UN General Assembly, Note on International Protection, 7 September 1994, A/AC.96/830, para. 32. [↑](#footnote-ref-34)
34. While recalling there is no right to regularization under the Convention (article 35), the ICRMW in its article 69(2) requests States to consider the possibility of regularizing the situation of persons in accordance with applicable national legislation and bilateral or multilateral agreements, and in doing so to take appropriate account of the circumstances of their entry, the duration of their stay, and other relevant considerations in particular those relating to their family situations. See also directly or by analogy the Conclusion on the Provision on International Protection Including Through Complementary Forms of Protection No. 103 (LVI) – 2005, Executive Committee 56th session. Contained in United Nations General Assembly document A/AC.96/1021. [↑](#footnote-ref-35)
35. See Committee on the Rights of the Child (CRC), General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin, para. 8. [↑](#footnote-ref-36)
36. The International Law Commission has concluded that the definition in Article 1(1) of the Convention forms part of customary international law (see A/61/10, Chap. II, Natural Persons, Article 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). [↑](#footnote-ref-37)
37. CRC, General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin, para. 7. [↑](#footnote-ref-38)
38. See ILO, IOM and OHCHR, *International migration, racism, discrimination and xenophobia* (2001), p. 2. [↑](#footnote-ref-39)
39. The international bill of rights (the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights) distinguishes between nationals and non-nationals with respect to only two rights, and only in limited circumstances. Article 25 of the International Covenant on Civil and Political Rights states that only citizens are entitled to vote and take part in public affairs; and Article 12 states that foreigners shall enjoy the right to freedom of movement provided they are lawfully present in a country. This said, the Human Rights Committee has made clear in General Comment No. 15 that all foreigners 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. (See its General Comment No. 15 on the Position of aliens under the Covenant, 1986, para.2.) The International Covenant on Economic, Social and Cultural Rights (ICESCR) also identifies an exception to the general rule of equal and universal access. Article 2(3) states: ‘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, and refers only to developing countries and economic rights. Under the ICESCR, a State may not discriminate on grounds of nationality or legal status. Any distinction, exclusion, restriction or preference, or other differential treatment on grounds of nationality or legal status, should be in accordance with the law, pursue a legitimate aim and remain legitimate to the aim pursued. See also, CESCR, Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights, E/C.12/2017/1, 13 March 2017, paras. 3, 5, 6 and 8; 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; and 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, it is accepted in international law that international treaties apply to all individuals in 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) and 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, A/71/L.1, 13 September 2016, para. 41. [↑](#footnote-ref-40)
40. 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 3(d); General Assembly, New York Declaration for Refugees and Migrants, A/70/L.1, 13 September 2016, para. 5; 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 and 9; General Assembly, Report of the Special Rapporteur on the human rights of migrants, A/71/40767, 20 July 2016, throughout but particularly paras. 29, 30 and 73; UN, Habitat III: New Urban Agenda, Outcome document, Quito, 10 September 2016, para. 28. [↑](#footnote-ref-41)
41. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (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. 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. [↑](#footnote-ref-42)
42. 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. [↑](#footnote-ref-43)
43. ICCPR, Article 12(2), 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. 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 (CAT), 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. [↑](#footnote-ref-44)
44. Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, Article 5. [↑](#footnote-ref-45)
45. Durban Declaration, paras. 2, 12, 16, 38, 47, 48, 49 and 51, and Programme of Action, paras. 6, 27, 29 and 30, 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 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 and 39; 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. 20, 21(f) and 39; 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. 23(a) and 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 and 8. [↑](#footnote-ref-46)
46. 1954 Convention relating to the Status of Stateless Persons and 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), at http://www.refworld.org/docid/53b676aa4.html; Committee on the Elimination of Racial Discrimination (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, and 63(e), (h), (i) and (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, at http://www.unhcr.org/ibelong/; General Assembly, Status of the Convention on the Rights of the Child: Report of the Secretary-General, A/71/413, 27 September 2016, paras. 28 and 29; European Convention on Nationality (CETS 166, 1997); Council of Europe, 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. [↑](#footnote-ref-47)
47. 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. The prohibition of discrimination in the workplace is also affirmed in two fundamental conventions of the ILO: the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Para. 28 of the Resolution concerning a fair deal for migrant workers in a global economy (International Labour Conference, 92nd Session, 2004) affirms: ‘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’ (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 and 2; Human Rights Committee, General Comment No. 31 on 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 and 10; CESCR, Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights, E/C.12/2017/1, 13 March 2017, paras. 3, 5, 6 and 8; CESCR, General Comment No. 20 (2009) on Non-discrimination in economic, social and cultural rights, throughout but particularly paras. 11, 12, 24, 30 and 39; CERD, General Recommendation No. 25 on Gender-related dimensions of racial discrimination (2000); CERD, General Recommendation No. 30 (2004) on Discrimination against non-citizens, paras. 7-9 and generally; CEDAW, General Recommendation No. 26 (2008) on Women migrant workers, paras. 1 and 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 and 18; CEDAW, General comment No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para. 6; CWM, 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 paras. 2, 8, 12, 18-20 and 76; Committee on the Rights of Persons with Disabilities (CRPD), General Comment No. 1 (2014) on Article 12: Equal recognition before the law, CRPD/C/GC/1, 19 May 2014, paras. 4-7, 25 and 32-35; CRPD, General Comment No. 2 (2014) on Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014, para. 13; CRPD, General Comment No. 3 (2016) on Article 6: Women and girls with disabilities, CRPD/C/GC/3, 2 September 2016; General Assembly, UN Principles for Older Persons, A/RES/46/91, Resolution 46/91 of 16 December 1991, 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 and 51, and Programme of Action, paras. 24, 26-27, 30 and 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 and 23(w); General Assembly, Measures to ensure the human rights and dignity of all migrant workers, Resolution 30/3449 (1975); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Targets 5.1, 10.2, 10.3, 16(b) and para. 23; General Assembly, New York Declaration for Refugees and Migrants, A/71/L.1, 13 September 2016, paras. 13 and 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 and 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 and 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. [↑](#footnote-ref-48)
48. Durban Declaration, paras. 12, 38 and 47, and Programme of Action, para. 30, especially 30(b), in Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/12, 31 August-8 September 2001; CERD, General Recommendation No. 30 (2004) on Discrimination against non-citizens, para. 9; CMW, Concluding observations on the initial report of Peru, CMW/C/PER/CO/1, 13 May 2015, para. 27. [↑](#footnote-ref-49)
49. CERD, General Recommendation No. 35 on Combating racist hate speech, CERD/C/GC/35, 26 September 2013; 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. 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) and 30(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, and 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; General Assembly, New York Declaration for 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 and 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, throughout and especially para. 34; 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. 21, 57 and 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, 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, at http://www.ohchr.org/ EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20518&LangID=E. [↑](#footnote-ref-50)
50. International Covenant on Civil and Political Rights, Article 20(2). Article 19(3) of the same Covenant states that restrictions to the right of freedom of expression must be set out in law and made clear and accessible to everyone; must be necessary and legitimate to protect the rights or reputation of others and to protect national security, public order, public health or morals; and must be proportionate in relation to the purported aim. See General Assembly, 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. [↑](#footnote-ref-51)
51. 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, Articles 26 and 40. [↑](#footnote-ref-52)
52. 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; Secretary General’s report to the 70th session of the General Assembly, (A/70/259), para. 79(f). [↑](#footnote-ref-53)
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. 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 and 36; Commission on the Status of Women, Session 60, Agreed Conclusions: Women’s empowerment and the link to sustainable development, paras. 10 and 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 and 63; General Assembly, Report of the 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 and 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 and 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 and 90; OHCHR, *The economic, social and cultural rights of migrants in an irregular situation* (2014), p. 99, 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, at https://micicinitiative.iom.int; OECD, ILO and World Bank, *The Contribution of Labour Mobility to Economic Growth*, presented to the G20 Labour and Employment Ministers’ meeting in October 2015, at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\_398078.pdf. [↑](#footnote-ref-54)
54. CMW, Concluding observations on the initial report of Peru, CMW/C/PER/CO/1, 13 May 2015, para. 27. [↑](#footnote-ref-55)
55. 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 and 101(c)(i); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 16(b); General Assembly, New York Declaration for Refugees and Migrants, A/71/L.1, 13 September 2016, para. 14. [↑](#footnote-ref-56)
56. 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. [↑](#footnote-ref-57)
57. 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. [↑](#footnote-ref-58)
58. CERD, General Recommendation No. 31 on the Prevention of racial discrimination in the administration and functioning of the criminal justice system, A/60/18; CRC, General Comment No. 10 on Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007; CEDAW, General Recommendation No. 26 on Women migrant workers, Article 26(l); CRPD, General Comment No. 1 (2014) on Article 12: Equal recognition before the law, CRPD/C/GC/1, 19 May 2014; Human Rights Committee, General Comment No. 32 on Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, para. 8. [↑](#footnote-ref-59)
59. Council of Europe, Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Article 59. [↑](#footnote-ref-60)
60. International human rights and labour treaties affirm the right to have access to courts and tribunals and enjoy 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; 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 and 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 and also Article 13 on access to justice; ILO, Migration for Employment Convention (Revised), No. 97; ILO, Migrant Workers (Supplementary Provisions) Convention No. 143; ILO, Protocol 29 of 2014 to the Forced Labour Convention (1930); CERD, General Recommendation No. 31 on the Prevention of racial discrimination in the administration and functioning of the criminal justice system, A/60/18, throughout and especially paras. 6-8; CEDAW, General Recommendation No. 26 on Women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras. 21 and 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 No. 33 on Women’s access to justice, CEDAW/C/GC/33, 23 July 2015, throughout and especially para. 11; 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. 2, 28, 30 and 31; CRPD, General Comment No. 1 (2014) on 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; General Assembly, UN Principles for Older Persons, A/RES/46/91, Resolution 46/91 of 16 December 1991, 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); General Assembly, New York Declaration for 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, 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; 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, at http://opac.minori.it/VSRV01\_EOS03\_Linked\_Documents/Giuridico2/2012%20Sec.Trim.(aprgiu)/Europeo%20ed%20internazionale/ Guidelines%20on%20child%20friendly%20justice.pdf. [↑](#footnote-ref-61)
61. 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 March 2006, para. 15. [↑](#footnote-ref-62)
62. Human Rights Council, Report of the Working Group of Forced or Involuntary Disappearances, A/HRC/33/51, 28 July 2016, paras. 68, 78, 79 and 80. [↑](#footnote-ref-63)
63. On the right of all persons, regardless of status, to have access to a lawyer and in certain circumstances to legal aid without cost, see: 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 (3)(d); Convention on the Rights of the Child, Article 40(2)(b)(ii); CRC, General Comment No. 10 (2007) on 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 No. 33 on Women’s access to justice, CEDAW/C/GC/33, 23 July 2015, paras. 13, 26-28, 36 and 37(a); Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, and welcomed by the General Assembly in Resolution 45/166 of 18 December 1990), especially Principles 1-4 and 6; United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, particularly Principles 3-7 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 on equity in access to legal aid, para. 32; Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted on 17 November 2010. [↑](#footnote-ref-64)
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66. CESCR, General Comment No. 20 on Non-discrimination in economic, social and cultural rights (Article 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 (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, welcomed by General Assembly Resolution 45/166 of 18 December 1990), Principles 9 and 14; UN Guidelines on the Role of Prosecutors (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, and welcomed by General Assembly Resolution 45/166, 1990), Guidelines 2(b), 12, 13(a), 15 and 16. [↑](#footnote-ref-67)
67. 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, International Maritime Organization (IMO), *Guidelines on the Treatment of Persons Rescued at Sea*, Maritime Safety Committee, Resolution MSC.167(78) (IMO Rescue Guidelines), adopted on 20 May 2004; Parliamentary Assembly of the Council of Europe (PACE), The interception and rescue at sea of asylum seekers, refugees and irregular migrants, Resolution No. 1821(2011), approved on 21 June 2011; General Assembly, New York Declaration for Refugees and Migrants, A/71/L.1, 13 September 2016, paras. 10 and 28; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/23/46, 24 April 2013, para. 90; Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, A/HRC/29/36, 8 May 2015, paras. 103-106. [↑](#footnote-ref-68)
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69. 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,* at http://www.spherehandbook.org. [↑](#footnote-ref-70)
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108. 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, Article 31(1); Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, especially paras. 3 and 18. The Human Rights Committee has set out the minimum legal obligations under the ICCPR; other instruments and experts have said more clearly that immigration detention should cease. See: 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. 24; CAT, Concluding observations on the fourth report of Cyprus, CAT/C/CYP/CO/4, 16 June 2014, para. 17(a); CAT, Concluding observations on the combined fourth and fifth periodic reports of Australia, 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 and 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). [↑](#footnote-ref-109)
109. 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 and 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. [↑](#footnote-ref-110)
110. CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, para. 48(c); CAT, Concluding observations on the fourth report of Cyprus, CAT/C/CYP/CO/4, 16 June 2014, para. 17(c); CAT, Concluding observations on the combined fourth and fifth periodic reports of Australia, 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, para. 9; UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012), Guideline 4.3; General Assembly, New York Declaration for Refugees and Migrants, A/71/L.1, 13 September 2016, para. 33; Commission on Human Rights, Report of the Special Rapporteur on the human rights of migrants, 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 and 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 and 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 and 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 and 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* (2011), 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). [↑](#footnote-ref-111)
111. CEDAW, General Recommendation No. 32 on the Gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para. 34; 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. 45 and 46; CRPD, Concluding observations on the initial report of the European Union, CRPD/C/EU/CO/1, 2 October 2015, paras. 34 and 35; Human Rights Commission, Report of the Special Rapporteur on 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 and 86(g); UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012), Guideline 9; International Detention Coalition, *Legal framework and standards relating to the detention of refugees, asylum seekers and migrants: A guide* (2011), Standard No. 2; OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, E/2002/68/Add.1, 20 May 2002, Principle 7, Guidelines 2(6) and 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”. [↑](#footnote-ref-112)
112. Convention on the Rights of the Child, Articles 2, 3, 9, 22 and 37; CRC, General Comment No. 6 on the Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, para. 61; CRC, *General Day of Discussion 2012: The Rights of All Children in the Context of International Migration*, paras. 78-80; CAT, Concluding observations on the combined fourth and fifth periodic reports of Australia, CAT/C/AUS/CO/4-5, 23 December 2014, para. 16; 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. 33; CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, para. 48(b); General Assembly, New York Declaration for 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 and 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, throughout and specifically on child migrants in paras. 59-62, 66, 67, 80-83 and 85; Human Rights Council, Report of the Special Rapporteur on the human rights of 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 and 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, 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, 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* (2014), at http://www.unhcr.org/53aa929f6.pdf; UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context* (2017), at http://www.refworld.org/docid/ 5885c2434.html. [↑](#footnote-ref-113)
113. 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 and 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, throughout 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, at http://www.ohchr.org/EN/NewsEvents/Pages/ DisplayNews.aspx?NewsID =21026&LangID=E. [↑](#footnote-ref-114)
114. International Covenant on Civil and Political Rights, Article 9(1). [↑](#footnote-ref-115)
115. See, for example: General Assembly, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Resolution 43/173, Principle 14; Human Rights Committee, General Comment No. 35 on 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 and 8. [↑](#footnote-ref-116)
116. For instance, migrants should be provided with information on their right to challenge a decision, to seek legal aid, to communicate with consular authorities or other bodies, and to have interpretation/translation services. Decisions 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 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 on Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 18; CRPD, Concluding observations on the initial report of the European Union, CRPD/C/EU/CO/1, 2 October 2015, para. 34. [↑](#footnote-ref-117)
117. 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. 23-35, 38 and 39; CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, para. 48(a); CAT, 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 combined fourth and fifth periodic reports of Australia, CAT/C/AUS/CO/4-5, 23 December 2014, para. 16; CERD, 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 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; CEDAW, General Recommendation No. 26 on Women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, para. 26(j); CEDAW, General Recommendation No. 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 and 7; Human Rights Council, Working Group on Arbitrary Detention, A/HRC/13/30, 18 January 2010, paras. 59 and 64; Human Rights Council, Report of the Working Group on Arbitrary Detention, Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, 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 and 61; Working Group on Arbitrary Detention, Preliminary Findings from its visit to the United States of America (11-24 October 2016), 24 October 2016, at http://www.ohchr.org/ EN/NewsEvents/Pages/DisplayNews.aspx?NewsID= 20746&LangID=E; Commission on Human Rights, Report of the Special Rapporteur on the human rights of migrants, E/CN.4/2003/85, 30 December 2002, paras. 20-34, 35, 74 and 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 and 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 and 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. [↑](#footnote-ref-118)
118. International Covenant on Civil and Political Rights, Article 9(4); Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, paras. 39-48; 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. 27, 30, 32 and 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 and 6. [↑](#footnote-ref-119)
119. United Nations, Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, 8 January 2016. See 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; 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, A/69/CRP.1, 23 July 2014, Guideline 8, paras. 7-12; CERD, 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); 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. 40 and 42; CEDAW, General Recommendation No. 32 on the Gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para. 34; CEDAW, General Recommendation No. 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 and 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) and 70(u); Association for the Prevention of Torture and UNHCR, *Monitoring Immigration Detention: Practical manual* (2014), in particular sections 4.4 and 4.6. [↑](#footnote-ref-120)
120. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Articles 17.2 and 17.3; Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, paras. 14 and 18; 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. 24 and 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 on the human rights of migrants, E/CN.4/2003/85, 30 December 2002, paras. 17, 18, 41, 46, 53, 56, 63, 73, 75(i) and 75(n); Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, A/HRC/20/24, 2 April 2012, paras. 31 and 33-35; OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, A/69/CRP.1, 23 July 2014, Guideline 8.9. Where facilities are operated by private contractors, States have a duty to hold them accountable for any human rights violations committed in the course of their operations. See, *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 (Ruggie Principles). [↑](#footnote-ref-121)
121. General Assembly, Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, 8 January 2016. See also: Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, paras. 14 and 18; 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. 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 and 41; Association for the Prevention of Torture and UNHCR, *Monitoring Immigration Detention: Practical manual* (2014), in particular sections 4.1, 4.2, 4.3 and 4.5. [↑](#footnote-ref-122)
122. Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para. 46; CAT, General Comment No. 2 on Implementation of Article 2 by States Parties, CAT/C/GC/2, 24 January 2008, para. 13; 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. 36-48; CEDAW, General Recommendation No. 33 on Women’s access to justice, CEDAW/C/GC/33, 23 July 2015, throughout and especially paras. 48, 49 and 51(n); CRPD, Concluding observations on the initial report of the European Union, CRPD/C/EU/CO/1, 2 October 2015, paras. 34 and 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 and 71; General Assembly, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Resolution 43/173, Principles 17 and 18; Human Rights Council, Report of the Working Group on Forced or Involuntary Disappearances, A/HRC/33/51, 28 July 2016, paras. 58, 74 and 76. [↑](#footnote-ref-123)
123. Optional Protocol to the Convention against Torture, Articles 19 and 20; Human Rights Committee, General Comment No. 20 on Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 11; 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. 36(b); CERD, General Recommendation No. 31 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); CEDAW, General Recommendation No. 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 on the human rights of migrants, 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 and 70(y); OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, A/69/CRP.1, 23 July 2014, Guideline 8, paras. 18 and 19; Association for the Prevention of Torture and UNHCR, *Monitoring Immigration Detention: Practical manual* (2014). [↑](#footnote-ref-124)
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125. OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, A/69/CRP.1, 23 July 2014, Guidelines 4.11 and 8.16. [↑](#footnote-ref-126)
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156. CESCR, General Comment No. 14 (2000) on the Right to the highest attainable standard of health, paras. 36 and 44(b); CRC, General Comment No. 15 on 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 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. [↑](#footnote-ref-157)
157. On non-discrimination in migrants’ access to health, refer to footnote n. 144 [↑](#footnote-ref-158)
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164. CESCR, General Comment No. 14 on the Right to the highest attainable standard of health, E/C.12/2000/4 (2000), paras. 17, 22, 26, 27, 34, 36, 49 and 53; CRC, General Comment No. 4 on 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) and 41(a); CRC, General Comment No. 6 on Treatment of unaccompanied and separated children outside their country of origin, 2005, paras. 22, 44 and 48; General Assembly, Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, 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 and 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 and 76; UNHCR, IOM , 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* (2015); Inter-Agency Standing Committee, *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Setting*s (2007); Y. Fassil and A. Burnett, *Commissioning mental health services for vulnerable adult migrants: Guidance for commissioners*, MIND, with the Faculty for Homeless and Inclusion Health/Pathway (2014), at http://www.crisiscareconcordat.org.uk/wp-content/uploads/2015/02/Vulnerable-Migrants-guidance-for-commissioners-August-2014-FINAL.pdf. [↑](#footnote-ref-165)
165. With specific reference to health services, the CMW has affirmed: “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”. See 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: Glossary of key terms in this document; EU Fundamental Rights Agency, *Apprehension of migrants in an irregular situation* (2013), at htpps://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), pp. 157–183; European Commission against Racism and Intolerance, General Policy Recommendation No. 16 on Safeguarding Irregularly Present Migrants from Discrimination, adopted on 16 March 2016, Council of Europe, CRI(2016)16, at http://www.coe.int/t/ dghl/monitoring/ecri/activities/GPR/EN/Recommendation\_N16/REC-16-2016-016-ENG.pdf. [↑](#footnote-ref-166)
166. 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. 77. [↑](#footnote-ref-167)
167. 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 and 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), 22, 24-35, 42, 46, 84(2), 92(2), 105 and 109-110; 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. 36 and 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. [↑](#footnote-ref-168)
168. International Covenant on Economic, Social and Cultural Rights, Article 11.1; Convention on the Rights of the Child, Articles 24, 27; Convention on the Elimination of All Forms of Discrimination Against Women, Article 12; Convention on the Rights of Persons with Disabilities, Article 28.. See also: CESCR, General Comment No. 4 on the Right to Adequate Housing (Art. 11(1) of the Covenant), in E/1992/23, 13 December 1991, particularly paras. 6, 7, 11 and 12; CESCR, General Comment No. 6 on 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 and 39; CESCR, General Comment No. 15 on the Right to water (Arts. 11 and 12 of the Covenant), E/C.12/2002/11, 20 January 2003, paras. 13, 16, 28, 34 and 60; CESCR, General Comment No. 20 on Non-discrimination in economic, social and cultural rights (Article 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009, paras. 3, 6 and 8; CESCR, Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights, E/C.12/2017/1, 13 March 2017, paras. 3, 4, 5, 6, 9, 11, 14 and 15; CRC, General Comment No. 6 (2005) on Treatment of unaccompanied and separated children outside their country of origin, paras. 3, 44 and 45; CRPD, General Comment No. 2 on Article 9: Accessibility, CRPD/C/GC/2, 22 May 2014, para. 42; CPRD, General Comment No. 3 on Article 6: Women and girls with disabilities, CRPD/C/GC/3, 2 September 2016, paras. 55 and 59; General Assembly, UN Principles for Older Persons, A/RES/46/91, Resolution 46/91 of 16 December 1991, Principle 14; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Targets 6.1, 6.2 and 11.1. See further: General Assembly, New York Declaration for Refugees and Migrants, A/71/L.1, 13 September 2016, para. 11 (“we stress [that migrants] need to live their lives in safety and dignity”); UN, Habitat III: New Urban Agenda, Outcome document, Quito, 10 September 2016, para. 28; UNHCR, *Working with Persons with Disabilities in Forced Displacement* (2011), at http://www.unhcr.org/4ec3c81c9.pdf. [↑](#footnote-ref-169)
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171. CESCR, General Comment No. 7 on the Right to adequate housing (Article 11(1) of the Covenant): Forced evictions, 1997; Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Basic Principles and Guidelines on development-based evictions and displacement, A/HRC/4/18, Annex 1, at http://www.ohchr.org/Documents/ Issues/Housing/Guidelines\_en.pdf; Commission on Human Rights, Resolution 1993/77, para. 1. [↑](#footnote-ref-172)
172. See the Glossary of key terms in this document. See also: EU Fundamental Rights Agency, *Apprehension of migrants in an irregular situation* (2013), preamble, at htpps://fra.europa.eu; F. Crépeau and B. Hastie, ‘The Case for “Firewall” Protections for Irregular Migrants: Safeguarding Fundamental Rights’, *European Journal of Migration and Law* 17 (2015), pp. 157–183; European Commission against Racism and Intolerance, General Policy Recommendation No. 16 on Safeguarding irregularly present migrants from discrimination, adopted 16 March 2016, Council of Europe, CRI(2016)16, at http://www.coe.int/t/dghl/monitoring/ecri/ activities/ GPR/EN/Recommendation\_ N16/REC-16-2016-016-ENG.pdf. [↑](#footnote-ref-173)
173. 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 and 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 and 46. [↑](#footnote-ref-174)
174. Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/27/48, 30 June 2014, paras. 78-79 and 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 and 12.7. [↑](#footnote-ref-175)
175. International Covenant on Economic, Social and Cultural Rights, Article 6 (1); CESCR, 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. 5. The Committee makes clear that the article applies to migrant workers and covers all migrant workers, not only those who are documented (para. 47(v)). See also: CESCR, Duties of States towards refugees and migrants under the International Covenant on Economic, Social and Cultural Rights, E/C.12/2017/1, 13 March 2017, paras. 3, 4, 5, 6, 8, 9, 11 and 13; CESCR, General Comment No. 18 on the Right to work (Article 6 of the Covenant), E/C.12/GC/18, 6 February 2006, para. 18; CERD, General Recommendation No. 30 on Discrimination against non-citizens, CERD/C/64/Misc.11/rev.3 (2004), para. 29; CMW, 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, 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 and 27, SDG Target 8.8. [↑](#footnote-ref-176)
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177. ILO, Migrant Workers (Supplementary Provisions) Convention (No. 143), para. 14(b); CESCR, 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; CEDAW, General Recommendation No. 26 on Women migrant workers, CEDAW/C/2009/WP.1/R, 5 December 2008, paras. 13-15; CMW, 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) and (b); General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Targets 1.3 and 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), 98(v)(b), 98(viii), 98(ix), 100(iii), 101(ii) and 102(i). [↑](#footnote-ref-178)
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179. On labour inspectors, see: CESCR, 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; 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. 63; CMW, Concluding observations on the initial report of Turkey, CMW/C/TUR/CO/1, 31 May 2016, paras. 58(c) and (d). On firewalls more generally, see the Glossary of key terms in this document. See also: EU Fundamental Rights Agency, *Apprehension of migrants in an irregular situation* (2013), at htpps://fra.europa.eu; F. Crépeau and B. Hastie, ‘The Case for “Firewall” Protections for Irregular Migrants: Safeguarding Fundamental Rights’, *European Journal of Migration and Law* 17 (2015), pp. 157–183; European Commission against Racism and Intolerance, General Policy Recommendation No. 16 on Safeguarding irregularly present migrants from discrimination, adopted on 16 March 2016, Council of Europe, CRI(2016)16, at http://www.coe.int/t/dghl/ monitoring/ecri/activities/GPR/EN/Recommendation\_N16/REC-16-2016-016-ENG.pdf; ILO, Committee of Experts, General Survey on the labour inspection instruments (2006), paras. 78 and 161, at 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. [↑](#footnote-ref-180)
180. ILO, Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), Article 1; CESCR, General Comment No. 23 on the Right to just and favourable conditions of work, E/C.12/GC/23, 8 March 2016, paras. 29 and 57. [↑](#footnote-ref-181)
181. ILO, General Principles and Operational Guidelines on Fair Recruitment (2016). [↑](#footnote-ref-182)
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183. On the right to education, see: 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. 77. See also: EU Fundamental Rights Agency, *Apprehension of migrants in an irregular situation* (2013), Principles 4 and 5 and preamble, at htpps://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), pp. 157–183; European Commission against Racism and Intolerance, General Policy Recommendation No. 16 on Safeguarding irregularly present migrants from discrimination, adopted on 16 March 2016, Council of Europe, CRI(2016)16, at http://www.coe.int/t/dghl/monitoring/ecri/activities/ GPR/EN/Recommendation\_N16/REC-16-2016-016-ENG.pdf. [↑](#footnote-ref-184)
184. 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. 77. [↑](#footnote-ref-185)
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186. International Covenant on Economic, Social and Cultural Rights, Article 13(1); UNESCO, Convention on Promotion of the Diversity of Cultural Expressions; CRC, General Comment No. 1 on Article 29(1): The aims of education, CRC/GC/2001/1, 17 April 2001, paras. 2, 4, 11, 19 and 24; General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, SDG Target 4.7; Economic and Social Council, UN Guidelines for the Prevention of Crime, Resolution 2002/13, para. 25(d). [↑](#footnote-ref-187)
187. CRC, General Comment No. 6 on the Treatment of unaccompanied or separated children outside their country of origin, 2005, para. 42; CESCR, General Comment No. 6 on the Economic, social and cultural rights of older persons, 1995, paras. 36 and 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); General Assembly, UN Principles for Older Persons, A/RES/46/91, Resolution 46/91 of 16 December 1991, Principles 4 and 16; General Assembly, Protection of migrants, Resolution GA70/147 adopted on 17 December 2015, 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 and 4.4. [↑](#footnote-ref-188)
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385. Adopted 10 December 1948, UNGA Res 217 A (III). [↑](#footnote-ref-386)
386. Adopted 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3. [↑](#footnote-ref-387)
387. Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117. [↑](#footnote-ref-388)
388. Adopted 15 November 2000, General Assembly Resolution 55/25, A/RES/55/25, 8 January 2001. [↑](#footnote-ref-389)
389. Banjul Charter, adopted 27 June 1981. [↑](#footnote-ref-390)
390. Protocol of San Salvador, adopted 16 November 1999, A-52. [↑](#footnote-ref-391)
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394. Adopted 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195. [↑](#footnote-ref-395)
395. Adopted 18 December 1990, A/RES/45/158, United Nations, Treaty Series, vol. 2220, p. 3. [↑](#footnote-ref-396)
396. Adopted 18 December 1990, A/RES/45/158, United Nations, Treaty Series, vol. 2220, p. 3. [↑](#footnote-ref-397)
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398. Banjul Charter, adopted 27 June 1981. [↑](#footnote-ref-399)
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400. Arab Charter on Human Rights, adopted 22 May 2004. [↑](#footnote-ref-401)
401. OJ C 364/1, 18 December 2000 (entry into force 1 December 2009). [↑](#footnote-ref-402)
402. Adopted 10 December 1948, UNGA Res 217 A (III). [↑](#footnote-ref-403)
403. Adopted 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195. [↑](#footnote-ref-404)
404. Adopted 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3. [↑](#footnote-ref-405)
405. Adopted 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3. [↑](#footnote-ref-406)
406. Adopted 18 December 1990, A/RES/45/158, United Nations, Treaty Series, vol. 2220, p. 3. [↑](#footnote-ref-407)
407. Adopted 15 November 2000, General Assembly Resolution 55/25, A/RES/55/25, 8 January 2001. [↑](#footnote-ref-408)
408. Adopted 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117. [↑](#footnote-ref-409)
409. Adopted 14 December 1960. [↑](#footnote-ref-410)
410. Adopted 20 March 1952, ETS 9. [↑](#footnote-ref-411)
411. Banjul Charter, adopted 27 June 1981. [↑](#footnote-ref-412)
412. Protocol of San Salvador, adopted 16 November 1999, A-52. [↑](#footnote-ref-413)
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415. Adopted 10 December 1948, UNGA Res 217 A (III). [↑](#footnote-ref-416)
416. Adopted 20 December 2006. [↑](#footnote-ref-417)
417. Adopted 18 December 1990, A/RES/45/158, United Nations, Treaty Series, vol. 2220, p. 3. [↑](#footnote-ref-418)
418. Adopted 15 November 2000, General Assembly Resolution 55/25, A/RES/55/25, 8 January 2001. [↑](#footnote-ref-419)
419. Pact of San Jose, adopted 22 November 1969. [↑](#footnote-ref-420)
420. Banjul Charter, adopted 27 June 1981. [↑](#footnote-ref-421)
421. OJ C 364/1, 18 December 2000 (entry into force 1 December 2009). [↑](#footnote-ref-422)
422. Adopted 10 December 1948, UNGA Res 217 A (III). [↑](#footnote-ref-423)
423. Adopted 16 December 1966, 999 UNTS 171, United Nations, Treaty Series, vol. 999, p. 171, and vol. 1057, p. 407. [↑](#footnote-ref-424)
424. Adopted 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3. [↑](#footnote-ref-425)
425. Adopted 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195. [↑](#footnote-ref-426)
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429. Adopted 24 January 2007. [↑](#footnote-ref-430)
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433. European Convention on Human Rights, as amended. [↑](#footnote-ref-434)
434. Pact of San Jose, adopted 22 November 1969. [↑](#footnote-ref-435)
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454. Adopted 24 October 1945, 1 UNTS XVI. [↑](#footnote-ref-455)
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