
INTER-AMERICAN PRINCIPLES ON THE HUMAN RIGHTS OF ALL MIGRANTS, REFUGEES, STATELESS PERSONS AND VICTIMS OF HUMAN TRAFFICKING

(Resolution 04/19 approved by the Commission on December 7, 2019)

The Inter-American Commission on Human Rights, under the auspices of its Rapporteurship on the Rights of Migrants and pursuant to Article 41.b of the American Convention on Human Rights,

RECOGNIZING the obligation of States to protect the rights of all persons, regardless of their migration status, pursuant to the Charter of the Organization of American States (OAS); the American Declaration on the Rights and Duties of Man; the American Convention on Human Rights (“Pact of San José” or “American Convention”), the Charter of the United Nations; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”); the Inter-American Convention against All Forms of Discrimination and Intolerance; the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”); the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities; the Inter-American Convention on the Protection of the Human Rights of Older Persons; the American Declaration on the Rights of Indigenous Peoples; the Inter-American Convention to Prevent and Punish Torture; the Inter-American Convention on Forced Disappearance of Persons; the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas;

RECALLING the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Convention on the Rights of Persons with Disabilities; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention for the Protection of All Persons from Enforced Disappearance; the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons; the 1961 Convention on the Reduction of Statelessness; the 1957 Convention on the Nationality of Married Women; the 1985 Declaration on the Human Rights of Individuals who are not nationals of the country in which they live; the Cartagena Declaration on Refugees of 1984; the Conventions of the International Labour Organization, specially No. 87, 98, 29, 105, 138, 182, 100, 111; the United Nations Convention against Transnational Organized Crime and its Protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol); the Protocol against the Smuggling of Migrants by Land, Sea and Air; the New York Declaration for Refugees and Migrants; the Global Compact on Refugees; the Global Compact for Safe, Orderly and Regular Migration; the 2030 Agenda for Sustainable Development; and other relevant international instruments;

EMPHASIZING the universality, indivisibility, interdependence, interrelationship, progressivity and non-regression of all human rights and fundamental freedoms, and the need to guarantee all persons, regardless of their migration status, full respect for their human rights in accordance with Articles 1 and 2 of the American Convention; and the right of all migrants to equal treatment and non-discrimination on the grounds of race, color, sex, language, religion or conviction, political or other opinion, national or social origin, economic status, birth, property, marital status, sexual orientation, gender identity or expression, ethnic group, disability, nationality or statelessness, migration or residence status, age, reasons for crossing international borders or the circumstances of travel, or any other factor;

REAFFIRMING the fundamental principles of international human rights instruments, the principle of *non-refoulement*, upheld in humanitarian law and refugee law, which prohibits the return of any person to a

situation in which they would face a real and foreseeable risk of persecution, death, torture, and other cruel, inhuman, and degrading treatment or punishment, enforced disappearance or other irreparable harm;

RECOGNIZING that migration movements require differentiated and individualized forms of protection that cater to people at all stages of international displacement, including persons migrating for humanitarian, economic, or environmental reasons, migrants in regular or irregular situations, asylum seekers, refugees, stateless persons, beneficiaries of complementary protection, victims of human trafficking, survivors of torture, children and adolescents accompanied or unaccompanied or separated from their families, women, LGBTI persons, indigenous persons, returned persons, and any other person requiring international protection;

CONSIDERING that countless migrant women, girls, and LGTBI persons, including refugees, suffer from specific, continual, and disproportionate violence in their countries of origin, transit or destination, including sexual and gender-based violence, violation of their sexual and reproductive rights, and trafficking in persons for all its purposes, which must be analyzed from a human rights, gender, and differentiated perspective;

RECALLING the transnational nature of migration and the importance of shared responsibility between States, and the need to cooperate and engage in dialogue to defend and protect the rights of all migrants, regardless of their migration status; the need for comprehensive, people-centered and human rights-based policies, laws and practices, including responses to large and/or mixed movements of migrants implemented by States to address the human mobility phenomenon, and the applicability of the principles of non-regression and non-derogability in all relevant matters;

URGING the member states of the OAS, their governments, administrations, civil society organizations, regional and international bodies and relevant actors working with migrants to implement these guidelines in recognition and development of law, human rights principles, standards, resources, regulatory frameworks and public policies regarding all migrants, regardless of their migration status, and their specific international needs;

ACKNOWLEDGING that migrants, regardless of migration status, contribute significantly and positively to their home and host communities, generating prosperity, knowledge, skills, innovation, and sustainable development, and that their being able to participate in and influence the community on an equal basis is an important part of human dignity;

OBSERVING WITH CONCERN the rise in xenophobic political movements and trends, accompanied by a resurgence of aggressive rhetoric and repressive actions by State and non-State actors and their human security implications for border areas as well as cities, with direct repercussions on the well-being of both migrant and local communities;

RECALLING that the irregular departure, entry, or stay of a person in a State cannot constitute a criminal offense, and therefore must not be the subject of criminal or similar law; and that the use of the term “illegal” as a qualifier of persons reinforces the criminalization, discrimination, and dehumanization of all migrants, regardless of their migration status;

REAFFIRMING the importance of combatting all forms of hate speech, violence, criminalization, discrimination, racism, xenophobia and related forms of intolerance against migrants, regardless of their migration status, and any against person in need of international protection, in the region and in the world; and

RECOGNIZING that the construction of a global and comprehensive framework for the protection and promotion of the rights and dignity of all migrants will make a significant contribution to the international protection of their rights,

ADOPTS the following INTER-AMERICAN PRINCIPLES ON THE HUMAN RIGHTS OF ALL MIGRANTS, REFUGEES, STATELESS PERSONS, AND VICTIMS OF HUMAN TRAFFICKING.

INTER-AMERICAN PRINCIPLES ON THE HUMAN RIGHTS OF ALL MIGRANTS, REFUGEES, STATELESS PERSONS AND VICTIMS OF HUMAN TRAFFICKING

GENERAL PROVISION

These Principles seek to guide OAS member states in their obligations to respect, protect, promote, and guarantee the human rights of all persons, regardless of their nationality or migration status, including refugees, stateless persons, and victims of human trafficking. These Principles serve as guide to State authorities as they develop legislation, regulations, administrative decisions, public policies, practices, and programs and relevant jurisprudence.

DEFINITIONS

For the purposes of the present document:

MIGRANT: Any person who is outside the social, affective, or political territory to which they belong. For the purposes of these Inter-American Principles, a migrant is specifically considered to be someone who is outside of a territory of which they are a citizen or national, regardless of migratory status, intent and temporality. It also encompasses stateless persons and victims of human trafficking as defined by national legislations and by the pertinent international conventions.

MIXED MOVEMENTS: The cross-border movements of persons with varying protection profiles, reasons for moving and needs, who use the same routes and methods or means of transport, often in large numbers.

COMPLEMENTARY PROTECTION: The protection to be provided to a person or persons not qualifying for refugee or asylum status to prevent their return to the territory of another country in which their life or freedom would be in danger or there are reasons to believe that they would be in danger of being subjected to torture or other cruel, inhuman, and degrading treatment or punishment.

INTERNATIONAL PROTECTION: The protection granted by a State or an international organization to a person because their human rights are threatened or violated in their country of nationality or habitual residence, and in which they could not obtain due protection because they are not accessible, available and / or effective. Such protection includes: (a) the protection received by asylum seekers and refugees based on international conventions or internal laws; (b) the protection received by asylum seekers and refugees based on the expanded definition of the Cartagena Declaration; (c) the protection received by any person of foreign nationality based on international human rights obligations and, in particular, the principle of non-refoulement and the so-called complementary protection or other forms of humanitarian protection, and (d) the protection received by stateless persons in accordance with international instruments on the subject¹.

International protection covers, in the case of refugees and asylum seekers, all actions aimed at ensuring equal access and enjoyment of the rights of women, men, boys and girls benefited. Such protection includes interventions by States or international organizations in the interest of asylum seekers and refugees to ensure that their rights, security and well-being are guaranteed according to international standards, such as: guaranteeing respect for the principle of non-refoulement, access to physical security, and access to fair procedures for determining refugee status, to standards of human treatment, and the implementation of durable solutions.

REFUGEE: Person who qualifies as a refugee in accordance with the Convention on the Status of Refugees of 1951 or its Protocol of 1967 or the Declaration of Cartagena on Refugees of 1984. The Determination of refugee status is declarative. Persons who fulfill the definition of refugee under international, regional or national laws, or under UNHCR's mandate, have a right to international protection.

¹ Inter-American Court on Human Rights, [Rights and guarantees of children in the context of migration and/or in need of international protection](#). Advisory Opinion 21/2014, of August 19, 2014, paragraph 37.

ASYLUM-SEEKER: Person seeking asylum, in accordance with international instruments or regional regulations or the internal legislation of the country of asylum.

STATELESS PERSON: Any person not considered as a national or citizen by any State in accordance with its legislation.

CHILD OR ADOLESCENT: Any person under eighteen years of age, unless by virtue of the law applicable to them, majority is attained earlier.

ACCOMPANIED CHILDREN: Any child or adolescent who is accompanied by an adult person exercising parental authority, who has that child under their guardianship or custody, or by a guardian or adult person to whose care he or she is entrusted by law or custom.

UNACCOMPANIED CHILDREN: Any child or adolescent who is traveling unaccompanied by any parent or other relatives and is not under the care of an adult who, by law or custom, bears such responsibility.

SEPARATED CHILDREN: Any child or adolescent separated from one or both parents or from their legal guardian or habitual caregiver, but not necessarily from other relatives. "Separated children" may, therefore, include children accompanied by other adult family members.

FORCIBLY SEPARATED CHILDREN OR ADOLESCENTS: Any child or adolescent who has been involuntarily or forcibly separated from one or both parent(s) or from their legal guardian or habitual caregiver. Generally, the aforementioned separation is an immediate and direct consequence of an emergency, for example, flight or displacement triggered by armed conflict.

HUMAN TRAFFICKING: the recruitment, transportation, transfer, harboring or reception of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or abuse of a position of vulnerability, or the giving or receipt of payments or benefits to obtain the consent of a person having authority over another for the purpose of exploitation. Exploitation shall include, at a minimum, exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, and the removal of organs.

MIGRANT SMUGGLING: Facilitation of the irregular entry of a person into a country in order to obtain financial or other material benefit.

Given the breadth of the aforementioned concepts, the following Principles shall be invoked, according to each case, considering that all migrants, refugees, asylum seekers, stateless persons, victims of human trafficking and other persons involved in international mobility processes are entitled to the same universal human rights and guarantees, which must be respected, protected and guaranteed at all times, even if they are governed by specific international and national protection provisions.

SECTION I
Fundamental Principles

Principle 1: Right to life

Every migrant has the inherent right to life. No migrant shall be arbitrarily deprived of life.

Principle 2: Human dignity

Every migrant has the right to human dignity, including physical, sexual and mental and moral integrity, regardless of their migration status or place of origin.

States shall create conditions for an adequate standard of living compatible with the dignity of the human person and shall not produce, by commission or omission, conditions that hinder or impede it, ensuring, among others, the right to health, food and nutritional security, drinking water, housing, environmental sanitation, education, work, clothing, and other necessary social services.

Principle 3: Pro persona

Where two or more provisions are applicable to a particular case or situation, States are obligated to use the most favorable provision to protect the rights of all migrants, regardless of their migration status. Likewise, where there are two or more interpretations of a provision, States are obligated to use the most favorable to the person, offering the broadest protection. In addition, States should apply the most favorable interpretation to guarantee human rights, and the most restrictive interpretation to impose limits on those rights.

Principle 4: Right to recognition as a person before the law

Every migrant, regardless of migration status, has the right to recognition everywhere as a person before the law. To make this right effective for migrants, every child shall be registered immediately in their country of birth, regardless of the nationality of their parents, or lack thereof.

Every migrant, regardless of migration status, has the right to access and possess all documents necessary to enjoy and exercise their rights, such as passports or valid travel documents, identity documents, birth certificates and marriage certificates. Countries of transit and destination must facilitate the issuance of identity and civil status documents, as well as coordinate with appropriate consular offices to ensure access to identity documents. Consideration should be given to exempting or reducing costs for the issuance of documents, taking into account the situation of vulnerability in which people may find themselves.

States must take legislative, or other steps to prevent any person, including employers or employment agencies, from confiscating, improperly retaining, destroying, or attempting to destroy any identity document, document authorizing entry or stay, residence, or settlement in a national territory, travel document or a document granting a work permit or access to any other type of rights. Any exceptions to this principle must be performed strictly by duly authorized public official, only when there is a reasonable cause under a legal provision and through a procedure that safeguards the principle of non-discrimination and administrative due process.

Principle 5: Encouragement of regular migration status

States must encourage migration through regular channel, avoiding, in particular, precarious workplace conditions and other consequences of irregular migration status.

Principle 6: Non-refoulement

No person shall be expelled, returned, extradited, informally transferred to or, in any form delivered or placed at the borders of a country, regardless of this be his or her country of nationality, where this person's life or freedom might be endangered or where this person would risk be subjected to torture or cruel, inhuman or degrading treatment or punishment.

Asylum seekers or persons already recognized as refugees enjoy a special protection against the return, which derives from the obligations of international refugee law. The exceptions to the principle of *non-refoulement*, in accordance with international refugee law 1951, are only applicable in the circumstances expressly provided for Article 33 (2) of the Convention Relating to the Status of Refugees of 1951, must be given restrictive interpretation and in a of accordance with the principle of proportionality. Return is prohibited without exception when there are substantive reasons to believe that the person would be at risk of torture, or other irreparable damage in the place to which she or he would be transferred or returned.

States must respect the principle of non-refoulement, including the prohibition of refusal at the border and indirect return, with respect to any person seeking asylum or other form of international protection.

A "chain" (or indirect) refoulement is considered to be the transfer of persons to a country or territory from which they can be returned to a country where their life, liberty or personal integrity are in danger.

The States shall enforce the right of non-refoulement of any person in all places where they exercise jurisdiction, even within their own territory. The term "territory" includes the land area and territorial waters of a State, as well as its *de jure* border entry points, including transit zones or "international" zones at airports. The responsibility of a State to protect people against *refoulement* occurs irrespective of whether the person has entered the country lawfully or and has passed through immigration controls.

Principle 7: Presumption of innocence

Every migrant accused of committing a criminal offense has the right to be presumed innocent until their guilt is legally established by final decision in criminal or administrative proceedings.

Guilt should not be a determining factor influencing the migration situation of the person.

Principle 8: Gender perspective and differentiated approach

Migration laws and policies implemented by States must incorporate a gender perspective considering the specific risks, as well as the differentiated impacts faced by women, men, children and adolescents of both sexes, and LGBTI persons in the context of human mobility.

Principle 9: Cooperation and coordination

States should establish and strengthen cooperation on international migration so that it takes place in a safe, regular and orderly manner. Similarly, they should work to expand channels for regular migration that take into account the gender perspective, demographic and labor market circumstances, facilitate educational mobility, heed the right to family life and respond to the needs of migrants and persons subject to international protection who are in a vulnerable situation.

States should contribute to the prevention and elimination of irregular migration, bearing in mind that irregular migration increases the vulnerability of migrants and persons subject to international protection, putting their lives, dignity, and security at risk.

States must avail themselves of technical cooperation from the regional and international community, including from the United Nations agencies and entities and regional organizations, as well as from civil

society organizations and other relevant stakeholders for the implementation of migration policies with a human rights approach.

SECTION II

Protection of children and adolescents in connection with migration

Principle 10: Best interest of the child or adolescent

The best interest of the child or adolescent shall be a primary consideration in all actions concerning children. The child's or adolescent's best interest refers to their holistic development, understood broadly to include their basic material, physical, educational, and emotional needs as well as their need for affection and security and applies to all children and adolescents without discrimination.

This principle implies that, in all actions or decisions they take that affect or concern children and adolescents in all spheres of their lives; public or private social welfare institutions, courts, administrative authorities or legislative bodies must take into account and give priority to the interests of the child or adolescent. This principle must be given priority when designing public policies and drafting laws and regulations relating to children, as well as in their implementation in all spheres affecting the life of the child.

Any migration policy, and any administrative or judicial decision related to the entry, stay, detention, expulsion, or deportation of a child or adolescent or any State action considered in connection with their parent, parents, primary caregiver or legal guardian, including actions taken in relation to their status as a migrant, shall prioritize the evaluation, determination, consideration, and protection of the best interests of the child or adolescent involved.

Principle 11: Right of the child to be heard, express views and participate

Children and adolescents have the right to freely express their views in all matters affecting them, due weight being given to their age and maturity, and the evolving capacity of the child or adolescent.

In any judicial or administrative proceedings affecting them, States shall undertake to ensure to the child migrant the right to freely express their views in the child's own language, either directly, or through a representative or competent body.

Children and adolescents shall be heard independently of their parents or legal guardian, and their individual circumstances shall be included in the consideration of cases affecting the migratory status of their family members.

Children and adolescents shall be provided with all relevant information pertaining to complaints mechanisms, the migration and asylum processes and their outcomes. Information shall be provided in the child's own language in a timely manner, in a child-sensitive and age-appropriate manner, in such a way that they can make their voice heard and be given due weight in the procedures, with due observance of the principle of privacy.

States parties must adopt measures directed at facilitating the participation of all children and adolescents in the context of international migration and human mobility in the design, implementation, monitoring, and evaluation of policies that could directly or indirectly affect them, as individuals or a group, including in the fields of social policies and social services. For the principle to be effective, multidisciplinary teams should be involved in this process.

SECTION III Non-Discrimination and Equal Protection

Principle 12: Non-discrimination and equal protection

All persons, including migrants, are equal before the law and are entitled to equal protection of the law without discrimination of any kind or on any ground, including status as a migrant.

The law shall prohibit any discrimination and guarantee migrants equal and effective protection against discrimination on any ground such as race, color, sex, language, religion or conviction, political or other opinion, national or social origin, economic status, birth, property, marital status, sexual orientation, gender identity or expression, ethnic group, disability, nationality or statelessness, migration or residence status, age, reasons for crossing international borders or the circumstances of travel or any situation in which they are found by the authorities, as any other factor.

Distinctions in the treatment of migrants are permissible, including in the regulation of admission and exclusion, only where the distinction is made pursuant to a legitimate aim, the distinction has an objective justification, and reasonable proportionality exists between the means employed and the goals pursued.

In order to prevent discrimination and xenophobia against migrants. States should implement positive measures such as educational and awareness campaigns aimed at promoting multicultural societies and combating discrimination and xenophobia. States should also prevent, investigate and punish all acts of racism, xenophobia and hate speech.

Principle 13: Right to prevention and protection against stigma, racism, xenophobia and related intolerance

Migrants have the right to live free from stigma, stereotypes, prejudices and practices of intolerance.

States should take all positive, reasonable measures necessary to prevent, eliminate, and reverse or change discriminatory situations that perpetuate stigma, prejudice, practices of intolerance and criminalization against persons on the basis of their migration status, their national origin, lack of nationality, or any other situation detrimental to their human dignity.

Principle 14: Prohibition of all forms of violence

States should act with due diligence to prevent, investigate, and punish those responsible and make reparation to victims of crimes committed against migrants. Preventive measures shall be taken to protect them from any type of violence and exploitation, whether exercised by State institutions and their officers or by individuals, groups, or private entities.

States have a duty to prevent, investigate and punish all forms of sexual and gender-based violence against migrant women, men, girls, boys and LGBTI persons at all stages of displacement and from any type of actor.

Principle 15: Personal integrity and prohibition of torture and cruel, inhuman, or degrading treatment

Every migrant has the right to physical and mental integrity. No migrant shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

States have a duty to prevent, investigate, and punish violations of personal integrity against any person, including migrants, by State agents or by third parties. Prolonged and excessive migration detention can constitute torture or cruel, inhuman, or degrading treatment or punishment. Detentions with indeterminate length constitute torture or cruel, inhuman, or degrading treatment or punishment.

Conditions of detention may constitute torture or cruel, inhuman, or degrading treatment or punishment when they are grossly disproportionate, implemented or tolerated by States for reasons based on discrimination of any kind, including migratory status, or for the purpose of deterring, intimidating, or punishing migrants or their family members, forcing them to withdraw their applications for protection or status, agree to voluntary return, provide information or fingerprints, or with the intention of extorting them for money or sexual acts.

In addition, unjustified detention of migrants, delayed access to procedural rights, or moderate physical discomfort may in itself constitute torture or cruel, inhuman or degrading treatment or punishment when applied together or for a prolonged or indeterminate period. The threshold of torture or cruel, inhuman or degrading treatment or punishment is even lower in cases of migrants in situation of vulnerability and persons who have experienced traumatic events, such as children and adolescents, women, LGBTI people, older persons, persons with disabilities, asylum seekers, refugees and stateless persons.

SECTION IV

Migrants with special needs

Principle 16: Protection of migrants in vulnerable situations

Authorities should be aware of the particular risks to which certain population groups are exposed, in which one or multiple factors of discrimination converge that increase their levels of vulnerability, including those that may occur throughout the migratory cycle, and groups that require specialized attention, due to their high level of vulnerability. It must be recognized that this is related to situations of discrimination and structural exclusion, so State responses must take into account the specific vulnerabilities that accompany people from their country of origin and that are aggravated by their status as persons in the context of human mobility, increasing their risk of suffering greater discrimination and exclusion in countries of transit and destination.

These population groups include, among others, irregular migrants; refugees; stateless persons or persons at risk of statelessness; children and adolescents; indigenous persons; persons living with HIV or medical needs; lesbian, gay, bisexual, transgender, intersex (LGBTI) persons or persons with non-normative gender expressions; women; pregnant women; racially or religiously vulnerable groups; persons with disabilities; torture survivors; older adults and persons deprived of liberty, among others, so steps should be taken to ensure that they receive the protection and assistance required, as well as the treatment required to address migrant's special needs.

Positive measures should be taken to reverse or change existing discriminatory situations that are detrimental to a particular group of people. States should incorporate a gender and intersectional perspective in all actions and responses regarding migrants and refugees that allows for an understanding of the situations and needs of each population group, based on gender, age and other social constructs such as ethnicity, race, sexual orientation, gender expression, creed, among others.

Principle 17: Protection of indigenous peoples, including migrants in border areas

States must adopt special migration policies for indigenous peoples whose ancestral territories are located across international borders in such a way as to guarantee free movement within their territories without migration sanctions.

Similarly, States must ensure respect for the language and culture of migrants and internationally protected persons belonging to indigenous groups.

SECTION V

Enforced disappearance, slavery, human trafficking and human smuggling

Principle 18: Prohibition of enforced disappearances

No migrant shall be subjected to enforced disappearance.

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance of a migrant.

States shall:

- a. Punish within their jurisdictions, those persons who commit or attempt to commit the crime of enforced disappearance of migrants and their accomplices and accessories;
- b. Cooperate with one another in helping to prevent, punish, and eliminate the enforced disappearance of migrants;
- c. Take legislative, administrative, judicial, and any other measures necessary to comply with the commitments made by States in relation to enforced disappearances;
- d. Establish or, where appropriate, reinforce mechanisms for searching for migrants who have disappeared within their territory;
- e. Establish mechanisms to identify the remains of people who might have presumably disappeared in the course of their migration;
- f. Reinforce international cooperation to locate missing migrants, ensure access to justice, and facilitate the participation of family members in proceedings and the return of human remains where appropriate; and
- g. Guarantee reparations to persons and relatives who are victims of this practice, as well as guarantee measures of non-repetition.

Principle 19: Prohibition of slavery and servitude and its analogous conditions

Every migrant has the right to be free from slavery, servitude, or forced or compulsory labor. No migrant shall be required to perform forced or compulsory labor, nor any practice analogous to slavery, with or without profit. States shall take concrete measures to ensure the effective abolition of child labor among other practices.

States must generate mechanisms to prevent these practices, such as constant monitoring of the workplaces of migrants, verification of working conditions, and guarantees of their labor-related human rights, regardless of their migratory status.

Principle 20: Preventing, combating, and eliminating trafficking in persons

No migrant shall be subjected to human trafficking or related conduct or crimes involving exploitation and violence. States have an obligation to prevent and combat trafficking of persons; to identify and dismantle transnational human trafficking networks; to protect and assist migrant victims of trafficking, taking into account the gender perspective, the best interest of the child and the non-criminalization of migrants who are victims of the crime of trafficking in persons; and to promote cooperation among States to achieve those ends.

States must adopt an integrated approach to preventing and combating the conduct and crimes that create the context of exploitation and violence associated with and aggravating human trafficking, such as exploiting the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery and practices similar to slavery, servitude, and the removal of organs

States have an obligation to monitor, prevent, identify and address situations involving a risk of human trafficking, especially at points of irregular entry into countries, and ensure the applicability of the principle of *non-refoulement*.

Principle 21: Prohibition of migrant smuggling

States shall prevent the facilitation of irregular entry by a person into a State of which the person is not a national or a permanent resident for the purpose of obtaining, directly or indirectly, a financial or other material benefit.

States must ensure protection of persons under international protection when enforcing migrant smuggling laws.

SECTION VI Nationality

Principle 22: Nationality

Every migrant has a non-derogable right to a nationality and not to be stateless.

Every person has the right to the nationality of the State in whose territory the person was born if they are not entitled to any other, and States must also guarantee the right of nationality when the person would otherwise be stateless.

Every person has the right to retain her or his nationality, and may not arbitrarily deny, lose or be deprived of her or his nationality.

Principle 23: Renunciation of nationality

The renunciation of nationality must be affirmative, and the result of the express, free and full consent of the person, and it shall not lead to statelessness.

The acquisition of a foreign nationality by a migrant must not be deemed to be an automatic or implicit renunciation of the nationality of the State of origin.

Principle 24: Marriage and nationality

Neither marriage nor its dissolution shall automatically negatively affect the nationality of either spouse or their children. Parents shall enjoy equal rights, irrespective of their gender, with respect to the nationality of their children. States shall implement nationality legislation that does not discriminate on the basis of gender.

Principle 25: Withdrawal of nationality

States may not withdraw nationality except in very limited circumstances, based on non-discriminatory reasons under law, with full due process including notice and opportunity to challenge the decision.

Migrants shall not be arbitrarily deprived of their nationality; nor shall they be denied the right to change their nationality.

The migration status of the parents may not be invoked to justify withdrawal of nationality.

Principle 26: Naturalization

States shall grant the naturalization of migrants in accordance with non-arbitrary limitations and conditions and in accordance with the due process established by law.

Principle 27: Eradication of statelessness

States shall adopt administrative, legislative and judiciary measures to eradicate statelessness, including measures of prevention, identification, protection and reduction, such as the universal registration of the birth of the children of migrant persons, ensuring equality between women and men in relation to transmitting nationality to their children, especially if, otherwise, the child would be stateless. States should ensure that children born to their nationals in other territories who would otherwise be stateless acquire their nationality.

SECTION VII

Freedoms of conscience, religion, belief, expression and association

Principle 28: Freedom of conscience, religion and belief

Every migrant has the right to freedom of thought, conscience, religion, or belief. This right implies the freedom to have, change, or adopt the religion or beliefs of one's choice, or to not adopt any, and the freedom to manifest one's religion or belief in worship, observance, practice, and teaching, whether individually or collectively, in public or in private. No person, regardless of their migration status, shall be subject to coercion that would impair their freedom to have, adopt, or not have a religion or belief of their choice.

Principle 29: Freedom of opinion, thought and expression

Every migrant has the right to freedom of thought, opinion and expression. This right includes the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, on social media, in print, in the form of art, or through any other medium of the migrant's choice.

Limitations to freedom of expression shall be clearly established by law and restricted to those necessary to ensure respect for the rights or reputations of others, or to ensure the protection of national security, public order or public health.

Principle 30: Freedom of meeting and association

Every migrant has the right to freedom of peaceful assembly and association.

This right includes freedom to form associations and unions in the State of residence for the promotion and protection of economic, social, and cultural rights, and other interests of migrants.

The freedom of meeting and association cannot be restricted solely in order to guarantee public order or national security; States must therefore commit to respecting and protecting the exercise of these rights.

Principle 31: Political participation

Every migrant has the right to participate in the civil and political life of their community in their State of origin and in the conduct of public affairs.

This right shall include the freedom to participate in the public affairs of the State of origin and the right to vote and to be elected in the elections of that State, in accordance with its legislation.

SECTION VIII Family

Principle 32: Protection of the family

Every migrant family is entitled to protection by society and the State. This obligation must be respected taking into consideration that there is no single model of family, and therefore the protection of the family must be afforded ensuring equality of rights and without discrimination on grounds of gender, sexual orientation or expression, gender identity, or marital status of parents or guardians, as well as any other type of diversity in the family.

Principle 33: Protection of family unity and reunification

Family unity and family reunification shall be paramount considerations in any decision about migration status, valuing the best interest of children and adolescents, and their right to non-deprivation of liberty. States shall not use family separation to coerce parents into forgoing their right to seek protection or migration status in another country.

Any child who lacks a valid nationality shall have the right to return to the State of origin of either parent and to remain indefinitely with one or both parents regardless of the child's or adolescent's citizenship, when it does not contravene his best interests.

In determining the custody of children of migrants, the migration status of either parent shall not be a reason to terminate custody, parental rights, or visitation rights. Likewise, to determine the custody of children and adolescents whose parents die, the existence of close relatives will be taken into account, even if they are outside the country.

In light of the right to family unity and the best interests of the child, States should prevent the forced emigration of children and adolescents who are nationals as a result of the deportations of migrant parents or family members, according priority to family unity.

SECTION IX Adequate standard of living

Principle 34: Right to property

Every migrant has the right to use and enjoy her or his property; no migrant may be deprived of this right except by payment of just compensation.

Principle 35: Right to health

Every migrant has the right to enjoyment of the highest attainable standard of physical and mental health and to the underlying determinants of health; medical attention cannot be denied due to a person's migration status. Health services cannot be denied because of a lack of identity documents. Everyone, regardless of migration status or origin, has the right to receive the same health care as nationals, including sexual and reproductive health and mental health services. States shall take into account the differentiated attention that certain groups require, such as women, children and adolescents.

States must guarantee the right to confidentiality, which entails prohibiting notification and sharing of information related to the migration status of patients or their parents with migration authorities, as well

as the carrying out migration control operations in hospitals or their vicinity. When analyzing cases, a person's state of health may be taken into consideration in processes of temporary regularization of the migratory situation.

Principle 36: Right to work

Every migrant has the right to work, which includes the opportunity to secure the means to lead a dignified life by performing a freely chosen or accepted lawful activity.

Every migrant shall have access on equal terms to just and favorable working conditions and to all labor rights, including the right to join and form trade unions, the right to social security, the right to just and favorable working conditions, including fair and equal remuneration, minimum working age, maximum hours, health and safety standards, protection against unjustified dismissal, protection against discrimination and reprisals, freedom to change employers and collective bargaining. The migration status of a person shall not constitute a justification for depriving that person of the enjoyment and exercise of his or her labor rights. States shall under no circumstances tolerate discrimination or workplace harassment.

States must recognize all means of subsistence of the migrant population, and therefore refrain from adopting and/or implementing policies and practices that promote the harassment or stigmatization of migrants within the informal economy.

States must establish mechanisms for monitoring the workplaces of migrants, to verify working conditions and guarantee their labor rights regardless of their migratory status, as well as report and address these cases and provide effective remedies, as a basis for promoting labor mobility policies with a gender, age and diversity perspective. This type of monitoring should never be accompanied by acts of migration control and verification.

Principle 37: Right to education

Every migrant, especially migrant children and adolescents, have the right to education, regardless of their migration status.

Access to public educational institutions or schools shall not be refused or limited by reason of the migratory situation or employment of either parent or the lack of identity or enrolment documents.

States shall encourage the availability of secondary education and shall make it accessible to all, including migrants and their children, on an equal footing with nationals.

States shall make higher education accessible to all persons, including migrants, and their children.

States should, to the extent possible, standardize and adopt a more flexible approach to requirements for migrants' access to education, in order to guarantee access to and completion of studies at all educational levels.

Principle 38: Right to housing

Every migrant has the right to adequate housing: (i) availability of services, materials, facilities and infrastructure, including permanent access to natural and common resources, drinking water, energy for cooking, heating and lighting, sanitary and washing facilities, food storage, waste disposal, drainage and emergency services; and (ii) habitability, in the sense of providing adequate space to its occupants and protecting them from cold, humidity, heat, rain, wind or other health threats, from structural risks and from disease vectors. It must also ensure accessibility, affordability, physical safety and cultural adequacy for its occupants.

Principle 39: Right to culture

Every migrant has the right to enjoy their own culture and to use their own language either individually or in community with others, in both the public and private spheres.

Every migrant has the right to participate in the cultural and artistic life of the community, to enjoy the benefits of scientific and technological progress, and to benefit from the protection of moral and material interests in any scientific, literary, or artistic work of which they are the author.

The right to enjoy cultural life includes the freedom of migrant parents to guarantee the religious, cultural, linguistic, and moral education of their children, according to their own convictions, as well as the freedom to choose a school other than those established by public authorities.

States shall ensure the integration of migrants into society through positive measures. This situation must not be conditional on the loss of the national and cultural identity of their countries of origin. States shall encourage and support the efforts of migrants to conserve their culture and ethnic identity through educational and cultural activities, including the preservation of their languages and knowledge related to migrants' cultures.

SECTION X Access to justice

Principle 40: Access to justice and the right to effective remedy

Every migrant has the right to access to justice for the protection of all their rights, and to integral reparation of harm done, free of charge and on an equal basis with nationals of the State, including the right to due process and judicial guarantees. States shall guarantee the real possibility of access to justice and effective protection, in an effective, impartial and expeditious manner, subject to the principles of immediacy, celerity and due diligence, through the mechanisms that the national legislation provides for all inhabitants, so that just resolution of a dispute is reached, with care taken to ensure that no migrant is left without appropriate and effective legal representation. Guarantees shall be established to facilitate the recognition of rights, their requirement when they have been disregarded, their reestablishment when they have been violated, and their implementation when their exercise encounters unjustified obstacles.

Every migrant has the right to an effective remedy for acts violating the rights guaranteed to the migrant by relevant domestic legislation as well as international law, including the rights recognized herein.

The right to access to justice and effective remedy should not be subject to the presentation of identity documents that are difficult or impossible to obtain for the migrant population.

States must investigate, identify, prosecute, and punish those responsible for serious human rights violations and, depending on the circumstances of each case, guarantee access to the information held by the State.

Principle 41: Protection of the victims of crimes

All migrant victims of crime have the right to assistance, protection, access to justice and full and effective reparation of damage done. States shall foster the ability of migrant victims of crime, particularly migrants in an irregular situation, to access the justice system without fear, for example through the creation of specialized prosecutor's offices for migrants, the prohibition of notification to migration authorities by operators of ordinary justice systems or health authorities, and the granting of visas to regularize the stay in the country to persons with an irregular migration status.

This principle includes the duty of the State to properly investigate crimes committed against migrants with due diligence and within a reasonable time, including collection, chain of custody, storage, and adequate analysis of evidence and records of what happened.

States must provide legal, psychological, social, medical and protective assistance, as well as address the differential impact suffered by some population groups and promote a differential approach, taking into account the right to equality and non-discrimination. Also, they shall keep migrants who have been victims informed about their rights, the conduct of the investigation and the process, allow them access to the investigation records, safeguard their personal data and information contained in the investigation files, and guarantee the participation of the victims in the investigation processes.

Migrants shall not be subject to criminal prosecution for having been the victim of a crime or the subject/object of criminal activity.

Principle 42: Victims of human trafficking

All victims of human trafficking, regardless of their migration status or national origin, should be protected from revictimization and provided with legal assistance, counselling and information, including with respect to their rights in a language they can understand and with a gender perspective, medical, psychosocial and material assistance, and the victim's privacy and identity should be protected. Educational and/or training opportunities should also be provided.

Principle 43: Victims of human trafficking shall not be deprived of their liberty

States should address the vulnerable situation of victims of human trafficking and other forms of exploitation by facilitating their access to justice and the ability to report without fear of arrest, deportation or punishment, focusing on prevention, identification and appropriate protection and assistance. Judicial processes should have a gender perspective, take into account the various factors of discrimination to which migrants, especially women, girls and LGBTI persons, are exposed, and avoid revictimizing practices and the perpetuation of gender stereotypes.

States should facilitate the obtaining of documentation and legal status for those crime victims who wish to remain in their territory by safeguarding their identity, without unnecessary delay, the presentation of evidence of impossibility, or other administrative impediments, for the purpose of continuing the criminal investigation or as a means of redress. In cases of children and adolescents, their best interests must be taken into account.

Principle 44: Guarantees of cross-border justice

Coordination between State authorities is essential to ensure access to justice across borders in fair, effective, and accessible conditions for migrants and their families. States shall create mechanisms for appealing decisions outside their territorial boundaries and shall provide the means to participate in legal proceedings, such as permitting travel and entry into the sending country, for which visas or related documentation should be considered for effective access to justice.

States shall promote the creation of legal mechanisms and agreements with each other to ensure effective observance of the rights of migrants, such as economic, social and cultural rights, as well as civil and political rights. Any understanding established between States that may impact in the processing of migratory, refugee or asylum requests shall be made in a transparent and accountable way. States shall respond effectively to the mass casualties and disappearances of migrants *en route* and at border areas, including by: investigating all cases of deaths and disappearances, and mass graves of migrants, with the cooperation of the authorities of all States involved; as well as the killing or ill-treatment of migrants.

States shall establish international multi-stakeholder mechanisms to strengthen and coordinate search and rescue operations, investigation and forensic protocols, dignified treatment of the dead, identification and

tracing of families through the safe exchange of *ante-mortem*, *post-mortem* and DNA information, as well as the creation of a forensic database for genetic comparisons of human remains to facilitate *post-mortem* identification.

Principle 45: Right to the truth

In the event of serious human rights violations, including death or enforced disappearance, every migrant, as well as their family members, has the right to know the truth with respect to the facts that gave rise to violations of human rights, as well as the right to know the identity of those who participated in the violations. This implies, in turn, the obligation of States to clarify, investigate, prosecute, and punish those responsible for cases of human rights violations, and, depending on the circumstances of each case, guarantee access to information that is in the custody of the State.

The families of migrants presumed to be missing or deceased and, in their absence, their States of origin or nationality have the right to know their fate and the right to have their remains returned and be given adequate funereal rites. The identification of an unidentified deceased migrant also has other practical effects, such as the need to obtain a death certificate, which is necessary to clarify issues related to inheritance, marriage, property rights, and statistical information.

It must be guaranteed that family members can participate in the process and that they receive timely information on the search actions that the competent authorities carry out with a view to locating the disappeared person; propose lines of inquiry; access, directly or through their representatives, the files opened for search or investigation; request the intervention of independent national or international experts or experts in search tasks; enjoy , protection and confidentiality, as well as being informed diligently about the progress of the process and the results of identifying or locating the remains. For this, States must implement a forensics protocol that meets international standards to obtain, preserve and match DNA samples, while protecting the confidentiality of all individuals involved. States must implement an internationally-accepted standard for handling bodies or remains, returning them intact to the families, and ensuring the ability of families to provide a culturally-appropriate burial. In addition, they should be provided with protection and measures to help, assist and provide comprehensive care to victims, particularly those who facilitate their participation in search actions, including psychosocial support.

Principle 46: Comprehensive reparation for violations of human rights

Every migrant has the right to full reparation for any violation of their human rights. Comprehensive reparation measures include restitution, compensation, physical and mental rehabilitation, satisfaction, and guarantees of non-repetition.

Migrant victims or their relatives are entitled to participate in all stages of the respective administrative, judicial and/or reparation processes, formulate claims and present evidence, that must be analyzed in a thorough and serious manner by the authorities prior to a decision establishing facts, responsibilities, penalties, and reparations.

Integral reparation must be proportional to the seriousness of the violations and to the damage suffered, and must be oriented towards the restoration of migrants' dignity, quality of life, and well-being, as well as the restoration of the situation prior to the damage suffered. In cases of violations arising from structural or systematic problems, reparation must be transformative, that is, conducive to altering the context in which the violation was committed.

All migrants who have suffered traumas must be given special consideration and care to avoid re-traumatization during legal/ administrative proceedings designed to provide justice and reparation or any other public service.

SECTION XI

Protection for defenders of migrants' human rights

Principle 47: Assistance and protection

States must provide immediate assistance to all migrants needing it, taking into consideration the specific circumstances of all migrants at the border and point of entry into the territory, and guarantee effective protection for them, individual evaluation, and access to justice, including at or in the vicinity of rescue and interception areas and at points of entry and disembarkation of large groups of migrants. That assistance shall encompass all necessary humanitarian aid, including medical and psychological care, food and water, blankets, clothing, sanitation, hygiene kits, adequate housing, and an opportunity to rest.

States must devise and apply instruments for detecting situations of vulnerability on a case by case basis and mechanisms for referring them to appropriate agents to address the short, medium, and long-term needs identified.

Principle 48: Protection for human rights defenders

States must ensure protection for the human rights defenders who advocate on behalf of migrants, regardless of their migration status, from any violence, threat, reprisal, adverse de jure or de facto discrimination, pressure, or any other arbitrary measure, based on the legitimate exercise of their right to promote and work, individually or together with others to advance the protection and observance of human rights and fundamental freedoms at the national and international level.

Security must be guaranteed for humanitarian actors, human rights defenders, and journalists, both at borders and in host communities . States must not criminalize, punish, or in any way prevent the provision of humanitarian assistance to the migrant population by the population as a whole, civil society, States, or international organizations.

Principle 49: Protection in relation to non-State agents

States have an obligation to prevent, investigate, punish, and make reparation for human rights violations committed against migrants in their territory or jurisdiction by third parties, including companies, organized crime, and other entities, by implementing effective policies, legislation, regulations, and judicial rulings or any other regulatory instrument.

Section XII

Due Process and migration

Principle 50: Guarantees of due legal process in migration proceedings

Every migrant has the right to due process before the courts, tribunals, and all other organs and authorities administering justice in any legal process conducive to the restriction of rights, as well as before those persons and authorities specifically charged with determining their migration status.

States must adopt all measures that may serve to avoid unnecessary delays in administrative and judicial proceedings, so as not to unduly prolong the suffering caused by remembering events that happened and to promote appropriate handling of the risk of re-traumatization as a result of those proceedings.

Migration proceedings must offer at least, the following guarantees to migrants:

- a. Migration control functions performed by authorities that are clearly identified by law to perform such duties, including those with the authority to request and review documentation;

- b. Information on their legal status, the legal process and their rights;
- c. Handling of legal proceedings and appeals by a competent, independent, and impartial authority;
- d. Protection of personal information and observance of the principle of confidentiality;
- e. Prior and detailed notification about the proceeding in which they are a party, its implications and possibilities of appeal in a language and form they understand;
- f. The right to appear promptly before a judge or other officer authorized by law to exercise judicial powers, and to trial within a reasonable period of time; to analyze the legality of detention, or be released from detention without prejudice to the continuation of legal proceedings;
- g. Cost-free assistance of a translator or interpreter (including in any proceeding regarding their status as a migrant);
- h. Legal assistance and representation by a qualified legal representative of the migrants' choice (including in any proceeding regarding their status as a migrant), and cost-free when migrants cannot afford private representation;
- i. Hearing or personal interview without delay, within a reasonable time and with the means needed to prepare a defense, and to meet in a free and private manner with one's lawyers;
- j. Notification of the decision taken in the proceedings;
- k. Delivery of written notification of a duly substantiated and reasoned decision;
- l. The right to appeal the decision, within a reasonable time and with suspensive effect;
- m. Notification of the right to receive consular assistance and to have effective access to it, when the migrant so requests in order to notify the consular authorities of their country of origin;
- n. For asylum-seekers and refugees, the right to contact a UNHCR representative and with the asylum authorities;
- o. Exemption from disproportionate penalties on account of entry, presence or migration status, or on account of any other migration-related offense; and
- p. A trauma-sensitive approach, where applicable, to implementation of these guarantees.

Principle 51: Due process in procedures involving children and adolescents

Procedures involving children shall focus primarily on determination of the principle of the best interests of the child. In addition to the guarantees contained in Section XII applicable to all migrants, proceedings involving children must offer the following additional guarantees:

- a. Access to the territory, regardless of the documentation they have or lack thereof, and referral to authorities in charge of evaluating their needs in terms of protection of their rights and/or restitution of their rights, ensuring that the corresponding procedural safeguards are in place.
- b. The obligation to appoint a guardian from the first moment of the proceedings in the case of unaccompanied or separated children or adolescents, who must be chosen by the child or adolescent;
- c. The right to have the proceedings conducted by a specialized officer or a judge, and any interviews carried out in person by professionals trained in communicating with children and adolescents;

- d. The right to be notified of the existence of a procedure and of any decision taken within the framework of the migration process, as well as the right to know the duration of the procedure to be carried out, which should abide by the principle of celerity;
- e. To be fully informed throughout the entire procedure, together with their guardian and legal adviser, of their rights and of any relevant information that could affect them, in a simple, clear and accessible way;
- f. The right to be heard, to participate actively in the different stages of the procedure, and that their opinion is taken into consideration in accordance with their age, their maturity, and their gradually evolving autonomy;
- g. The right to receive child-sensitive and rights-based consular protection, when it is appropriate and not contrary to international refugee law;
- h. To be assisted by an attorney trained and/or experienced in representing children and adolescent at all stages of the proceedings and communicate freely with the representative, and have access to free legal aid;
- i. The right to be assisted by a translator and interpreter in their own language;
- j. Priority handling of applications and procedures involving children, ensuring ample time to prepare for proceedings and observance of all due process guarantees;
- k. Access to contact with their families and not to be separated from them;
- a. To have their best interests evaluated before the making of any decision regarding their life.

SECTION XIII Freedom of movement and residence

Principle 52: The right to freely leave any country, including one's own

Every person has the right to leave any country, including their own, and to return to their own country. This shall not be conditional upon any specific purpose or period of time that the individual chooses to stay out of the country. Likewise, the right to determine the State of the migrant's destination is part of this guarantee.

Every migrant lawfully within the territory of a member state shall, within that territory, have the right to freedom of movement and freedom to choose their residence. All persons also have the right to remain in their country of origin.

The exercise of the foregoing rights may not be restricted except by a law, to the extent indispensable in a democratic society, to prevent criminal offences or to protect national security, public safety or order, public morals or health or the rights and freedoms of others.

Principle 53: Prohibition against the expulsion or deportation of citizens and the denial of their right to return

No person may be expelled from the territory of the State of which they are a national, nor be deprived of the right to enter it.

Principle 54: Right to remain in their country of origin or residence

Every person has the right to remain in their country of origin or habitual residence and must be protected against actions or omissions which compel them to move in a forced manner. This right includes the following:

- a. Persecution on grounds of race, religion, nationality, membership in a particular social group, or political opinion;
- b. Generalized violence, foreign aggression, internal conflicts, gross violation of human rights, or other circumstances that have seriously disrupted public order and threaten the life, safety, or freedom of persons;
- c. Cases of large-scale development projects that are not justified by overriding and necessary public interest, and cases of projects affecting indigenous and ethnic communities, that have not been subjected to a process of free, prior, and informed consultation;
- d. Cases of natural, technological and man-made disasters, except where the affected persons require evacuation for reasons of safety or health;
- e. Poverty and extreme poverty, inequality, marginalization and lack of opportunities for people to live in dignity and develop.

SECTION XIV

Refugees, asylum and international protection

Principle 55: Asylum and Refuge

Every person has the right to seek and enjoy asylum in other countries, in accordance with the legislation and practice of each State and the relevant international instruments.

Every asylum-seeker has the right to access fair and efficient refugee status determination procedures when under a State's jurisdiction, authority or effective control, whether or not they are within the State's territory.

No State shall under any circumstances, by means of expulsion, return, deportation, extradition or, in any other way, place a refugee or asylum-seeker persons at the borders of the territories where their life, security or freedom is in danger due to their race, religion, nationality, membership of a certain social group, or of their political opinions.

Principle 56: Access to asylum procedures and territory

Persons with possible international protection needs may not be rejected at the border or points of entry into the territory, including airports, without adequate analysis of their protection requests, especially in the case of unaccompanied children and adolescents, and explicit consideration must also be given to the principles of family unity and the best interests of the child or adolescent.

Access to a territory should not be subject to the presentation of identity or travel documents in the case of asylum seekers or refugees.

States must monitor, prevent, identify and address situations of risk at borders with respect to trafficking in persons, smuggling of migrants and forced recruitment of migrants by criminal networks, especially at points of irregular entry into countries, with a differential focus and special attention to unaccompanied children and adolescents.

Principle 57: Identification of persons with international protection needs

States shall ensure that persons who are at particular risk and who may or are likely to present international protection needs, are identified and referred to the proper asylum authorities or protection procedures.

Authorities shall also ensure effective and immediate access to information for example in migratory detention centers and points of entry into the territory, including airports, in the language of the person, on the existence the right to asylum and the procedure for seeking international protection, including refugee status and any complementary protection.

SECTION XV

Stay, documentation and integration in destination countries

Principle 58: Guarantees in migration regularization procedures

States shall, when migrants on their territory are in an irregular situation, take appropriate measures to ensure that this situation does not persist. States shall consider regularizing the situation of such persons, taking into account the circumstances of their entry, the duration of their stay in the State, and other relevant considerations, in particular those related to the best interests of the child, their family situation, local ties, and humanitarian grounds, including, among other factors and on a case-by-case basis, ensuring that processes are accessible, affordable, non-discriminatory, effective and non-arbitrary.

Principle 59: Flexible documentation

States must be willing to relax the internal requirements for documents issued abroad that must be enforced in their jurisdiction under a particular formality, such as the need of an *apostille*.

Such relaxation will occur in cases where the requirement of formality with respect to a document issued abroad could reasonably be supposed to jeopardize the enjoyment of a migrant's human right.

Similarly, States shall promote the adoption of bilateral or multilateral cooperation mechanisms to exempt migrants from the presentation of documents in which some formal requirement is demanded, when failure to do so would result in a violation of their human rights.

States of residence must take into consideration the exceptional situation of refugees, stateless persons, and beneficiaries of international protection and propose simplified procedures, easing requirements regarding documents needed to accredit academic knowledge, recognize professional skills, and the other accreditations needed for reinsertion into academic and professional life.

Principle 60: Family reunification

States shall take all necessary measures to facilitate the reunification of family members with migrants who have already been granted a form of international protection, temporary or permanent status, or citizenship, including by granting appropriate legal status to migrants and members of their family in the host country.

States shall grant derivative migration status and timely admission for dependent family members of migrants who are legally established in the State. Particular consideration should be given to the urgency of family reunification for those who are entitled to a form of international protection, particularly in cases of separated and unaccompanied children and adolescents.

Principle 61: Prohibition of separation of families

States should not refuse to allow families into their territory or separate them at any stage of the process, unless the best interests of children and adolescents so require.

In principle, States must refrain from separating families through expulsion or deportation proceedings. In the case of expulsion or deportation, the family unit and the best interests of the child or adolescent must be the guiding principles. States shall ensure that expulsion or deportation proceedings are proportionate and absolutely necessary in the specific case and are specifically in compliance with an enforceable decision of a competent court and in accordance with a law establishing such measures, as well as with international and regional law.

Principle 62: Humanitarian assistance

The purpose of humanitarian assistance is to save lives, alleviate suffering, and maintain the human dignity of all migrants, regardless of their migration status. This includes, in particular, the rights to life, health, personal integrity, water and sanitation, adequate housing, food and nutrition. All humanitarian assistance shall be granted in good faith and executed in accordance with the principles of humanity, neutrality, independence and impartiality, without discrimination, throughout the migration cycle in countries of origin, transit, destination and return.

It is the responsibility of the State to provide humanitarian assistance in emergency situations, as well as to ensure the conditions needed for civil society and international organizations to provide humanitarian assistance in such situations and all along migratory transit routes.

Principle 63: Social inclusion guarantees

States shall promote and allocate budget for public policies, programs, and projects to promote the local integration of migrants in their communities and ensure their effective enjoyment of rights, without discrimination and on an equal basis with the national population of the country.

States shall, as far as possible, establish labor integration programs that take into account both migrant and national populations, that strategically prevent xenophobia and address the fear of nationals of losing their workplaces and job opportunities and allow all members of the community - migrant as well as national - to develop professionally, improve their skills, and contribute to the community's economic system.

States must guarantee access to public services, public welfare programs, and social rights for the migrant population and those subject to international protection, regardless of their migratory status, on the basis of equality and non-discrimination.

Principle 64: Guarantees for protection of personal data

States shall undertake all measures necessary to ensure the protection of personal data and information to which they might have access while conducting migratory or other procedures.

The gathering of personal information may be authorized and data may be elicited for purposes of crafting and implementing public policies on non-discriminatory terms. States must guarantee for migrants, on an equal footing with nationals, observance of the rules and procedures for preserving the privacy and safe custody of personal data and information. Respecting privacy rights, States shall safeguard means of access to personal data in its possession that have to do with migrants.

In keeping with the right to privacy, States shall not require schools, health services, other social services, or judicial authorities to make available, exchange, or share information regarding the migration status of migrants with the migration authorities.

SECTION XVI

Migration control

Principle 65: Proportionate and graduated use of force

Security in migratory posts must always be oriented towards the protection of the migrant and their rights. Coercive force shall be used only when all other means of control have been exhausted or failed, and shall always be strictly proportional and necessary to achieve a lawful objective that is reasonable in the circumstances. Exceptional circumstances in which the use of force is permitted must be specifically established in law and must be strictly interpreted to minimize the use of force.

The lethal use of force is only permitted in response to circumstances which pose an objective and imminent threat to life. Under no circumstances may lethal force be used for the purpose of arresting or detaining migrants, including in the event of flight from checkpoints, roadblocks, or police or migration controls, for irregular entry into the territory, or for suspicion of violation of migration laws.

Principle 66: Appropriateness of migration control operations

States shall not conduct migration control operations in schools, in facilities used for essential public services, such as health services, migration services, or in other public buildings, and especially not in or near administrative or judicial tribunals.

Principle 67: Exemption from punishment for irregular entry, presence or status

The fact that a migrant is in an irregular situation in a State does not harm any fundamental legal good that needs protection through the punitive power of the State. Migrants must be free from penalties on account of entry, presence or migration status, or on account of any other offense which can only be committed by migrants. Therefore, punishment of irregular entry, presence, stay or status is disproportionate under criminal law.

States shall not impose penalties on persons in need of international protection, on account of their illegal entry or presence.

Migrants shall not be subject to criminal prosecution for acts committed as a consequence of being victims of smuggling of migrants and/or human trafficking.

Principle 68: The right to personal freedom and exceptionality of detention

Every migrant has the right to liberty and security of person. No migrant shall be arrested, detained, or deprived of liberty in an arbitrary manner.

States shall take measures to eradicate the detention of migrants in law, public policy and practice. Until then, States shall ensure that detention is used only in accordance with and as authorized by law and only when determined to be necessary, reasonable in all the circumstances, and proportionate to a legitimate purpose. Detention shall occur only as a measure of last resort and shall last no longer than required by the circumstances. Periodic review of the reasons for detention shall take place to ensure this. Detention shall occur only pursuant to an individual determination based on facts of the need to detain. The migrant shall have the right to appeal the conditions, legality, and length of detention to an independent authority in order to guarantee the rights to access to justice and due process. Every migrant deprived of liberty shall be treated with humanity and with due respect for the inherent dignity of the human person. States must ensure periodic and independent monitoring of all migrant detention centers.

States shall adopt alternative measures to detention and shall respect the prohibition of child or adolescent detention and safeguard the principles of the best interests of the child and family unity.

Principle 69: Necessity, adequacy, reasonableness, and proportionality criteria for detention

Detention must be a measure of last resort. All alternatives to detention must be explored. If detention of migrants is used, it must be lawful and used exclusively as a precautionary and temporary measure to ensure compliance with repatriation, deportation, expulsion, or extradition procedures. Detention must be individual and well-founded, in accordance with the following principles:

- a. Lawful, that is, established by law and in accordance with regional and international treaties on human rights;
- b. Necessary, in the sense that detention must be absolutely essential to achieve the intended purpose;
- c. Strictly proportional, such that the restriction of the right to personal liberty is not exaggerated or excessive compared with the advantages obtained and the scope of the objective of detention, including when, among all possible measures, there is no less harmful option in relation to the right involved that would be adequate to achieve the stated objective;
- d. Detention must be in places other than those used for detaining persons accused of or convicted of criminal offences, for the shortest period of time possible, in no case indefinite, and subject to periodic re-evaluation and judicial review;
- e. Decisions regarding the detention of migrants must also take into account the effect of the detention on their physical and mental health;
- f. Migrants with international protection needs and migrants in vulnerable situations, including pregnant women, breastfeeding women and victims of trafficking must never be detained.

Principle 70: Access to, and independent monitoring of, migration detention centers

States must ensure autonomous and independent monitoring mechanisms and allow civil society organizations and international organizations access to detention centers for the purpose of monitoring conditions of detention, including guaranteed access to all facilities in places of deprivation of liberty; access to information and documentation relating to the establishment and persons deprived of liberty; and the possibility of private and confidential interviews with persons deprived of liberty and staff. States must guarantee the existence of accessible complaint mechanisms for all detained persons, and especially women, children, LGBTI persons, persons with disabilities and others who may be exposed to disproportionate exploitation and abuse.

Principle 71: Prohibition of detention of migrant children

Every child, at all times, has a fundamental right to liberty and freedom and not to be admitted in immigration detention.

States shall prohibit detention of children both by law and in practice. States may not opt to deprive children of their liberty as a precautionary measure to protect the objectives of migration proceedings; nor may they detain children based on a lack of compliance with the requirements of entry and stay in a country, the fact that a child is unaccompanied or separated, or with the objective of ensuring the family unit. In the case of accompanied children, the prohibition of detention should be extended to the parent(s), family members, primary caregiver or legal guardian accompanying them. In addition, States may not detain a child or adolescent while the best interest assessment and determination is being carried out, nor while their migration, asylum or international protection procedures are being substantiated.

SECTION XVII**Guarantees in repatriation, deportation, and expulsion proceedings and procedures****Principle 72: Prohibition of collective expulsion or deportation**

Collective expulsions or deportations are manifestly contrary to international law. A collective expulsion or deportation is defined as an expulsion carried out without making individual determinations of status, but rather on the basis of group determinations, regardless of the size of such a group. The absence of a reasonable and objective examination of each person's individual case means that collective expulsion or deportation is inherently arbitrary and must be prohibited. Therefore, each case of expulsion or deportation must be ordered through an individual decision, with particular consideration given to any international protection needs.

Summary deportation proceedings or direct return (*refoulement*) policies are contrary to the guarantees of due process in that they deprive migrants of the right to be heard, to defend themselves adequately, and to challenge their expulsion or deportation.

Principle 73: Guarantees in expulsion or deportation procedures

Every migrant has the right to protection against discriminatory or arbitrary expulsion or deportation. States may expel a migrant only when justified on the basis of the specific facts concerning the person, and only in compliance with a decision reached on the basis of and authorized by law. Any expulsion or deportation procedure that has family separation as a consequence should be eminently exceptional. Migrants shall have the right to an effective remedy when the expulsion or deportation may lead to a human rights violation.

Every migrant has and shall enjoy the right to be heard in order to defend their rights in the context of any proceeding that could result in expulsion or deportation. Expulsion or deportation proceedings must respect, protect, and fulfill migrants' rights to due process. As long as the appeal remains pending, the suspension of the decision to expel or deport must be guaranteed.

The decision to expel a migrant must be communicated to the migrant in writing stating the reasons for the decision, in a language that the migrant understands. The migrant must be informed of these rights in advance, or at minimum, at the time the decision is rendered.

Expulsion or deportation by a State should not in itself threaten any rights acquired by the migrant on the basis of the law of the State concerned, including the right to receive wages and other debts owed. The migrant must have a reasonable opportunity before or after departure to settle any claims for wages and other debts and any outstanding liabilities.

In the execution of the expulsion or deportation of a migrant from its territory, the State shall ensure respect for the rights guaranteed to the migrant by relevant national, regional and international law, and in particular any rights to international protection.

Principle 74: Treatment during expulsion or deportation

Any person subject to expulsion, repatriation, or deportation proceedings must have access to nutritious food, water, sanitation, basic health care, psychological care, shelter, and other basic necessities such as adequate clothing during all stages of travel and upon arrival in the receiving country. Due consideration should be given to this by States at the time of arrival, to security at the place of return, and the presence of adequate reception services. The person subject to this measure shall have access to complaint mechanisms regarding the behavior of the personnel assigned to its execution, including incidents related to sexual exploitation or abuse. In the case of children and adolescents, their best interest must prevail, in the event of any deportation or return decision.

Principle 75: Right to information regarding and during repatriation, deportation, and expulsion proceedings

States shall authorize any person being expelled, repatriated, or deported to notify family members and others in their State of destination or arrival and shall effectively afford them the opportunity to do so. At all stages in repatriation, deportation, and expulsion proceedings, States shall facilitate access to consular assistance channels.

States of origin and destination must make arrangements to establish more efficient coordination mechanisms that allow family members to know the exact place and time their family member will be deported, and make available the means needed to establish communication with their family members and to inform them of the place and time of their arrival.

SECTION XVIII

Return and integration in states of origin

Principle 76: Guarantees for safe return

All migrants, regardless of their migration status, have a right to return to the State of which they are nationals. States must work together to facilitate return and readmission in conditions of safety and dignity, without discrimination with respect to the form of displacement.

Voluntary return processes must be carried out through mechanisms that ensure the voluntary nature of the consent of the returnees. States must ensure that the consent given for voluntary return is fully communicated to returnees in their own language, based on up-to-date and objective information, including that concerning the place and circumstances to which the migrant would be returning. Consent must be given free from coercion, including violence and ill-treatment, arbitrary detention or the possibility of it, or detention under inadequate conditions.

States must at all times promote lasting and sustainable solutions to guarantee the safe return of migrants, especially in the case of unaccompanied children, they must also ensure that returnees do not suffer threats to their life, liberty, security and/or integrity before, during or after return.

Principle 77: Transfer of mortal remains

States must ensure that the process of identifying, investigation, and transfer of the mortal remains of deceased migrants is conducted with respect and that those remains are, if possible, returned in conditions that enable family members to perform the funeral rites they deem appropriate. The States of residence and origin must communicate to ensure that the family members of the deceased are consulted in advance before any steps are taken that could irreversibly alter the state of the remains

States must guarantee logistical and financial support for transferring the bodily remains of migrants.

Principle 78: Protection of personal goods and effects

All returning migrants must be able to bring their goods and personal effects with them to the receiving State and must have sufficient time to collect them, as well as continuous access to such goods and effects in the sending State, including funds, prior legal agreements, pensions, social security, and other government benefits.

Principle 79: Personal documents

States shall ensure access to identification documents for all returning migrants, as well as documents showing citizenship or legal status in the receiving State, in order to allow them to enjoy their rights and privileges in the receiving State. States shall facilitate access to these documents and their affordability.

The State shall not retain personal identification documents at any time after the departure of a person who is expelled or deported.

Principle 80: Access to means needed for social reintegration

States of stay and reception must coordinate measures to ensure that the return and readmission of migrants are strictly legal, take place in conditions of safety and dignity, and that reintegration is sustainable to guarantee the full respect and protection of the human rights of returnees throughout the return process, including the right to legal personality and identification, and the civil, political, economic, social, and cultural rights of returnees, including, but not limited to, skills training, language courses, job opportunities, and small business loans.

Receiving States must guarantee, without discrimination, dignified conditions for the reintegration of returnees and deportees, access to justice in cases of human rights violations during return/deportation/removal/expulsion, access to emotional and mental health care to enable them to rebuild their lives, and the non-criminalization and re-victimization of such persons.

States shall facilitate the accreditation and validation of school credits, academic diplomas and certificates, and professional titles and skills with a view to achieving swift academic and professional reintegration of their nationals returning to their country of origin, including migrant persons that belong to their nuclear family.