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## **Human Rights Council**

### **Thirty-fourth session**

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Agenda items 2 and 3

### **Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General**

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations within large and/or mixed movements, on the basis of existing legal norms\***

### **Conference room paper of the Office of the United Nations High Commissioner for Human Rights**

#### *Summary*

The present *Conference Room Paper* is attached to report A/HRC/34/31, submitted to the Human Rights Council pursuant to Human Rights Council resolution A/HRC/32/14, in which the Council requested the United Nations High Commissioner for Human Rights to continue to develop, as co-chair of the Global Migration Group Working Group on Migration, Human Rights and Gender, principles and practical guidance on the protection of the human rights of migrants in vulnerable situations within large and/or mixed movements, on the basis of existing legal norms, and to report thereon to the Human Rights Council at its thirty-fourth session.

The conference paper includes the guidelines complementing each principle set out in A/HRC/34/31. The guidelines are currently in draft form and the present document is being presented as a progress report, pursuant to the request of the Human Rights Council.

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\* Reproduced as received.



These guidelines are designed to provide practical guidance derived from international best practice to States and other stakeholders on upholding the human rights of migrants in vulnerable situations. The complete draft of the principles and guidelines is available at <http://www.ohchr.org/EN/Issues/Migration/Pages/Draftsforcomments.aspx>

## **I. The Guidelines**

### **A. Principle 1: Ensure that human rights are at the centre of addressing migration, including responses to large and/or mixed movements of migrants**

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.
2. Ensure legislation and other measures of migration governance are consistent with States' obligations under international human rights law and do not adversely affect the full enjoyment of the human rights and fundamental freedoms of migrants. Undertake due diligence prior to adopting new policies on migration including human rights impact assessments, and ensure consultation with all relevant stakeholders, including migrants themselves. Immediately suspend, review and amend or repeal any laws and other measures that have negative consequences or disproportionate impact on the human rights of migrants.
3. Ensure that leaving, entering and/or staying in a country irregularly is not considered a criminal offence, given that border crossing, management of residence and work permits are administrative issues. Any administrative sanctions applied to irregular entry should be proportionate, necessary and reasonable, and should never include the detention of children. Ensure that migrants are not liable for criminal prosecution for having used the services of smugglers.
4. Ensure that there are appropriate laws and procedures in place to enable human rights and humanitarian actors to protect and assist migrants, and to document human rights violations. Adopt or amend legislation to ensure the effective accountability of private actors engaged by the State in migration governance.
5. Promote and support action in the context of migration to prevent statelessness, recognising inter alia that statelessness can be a gendered phenomenon, and ensure that all children are able to acquire a nationality.
6. Take necessary measures to achieve policy coherence on all human rights aspects of migration at the local, national, regional and international levels through a sustainable and whole-of-government approach.

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

7. Elaborate and implement human rights-based legal measures that protect migrants, regardless of their gender, sexual orientation, gender identity, ethnicity, disability, religion, nationality, migration or residence status, age, their motives for seeking to cross international borders, or the circumstances in which they have travelled or are found. Protect migrants from multiple and intersecting forms of discrimination throughout their migration. Ensure that non-discrimination provisions in law are applicable to all migration governance measures.
8. Repeal or amend any laws or other measures that may give rise to any kind of discrimination against migrants. Condemn and take effective measures against all acts, manifestations and expressions of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes applied to them, including on the basis of religion or belief, because they are non-citizens or migrants in an irregular status, and other

intersecting forms of discrimination including age and gender. Hold accountable those who commit such acts, including politicians, opinion-leaders and the media, and enable victims to access justice, including through accessible complaint mechanisms, and ensuring effective remedies. Ensure serious and extreme instances of hate speech and incitement to hatred are prohibited as criminal offences and brought for review by an independent court or tribunal.

9. Use correct and neutral terminology to describe migrants and migration, and promote evidence-based policies on migration that draw on research on the human rights of migrants, as well as on the fact-based impacts and contributions of migrants to countries of origin, transit and destination, including in terms of social and cultural life and diversity, economic growth, employment generation, social security policies, entrepreneurship and investment.

10. Introduce public education measures and conduct targeted awareness campaigns in order to combat prejudice against and the social stigmatization of migrants in general, and where relevant especially those of particular nationalities or religions. Devise or support locally-rooted campaigns that focus on supporting migrants and host communities and which aim to build empathy and solidarity and to confront prejudice, stigmatisation, and the exclusion of migrants.

11. Create or strengthen independent institutions and mechanisms, such as specialised national bodies, including National Human Rights Institutions or Ombudspersons, to monitor and report on all forms of discrimination against migrants. Ensure all Ombudspersons with relevant mandates adequately consider the intersection of migration with their area of focus.

### **C. Principle 3: Ensure access to justice for migrants**

12. Take measures to assist migrants, including those who are at particular risk of marginalization and exclusion, in gaining equal and effective access to justice. Ensure that dependent migration status is not a barrier to seeking or obtaining protection, support, or justice.

13. Develop or strengthen measures to provide competent, independent, free and confidential legal and other assistance to migrants, including accessible information and interpretation services to enable them to: understand their rights, obligations and any applicable procedures under criminal, administrative or labour justice processes; access due process and justice, including the right to an individual examination, the right to seek asylum, the right to appeal and the right to a judicial and effective remedy; and access victim support services.

14. Strengthen or establish official mechanisms and/or procedures to monitor, receive and investigate allegations of human rights violations and abuse of migrants. Provide adequate, and effective, prompt and appropriate judicial and other remedies, including reparation, noting that reparation should be proportional to the gravity of the violations and the harm suffered. Ensure the gender balance of such mechanisms and procedures corresponds with that of the migrant population. Where relevant, include the family of migrants who went missing, were subject to an enforced disappearance, or were killed in the course of their migration.

15. Ensure migrants are able to access independent and effective legal assistance and representation on an individual basis in legal proceedings that affect them, including during any related hearing, with quality legal aid made available without any cost to them as required by international standards.

16. Establish mechanisms to ensure migrants who are victims of or witnesses to crimes in the course of migration are able to participate in legal proceedings, give evidence and testify whether they are in the jurisdiction of the prosecuting State or not, and without fear of expulsion if they are.

17. Develop clear and binding procedures and standards on the establishment of firewalls between law enforcement and criminal justice actors, and immigration enforcement authorities or private actors, and ensure their implementation in practice.

18. Ensure that judges, lawyers and prosecutors who are involved or may become involved in proceedings relating to migrants are aware of relevant international human rights law and standards, and respect and fulfil their roles to uphold and protect the human rights of migrants. Ensure that the judiciary, legal profession and prosecutorial services are enabled to fulfil this role, including through the legal and practical guarantees of independence and impartiality provided for by international human rights law and standards.

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

19. Ensure that relevant legal frameworks, as well as international, multilateral, and bilateral agreements on competences on search and rescue zones, fully ensure the effectiveness of search and rescue operations.

20. Establish, operate and maintain adequate and effective services for search and rescue at sea. Ensure that these search and rescue services operate under a broad understanding of distress, for example rescuing any unseaworthy vessels even if not in immediate danger of sinking, and that they are proactive, patrolling at-risk zones with the sole objective to save lives. Ensure that all possible resources of the States are mobilised for search and rescue when the presence of migrants in international, contiguous and/or territorial waters is considered likely according to informed risk assessments.

21. Make every effort to protect the right to life of migrants, including at sea and inhospitable or dangerous land or other routes such as rivers or lakes. Ensure adequate resourcing of necessary assistance such as rescue services and equipment such as rescue beacons. Refrain from acts and omissions intended or expected to cause migrants' unnatural or premature death, as well as their legitimate expectation to enjoy a dignified existence.

22. Establish pre-identified and adapted places of arrival and disembarkation, including landing points for safe disembarkation, that allow for reception and assistance which meets human rights and humanitarian standards. This should include adequate medical screening and first psychological aid and vulnerability assessments, as well as adequate food and water, blankets, clothing, dignity kits, sanitary items, and opportunity to rest. Provide assistance in a non-discriminatory, disability-, age- and gender-responsive, and culturally appropriate manner. Humanitarian assistance must not be conditioned on border control, police or other enforcement procedures.

23. Develop guidelines and implement agreements with national protection bodies and other relevant actors to ensure timely and effective referrals for migrants to protection and assistance, in particular psychological and emotional support following their rescue. Ensure that specialised and priority support is provided to the most vulnerable migrants, including shipwreck survivors as well as victims of trauma, torture and sexual and gender-based violence. Put in place measures to respond to the special needs of children following rescue, whether they are travelling unaccompanied, have been separated from or are travelling with family/guardians

24. Provide training to those responsible for providing search, rescue or assistance on the primacy of their obligations to protect human rights including migrants' lives and safety, address specific needs, and ensure the human rights and dignity of all persons rescued.

25. Ensure those individuals and organisations providing search, rescue or assistance to migrants are not criminalised or otherwise punished for doing so, including through modifying existing legislation as necessary.

26. Establish and support public policies and other efforts at national, bilateral, regional and international levels aimed at searching for people who have gone missing or died on their journey and facilitate recovery, identification and transfer of human remains and notification of families, including granting relatives the right to access justice and, as appropriate, effective redress.

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

27. Protect the right of all persons to leave any country including their own, and ensure that migration and border-governance legislation, measures and practices are human rights-compliant, child-sensitive and gender-responsive and do not adversely impact on the human rights and dignity of migrants.

28. Ensure that no migrant is criminalised for crossing a border irregularly or with the help of a facilitator.

29. Prohibit border governance measures that cause or risk human rights abuses. Prohibit excessive use of force and dangerous border control practices, such as water-hosing and the use of dogs against migrants. Ensure there are no arbitrary and collective expulsions, including through tow-backs or push-backs, in all areas where the State exercises jurisdiction or effective control including outside the territory of the expelling State, at border areas and on the high seas.

30. Take all reasonable measures to minimise the duration for which migrants are delayed at borders or other crossing points on their journey. Provide adequate humanitarian assistance during border procedures and delays, including access to shelter, water and sanitation facilities, culturally appropriate food, and medical care with specific attention to the needs of children, pregnant women, older persons and persons with disabilities.

31. Implement individual screening and assessment procedures as soon as possible after arrival to ensure prompt identification of situations of vulnerability for all migrants without discrimination. Such screening should, as relevant, be prior to, apart from, or alongside interviews to establish an asylum claim. Ensure sufficient numbers of competent experts are present at borders to establish and deliver human rights-based screenings and referrals.

32. Establish practical and effective mechanisms to assess the individual situation of all migrants at borders. Prevent or suspend any expulsion until such an assessment has been completed or an appeal against any negative decision has been completed. Such a mechanism should; be composed of properly qualified personnel; be able to properly identify the individual situation of migrants in order to assess risks and rights including needs for protection; work in a timely manner, including providing adequate time for the migrant to present his or her case and seek remedies where appropriate; enable access to

competent legal advice and representation; be able to access all documents related to the case; provide justification for the decision in writing in a language and format understandable to the migrant; be able to exercise positive immigration discretion on humanitarian grounds where appropriate, including for migrants displaced by climate change and environmental factors; provide information on the remedies available; arrange appropriate referrals.

33. Ensure border authorities are only able to confiscate migrants' personal property when duly authorised by law and in accordance with international human rights standards in clearly defined, limited circumstances and establish clear procedures for their return.

34. Provide training for border authorities on their obligations to respect, protect and fulfil the human rights of migrants and on migration experiences and abuses that can occur throughout the migration process. Use training materials that are based on the evidence of migrants' experiences, that are border-specific and take into account the different risk factors and human rights violations that may be experienced by different groups of migrants.

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

**F. Principle 6: Ensure that all returns are only carried out in full respect for the human rights of migrants and in accordance with international law, including upholding the principle of non-refoulement, the prohibition of arbitrary or collective expulsions and the right to seek asylum**

36. Ensure the relevant judicial and administrative authorities are made aware of and implement the legal obligation to ensure that no person is returned to a place where there are substantial grounds to believe that they would be at risk of torture or cruel, inhuman, or degrading treatment or punishment, or other serious human rights violations or irreparable harm, including: threats to their liberty and security of person, risk to life including lack of necessary medical care, living conditions contrary to human dignity in cases in which the person is unable to cater for their basic needs, serious forms of discrimination, where expulsions would constitute arbitrary interference with migrants' right to family and private life, or the risk of onward refoulement. Ensure counter-smuggling measures and measures to manage irregular migration, such as the creation of special zones at airports or readmission agreements, do not breach the obligation of non-refoulement.

37. Any consent given to voluntary return processes must be fully and meaningfully informed, based on up-to-date, accurate and objective information, including in relation to the place and circumstances to which migrants will be returning. Consent must be given free of any coercion, including violence and ill-treatment, the actual or imputed prospect of indefinite or arbitrary detention, or detention in inadequate conditions.

38. Ensure that returns are only carried out in accordance with international law, in conditions of safety and dignity, and with due procedural guarantees. Children should be accompanied throughout the return process. Migrants who are being returned should not be subject to human rights violations and abuse by state or private actors, including arbitrary detention, violence and ill-treatment, and extortion.

39. Make efforts to guarantee that returning migrants can choose the State to which they are returned, subject to the agreement of that State. Ensure that the right of any person to

return to their own country is respected in law and in practice, and that nationality is not arbitrarily deprived or travel documents are not annulled in order to undermine the enjoyment of this right.

40. Make determinations on the return of children (including unaccompanied or separated children as well as children accompanied by their parents or other caregivers) in accordance with the principle of the best interests of the child. Such determinations should; be reached in a formal procedure with competent officials; contain the necessary safeguards, including allowing for the fulfilment of the right of the child to be heard, and his or her right to competent and independent legal representation; ensure that all solutions available to the child are equally assessed; incorporate the component of adequate development and survival of the child; and take into account the socio-economic conditions in the child's country of origin and family environment, including whether there is adequate safe reception in their country of origin.

41. Ensure that families are kept together in the country of residence rather than the parents being deported without their children, where return has been deemed not to be in the child's best interest. In cases of separation, States of origin and destination should cooperate to ensure that family tracing efforts continue after return.

42. Make every effort to secure the sustainability of returns by mitigating the risks returnees face upon arrival in countries of origin. Realise this by implementing measures to ensure the equal enjoyment of human rights by all returning migrants, including with regard to social protection, health care, an adequate standard of living, education and decent work, and meaningful and tailored reintegration programmes that respond to the differing needs of women and men. Ensure the effective reintegration of returning children, from a human rights perspective and through targeted measures which should include effective access to justice, education, health, family life, and protection against all forms of violence. Ensure that prior to return there is an adequate plan in place for the child's sustainable reintegration and adequate and ongoing post-return evaluation. Returns should not result in children being rendered homeless or housed in orphanages, residential care facilities, or other situations where they may face social exclusion or compromised development. Ensure returns are not to areas of repeated extreme weather and/or slow onset events. Create long-term, independent reporting mechanisms that are able to monitor potential or actual human right violations after returns.

43. Institute independent mechanisms for ongoing human rights monitoring post-return, which should; ensure that the return did not violate the principle of non-refoulement, the right to seek asylum, and/or the prohibition of arbitrary and collective expulsions; guarantee that all allegations of human rights violations during return processes are promptly and impartially investigated; monitor the human rights situation of migrants who have been returned in forced or voluntary processes; and ensure access to effective complaints mechanisms and remedies where appropriate.

44. Grant temporary residence status or other temporary protected status to any migrants who cannot be returned, including those who are refused admission into the territory of their country of origin or habitual residence, or for whom there are practical obstacles to return to their country of origin or residence. Do not hold migrants who cannot be returned in indefinite or protracted detention and protect against re-detention.

45. Ensure in all measures relevant to returns, whether forced or voluntary, that due consideration is given to the provisions on 'human rights-based return or removal' of OHCHR's *Recommended Principles and Guidelines on Human Rights at International Borders*.

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

46. Take preventative and response measures to protect migrants from violence and exploitation, whether inflicted by State institutions and officials or by private individuals and entities or groups. Ensure that prevention and response measures prevent reoccurrence, are accessible to all migrants, and that measures to protect migrants from violence and exploitation are devised in consultation with migrants and their organizations, representative employers' and workers' organizations, and criminal justice actors. All immigration facilities should adhere to violence prevention and response standards, including for sexual and gender-based violence prevention, and provide safe accommodation and assistance to migrant victims of violence and exploitation.

47. Ensure that legislation, policies and practice reduce risks that migrants will be exploited by those offering services or work in the formal and informal sectors, including being subject to forced labour or trafficking in persons. Ensure that migrant children are protected against exploitation and abuse, including the worst forms of child labour.

48. Establish accessible and confidential services for migrant victims of violence and exploitation including care, counselling, reporting and complaints mechanisms, and functioning referral pathways. Such services should include medical, sexual and reproductive healthcare, which can ensure access to essential medicines and services, as well as psycho-social and other relevant support services to assist in recovery and rehabilitation, appropriate to the human rights violations to which they have been subjected. Service providers should be trained to understand and respond to the human rights and needs of migrants and their families who have been affected by violence, and to overcome anti-migrant bias. Migrants' experiences of violence, including domestic violence and sexual and gender-based violence, should be addressed without causing further victimisation, trauma or harm. Ensure appropriately tailored information about protection, services and rights is made available to migrants in a format and language they understand and in an age appropriate manner.

49. Strengthen law enforcement and criminal justice responses to violence and exploitation against migrants. Ensure the prompt, independent and effective investigation and prosecution of excessive use of force, including lethal force, and of any act of violence against migrants, regardless of the status or situation of the migrant or whether the alleged perpetrator was acting in a public or private capacity.

50. Take measures to encourage migrants to report crimes committed against them, with clear and binding firewalls to ensure migrants are able to report crimes against them and to participate in criminal justice proceedings and access related assistance and support. Ensure that migrants are not deterred from doing so due to fears of arrest, detention and expulsion on the basis of their migration status. Ensure that immigration authorities do not conduct enforcement operations at or near places of administration of justice such as court houses and community police stations. Ensure that sentences imposed on those who carry out violence against, or exploit, migrants are proportionate to any human rights violations committed against migrants.

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

51. Establish a presumption against immigration detention in law.

52. Work towards progressively ending all forms of immigration detention. Until then, ensure that immigration detention is implemented in line with international human rights law and its procedural safeguards. These must include; guarantees that detention can only be ordered by a court of law; ensuring that detention is always determined on a case-by-case basis as an exceptional and last resort measure and for the shortest period of time; respect for due process of law, including access to legal counsel and fair trial guarantees; ensuring detention is not mandatory, that it is necessary and proportionate, and that it is of limited scope and duration; ensuring that there are no suitable non-custodial alternatives available to meet the same legitimate aim; clearly defining in law the reasons for detention; ensuring that these reasons are explained to migrants orally and in writing, in a language and format they understand with the assistance of an interpreter if necessary; guaranteeing that information on the individual's rights in connection with the decision is included in the detention order; guaranteeing the right to challenge the lawfulness of any deprivation of liberty in a timely manner before a court, independent of the detaining authority, and to be ordered promptly released if the detention is found unlawful.

53. Develop national plans to end immigration detention and to implement human rights-compliant, non-custodial, community-based alternatives to detention based on an ethic of care not enforcement. Legislation should include the obligation of administrative or judicial bodies to start from a presumption of liberty and only if that is rejected for clear, articulated reasons to consider human rights-based alternatives to detention – one by one – including the obligation to provide adequate reasons at each step why each option is not applicable in the particular case.

54. Ensure detention conditions guarantee due respect for the dignity of the person by ensuring adherence to the UN Standard Minimum Rules on the Treatment of Prisoners and all other relevant international standards. Conditions should reflect the administrative purpose for which migrants are being detained and migrants should never be held in criminal prisons or facilities designed for criminal corrections. Any restrictions imposed on individual autonomy should be applied only to the extent necessary to protect the rights of others and to maintain public order. Ensure that migrants deprived of liberty have prompt access to independent lawyers, including to receive visits and to communicate with such lawyers, both to make effective the right to challenge the lawfulness of detention, and as a safeguard against torture or other cruel, inhuman or degrading treatment.

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

56. Enforce the principle of non-detention for immigration purposes of all children, regardless of their status or the status of their parents, and expeditiously and completely cease all such detention of children, even for short term periods. Ensure also that migrants with specific protection needs including but not limited to pregnant or nursing women, older persons, persons with disabilities, survivors of torture or trauma, migrants with particular physical or mental health needs and stateless persons, are not placed in detention.

57. Ensure that centres of detention are effectively monitored by autonomous and independent mechanisms with a clear human rights mandate to prevent and address any act of torture and other form of violence, as well as to protect the rights of migrants deprived of liberty, including children. Ensure that monitoring mechanisms have clear roles and responsibilities and broad powers defined by law, including; the right to gain access to any place of deprivation of liberty, including through unannounced visits; the right to access any needed information, to request reports before, during and after the inspection and to receive a prompt response; the right to receive complaints directly from migrants; and the authority to make public the results of their inspections and recommendations, while preventing the public disclosure of information that may place a migrant at risk.

58. Take the necessary measures to ensure that consulates respond effectively to the needs of their citizens being held in immigration detention. Such measures should include ensuring legal aid, promoting access to justice and other guarantees of due process, the provision of assistance, the allocation of sufficient human and financial resources to implement consular duties in this regard, and the development of ongoing training programmes for consular officials on human rights law. Detaining authorities should be made aware of the particular risks posed to certain groups, such as irregular migrants or LGBTI individuals, of being brought to the attention of consular authorities without their knowledge and informed consent.

59. Ensure accountability and remedy for any instances of unlawful or arbitrary detention, deficiencies in detention standards and any violations or abuse of the human rights of detained migrants by State actors and private individuals, entities or security forces.

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

60. Develop measures to ensure the non-separation of migrant families, including in disembarkation and border control processing, reception and registration processes, as well as in the context of detention and deportation. Ensure that children enjoy the right to express their views freely concerning decisions about their possible return to their families. Family reunification should never be used to justify expedited return in the absence of due process.

61. Take positive measures, both at the domestic level as well as in bilateral and regional processes, to facilitate the unity or reunification of families. Enhance regular channels for family reunification without discrimination or disproportionate restrictions including in relation to age, income, or language. Ensure that requests for family reunifications entail no adverse consequences for the applicants and for members of their family.

62. Make all efforts to trace and reunite unaccompanied or separated children with their parents, in accordance with the principle of the best interests of the child, noting that reunification in the country of origin may not always be in the child's best interests. Simplify and speed up procedures, without compromising human rights standards, to make it easier for children to reunite with their families. In particular, guarantee that applications by a child or his or her parents to enter or leave a State for the purpose of family reunification will be dealt with by States in a positive, humane and expeditious manner, without compromising standards.

63. Ensure family registration and reunification processes recognise that various forms of family exist and do not practice gendered, heteronormative, or other stereotyped or prejudicial assumptions in registering family representatives.

64. Ensure, including through legal assistance and judicial and administrative protection, that parents who have been returned or otherwise removed are able to exercise their right to family unity and custody of their children, including of those children who have citizenship of the State that is carrying out the removal, before the courts of that country.

65. Families with children should be accommodated together as a unit in safe and child friendly environments. Maintaining family unity should never form the justification for the detention of children whose parents or guardians are detained; alternatives to detention should instead be applied to the entire family.

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

66. Ensure that all policy, practice and guidance on migrant children and other children affected by migration; are based on international law, in particular the principles of non-discrimination, the best interests of the child and the full participation of all children, and ensure to the maximum extent possible the survival and physical, mental, spiritual, moral and social development of migrant children and children of migrants, keeping in mind that the principle of the best interests of the child encompasses short, medium- and long-term effects of actions related to the development of the child; uphold the principle that the child's best interest takes precedence over migration management objectives or other administrative considerations, guarantee that children in the context of migration are treated first and foremost as children, and ensure equal standards of protection are provided to all children regardless of age; incorporate due process guarantees, including the right to qualified legal representation; provide migrant children with opportunities to express their views freely in all matters affecting them and to have their views taken into account in accordance with their age and maturity; ensure that all migrant children have access to age-appropriate and child sensitive information on their rights and any processes to which they will be subject.

67. Provide guidance on the practical operationalization of the principle of the best interests of the child for all cases involving migrant children who may not be making a claim for asylum under the 1951 Refugee Convention. This guidance should be based on international human rights law and best practice, and be directed at child protection officers and other relevant officials.

68. In case of reasonable doubt regarding the age of a migrant, provide gender-sensitive and multidisciplinary age determination procedures which draw on assessments by independent and qualified psychologists and social workers in a safe, age-appropriate and dignified manner. Establish a presumption in favour of the child in situations of ambiguity. Return should be suspended and children should not be detained while age-assessment takes place. Recall in this context the absolute prohibition on the detention of children based on their migration status.

69. Ensure that national child protection systems, in their design and implementation, take into account the distinctive needs and views of migrant children and children born to migrant parents. Coordinate child protection policies and systems internally and across borders that are in full compliance with international human rights law and ensure that officials who are likely to encounter migrant children are trained in good practices such as

child-friendly communication. To the extent possible, ensure that there are adequate numbers of trained child protection officers at all stages of the migration journey.

70. Ensure screening of child migrants is conducted by a child protection officer, and not an immigration or border enforcement officer, who is empowered to refer the migrant child to child protection experts for further screening, interviewing, assistance and protection. Ensure that unaccompanied children are accommodated in separate reception facilities from adults.

71. Provide unaccompanied and separated migrant children with specific protection and assistance. Establish or strengthen qualified, trained and independent guardianship mechanisms, to ensure they are promptly appointed to give the necessary protection and assistance to all unaccompanied and separated children and child-headed households as soon as they are identified. Develop national implementation plans to ensure that all migrant children are able to access competent guardians in a timely manner.

72. Ensure the effective provision of free birth registration for all children in the context of migration, irrespective of the migration or residence status of their parent/s or other guardians.

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

73. Ensure legislation, policy and programming is designed to meet the particular needs and rights of migrant women and girls. Provide adequately trained women case workers, lawyers, interviewers and independent interpreters and ensure childcare is made available during the interviews to ensure women are able to present their situation and any claim for human rights protection claims in a safe, culturally-appropriate and gender-responsive environment. Ensure women's reports of human rights abuses are not treated through the lens of male experiences.

74. In all reception facilities and any other centres for migrants, ensure women and girls are not discriminated against in asset allocation and control over resources. Women staff should be present wherever women or girls are accommodated. All such centres should provide well-lit, safe and private WASH (water, sanitation and hygiene) facilities, as well as multi-purpose culturally-appropriate and women-only and mother/baby areas that provide safe spaces for women to rest and receive information as well as other services.

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

76. Provide training, monitoring and supervision to ensure border police and immigration officials including contracted private actors are adequately equipped, trained, supervised and monitored for non-discriminatory practices and responsiveness to the needs and human rights of migrant women and girls.

77. Ensure a robust gender analysis of the differential impacts of migration policies and programmes on migrants of all genders, including in relation to access to visas, residence permits, employment, detention policies and labour rights as well as in the context of bilateral and multilateral agreements such as readmission agreements. Give special attention to the ways in which women and girls can be understood only as victims in need of protection as this can be used to justify restricting the mobility of women and girls. Review and amend any gender discriminatory restrictions on migration in law or practice that limit

opportunities for women and girls or which do not recognise their capacity and autonomy to make their own decisions.

78. Involve a cross-section of migrant women of different nationalities, including adolescent girls, women-headed households, pregnant women and women with disabilities, in drafting and regularly reviewing relevant laws, policies and programmes to ensure that they are adequate to their needs and human rights.

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

79. Ensure health systems and national plans of action on health are inclusive of migrants, regardless of their status, and create legal and administrative mechanisms that make inclusion a reality in practice. Clearly reject the use of migration status as a basis to exclude people from accessing health care in the public system. Promote migrant-responsive health policies and programme interventions that can provide equitable, affordable and acceptable access to essential health promotion, disease prevention, access to medicines, and good quality care for migrants.

80. Provide access to health facilities, goods, services and conditions, and ensure that they are delivered to migrants in a manner that is non-discriminatory, gender-responsive, culturally and linguistically appropriate. These services should include clinical diagnosis, treatment and health promotion, and vaccinations for children, which are in line with human rights standards and tailored to the needs of migrants where relevant.

81. Provide timely and accurate information to migrants on health issues and their health rights at all stages of their migration; along migratory routes, at reception points, and in communities where migrants live and work, in a language and format that migrants can understand. This should include information about universal access to health services including primary health care, as well as rehabilitative and emergency medical care that is available to migrants.

82. Provide access to rights-based, comprehensive and integrated sexual and reproductive health information and services. This should include inter alia, menstrual hygiene products, safe and effective methods of modern contraception; emergency contraception; maternal health care including emergency obstetric services and pre- and post-natal care; safe and accessible abortion care; prevention, treatment, care and support for sexually transmitted infections including HIV; and specialised care for survivors of sexual violence and abuse. Provide, as a priority, a minimum initial service package for reproductive health.

83. Any HIV testing offered to migrants should be conducted in a voluntary manner, ensuring pre- and post-test counselling, informed consent and in privacy and guaranteeing that results will be confidential. There should be no negative consequences of testing HIV positive such as removal or return, restriction of freedom of movement, or denial of access to care, as these represent a violation of rights and do not serve public health objectives.

84. Develop strategies in conjunction with relevant actors including civil society service providers to ensure adequate continuity of care for the management of long-term or chronic health needs. Make every effort to ensure this continuity through putting adequate arrangements in place, such as mechanisms to transfer medical records along the migratory route or when migrants are detained or relocated.

85. Recognise that migrants may have particular and often urgent mental health needs. Ensure their access to adequate mental health care, including at reception and through referrals to appropriate secondary services. Ensure that migrant children have access to

specific care and psychological support, which takes into account that they experience stress differentially than adults and have lower coping levels. Provide the necessary counselling for migrants who have lost family members, and for migrant women who have suffered miscarriages, en route. Design and deliver mental health promotion programmes in partnership with migrants to ensure that they are culturally appropriate and avoid stigma.

86. Develop procedures and standards on the establishment of clear and binding firewalls between public health service providers and immigration enforcement authorities or private actors, and ensure their implementation in practice. Ensure that immigration authorities do not conduct enforcement operations at or near medical facilities and premises.

87. Ensure that migrants who are detained are held in conditions that meet all requirements of health with access to necessary healthcare services, including for sexual and reproductive health and mental health conditions, free of charge and without discrimination.

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

88. Take measures to ensure that migrants are able to access an adequate standard of living, including in temporary locations such as reception facilities and informal camps. Ensure these are accessible to all migrants, including children, persons with disabilities, older persons and pregnant, new and breastfeeding mothers. An adequate standard of living would include; adequate safe food and nutrition in a quantity and quality sufficient to satisfy an individual's dietary needs; culturally acceptable, potable water and sanitation; appropriate and adequate clothing; and adequate housing and the continuous improvement of living conditions.

89. Guarantee migrants access to shelter which includes sufficient facilities to meet their needs including their right to privacy and can protect them from threats to their safety. Ensure that they are able to carry out necessary improvements, including to temporary shelters and informal camps. Include migrants, regardless of their status, in national plans of action on housing.

90. Ensure any evictions or planned relocation of migrants are carried out in strict compliance with the relevant provisions of international human rights law and through full and effective consultation with affected individuals. Any such evictions should only take place with the full, prior and informed consent of those being evicted, in accordance with due process safeguards as well as general principles of reasonableness and proportionality, and only after alternatives to evictions have been duly considered. Establish or modify procedures and regulations to ensure prior to, during and after any eviction that migrants are promptly provided with relevant and accurate information about their situation, their rights, applicable legal procedures and remedies, possible consequences of their non-compliance with these procedures, location of and conditions in proposed reception centres or relocation sites, as well as contacts of legal aid providers, ombudspersons and relevant civil society organizations. Strictly ensure that migrants are not subjected to forced eviction.

91. Develop procedures and standards to establish clear and binding firewalls between public or private service providers as well as public or private housing providers, and immigration enforcement authorities. Ensure that irregular migrants are not criminalised for exercising their right to an adequate standard of living, and that private actors – such as landlords and civil society organisations – who facilitate their exercise of this right are also

not criminalised. Ensure that migrants, regardless of their status, are able to access homelessness shelters.

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

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

93. Develop national policy, and national action plans as appropriate, to ensure the protection of the rights of all migrants in the labour market, including in respect of access to decent work and livelihood, given that everyone is entitled to the right to work and the right to just and favourable conditions of work, without discrimination on any basis.

94. Ensure equality of treatment and non-discrimination of migrants with nationals and among all workers without distinction in respect of the terms and conditions of employment, including wages, rights in the workplace, social dialogue including trade union rights, recognition of skills and qualifications, and social protection. Ensure migrants are not discriminated against on the basis of occupation, recognising that many migrants, especially migrant women, are compelled to work in the informal economy and are often excluded from protection under national labour laws.

95. Strengthen or make provision for adequate supervision of working conditions for migrants in all sectors by the competent labour market authorities, such as labour inspection services. Establishing and publicise clear and binding firewalls between complaints mechanisms, labour inspection services and complaints mechanisms, and immigration enforcement authorities, and ensure their implementation in practice.

96. Establish effective complaints mechanisms to ensure that workers, regardless of nationality, migration or residence status, are able to take complaints against their employers, and access remedies including unpaid wages and compensation for violations of labour rights. Ensure unrestricted and effective access to judicial remedies and reparation for violations of their rights in the workplace without fear of reprisals and expulsions, and regardless of their migration status. Provide access to workers' compensation schemes in the case of occupational injuries or accidents to all migrants without discrimination.

97. Ensure the protection of all migrants from abusive and fraudulent recruitment practices, including by ensuring effective regulation of labour recruiters and guaranteeing that migrants are not compelled to pay recruitment fees or related costs. Ensure the effective application of ILO's *General Principles and Operational Guidelines for Fair Recruitment*.

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

98. Develop procedures, mechanisms and partnerships to ensure the effective access of all migrant children to adequate and appropriate education at all levels, on the basis of equality of treatment with nationals and with primary education free of charge for all. All aspects of education should be provided on a non-discriminatory basis including

examinations, qualification certification, vocational training, and financial subsidies. Develop and implement national plans of action on education and training that are inclusive of migrant students, without discrimination.

99. Develop and publicise procedures and standards on the establishment of clear and binding firewalls between schools and other education service providers and immigration enforcement authorities. Make it clear to administrators, teachers and parents that they are not required to report or share data on the regular or irregular status of pupils or their parents. Ensure that immigration authorities do not conduct enforcement operations on or near school or other education premises.

100. Implement or strengthen measures to recognise migrants' educational and vocational qualifications and transfer educational achievements.

101. Introduce inclusive curriculum content that fosters intercultural dialogue between migrant and host communities and promotes understanding of the situation and rights of migrants. Provide targeted training to teaching personnel at all levels and forms of education with the objective of fostering respect for the human rights of migrants and for cultural diversity.

102. Support migrants' access to vocational training and lifelong learning opportunities that help them acquire the knowledge and skills needed to participate fully in society.

## **P. Principle 16: Uphold migrants' right to information**

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

104. Provide migrants with all necessary information in order to make informed decisions about their migration, including on routes, means of travel, and conditions of entry and stay. Any campaigns that are developed and implemented in this respect should; be based on consultation with migrants and other affected individuals, local and community based organisations as well civil society organisations in countries of origin, transit and destination; as a primary aim provide information that is targeted to protecting human rights and promoting safe alternatives to dangerous migration routes, rather than solely focused on preventing movement; ensure that they do not, deliberately or unintentionally, foster an anti-migrant environment including by perpetuating negative stereotypes about migrants.

105. Provide access to the internet as a tool for migrants to exercise their human rights. This could include new forms of information-sharing that migrants use to navigate their journeys, to stay in contact with families, and to share their experiences, including to safely report gender-based and sexual violence. Ensure migrants are able to retain and use their communication equipment at reception centres.

106. Ensure migrants' privacy online is protected as part of the realization of their right to information and in line with the protection of personal data. Commit to not tracking, collecting, storing or sharing the following with the objective of limiting migrants' human rights; data of migrants' journeys, location data, or their communications through digital technologies and media, or data of those who provide assistance to migrants.

107. Promote a safe and enabling environment for all media professionals, citizen-journalists and journalistic sources to be able to perform their work without undue interference, in order to ensure independent and accurate reporting on issues related to the

movement of migrants in a vulnerable situation. End impunity for attacks on media professionals who report on such issues.

**Q. Principle 17: Guarantee monitoring and accountability in all responses to migration, including in large and/or mixed movements of migrants**

108. Establish or strengthen independent internal and external mechanisms to monitor the human rights impact of laws, policies and practices that are relevant to migrants. Publish monitoring reports (while protecting confidentiality) in line with principles of accountability and transparency.

109. Ensure and facilitate the unrestricted access of independent monitoring bodies, including national human rights institutions, ombudspersons, national preventive mechanisms and other relevant bodies to all locations, including places of detention, and to all information that is required to effectively monitor the human rights of migrants. Enable civil society actors working with migrants to participate in monitoring and evaluating the human rights impact of governance measures. Share this information with the United Nations human rights treaty-monitoring bodies and special procedures and through the Universal Periodic Review process. Ensure that mechanisms are put in place to implement recommendations by the national and international monitoring bodies.

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

111. Investigate and prosecute corruption on the part of immigration authorities as well as the involvement or complicity of authorities in abuse of migrants' human rights, and ensure necessary legislation and resources for this purpose.

112. Provide effective and timely remedies that respond to the different types of human rights abuse and violations experienced by migrants. Remedies must be provided by a judicial mechanism or a mechanism with equivalent independence, impartiality and effectiveness, and ensure the provision of adequate and comprehensive reparations.

113. Ensure the effective accountability of non-State actors, including private security companies and military contractors as well as private transport companies, which are involved by States in responses to migration, including large and/or mixed movements of migrants. This would include private actors who are involved in search and rescue, implementing entry restriction measures such as pre-departure screening and decisions on access to transportation, providing services to migrants, or operating detention facilities. Concrete mechanisms should be established to ensure accountability, and to guarantee remedies in the case of human rights abuses.

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

114. Provide a safe, accessible and enabling environment in which individuals and organizations working to support migrants can operate. Ensure specific protection of human rights defenders who work in defence of migrant women's rights, as well as migrants who defend the rights of other migrants. Do not criminalize the provision of support and assistance to migrants. Ensure that human rights defenders are not prevented from enjoying human rights owing to their work.

115. Develop and put in place sustainable public policies or programmes that support and protect human rights defenders at all stages of their work and do not place any limitations on their work that are contrary to international standards. Ensure that legislation affecting the activities of human rights defenders, including any legislation and procedures governing the registration and funding of civil society organisations as well as legislation designed to guarantee public safety and public order, is consistent with international human rights law.

116. Take all necessary measures to ensure the protection of human rights defenders working with migrants, individually and in association with others, against any violence, threats, retaliation including discrimination, threats of deportation or other kinds of pressure or arbitrary action, by State or non-State actors, as a consequence of their work.

117. Investigate and pursue accountability for all attacks and threats by State and non-State actors against migrants' human rights defenders as well as against their family members, associates and legal representatives. Condemn publically all cases of violence, discrimination, intimidation and reprisals in this context.

118. Adopt or revise and implement national legal frameworks to protect any person who discloses information about the human rights of migrants that they reasonably believe, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud or harm to the environment, public health or public safety. Ensure there are adequate oversight mechanisms to protect, investigate and provide redress and compensation as appropriate.

119. Express public support for the important role of human rights defenders and the legitimacy of their work, including by condemning all cases of violence and discrimination against them and underlining that such practices can never be justified.

**S. Principle 19: Improve the collection of disaggregated data on the human rights situation of migrants, while ensuring the right to privacy and protection of personal data**

120. Produce and support quantitative and qualitative research on migrants' experiences, with their consent and voluntary participation, to inform rights-based and evidence-based migration policies, to measure trends and raise awareness of risks, and to sanction and prevent abuse of the human rights of migrants. Priority subjects for research include, but are not limited to the following; data on the number and circumstances of migrants in vulnerable situations; analysing the root causes and drivers of the movement of migrants in vulnerable situations, including analysis of the decision-making factors and triggers for international migration; data on the number, age and gender of migrants crossing maritime, land or air borders, including those who are killed, missing, injured, or victims of crime or enforced disappearances while attempting these crossings; quantitative and qualitative data and indicators on immigration detention, on the alternatives applied and the reasons for applying them and discounting other options; data on complaints, investigations, prosecutions, and convictions of all instances of human rights violations perpetrated by State or non-State actors against migrants.

121. Disaggregate data on the human rights situation of migrants by age and gender as well as other grounds as relevant, such as migratory status, religion, ethnicity, disability, sexual orientation or gender identity and minority status.

122. Work collaboratively to collect reliable statistical data on international migration, including through developing international standardised approaches for monitoring indicators on and variables relating to migrants' human rights.

123. Ensure research and data collection methodologies are firmly grounded in ethical principles, including an understanding of the need not to re-traumatize or otherwise harm migrants, as well as international standards and principles for the protection of personal data. Data should be permanently and irreversibly anonymised to ensure its use does not compromise privacy rights and that it cannot be used for immigration enforcement purposes. Ensure digital biometric technologies are never used to facilitate hi-tech forms of discriminatory profiling of migrants or to increase their vulnerability to surveillance, or are otherwise used, stored or processed in a way that can cause risks to individuals.

124. Monitor collection of all data on migrants (including biometric data) to ensure it is obtained lawfully, stored, transferred and disposed of in accordance with international standards and best practice guidelines on data protection and privacy. Personal data, including biometric data, should be handled in a confidential manner and be subject to a high level of data security to prevent unauthorized access, loss, or damage.

**T. Principle 20: Build capacity and promote cooperation amongst and between all relevant stakeholders to ensure a gender-responsive and human rights-based approach to migration governance and to understand and address the drivers of the movement of migrants**

125. Establish or strengthen multi-stakeholder partnerships and cooperation to uphold the human rights of all migrants. Stakeholders include national human rights institutions, intergovernmental, international and regional organisations, civil society organisations including representative migrants' associations, women's organisations, trade unions, representative employers' organizations and private sector actors, at the local, national, regional and international levels. Establish terms and conditions for cooperation and coordination among stakeholders with clear areas of responsibility, including referral procedures, and regular information exchange.

126. Build the capacity of all officials, including of law enforcement, municipal authorities and local governments, who are in contact with migrants to promote and protect the human rights of all migrants.

127. Enhance sufficient, accessible and safe migration pathways, through both extraordinary and permanent avenues, and promote holistic approaches that take into account the demand for such pathways, such as for labour migration at all skills levels, that come from receiving societies as well as the necessity for migrants to seek protection of their rights, including the right to family life.

128. Promote international cooperation to address the root causes and drivers of the movement of migrant in vulnerable situations in a rights-based and sustainable manner. Ensure that all responses to manage or mitigate such drivers, including those related to the adverse consequences of climate change and environmental degradation, are carried out in accordance with international human rights law and standards in order to facilitate migration with dignity and to avoid human rights violations. Ensure the meaningful participation of migrants and their communities in these responses.

129. Consider regularising the situation of migrants in an irregular status within a reasonable period of time as the most effective measure to address the needs, and secure the rights, of such migrants.

130. Promote the inclusion of migrants in receiving societies. Develop integration policies, practices, institutions and partnerships which aim to support inclusion and foster greater social and economic equality and cultural diversity. In this regard gather complementary skills across the public sector, private sector, civil society and migrant

communities. Ensure that migrants are able to form and join trade unions and to participate in informal networks and associations as well as community and faith-based activities. Make efforts to ensure that migrants are able freely to practice their religion or belief and to worship in private and public, including in community with others.

131. Improve knowledge, build capacity and sensitize media professionals and outlets on the situation and human rights of migrants. Strengthen the capacity of media professionals and journalists to report accurately and sensitively on migration issues with an emphasis on eliminating harmful stereotypes, upholding the rights of migrants and promoting recognition of the value of inclusive and diverse societies.

132. Ensure that migration policy-making at the national, regional and international levels, is subjected at all times to oversight including parliamentary scrutiny and rendered transparent and accountable by making public all bilateral agreements, readmission agreements and Memoranda of Understanding relevant to migration. Ensure that international cooperation is always premised on the obligation to respect, protect and fulfil the human rights of migrants and never conditional on measures that prioritize the unlawful and/or disproportionate restriction or containment of migration.

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