

INTRODUCTORY NOTE TO THE AFRICAN GUIDING PRINCIPLES ON THE RIGHTS OF MIGRANTS,  
REFUGEES AND ASYLUM SEEKERS (AFR. COMM’N H.P.R.)  
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## Introduction

In its 75th ordinary session, the African Commission on Human and Peoples’ Rights (ACHPR, or Commission), the human rights organ of the African Union, with a mandate to promote and protect human and peoples’ rights and interpret the African Charter on Human and Peoples’ Rights, unanimously adopted the African Guiding Principles on the Human Rights of Migrants, Refugees and Asylum Seekers (Guiding Principles).<sup>1</sup> They were publicly launched by the Commission at its 77th ordinary session on October 21, 2023. The drafting was led by the Commission’s Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons, and Migrants in Africa. The thirty-eight Guiding Principles are based largely on African regional treaty law, case law, standards, and resolutions of the Commission and also draw from complementary international law. In addition, the Guiding Principles draw from the experience of other world regions, including adoption by the Inter-American Commission on Human Rights (the human rights organ of the Organization for American States) of the 2019 Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking.<sup>2</sup>

## Background

In 2021, the ACHPR directed the Rapporteur to conduct a study to assess African responses to migration with a view to developing principles and guidelines for the protection of the rights of migrants, asylum seekers, and refugees in Africa.<sup>3</sup> Guiding Principles were then developed on the basis of Article 45(1)(b) of the Charter, which empowers the Commission to formulate standards, principles, and rules on which African governments can base their legislation.<sup>4</sup> Their eventual adoption emerged against the backdrop of two parallel processes.

The first involved efforts in Africa to develop a robust agenda for free movement. Most emblematic of this is the African Union’s 2018 Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment.<sup>5</sup> Although the Protocol has not yet entered into force, it sets forth the Union’s goal of establishing free movement of persons—including the creation of an “African Passport.”<sup>6</sup> Yet the Protocol provides only minimal consideration of what might be considered the basis for human rights of non-citizens moving in the context of the new regime.

Second, at the global level, states have recently elaborated two compacts, one on refugees and one for migration, collating actions to advance more predictable and equitable responsibility-sharing in the refugee protection space and to promote safe, orderly, and regular migration for those not fleeing harm defined by refugee law.<sup>7</sup> Both documents affirm the salience of the refugee and human rights treaty law regimes, but generally do not frame their non-binding undertakings in human rights terms.<sup>8</sup>

These twin processes created opportunities for regional leadership to specify how general human rights law protects migrants and to engage international processes at the intersection of global and regional norms.<sup>9</sup> The African Guiding Principles thus represent a soft law contribution intended, in the words of the former ACHPR Vice-Chair and relevant Rapporteur of the Commission, Professor Maya Sahli-Fadel, to “assist States to implement their human rights obligations in the context of human movement across borders within the continent and into the extra-continental diaspora.”<sup>10</sup>

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## Significance

Despite the overwhelming focus within the General Principles on the application of existing African human rights law, there are three areas where they make a particularly important contribution to the *corpus juris*. First, the Guiding Principles include a broad definition of “migrant,” focusing on the crossing of an international border, and represent the first time a definition of “climate migrant” has been adopted by an international body. Second, the Guiding Principles clarify state duties regarding the protection of the rights of people of African descent in the African diaspora. Third, and finally, the Guiding Principles elaborate the manner in which states must protect the rights of migrants caught in countries in crises or conflict, affirming the application of both human rights and humanitarian law.<sup>11</sup>

## Defining Climate Migrants

The Guiding Principles include all people who are outside of the state of which they are a citizen or national (including stateless migrants outside of their state of birth or habitual residence) in the definition of “migrant.”<sup>12</sup> This clearly includes asylum-seekers and refugees, and any other person who crosses an international border in the broad sweep of its definition (while preserving claims to citizenship of stateless migrants). The plain statement joins a chorus of other authorities defining “migrant” similarly broadly.<sup>13</sup> Such a definition undermines any suggestion of a hierarchization of rights as between refugees and migrants.

Building from this capacious understanding, the Guiding Principles propose a novel definition of “climate migrant.” This begins with a definition of “human mobility in the context of climate change” as “displacement motivated by the adverse effects of sudden- or slow-onset climate impacts, whether within and across national borders.”<sup>14</sup> This is important given how much climate-induced mobility is projected to be internal.<sup>15</sup> The definition then states that “[w]hen climate change induced human mobility involves movement across international borders, those displaced are ‘climate migrants.’”<sup>16</sup> This is a global first from an international body.

Likewise, and consonant with this, the Guiding Principles affirm that when refugees (which definition includes both the core aspects of the 1951 Convention’s Article 1A and the related 1969 OAU Convention)<sup>17</sup> cross borders as a result of climate change that affects their fundamental rights, they may be considered refugees regardless of whether the cause(s) seriously disturb public order. As a matter of refugee protection, this is a powerful statement by the ACHPR concerning the breadth of interpretation appropriately given to the public order provision of the 1969 OAU Convention.<sup>18</sup>

Complementing this attention to the role of climate change in driving human mobility on the continent are applications of the Charter to recognize that migrants, too, have the right to development and that this must include climate-resilient development.<sup>19</sup> As such, the Commission calls on states to recognize that the extra-territorial effects of climate change are “important drivers” of climate migration—and to take action.<sup>20</sup> The relevant Principle indicates that states must adopt mitigation measures as well as adaptation and resilience strategies. Finally, and also as a consequence of the right of migrants to a favorable environment, the Guiding Principles direct states to take into account the need to create pathways for migration among such strategies. Such calls are consonant with other efforts on the continent to draw attention to the need for action to address the climate–migration nexus, but the first to ground such duties in regional human rights law.<sup>21</sup>

## The Extraterritorial Reach of Key Rights to Migrants in the Diaspora

The Guiding Principles encourage African and non-African countries to protect the rights of diasporic communities. The Guiding Principles adopt the African Union’s broader understanding of “diaspora” to include recent emigrants and all people of African descent, building on the historical solidarity of people of African descent and Africa’s anti-racial discrimination activism.<sup>22</sup> This solidarity in its formal post-independence sense dates to a 1964 African Union resolution against the United States’ discriminatory practices against African Americans despite the Emancipation Proclamation and the Civil Rights Act.<sup>23</sup> The Guiding Principles thus fill a gap by calling on African and non-African states to promote the equality of people of African descent, and establishing soft law authority on which African states can rely to condemn racial discrimination of people of African descent in Europe or elsewhere.<sup>24</sup>

In relation to the African Charter's extra-continental reach, the Guiding Principles arguably fill a gap left by the Vienna Convention on Consular Relations (VCCR) by establishing that African states should provide consular protection to stateless persons with a claim to citizenship and to holders of more than one citizenship.<sup>25</sup> The VCCR establishes a duty to provide consular protection to people with nationality. It does not identify any alternatives to the provision of consular protection for stateless persons. The Guiding Principles address this by obligating the state of habitual residence to provide consular services and protection.<sup>26</sup>

Second, in relation to dual citizens, the VCCR is silent on which state is the "sending state" with the obligation to provide consular protection. This is an effect of the *Nottebohm (Liechtenstein vs. Guatemala)* dispute.<sup>27</sup> In *Nottebohm*, the International Court of Justice opined that consular protection results from an effective citizenship analysis that measures economic and non-economic connections. Given how difficult it is to define and measure effective citizenship in our contemporary period, where dual and multiple citizenships are more common than in the post-World War II period, the question of the "sending state" has been in limbo. The African Guiding Principles respond to this by obliging states to provide consular services and protection, irrespective of the person's dual or multiple citizenships.<sup>28</sup>

### The Rights of Migrants Caught in Crises or Conflict

The Guiding Principles also cover the rights of migrants who must be protected in the event of conflicts and humanitarian emergencies. It affirms that states must ensure the protection of all migrants caught in situations of armed conflict under both international humanitarian law and international human rights law. This builds indirectly on efforts by states at the global level to develop good practices to respond to such crises.<sup>29</sup> It also reflects myriad experiences related to armed conflicts and takes the African context into consideration.<sup>30</sup> The text thus affirms obligations for states to take into consideration the vulnerabilities of migrants caused by the armed conflict and to take feasible measures to ensure their protection, including through the provision of humanitarian assistance.<sup>31</sup> Recognizing the situation faced by many displaced across borders into areas of armed conflict, the Guiding Principles stress the duties of states to consider the settlements established as a temporary measure as civilian objects.<sup>32</sup> This contextualization is a way to strengthen migrants' rights in all circumstances, including conflict or crisis.

### Conclusion

The African Guiding Principles represent an important soft law contribution of the ACHPR as part of a trend of regional and global innovation on addressing state actions in the context of migration. Given the document's breadth, it could have a significant impact on the application of the African Charter to migrants on the continent. This will depend largely on the Commission's ability to inject its interpretations of human rights law into the African Union's increasing efforts to support migration management and to develop continental free movement, as well as its own application of the Guiding Principles to periodic reports by states and individual complaints to the Commission.

### ENDNOTES

- 1 *African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers* Af. Comm'n & H. Peoples' R., (Oct. 21, 2023 making public the document adopted by the Commission in closed session in May 2023), <https://achpr.au.int/index.php/en/soft-law/african-guiding-principles-human-rights-all-migrants-refugees> [hereafter Guiding Principles]. At the same time, the ACHPR adopted a related study. *Study on African Responses to Migration and the Protection of Migrant Rights*, Af. Comm'n & H. Peoples' R., (Oct. 21, 2023), <https://achpr.au.int/en/soft-law/study-african-responses-migration-and-protection-migrant-rights>.
- 2 *Inter-American Principles on the Human Rights of Migrants, Refugees, Stateless Persons and Victims of Trafficking*, Inter-
- 3 *Resolution on the Need for a Study on African Responses to Migration and the Protection of Migrants with a View to Developing Guidelines on the Human Rights of Migrants, Refugees and Asylum Seekers*, ACHPR/Res. 481 (LXVIII) ¶ 5. (May 20, 2021), <https://achpr.au.int/en/adopted-resolutions/481-resolution-need-study-african-responses-migration-and-pro>.
- 4 African Charter on Human and Peoples' Rights, art. 45, June 27, 1981, 1520 U.N.T.S. 217; 21 I.L.M. 58 (1982).
- Am. Comm'n H.R., Res. No. 04/19, ¶ 71 (Dec. 7, 2019). Ian M. Kysel, through the Migrant Rights Initiative, also provided technical and editorial assistance to the Inter-American Commission on Human Rights in the course of the drafting and adoption of that document.

- 5 See African Union, 2018 Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, opened for signature Jan. 29, 2018, [https://au.int/sites/default/files/treaties/36403-treaty-protocol\\_on\\_free\\_movement\\_of\\_persons\\_in\\_africa\\_e.pdf](https://au.int/sites/default/files/treaties/36403-treaty-protocol_on_free_movement_of_persons_in_africa_e.pdf).
- 6 *Id.*, Preamble ¶¶ 7, 9, 15.
- 7 *Global Compact for Safe, Orderly and Regular Migration*, U.N. Doc. A/Res/73/195 (Dec. 19, 2018); *Global Compact on Refugees*, U.N. Doc. A/73/12 (Part II) (Sept. 13, 2018).
- 8 Justin Gest, Ian M. Kysel, and Tom Wong, *Protecting and Benchmarking Migrants' Rights: An Analysis of the Global Compact for Safe, Orderly and Regular Migration*, 57 INT'L MIGRATION 60 (2019). The lack of clear normative content in these global efforts has left the 1985 General Assembly Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live as the broadest articulation since the Universal Declaration of Human Rights addressing the rights of *all* migrants, standing alongside other more the specific articulations of the rights protecting particular groups of migrants, such as refugees and migrant workers. See *Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live*, G.A. Res. 40/144 (Dec. 13, 1945).
- 9 As noted above, the latter opportunity was arguably also engaged directly by the Inter-American Human Rights Commission in its 2019 Inter-American Principles on the Human Rights of all Migrants, Refugees, Stateless Persons and Victims of Trafficking. See *supra* note 2.
- 10 Guiding Principles, Foreword.
- 11 The Guiding Principles also innovate in other ways not noted above. For example, for over a decade, the tragic routes migrants take to cross from North Africa to Europe have dominated the news. See, e.g., Jim Yardley and Elisabetta Povoledo, *Migrants Die as burning Board Capsizes off Italy*, N.Y. TIMES (Oct. 3, 2013), <https://www.nytimes.com/2013/10/04/world/europe/scores-die-in-shipwreck-off-sicily.html>. The Guiding Principles are the first legal instrument at the African level that calls on African states to search for migrants missing at sea, be it their territorial waters or high seas. Principle 9(4) of the African Guiding Principles “States shall establish or reinforce mechanisms for searching for migrants who have gone missing or disappeared within their territory and on the high seas. States should standardize the collection and exchange of relevant information, to establish effective coordination mechanisms for the search for missing and deceased migrants and shall establish mechanisms and strengthen their forensic system capacity and standards in order to identify the remains of people who have disappeared in the course of their migration or displacement.” Guiding Principles, Principle 9.4. Furthermore, it also calls on African states to collect adequate forensic data to identify the identity of deceased migrants. Principle 9(6) of the African Guiding Principles “States should endeavor to identify dead or missing persons, in accordance with applicable legal frameworks. Every family of a migrant has a right to be informed when the remains of deceased migrant has been identified or located. Family members of a deceased migrant have a right to the remains of the deceased migrant.” Guiding Principles, Principle 9.6.
- 12 Guiding Principles, Principle 2.
- 13 United Nations Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights at International Borders* U.N. Doc. A/69/277, p. 4, n. 2 (Oct. 22, 2014), [https://www.ohchr.org/Documents/Issues/Migration/OHCHR\\_Recommended\\_Principles\\_Guidelines.pdf](https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf). See also Zach Bench et al., *International Migrants Bill of Rights*, 28 GEO. IMMIGRATION L. J. 9, 13 (2013).
- 14 Guiding Principles, Principle 2.2 (also noting that, “[c]limate change induced human mobility involves different levels of constraints, agency, and vulnerability and encompasses both forced displacement and migration, including planned relocation” and that “[c]limate change induced human mobility occurs over different distances and can be temporary, recurrent, or permanent.”).
- 15 World Bank, *Groundswell* (Sept. 13, 2021), <https://openknowledge.worldbank.org/handle/10986/36248>.
- 16 Guiding Principles, Principle 2.2
- 17 Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; Convention Governing the Specific Aspects of Refugee Problems in Africa, Oct. 10, 1969, 1001 U.N.T.S. 45.
- 18 This thus goes farther than UNHCR has in interpreting the public order provision of the 1969 OAU Convention. United Nations High Commissioner for Refugees, *Assessing serious disturbances to public order under the 1969 OAU Convention, including in the context of disasters, environmental degradation and the adverse effects of climate change* (Sept. 27, 2023), <https://www.refworld.org/reference/research/unhcr/2023/en/124351>.
- 19 Guiding Principles, Principle 32.
- 20 *Id.*
- 21 African Union, *Addressing the Impact of Climate Change on Human Mobility at the center of PAFOM deliberations in Kigali* (Oct. 19, 2022), <https://au.int/en/pressreleases/20221019/addressing-impact-climate-change-human-mobility/>; Africa Climate Mobility Initiative, Agenda for Action, <https://africa.climate-mobility.org/agenda-for-action>.
- 22 See, e.g., The Protocol on Amendments to the Constitutive Act of the African Union adopted by the First Extra-Ordinary Session of the Assembly of Heads of State and Government in Addis Ababa, Ethiopia in January 2003, <https://au.int/en/treaties/protocol-amendments-constitutive-act-african-union>.
- 23 AHG/Res. 15(I), Racial Discrimination in the United States of America, July 17-21, 1964. The Chairperson of the African Union recently invoked this principle of solidarity and Africa’s anti-racial discrimination activism concerning the Black Lives Matter movement in the United States. However, the African Union had to reference its 1960s resolution to condemn the racially motivated. See African Union, Statement of the Chairperson following the murder of George Floyd in the USA (May 29, 2020), <https://au.int/en/pressreleases/20200529/statement-chairperson-following-murder-george-floyd-usa>.
- 24 Guiding Principles, Preamble (stating “In light of these consideration, the present *Guiding Principles* are presented to the Commission for consideration and adoption in order to assist States to implement their human rights obligations in the context of human movement across borders within the continent and into the extra-continental diaspora.” and “These *Guiding Principles* also give direction to non-African states hosting African diaspora and people of African descent. These *Guiding Principles* serve as a reminder of the United Nations

- General Assembly Proclamation of the International Decade for People of African Descent. The African Commission calls on all member states of the United Nations to promote the equal recognition and protection of people of African descent irrespective of their migration status.”) In addition, Principle 1(2) of the Guiding Principles state “[t]he rights enshrined in these Guiding Principles apply to the obligations of African Union Member States to protect the rights of all migrants, irrespective of their origin, including migrants in the African diaspora.” Guiding Principles, Principle 1.2.
- 25 Article 5 (a) of the Vienna Convention on Consular Affairs aligns protection with nationality. Article 5(a) states “Consular functions consist in protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law.” Statelessness signifies a person without a nationality or the protection of a nation. Although there have been significant treaty instruments to reduce Statelessness the VCCA failed to capture stateless persons in its rubric of consular protection. See *Vienna Convention on Consular Relations*, Apr. 24, 1963, 21 U.S.T. 77; 596 U.N.T.S. 261. See also *Global Compact for Safe, Orderly and Regular Migration*, *supra* note 8, Objective 20.
- 26 Guiding Principles, Principle 34.2.
- 27 *Nottebohm (Liechtenstein v. Guatemala)*, 2nd Phase Judgment, I.C.J. Rep. 1955 (Apr. 6).
- 28 Principle 34 (1) of the African Guiding Principles states “States shall provide diplomatic protection and consular assistance for all its nationals, irrespective of their migratory status, dual or multiple citizenship.” Guiding Principles, Principle 34.1
- 29 Migrants in Countries in Crisis Initiative, *Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster* (June 2016), [https://micicinitiative.iom.int/sites/g/files/tmzbdl1426/files/documents/micic\\_guidelines\\_english\\_web\\_13\\_09\\_2016.pdf](https://micicinitiative.iom.int/sites/g/files/tmzbdl1426/files/documents/micic_guidelines_english_web_13_09_2016.pdf) (noting in its forward its goal of “clos[ng] the broader protection gaps faced by migrants at risk”).
- 30 See, e.g., United Nations Office of the High Commissioner for Human Rights, *Nowhere But Back*, (Nov. 2024), <https://www.ohchr.org/sites/default/files/2022-12/Report-on-assisted-return-and-reintegration.pdf>; Press Release, U.N. High Commissioner for Refugees, UNHCR Increasingly Concerned About Safety of Refugees Caught up in Sudan Conflict (June 1, 2023), <https://www.unhcr.org/news/press-releases/unhcr-increasingly-concerned-about-safety-refugees-caught-sudan-conflict>; Refugees International, *Nowhere to Run: Eritrean Refugees in Tigray* (March 3, 2022), <https://d3jwam0i5codb7.cloudfront.net/wp-content/uploads/2023/03/EritreaBrief-March202228129.pdf>.
- 31 Guiding Principles, Principle 35.
- 32 *Id.*

AFRICAN GUIDING PRINCIPLES ON THE RIGHTS OF MIGRANTS, REFUGEES AND  
ASYLUM SEEKERS (AFR. COMM’N H.P.R.)\*  
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## African Commission on Human and Peoples’ Rights

# African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers

May 2023

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## FOREWORD



The present *African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers* are proposed for consideration and adoption by the African Commission on Human Rights during its 75th ordinary session in Addis Ababa (3-23 May 2023).

African Union institutions and Member States have recognized that migrants bring special contributions to their communities and to our Continent.

The *Guiding Principles* were conceived of and drafted after African Union institutions and its Member States had passed resolutions and put in place various mechanisms to recognize and promote the rights of all migrants – including having played a leading role for decades in issues of refugee protection – and developed a landmark framework to promote freedom of movement on the continent.

The Commission, for its part, has passed multiple resolutions addressing the rights of all migrants, including Resolution 114 of 2007, on Migration and Human Rights; Resolution 333 of 2016, on the Situation of Migrants in Africa; and Resolution 470 of 2020, on the Protection of Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in the Fight Against the COVID-19 Pandemic in Africa. Finally, the Commission identified the need to study African Responses to Migration and the Protection of Migrants with a view to Developing Guidelines on the Human Rights of Migrants, Refugees and Asylum Seekers in its Resolution 481 of 2021.

The *Guiding Principles* were developed on the basis of Article 45(1)(b) of the African Charter, which empowers the Commission to formulate standards, principles, and rules on which African governments can base their legislation. They are based on African regional treaty law, case law, standards and resolutions of this Commission; international human rights treaty law, international refugee law and international humanitarian law; and draw from the experience of other world regions, including the 2019 Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking (IACHR Res. 04/19). The *Guiding Principles* also consider other international and regional decisions and special procedures and the views of a broad range of stakeholders who engaged with the Commission while drafting and revising the present document. The *Guiding Principles* were drafted with the technical assistance of the Migrant Rights Initiative at Cornell Law School and also benefited from the engagement at two expert meetings of representatives of academia, African continental and regional organizations, international organizations and broader civil society and including migrants – as well as members of the Commission, held in October 2022 in Banjul, The Gambia and in March 2023 online.

In light of these considerations, the present *Guiding Principles* are presented to the Commission for consideration and adoption in order to assist States to implement their human rights obligations in the context of human movement across borders within the continent and into the extra-continental diaspora.

These *Guiding Principles* contain “Explanatory Notes” which point the reader to the source of authority on which they are based. They therefore provide a set of thirty-eight Principles, with a goal of both recognizing those key principles of international human rights law that are vitally important to protecting the rights of migrants while also applying those principles to the specific context of migration. The Commission should nonetheless recognize that while some issues may not be specifically addressed by the *Guiding Principles*, they should nonetheless be covered by the application of the thirty-nine Principles and by other human rights instruments.

These *Guiding Principles* also give direction to non-African states hosting African diaspora and people of African descent. These *Guiding Principles* serve as a reminder of the United Nations General Assembly Proclamation of the International Decade for People of African Descent. The African Commission calls on all member states of the United Nations to promote the equal recognition and protection of people of African descent irrespective of their migration status.

To provide States with guidance that would be most effective for respecting and ensuring their human rights obligations in the context of the movement of people across international borders, the *Guiding Principles* set out to meet several objectives:

- **Centering Migrants:** The Commission realizes that migrants are too often marginalized from discussions about their rights and from the actions and deliberations of States and inter-governmental organizations which impact their enjoyment of those rights. For this reason, the *Guiding Principles* are focused on the migrants as primary rights-holders.
- **Protecting all Migrants:** The Commission emphasizes that there are certain rights challenges which can be experienced by all people moving across borders and that human rights law protects all of these migrants on the basis of their humanity and dignity alone. Yet the continent and the international community has developed specific bodies of law protecting groups of persons on the move – including but not limited to refugees, stateless migrants, victims of human trafficking, women migrants, migrant children, migrants with disabilities, older migrants, migrant workers and members of their families, migrant domestic workers, investors, diplomats and consular officials. Restating general guiding principles for all people moving across international borders cannot be interpreted as displacing the application of such relevant specific bodies of binding international law, such as the law protecting refugees, as noted in the *Guiding Principles*' savings clause.<sup>1</sup>
- **Responding to Emerging Issues:** The *Guiding Principles* address a broad set of human rights issues, including emerging issues, such as global climate change, which particularly affect migrants. Drawing on other recent actions by States in our region and globally, and the longstanding role of African States and institutions in delivering innovation in the progressive development of the law protecting the human rights of migrants, including refugees, and the right of all people to a clean, healthy and sustainable environment, the *Guiding Principles* propose a novel and legally-supported definition of climate migrant and also highlight ways that existing African law protecting refugees could protect those climate migrants who are compelled to seek refuge outside their country of origin or nationality, including when the effects of global climate change seriously disturb public order, triggering application of continental refugee law.
- **Underlining the Importance of Cooperation:** Implementation of these *Guiding Principles* requires cooperation amongst African Union States and institutions to respect the human rights of migrants. The success of the *Guiding Principles* will depend on the extent to which they are known and implemented by States Parties to the African Charter.

The African Commission on Human and Peoples' Rights should therefore call on all stakeholders to use the *African Guiding Principles on the Human Rights of All Migrants, Refugees and Asylum Seekers* to inform their work in strengthening human rights protections in the context of the movement of people across international borders.

Honorable Commissioner Maya Sahli Fadel

Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa

Vice-Chairperson of the African Commission on Human and Peoples' Rights

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## ENDNOTE

1 The definition of migrant herein was first proposed by the Migrant Rights Initiative. See An International Migrants Bill of Rights and Commentaries, 28 *Georgetown Immigration Law Journal* 9 (2013). It has been adapted by the United Nations Office of the High Commissioner of Human Rights. See Recommended Principles and Guidelines on Human Rights at International Borders A/69/277 (2014); a similar

definition was adopted by the Inter-American Commission on Human Rights in its 2019 Inter-American Principles on the Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking (Resolution 4/19). These definitions are also consistent with other broad definitions of migrants. See, e.g., the Policy on Migration of the International Federation of the Red Cross and Red Crescent Societies.

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## EXPLANATORY NOTES

Instructive but non-exhaustive explanatory notes accompany the *Guiding Principles on the Rights of Migrants, Refugees and Asylum Seekers*. These Notes provide supporting material for the *Guiding Principles*. They include sources from African regional treaty law, the African Commission on Human and Peoples' Rights case law, international human rights treaty law, and customary international law. Notes are not provided where the supporting materials for the *Guiding Principles* are apparent.

## PREAMBLE

The African Commission on Human and Peoples' Rights;

Affirming its mandate to promote and protect human and peoples' rights in accordance with Article 45 of the African Charter on Human and Peoples' Rights;

Explanatory Note: *See*, Articles 1, 30 and 45 of the African Charter on Human and Peoples' Rights.

Considering Resolution 481 (LXVIII) 2021 of the African Commission on Human and Peoples' Rights requesting the Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons, and Migrants in Africa to study African responses to migration and the protection of migrants with a view to developing Guiding Principles;

Explanatory Note: *See*, Article 5 (ii) of Resolution 481 on the Need for a Study on African Responses to Migration and the Protection of Migrants with a view to Developing Guidelines on the Human Rights of Migrants, Refugees and Asylum Seekers - ACHPR/Res. 481 (LXVIII) 2021.

Recalling the obligations of African States to protect the rights of all persons, regardless of their status, under the Constitutive Act of the African Union, the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa Problems in Africa;

Explanatory Note: *See*, Article 3 (h) of the Constitutive Act of the African Union, which notes that the objective of the African Union shall be to "promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments." The African Charter on Human and Peoples' Rights reiterates Africa's commitment to protecting the rights of all persons, regardless of their migration status. Article 2 of the African Charter on Human and Peoples' Rights states that "[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status." Furthermore, Article 2 of the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa, Article 3 of the Protocol to the African and Human and Peoples' Rights of Persons with Disabilities in Africa, Article 3 of the African Charter on the Rights and Welfare of the Child, Article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, and Article 4 of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa Problems in Africa prohibit discrimination of migrants and requires African States to advance human rights of all. In conclusion, a holistic reading of these African instruments prohibits discriminatory and arbitrary denial of human and peoples' rights for migrants without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, or other status.

Recognizing African States' commitments and obligations to recognize and protect refugees.

Explanatory Note: Article 1 of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa Problems in Africa notes that "(1) [f]or the purposes of this Convention, the term "refugee" shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or,

owing to such fear, is unwilling to return to it. (2) The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” *See* also Article 8(2) of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa stating. *See* the United Nations Convention on Refugee United and the 1967 Protocol Relating to the Status of Refugees.

Recalling the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment and the commitment of African States under intra-African regional agreements that guarantee the free movement and rights of migrants, in particular the Treaty of the Economic Community of West African States, the Protocol on the Free Movement of Persons, the Right of Residence and Establishment of the Economic Community of West African States, the Economic and Monetary Community of Central Africa, the Southern African Development Community Protocol on Facilitation of Movement of Persons, the Southern African Development Community Protocol on Employment and Labor, Protocol on the Establishment of the East African Community Common Market, the Common Market for Eastern and Southern Africa Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment and Residence, the Protocol on Free Movement of Persons in the Inter-Governmental Authority for Development Region, the Treaty Establishing the Arab Maghreb Union, the Treaty Establishing the Community of Sahel-Saharan States;

Explanatory Note: *See*, Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment and African Union Agenda 2063 Aspiration 3 (An Africa of Good Governance, Democracy, Respect for Human Rights, Justice and the Rule of Law). *See* Article 2, 27(1), 27(2) of the Treaty of the Economic Community of West African States calls for free movement, free mobility without visa and residence permit, right to work and undertake commercial and industrial activities. In addition, Article 2 of the Protocol on the Free Movement of Persons, the Right of Residence and Establishment of the Economic Community of West African States grants “Community citizens the right to enter, reside and establish” in the Community. Article 40 of the Treaty Establishing the Economic and Monetary Community of Central Africa creates community citizenship. It guarantees the right to free movement and the establishment of community citizens. The Southern African Development Community Protocol on Facilitation of Movement of Persons under Article 3 guarantees community citizens visa-free entry, rights of residence, and establishment. Article 2 (4(b), (c), (d), and (e)) of the Protocol on the Establishment of East African Community Common Market guarantees the free movement of persons and labour, the right of establishment, and residence. Articles 3, 9, 11, and 12 of the Common Market for Eastern and Southern Africa Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment and Residence provide for the gradual realization of free movement of persons, labour, establishment, and residence. Article 3 of the Protocol on Free Movement of Persons in the Inter-Governmental Authority for Development Region guarantees the free movement of persons and labour and gradual realization of the right to the establishment. Article 2 of the Treaty Establishing the Arab Maghreb Union notes that member states need to work towards the gradual realization of the free movement of persons. Under Article 3(f), the Treaty Establishing the Community of Sahel-Saharan States promotes the free movement of persons.

Recalling African States’ commitment to protecting the rights of all persons, regardless of their status, under 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 Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families, the International Convention For the

Protection of All Persons From Enforced Disappearances, the Convention on the Rights of Persons with Disabilities, the Geneva Convention relating to the Status of Refugees and its Protocol, the Convention Relating to the Status of Stateless Persons, the Convention on the Reduction of Statelessness, International Labour Organization Conventions 97, 143 and 189, the Convention Against Transnational Organized Crime and the Protocols thereto and those relevant complementary provisions of customary international law as well as the Global Compact for Safe, Orderly and Regular Migration and Global Compact for Refugees;

Explanatory Note: *See*, Article 60 of the African Charter on Human and Peoples' Rights, which states "[t]he Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on Human and Peoples' Rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of Human and Peoples' Rights, as well as from the provisions of various instruments adopted within the Specialised Agencies of the United Nations of which the Parties to the present Charter are members." *See* Article 61 of the African Charter on Human and Peoples' Rights, which "[t]he Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognised by Member States of the Organisation of African Unity, African practices consistent with international norms on Human and Peoples' Rights, customs generally accepted as law, general principles of law recognised by African States as well as legal precedents and doctrine." *See* also the Preamble of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa Problems in Africa, which recognizes that "the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment."

Noting with concern the human rights violations of migrants in and out of Africa and desirous of finding ways of providing them with a better life and future;

Explanatory Note: *See* the Preamble of the Organization of African Unity Convention Governing Specific Aspects of Refugees notes "with concern the constantly increasing number of refugees in Africa and desirous of finding ways and means of alleviating their misery and suffering as well as providing them with a better life and future." *See* also the African Common Position on Migration and Development (EX.CL/Dec.305 (IX)) (page 3) recognizes the constantly increasing number of migrants globally. It also notes that one-third of global migrants are people of African descent. Furthermore, people of African descent have encountered violations of their fundamental rights in and out of Africa. For instance, *see* the Programme of activities for the implementation of the International Decade for People of African Descent, Resolution adopted by the General Assembly on 18 November 2014 (A/69/L.3). More recently, the Statement of the African Union on the reported ill-treatment of Africans trying to leave Ukraine shows discrimination and violation of the fundamental rights of migrants of African descent.

Recognizing the need for a human rights approach towards migrants and their families;

Explanatory Note: the African Union Migration Policy Framework for Africa and Plan of Action (2018–2030) on page 71 states that "[h]istorically, migrants have often been deprived of their rights and subjected to discriminatory and racist actions and policies including xenophobia, exploitation, mass expulsion, persecution, and other abuses. Safeguarding the human rights of migrants implies the effective application of norms enshrined in human rights instruments of general applicability, as well as the ratification and enforcement of instruments specifically relevant to the treatment of migrants."

Recognizing that in our continent, we have nomadic populations and cross-border mobility practices that need free movement guarantees to secure their livelihoods and cultures, as well as contribute to peace;

Explanatory Note: *See* Article 12 of the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment  
*See* also Article 15 of the Protocol on Free Movement of Persons in the Inter-Governmental Authority for Development Region.

Bearing in mind that the African Charter on Human and Peoples' Rights affirmed the principle that all human beings irrespective of their status as a migrant shall enjoy fundamental rights and freedoms without discrimination and that the African Commission on Human and Peoples' Rights confirmed that Charter rights are generally owed to nationals and non-nationals alike;

Explanatory Note: *See* Article 2 of the African Charter on Human and Peoples' Rights, which states, "[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status." Furthermore, *see* also 71/92: Rencontre africaine pour la défense des droits de l'Homme (RADDHO)/Zambia (Para. 22), where the African Commission on Human and Peoples' Rights confirmed that the African Charter on Human and Peoples' Rights "imposes an obligation on the contracting state to secure the rights protected in the Charter to all persons within their jurisdiction, nationals or non-nationals."

Mindful that the right to development is an inalienable human right by virtue of which every human person, including migrants, and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized;

Explanatory Note: *See* Article 1(1) of the U.N. General Assembly resolution A/Res/41/128, Declaration on the Right to Development.

Considering that migrants bring special contributions to their communities, that the ability to participate in and influence one's community is a significant part of human dignity;

Convinced that all the challenges of our continent must be solved and opportunities pursued in the spirit of the Charter of the African Union and in the African context;

Calling on all African states to establish common standards for the protection of the human and peoples' rights of all migrants, without prejudice to the duty to enforce any legal obligation more protective of migrants or groups of migrants, such as refugees;

Adopts the following Guiding Principles as minimum standards and definitions on the rights of migrants and urges States Parties to the African Union to incorporate them in their domestic legislation and take measures to ensure their effective implementation.

## PART 1: PURPOSE & DEFINITIONS

### PRINCIPLE 1 – PURPOSE

1. By restating African States' obligations as they relate to migrants, these Guiding Principles aim to support African Union Member States in fulfilling their legal obligations to guarantee the rights of all migrants.
2. The rights enshrined in these Guiding Principles apply to the obligations of African Union Member States to protect the rights of all migrants, irrespective of their origin, including migrants in the African diaspora.

Explanatory Note: These Guiding Principles apply to all migrants subject to the jurisdiction of member States of the African Union. First, these could be citizens or habitually resident stateless persons of African Union member States migrating within Africa (members of the African diaspora in the broad sense), as well as citizens or habitually resident stateless persons of another region who migrate into Africa. *See* Article 2 of the African Charter on Human and Peoples' Rights, which states, "[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status." Furthermore, *see* also 71/92: Rencontre africaine pour la défense des droits de l'Homme (RADDHO)/Zambia (Para. 22), where the African Commission on Human and Peoples' Rights confirmed that the African Charter on Human and Peoples' Rights "imposes an obligation on the contracting state to secure the rights protected in the Charter to all persons within their jurisdiction, nationals or non-nationals." Second, these could be citizens or habitually resident stateless persons of African Union member States moving extracontinentally from a member State of the African Union (members of the African diaspora in the sense used in African Union instruments) but who remain subject to the jurisdiction and therefore protection of rights obligations of States of the African Union (in addition to the duties of non-African States in whose territories or effective control migrants fall). *See* Article 3 (q) of the Protocol on Amendments of the Constitutive Act of the African Union recognizes the African diaspora as "an important part of our Continent." *See* also the Declaration of The Global African Diaspora Summit, Diaspora/Assembly/AU/ /Decl (I), Sandton 2012.

### PRINCIPLE 2 – DEFINITIONS

1. The term "migrant" in these Guiding Principles refers to a person who is outside of a State of which they are a citizen or national, or, in the case of a stateless person or person of undetermined nationality, their State of birth or habitual residence.
2. Human mobility in the context of climate change shall mean displacement motivated by the adverse effects of sudden- or slow-onset climate impacts, whether within and across national borders. Climate change induced human mobility involves different levels of constraints, agency, and vulnerability and encompasses both forced displacement and migration, including planned relocation. Climate change induced human mobility occurs over different distances and can be temporary, recurrent, or permanent. When climate change induced human mobility involves movement across international borders, those displaced are "climate migrants."
3. The term "refugee" shall mean every person who, owing to being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of their nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country, or who, not having a nationality and being outside the country of their former habitual



residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it and also shall mean every person who, owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of their country of origin or nationality, is compelled to leave their place of habitual residence in order to seek refuge in another place outside their country of origin or nationality.

4. The term “refugee” may also apply to those compelled to seek refuge outside their country of origin, nationality or habitual residence as a result climate change that affects their fundamental rights, regardless of whether such effects seriously disturb public order.
5. These Guiding Principles shall apply during the entire migration process.

Explanatory Note: See the African Union Migration Policy Framework for Africa and Plan of Action (2018-2030) recommends the need to “[r]espect, protect and meet the rights of all persons, regardless of their migration status” (Page 30). *See also* Article I of the Organization for African Union Convention Governing the Specific Aspects of Refugee Problems in Africa, which adopts a broader definition of refugees compared to Article 1.A. of the 1951 U.N. Convention on the Status of Refugees. The Organization for African Union Convention Governing the Specific Aspects of Refugee Problems in Africa recognizes the need to protect persons who migrate because of external aggression and climate change, creating a broader conceptualization and legal protection for refugees. See Paragraph 6 of the International Organization for Migration Discussion Note: Migration and the Environment, MC/INF/288 (definition of climate migrants.) See Article I (2) of the Organization of African Union Convention Governing the Specific Aspects of Refugee Problems in Africa Problems in Africa, which expanded the grounds for asylum to “events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” See also Article 16 (1) of the Protocol on Free Movement of Persons in the Inter- Governmental Authority for Development Region stating, “Member States shall allow citizens of another Member State who are moving in anticipation of, during or in the aftermath of [a] disaster to enter into their territory provided that upon arrival they shall be registered in accordance with national law.” Although these guiding principles focus on climate mobility across international borders, climate mobility does not just affect international migrants. Mobility motivated by the adverse effects of sudden- or slow-onset climate impacts happens within and across national borders. It involves different levels of constraints, agency, and vulnerability and encompasses both forced displacement and migration, including planned relocation. Climate mobility occurs over different distances and can be temporary, recurrent, or permanent. Africa Climate Mobility Initiative Note that “migrants in situations of vulnerability” is defined in Principle Eight and “refugee” is defined in Principle Twenty. *See also* Objective 2 of the Global Compact for Safe, Orderly and Regular Migration; Section D, Global Compact on Refugees. *See also* Page 4, note 2 of the United Nations Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights at International Borders, UN Doc. A/69/277. Finally, see U.N. General Assembly Resolution 40/144, “Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in which They Live (A/Res/40/144 (1985)), which defines as an “alien” an “individual who is not a national of the State in which he or she is present.”

## PART 2: GENERAL PRINCIPLES

### PRINCIPLE 3 – EQUALITY AND NON-DISCRIMINATION

1. All individuals, including migrants, are equal before the law and shall be equal before the courts and tribunals. Every migrant has the right, without any discrimination, to the equal protection of the law on the same basis as nationals of any State in which the migrant is present.
2. Every migrant shall be entitled to the enjoyment of the rights and freedoms recognized in these Guiding Principles without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.
3. In this respect, the law shall prohibit any discrimination and guarantee to migrants equal and effective protection against discrimination on any ground such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.
4. States shall pursue by all appropriate means and without delay a policy of eliminating racial discrimination and xenophobia in all its forms and promoting understanding among all races.

Explanatory Note: See, Article 2 of the African Charter on Human and Peoples' Rights, which states, "[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status." Similarly, Article 3 of the African Charter on Human and Peoples' Rights states that "(1) [e]very individual shall be equal before the law. (2) Every individual shall be entitled to equal protection of the law." Albeit limited only to refugees, Article IV of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa prohibits discrimination based on "race, religion, nationality, membership of a particular social group or political opinions." At the international level, Article 7 of the Universal Declaration of Human Rights notes, "[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination." Similar equality and non-discrimination provisions can also be found under Article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination. States have also pledged to eliminate racial discrimination and xenophobia in the International Convention on the Elimination of All Forms of Racial Discrimination.

### PRINCIPLE 4 – RIGHT TO LIFE

1. Every migrant has the inherent right to life. Every migrant shall be entitled to respect for life and the integrity of person. No migrant shall be arbitrarily deprived of life.
2. Any use of force in the context of border control measures must be consistent with principles of legality, necessity and proportionality. Such force may only be used as a last resort and when other means are ineffective. Lethal force may never be used for the purpose of arresting or detaining migrants, including in the event of flight from ports of entry, to prevent the exercise of the right to leave any country, including their own, to prevent irregular entry into a State's territory or for suspicion of violation of migration laws.
3. States must investigate all deaths of migrants thoroughly, independently and effectively, and provide redress and reparations.

Explanatory Note: See Article 4 of the African Charter on Human and Peoples' Rights notes that "[h]uman beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right." Similarly, Article 6(1) of the International Covenant on Civil and Political Rights protects "the inherent right to life" of every person. *See* African Commission on Human and Peoples' Rights, General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4). In addition, see Article 4(o) of the Constitutive Act of the African Union. Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions on Unlawful deaths of refugees and migrants, U.N. Doc. A/72/235. *See* also Guideline 4 (3) of the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders.

### **PRINCIPLE 5 – HUMAN DIGNITY**

1. Every migrant shall have the right to the respect of the dignity inherent in a human being. The right to dignity encompasses physical, mental, and moral integrity.

Explanatory Note: See, Article 5 of the African Charter on Human and Peoples' Rights which states, "[e]very individual shall have the right to the respect of the dignity inherent in a human being." See also Article 1 of the Universal Declaration of Human Rights which states "[a]ll human beings are born free and equal in dignity and rights."

### **PRINCIPLE 6 – TORTURE AND OTHER FORMS OF ILL-TREATMENT**

1. No migrant shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Explanatory Note: See, Article 5 of the African Charter on Human and Peoples' Rights which states, "[a]ll forms of exploitation and degradation of [people], particularly . . . torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." See also Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and generally the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### **PRINCIPLE 7 – LEGAL PERSONHOOD**

1. Every migrant has the right to recognition everywhere as a person before the law.
2. Every migrant child shall be registered immediately after birth.
3. Every migrant has the right to all documents necessary for the enjoyment and exercise of their legal rights, such as travel documents, personal identification documents, birth certificates and marriage certificates.
4. States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require.
5. States shall facilitate the issuance of identity and other such documents for migrants.

Explanatory Note: The recognition of the personhood of every person, including migrants, emanates from Articles 4 and 5 of the African Charter on Human and Peoples' Rights, which protect the inviolability and dignity of all persons. In this spirit, Article 6(2) of the African Charter on the

Rights and Welfare of the Child states that “[e]very child shall be registered immediately after birth.” See also Paragraphs 43 to 47 of the General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child. The right to register vital life events, personal identification, and travel documents should be equally accessed by all persons, including migrants, as Article 13(1) of the African Charter on Human and Peoples’ Rights requires. Article 13(2) of the African Charter on Human and Peoples’ Rights states, “[e]very citizen shall have the right of equal access to the public service of his country.” Albeit limited to refugees, Article VI (1) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa mandates African states to issue travel documents to migrants. See also Paragraph 30 of the General Comment No.5 on the African Charter on Human and People’s Rights: The Right to Freedom of Movement and Residence (Article 12(1)), which states “[g]iven the importance of identity documents in facilitating movement, the executive arm must set in place effective mechanisms for the issuance of identity documents in situations of armed conflict, natural disaster or other disruptive situations.” See also Article 28 of the 1951 Refugee Convention.

### **PRINCIPLE 8 – LIBERTY AND SECURITY OF PERSON**

1. Every migrant has the right to liberty and security of person. Any restriction on a migrant’s liberty must comply with the principles of legality, necessity and proportionality. No migrant may be deprived of their freedom except for reasons and conditions previously laid down by law. No migrant shall be arbitrarily arrested or detained.
2. States shall refrain from detention of migrants on the basis of their status as a migrant. Detention shall occur only as a measure of last resort, pursuant to an individualized determination and be for the shortest period of time necessary to achieve a legitimate purpose. It must not be prolonged or indefinite and must take a migrant’s individual vulnerabilit(ies) into account. When restrictive measures are lawful, States shall seek non-custodial alternatives to detention.
3. Detention should not be used as a means of deterrence or punishment for irregular entry or stay.
4. States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
5. States shall never detain child migrants, as deprivation of liberty on account of status as a migrant is never in their best interest. Migrant children must always be kept with their parent or caregiver, unless it is determined to be in their best interests to separate them, and placed together in alternative care, not detention; unaccompanied migrant children should be appointed an independent and competent legal guardian to defend their rights.
6. Every migrant who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
7. If so requested by the migrant, the relevant consular or diplomatic authorities must be informed, without delay, of their detention. Migrants must be informed of their right to inform and to communicate with their consular or diplomatic authorities.
8. States must allow detained migrants to have contact with members of their families, and they should ensure that migrants have the means, both technical and financial, to do so. Every detained migrant shall be treated with humanity and respect for the inherent dignity of the human person and have the right to appeal the conditions, legality and length of detention. Conditions and treatment in administrative detention shall be non-punitive.

Explanatory Note: *See* Article 6 of the African Charter on Human and People's Rights notes that "[e]very individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained." *See* also Paragraph 48 of the General Comment No.5 on the African Charter on Human and People's Rights: The Right to Freedom of Movement and Residence (Article 12(1)) "[s]tates must ensure that asylum seekers are accorded the right to move freely and reside within the borders of a state. States must refrain from detention of asylum seekers and seek alternatives to detention in the treatment of asylum seekers. Alternatives to detention must not be alternative forms of detention. Asylum seekers must not be detained in maximum-security facilities. Restrictions on the movement of asylum seekers must not be indefinite, and any restrictions or conditions must be subject to regular review by a judicial authority. States must facilitate and expedite the process of documentation for asylum seekers." These topics have also been addressed by ACHPR Resolution 486, which recognizes that the right to liberty and security of person prohibits deprivation of liberty in a secret detention facility in any country of transit or destination. ACHPR/Res. 486 (EXT.OS/XXXIII) 2021. At the international level, Article 9 (1) of the International Covenant on Civil and Political Rights states, "[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Report of the Special Rapporteur to the Human Rights Council on the human rights of migrants, U.N. Doc. A/HRC/20/24. *See* also Article 3 and 9 of the Convention on the Rights of the Child and the Joint General Comment – No. 4 of the CMW and No. 23 of the CRC (2017) – on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return. *See also* Article 31 of the 1951 Refugee Convention.

## PRINCIPLE 9 – ENFORCED DISAPPEARANCES & MISSING MIGRANTS

1. No migrant shall be subjected to an enforced disappearance.
2. States shall cooperate with one another in helping to save lives and to prevent, punish and eliminate the enforced disappearance of migrants.
3. States should take all possible measures to prevent migrants transiting or residing on their territory or otherwise under their jurisdiction from going missing, including preventing the separation of families.
4. States shall establish or reinforce mechanisms for searching for migrants who have gone missing or disappeared within their territory and on the high seas. States should standardize the collection and exchange of relevant information, to establish effective coordination mechanisms for the search for missing and deceased migrants and shall establish mechanisms and strengthen their forensic system capacity and standards in order to identify the remains of people who have disappeared in the course of their migration or displacement.
5. States should take all feasible measures to reunite separated families wherever possible and with no delay.
6. States should endeavour to identify dead or missing persons, in accordance with applicable legal frameworks. Every family of a migrant has a right to be informed when the remains of deceased migrant has been identified or located. Family members of a deceased migrant have a right to the remains of the deceased migrant.

Explanatory Note: *See* 486 Resolution on missing migrants and refugees in Africa and the impact on their families, which also emphasizes the importance of regularly assessing the consequences and impact of their migration laws and policies to ensure that they do not lead to new or increased risks

of disappearance of migrants or the aggravation of the phenomenon - ACHPR/Res. 486 (EXT.OS/XXXIII) 2021. *See* Article 4 of the African Charter on the Rights and Welfare of the Child. *See also* Principle 18 of the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking.

## PRINCIPLE 10 – MIGRANTS IN VULNERABLE SITUATIONS

1. Every migrant in a vulnerable situation has the right to protection and assistance required by the migrant's condition and status and to treatment which considers the migrant's special needs.
2. States shall take all appropriate measures to ensure that every child migrant, whether unaccompanied or accompanied by parents, legal guardians, or close relatives, receives appropriate assistance with primary consideration of the best interests of the child and due weight given to the right of every child migrant to express their views in all matters affecting them, in accordance with the age and maturity of the child, including proceedings related to their status as a migrant and procedures to determine a child's identity, age and the nature of the relationship between a child and any accompanying adult.
3. States shall take in all fields all appropriate measures to ensure the full development and advancement of women migrants for the purposes of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms based on equality with men, without discrimination, including taking a gender perspective in proceedings related to their status as a migrant and ensuring adequate responses to forced labor, sexual abuse, sexual harassment, and physical violence.
4. States shall promote the full realization of all human rights and fundamental freedoms for all migrants with disabilities without discrimination of any kind based on disability, including through taking appropriate measures to enable migrants with disabilities to live independently and participate fully in all aspects of life, including in proceedings related to their status as a migrant.
5. States shall take in all fields all appropriate measures to ensure that older migrants are accorded special measures and protection in keeping with their specific needs, including in proceedings related to their status as a migrant.

Explanatory Note: This provision captures migrant persons who might find themselves in vulnerable situations. In this principle, we explicitly note children, women, persons with disabilities, and the elderly as examples of persons who might find themselves in vulnerable situations and who are also protected by specific complementary bodies of law. This principle does not aim to give an exhaustive list of vulnerable persons. Such persons might reasonably include, in the appropriate circumstance, migrants in irregular situations, migrants who belong to a social minority group, stranded migrants, victims of crimes, migrants deprived of liberty. In addition to those, the list of persons in vulnerable situations in this principle does not necessarily imply that they are inherently vulnerable but might find themselves in vulnerable situations. The situations generating vulnerability that migrants face can arise from a range of situational and personal factors that may intersect or coexist simultaneously, influencing and exacerbating each other and also evolving or changing over time as circumstances change. *See* the United Nations Human Rights Office of the High Commissioner – Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations. Several African and international conventions protect migrants who might find themselves in vulnerable situations. *See* Article 23 of the African Charter on the Rights and Welfare of the Child and Article 22 of the Convention on the Rights of the Child provide specific protections to child migrants. *See also* Article 12 of the Protocol to the African Convention on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa and the International Convention on the Rights of Persons with Disabilities emphasize the need for special attention on migrants with disabilities. *See also* Article IV (2(k)),

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Article X (2(c) and (d)), and Article XI (3) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa that accord special attention to women migrants. The Convention for the Elimination of all sorts of Discrimination Against Women also accords particular attention to preventing women from falling into vulnerable situations. Likewise, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa and Article 18(4) of the African Charter on Human and Peoples' Rights call for special attention to older persons. See also Section 5.12 of the African Committee of Experts on the Rights and Welfare of the Child 2018 report, Mapping Children on the Move and Paragraph 20 of General Recommendation 26 of the UN Committee on the Elimination of all forms of Discrimination Against Women migrant workers, CEDAW/C/2009/WP.1/R.

### PART 3: ADDITIONAL RIGHTS PROTECTIONS

#### PRINCIPLE 11 – DUE PROCESS

1. Every migrant shall have the right to have their cause heard and to due process of law before the courts, tribunals and all other organs and authorities administering justice, including those specifically charged with making determinations regarding their legal status as a migrant. This includes:
  - a. the right to an appeal to competent national organs against acts violating fundamental rights as recognized and guaranteed by laws, regulations and customs in force;
  - b. the right to be presumed innocent until proved guilty by a competent court or tribunal;
  - c. the right to defense, including the right to be defended by counsel of their choice;
  - d. the right to legal assistance in all proceedings related to their legal status as a migrant;
  - e. the right to interpretation in a language the migrant can understand in criminal proceedings and in all proceedings related to their legal status as a migrant;
  - f. the right to be tried within a reasonable time by an impartial court or tribunal;
  - g. the right to be informed within a reasonable timeframe of their due process rights.
2. No migrant may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.
3. Migrants should be free from penalties for seeking justice, accessing services, or exercising their due process rights. No migrant should be threatened with or subjected to expulsion for exercising their due process rights.
4. Migrants should be free from penalties on account of entry, presence or status, or on account of any other offence which can only be committed by migrants.

Explanatory Note: The right to due process is recognized under Article 7 of the African Charter on Human and Peoples' Rights. Article 7 of the African Charter on Human and Peoples' Rights states, "(1) [e]very individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proven guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal. (2) No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender." See also Principle G of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa notes, "(a) [s]tates shall ensure that efficient procedures and mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, gender, language, religion, political, or other opinion, national or social origin, property, disability, birth, economic or other status. (b) States shall ensure that an accused person or a party to a civil case is permitted representation by a lawyer of his or her choice, including a foreign lawyer duly accredited to the national bar. (c) States and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the



important role of lawyers in protecting their fundamental rights and freedoms.” Such right shall include due process protections in refugee status determinations and those related the nationality of stateless migrants.

## PRINCIPLE 12 – VICTIMS OF CRIME

1. Every migrant victim of crime has the right to assistance and protection, including access to compensation and restitution. States should establish justice mechanisms independent of migration control so that migrants can report abuse and access justice without fear of being reported, detained or deported.
2. States shall ensure the physical, psychological, and social recovery of migrant victims of crimes, especially where such individuals are victims of human trafficking and to that end shall prohibit the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation..
3. States shall take into account the need to create pathways for regular status in responding to migrant victims of crime.
4. States shall protect all migrants against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered crimes and, when perpetrated in armed conflict, war crimes, and that their perpetrators are brought to justice before a competent criminal jurisdiction.

Explanatory Note: The right to redress migrant persons who are victims of crime is recognized under Article 7 of the African Charter on Human and Peoples’ Rights. *See also* Article XI (3) of the Protocol to the African Charter on Human and Peoples’ Rights that protect migrant women “against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.” *See* Articles 3 and 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime. Furthermore, Article 16 (3) of Protocol Against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention Against Transnational Organized Crime obliges states “shall afford appropriate assistance to migrants whose lives or safety are endangered” by criminal activities. *See also* Paragraph 75 of the report of the Special Rapporteur of the Human Rights Council on the human rights of migrants including a study on effective access to justice for migrants, UNGA A/73/178.

## PRINCIPLE 13 – FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION OR BELIEF

1. Every migrant has the right to freedom of conscience, the profession and free practice of religion. No migrant may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.
2. This right shall include freedom to have or to adopt a religion or belief of one’s choice, and freedom, either individually or in community with others and in public or private, to manifest one’s religion or belief in worship, observance, practice and teaching.

Explanatory Note: *See* Article 8 of the African Charter on Human and Peoples’ Rights, which notes that “[f]reedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of

these freedoms.” See Article 18(1) of the International Covenant on Civil and Political Rights “[e]veryone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

#### **PRINCIPLE 14 – FREEDOM OF OPINION AND EXPRESSION**

1. Every migrant shall have the right to express and disseminate their opinions without interference.
2. Every migrant shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the migrant’s choosing.
3. The exercise of the rights provided for in this principle may be subject to certain restriction as are provided by law and are necessary:
  - a. for respect of the rights or reputations of others;
  - b. for the protection of national security or of public order, or of public health or morals.

Explanatory Note: See Article 9 (2) of the African Charter on Human and Peoples’ Rights, which notes that “[e]very individual shall have the right to express and disseminate his opinions within the law.” See also Article 19 of the International Covenant on Civil and Political Rights “(1) Everyone shall have the right to hold opinions without interference. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.” See also Paragraph 102 of *Malawi African Association and Others v. Mauritania*, Communication No. 54/91-61/91-98/93-164.

#### **PRINCIPLE 15 – PRIVACY & PERSONAL DATA**

1. No migrant shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation.
2. States shall undertake all measures necessary to ensure the protection of personal data and information to which they might have access to while conducting migratory or other procedures. Migrants’ personal data should only be collected for specified, legitimate purposes.
3. Every migrant has the right to data protection including a set of institutional, technical, and physical safeguards that preserve the right to privacy on the collection, storage, use and disclosure of personal data.
4. Every migrant shall have a right to be informed when personal data is collected, used, including through the employment of digital and artificial intelligence technologies, or when it is transferred to third countries or international organizations. Every migrant must have a right to refuse the collection, use and transfer of personal data unless the collection, use and/or transfer is prescribed by and in accordance with law, pursues a legitimate aim, is strictly necessary to meet a legitimate aim and is conducted in a manner that is proportionate and non-discriminatory. In no case should data transfer prejudice or adversely affect the international protection of migrants.

5. Every migrant shall have the right to access, rectify, and to request erasure of personal data collected during their migratory process.

Explanatory Note: See Article 10 (4) of the African Convention on Cyber Security and Personal Data Protection that requires “authorization by the national protection authority [for] [p]rocessing of personal data involving biometric data; [and] [p]rocessing of personal data of public interest, particularly for historical, statistical or scientific purposes.” See Article 13 of the African Convention on Cyber Security and Personal Data Protection, which requires the consent of data subjects to collect and process personal data. See Article 16 of the African Convention on Cyber Security and Personal Data Protection, which states that “[t]he data controller shall provide the natural person whose data are to be processed with the following information no later than the time when the data are collected, and regardless of the means and facilities used, with the following information: (a) his/her identity and his/her representative, if any; (b) the purpose of the processing for which the data are intended; (c) categories of data involved; (d) recipient(s) to which the data might be disclosed; (e) the capacity to request to be removed from the file; (f) existence of the right of access to and the right to rectify the data concerning him/her; (g) period for which data are stored; [and] (h) proposed transfers of data to third countries.” See also Articles 17 (right of access), 18 (right to object), 19 (right of rectification or erasure), 20 (confidentiality obligations), 21 (security obligations), 22 (storage obligations), and 23 (sustainability obligations) of the African Convention on Cyber Security and Personal Data Protection. See also Article 6 of the African Charter on Human and Peoples’ Rights, Article 10 of the African Charter on the Rights and Welfare of the Child, and Article 9 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa. See also Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant on Civil and Political Rights, Article 16 of the Convention on the Rights of the Child, Article 14 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and Article 22 of the Convention on the Rights of Persons with Disabilities. See also Principle 64 of the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking.

#### **PRINCIPLE 16 – FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION**

1. Every migrant has the right to freedom of peaceful assembly and association, including the right of peaceful protest.
2. These rights shall include the right to strike and the freedom to form associations and trade unions in the State of residence for the promotion and protection of the migrant’s economic, social, cultural, and other interests.

Explanatory Note: See Article 10 (1) of the African Charter on Human and Peoples’ Rights, which notes that “[e]very individual shall have the right to free association provided that he abides by the law.” See Article 11 of the African Charter on Human and Peoples’ Rights states “[e]very individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.” See also Article 21 of the International Covenant on Civil and Political Rights.

#### **PRINCIPLE 17 – THE RIGHT TO LEAVE ANY COUNTRY**

1. Every migrant shall have the right to leave any country including their own, and to return to their country of citizenship or, in the case of stateless migrants, of habitual residence. This right may

only be subject to restrictions provided for by law for the protection of national security, law and order, or public health.

2. States shall issue travel documents to migrants, for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require.
3. Migrants who return to their country of citizenship or habitual residence shall not be penalized for having left.

Explanatory Note: See Article 12 of the African Charter on Human and Peoples' Rights states, "(2) Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, [or] public health." See also Article VI (1) of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa requires states to issue "travel documents" to facilitate the mobility of migrants. See also Article 5 generally and Article 5 (4) of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which states, "[r]efugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations." See also Article 8 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. See General Comment No.5 on the African Charter on Human and People's Rights: The Right to Freedom of Movement and Residence (Article 12(1)). In addition, see the Preamble and Article 3 ((a) and (c)) of the African Continental Free Trade Agreement.

#### **PRINCIPLE 18 – THE RIGHT TO FREE MOVEMENT**

1. Every migrant shall have the right to freedom of movement.
2. States must ensure that migrants are accorded the right to move freely and reside within the borders of the State in which they are present.

Explanatory Note: See Article 12 of the African Charter on Human and Peoples' Rights states, "(1) [e]very individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. (2) Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, [or] public health." See also Article VI (1) of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa requires states to issue "travel documents" to facilitate the mobility of migrants. See also Article 5 generally and Article 5 (4) of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which states, "[r]efugees who voluntarily return to their country shall in no way be penalized for having left it for any of the reasons giving rise to refugee situations." See also Article 8 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. See General Comment No.5 on the African Charter on Human and People's Rights: The Right to Freedom of Movement and Residence (Article 12(1)). In addition, see the Preamble and Article 3 ((a) and (c)) of the African Continental Free Trade Agreement.

#### **PRINCIPLE 19 – PASTORAL MOBILITY**

1. States shall take measures to ensure the mobility of persons who follow a pastoralist or nomadic life-style and whose migratory routes cross international borders, or who live in border regions.

2. States shall take all appropriate measures to ensure that every such a person has the right to the nationality of at least one of the States to which they have an appropriate connection.
3. States shall take all appropriate measures to preserve pastoral mobility.
4. States may introduce simple border permits to facilitate movement communities in border areas.

Explanatory Note: See Article 12 of the Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment states “(1) States Parties shall through bilateral or regional agreements establish measures, to identify and facilitate the free movement of residents of border communities without compromising the security or public health of host Member States. (2) States Parties shall endeavour to amicably resolve any legal, administrative, security, cultural or technical impediment likely to hamper the free movement of border communities.” See Article 15 of the Protocol on Free Movement of Persons in the Inter-Governmental Authority for Development Region (“(1) Member States shall through bilateral or an [Inter Governmental Authority for Development] arrangement establish mechanisms, to facilitate the free movement of residents and communities in border areas. (2) Member States may introduce simple border permit or border pass to movement of residents and communities in border areas.”) Article 11 (2 (a)) of International Covenant on Economic, Social and Cultural Rights states “[t]he States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed [t]o improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge . . . and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.” See also Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities of 2010. Appropriate measures to preserve pastoral mobility should include adoption of drought cycle management to mitigate environmental factors, improving access to primary veterinary care to protect pastoral livestock assets and recognizing communal land tenure systems to preserve pastoral rangelands.

## PRINCIPLE 20 – EXPULSION

1. Every migrant has the right to protection against discriminatory or arbitrary expulsion. A migrant may only be expelled by virtue of a decision taken in accordance with the law and with observance of due process rights of migrants.
2. Except where compelling reasons of national security otherwise require, a migrant shall be allowed to submit the reasons against expulsion and to have the migrant’s case reviewed by, and be represented by counsel before, the competent authority, before being expelled. The migrant shall have the right to seek a stay of the decision of expulsion.
3. No State shall expel, return (“refouler”) or extradite a migrant, regardless of their status, where there are substantial grounds for believing that the migrant would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment.
4. No State shall extradite, deport or otherwise remove a migrant in any manner whatsoever where there are substantial grounds for believing that the migrant would be subjected to a real risk of irreparable harm to a fundamental human right, particularly the right to life.
5. A decision to expel a migrant shall be communicated to the migrant in writing in a language they understand.
6. Migrants have a right to an effective remedy when expulsion violates human rights.

7. The mass or collective expulsion of migrants shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

Explanatory Note: Since the right to equality and non-discrimination, due process and remedy of migrants are discussed above. This explanatory note should be read in conjunction with the explanatory notes for the principles of equality and non-discrimination, due process, and remedy. *See* Article 7 of the African Charter on Human and Peoples' Rights. *See* also Article 12 (4) of the African Charter on Human and Peoples' Rights prohibits the expulsion of migrants except "by virtue of a decision taken in accordance with the law." Albeit limited to refugees, Article II (3) of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa prohibits the expulsion of migrants to a territory where their "life, physical integrity or liberty would be threatened." *See* also Article 32 (1) of the Convention on the Status of Refugees stating that "[t]he Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order." Furthermore, Article 32(2) states "[t]he expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority." In addition, at the African level, Article 12 (5) of the African Charter on Human and Peoples' Rights prohibits mass expulsion. *See* also Article 22 (1) of the International Convention on the Rights of All Migrant Workers and Members of Their Families stating "[m]igrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually." *See* Article 3 (1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment notes that "[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." In addition, Article 3(2) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits the *refoulement* of migrants to a state that has "a consistent pattern of gross, flagrant or mass violations of human rights." *See* Article 13 (7) of the International Convention for the Protection of All Persons from Enforced Disappearance, which stipulates that "Nothing in the Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic group, political opinions or membership of a particular social group, or that compliance with the request would cause harm to that person for any of these reasons. *See* Article 7 of the International Convention on Civil and Political Rights and General Comment No. 20 of the Human Rights Committee (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) and General Comment No. 6 (2005) of the Committee on the Rights of the Child on the Treatment of unaccompanied and separated children outside of their country of origin, U.N. Doc. CRC/GC/2005/6. *See* also *John K Modise v Botswana*, African Commission on Human and Peoples' Rights, Comm. No. 97/93 (2000).

## PRINCIPLE 21 – ASYLUM

1. Every person has the right to seek and to obtain asylum in other countries in accordance with laws of those countries, regional, and international conventions.
2. Every climate migrant has the right to seek and to obtain asylum in other countries in accordance with laws of those countries, regional, and international conventions.

3. Asylum seekers shall not be rejected at the frontier, returned or otherwise expelled without being able to access a fair and efficient status determination.
4. States shall receive refugees and secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality.
5. The grant of asylum is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any African Union Member State.

Explanatory Note: *See* Article 12 (3) of the African Charter on Human and Peoples' Rights notes that "[e]very individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions." *See* also Article II (1) of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa that requires African states "to receive refugees and to secure settlement of those refugees, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality." Furthermore, Article 14(1) of the Universal Declaration of Human Rights notes that "[e]veryone has the right to seek and to enjoy in other countries asylum from persecution." *See* also Article I of the Convention on the Status of Refugees. *See* also the Preamble of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which recognizes that "the United Nations Convention of 28 July 1951, as modified by the Protocol of 31 January 1967, constitutes the basic and universal instrument relating to the status of refugees and reflects the deep concern of States for refugees and their desire to establish common standards for their treatment." *See* Article II (2) and (3) of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.

## PRINCIPLE 22 – SPECIFIC PROTECTION CONSIDERATIONS FOR REFUGEES

1. Every refugee shall be accorded all of their rights as enshrined in African and international refugee law. The specific circumstances of refugees shall be taken into account in considering their special needs and tailoring protection intervention to ensure that such intervention is sensitive to those needs and reflect applicable law.
2. No State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion.
3. No State shall subject a refugee to measures such as rejection at the frontier, return or expulsion which would compel them to return to or remain in a territory where their life, physical integrity or liberty would be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion or owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of their country.

Explanatory notes: *See* the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa and the Convention relating to the Status of Refugees. *See* also the New York Declaration on Refugees and Migrants; and the Global Compact on Refugees. *See* Articles 1 and 2) of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa which notes that no migrant shall be "subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened." *See* also Article 33 (1) of the Convention on the Status of Refugees notes that "[n]o Contracting State shall expel or return

(“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” *See* also Paragraph 49 of the General Comment No.5 on the African Charter on Human and People’s Rights: The Right to Freedom of Movement and Residence (Article 12(1)), which states that “[s]tates must respect and safeguard the principle of non-refoulement (prohibition of return).” *See* also 484 Resolution on the Respect for the Principle of Non-Refoulement of Asylum Seekers and Refugees - ACHPR/Res. 484 (EXT.OS/XXXIII) 2021. *See* also John K Modise v Botswana, African Commission on Human and Peoples’ Rights, Comm. No. 97/93 (2000).

### PRINCIPLE 23 – NATIONALITY

1. Every migrant has the right to a nationality. States shall eradicate statelessness of migrants.
2. Every State shall grant its nationality to a person born in its territory who would otherwise be stateless.
3. Every State shall grant its nationality to a migrant child found abandoned in its territory who would otherwise be stateless.
4. Every child of migrants has the right to acquire the nationality of either or both parents.
5. Every migrant has the right to retain their nationality or acquire the nationality of their spouse.
6. Migrants shall not be arbitrarily deprived or denied recognition of their nationality nor denied the right to change their nationality.
7. States shall provide certificate of nationality to naturalized migrants.

Explanatory Note: *See* Article 1 of the 1961 Convention on the Reduction of Statelessness notes that a “State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted: (a) at birth, by operation of law, or upon application being lodged with the appropriate authority, . . . in the manner prescribed by the national law.” *See* Article 6 (4) of the African Charter on the Rights and Welfare of the Child stating that “[s]tates Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child’s birth, he is not granted nationality by any other State in accordance with its laws.” Article 6 (g) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa guarantees married women “the right to retain her nationality or to acquire the nationality of her husband.” Furthermore, Article 6 (h) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa states parents “shall have equal rights, with respect to [the] nationality of their children.” *See* also Article 6(3) of the Draft Protocol to the African Charter on Human and Peoples’ Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa states “[a] State Party shall facilitate in law the possibility of acquisition of its nationality by: (a)[t]he child of a person who has or who acquires its nationality; (b) [a] child born in the territory of the State to a non-national parent who is habitually resident there; (c) [a] person who was habitually resident in its territory as a child and who remains so resident at majority; (d) [a] child in the care of a national of the State; (e) [t]he spouse of a national; (f) [a] stateless person; [and] (g) [a] refugee.” *See* Article 12, the Draft Protocol to the African Charter on Human and Peoples’ Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa on issuing nationality or naturalization certificates. *See* Paragraph 96 of the African Committee of Experts General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child noting the importance of “ensuring that children found abandoned



in the territory of a State Party (foundlings) acquire the nationality of that State. Such provisions are important to ensure that children abandoned by their parents, or whose parents have died, or who are separated from their parents in case of war or natural disaster, also acquire a nationality.”

#### **PRINCIPLE 24 – CIVIL AND POLITICAL LIFE**

1. Every migrant has the right to participate in the civil and political life of the migrant’s community and in the conduct of public affairs.
2. This right shall include the freedom to participate in public affairs of the migrant’s State of origin and to vote and to be elected at elections of that State, in accordance with its laws.

Explanatory Note: *See* Article 13 (1) of the African Charter on Human and Peoples’ Rights, which notes that “[e]very citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.”

#### **PRINCIPLE 25 – THE RIGHT TO PROPERTY**

Every migrant has the right to property. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with applicable laws.

Explanatory Note: *See* Article 14 of the African Charter on Human and Peoples’ Rights states “[t]he right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.” *See also* Article 17 of the Universal Declaration of Human Rights which stipulates that: (1) “Everyone has the right to own property alone as well as in association with others. (2) “No one shall be arbitrarily deprived of his property.”

#### **PRINCIPLE 26 – LABOUR**

1. Every migrant has the right to be free from slavery, servitude, or forced or compulsory labour.
2. Migrant workers shall be entitled to treatment as favorable as that accorded to nationals with respect to labour conditions and employment.
3. Migrant workers have the right to social security and shall be entitled to social protection schemes, including to pension schemes, in a manner as favorable as that accorded to nationals.
4. Migrant workers shall have the right to form and participate in trade unions, including the right to be elected for trade union leadership.
5. Migrant workers shall have the right to work under equitable, decent and satisfactory conditions and shall receive equal pay for equal work.
6. Every migrant shall be entitled to fair and ethical recruitment that safeguards conditions for decent work.

Explanatory Note: *See* Article 15 of the African Charter on Human and Peoples’ Rights, which notes that “[e]very individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.” *See also* Article 4 of the Universal Declaration of Human Rights, which states, “[n]o one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” *See also* Paragraph 51 General Comment No.5 on the African Charter on Human and People’s Rights: The Right to Freedom of Movement

and Residence (Article 12(1)), which states “[m]igrant workers and their families have the right to move freely within the borders of the state of employment. As such, states must ensure conditions that facilitate the mobility of migrant workers and their families within its borders. States must facilitate documentation process for the residence of migrant workers and their families. States must ensure that employers and employment firms respect international labour standards relevant to the enjoyment of this right by migrant workers. Also, states must ensure access to social services that ease movement and support programmes that build societal cohesion and create conditions for the exercise of this right by migrant workers and their families. States must protect migrant workers and their families from arbitrary expulsion and refrain from mass expulsion of migrants from their territories.” *See* also Article 7, 10, and 12 of the Southern African Development Community Protocol on Employment and Labour.

### PRINCIPLE 27 – HEALTH

1. Every migrant has the right to enjoy the best attainable state of physical and mental health.
2. States shall take all necessary measures to reduce maternal mortality, stillbirth-rate, and infant mortality for the healthy development of the migrant child and mother.
3. States shall take all necessary steps for the improvement of environmental and industrial hygiene of migrants.
4. Every migrant has the right to enjoy the benefits of scientific progress and its application.
5. States shall take all necessary measures to provide migrants access for preventative, treatment and control of epidemic, endemic, occupational, and other diseases.
6. States shall take all necessary measures to protect the health of migrant persons, including equal access to preventive, curative, and palliative health services, and the right to an adequate standard of living and to the underlying determinants of health.

Explanatory Note: *See* Article 16 of the African Charter on Human and Peoples’ Rights, which notes that “(1) [e]very individual shall have the right to enjoy the best attainable state of physical and mental health. (2) State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.” *See* Article 12 (2) of the International Covenant on Economic, Social and Cultural Rights, which states, “[t]he steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) [t]he provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) [t]he improvement of all aspects of environmental and industrial hygiene; (c) [t]he prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) [t]he creation of conditions which would assure to all medical service and medical attention in the event of sickness.” *See* also Article 15(1)(b) of the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of everyone “to enjoy the benefits of scientific progress and its application.”

### PRINCIPLE 28 – ADEQUATE STANDARD OF LIVING

1. States shall recognize the right of every migrant and their family to an adequate standard, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.
2. States shall recognize the fundamental right of everyone, including migrants to be free from hunger, shall take measures to improve equitable and nutritious food production and distribution.

Explanatory Note: *See* Article 11 of the of the International Covenant on Economic, Social and Cultural Rights.

### PRINCIPLE 29 – EDUCATION

1. Migrants and their children have the right to education.
2. States shall make primary education free, available, and compulsory for migrant children.
3. States shall encourage the development of secondary education and shall make it accessible to all migrants, on the basis of equal treatment with nationals.
4. States shall make higher education equally accessible to all migrants, on the basis of capacity.

Explanatory Note: *See* Article 17 (1) of the African Charter on Human and Peoples' Rights, which notes, "[e]very individual shall have the right to education." *See* also Article 26(1) of the Universal Declaration of Human Rights. *See* also Article 13(1) of the International Covenant on Economic, Social and Cultural Rights. Furthermore, Article 11 (3) of the African Charter on the Rights and Welfare of the Child states, "State Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular: (a) provide free and compulsory basic education; (b) encourage the development of secondary education in its different forms and progressively make it free and accessible to all; [and] (c) make higher education accessible to all on the basis of capacity and ability by every appropriate means."

### PRINCIPLE 30 – CULTURE

1. Every migrant has the right to freely take part in the cultural life of their communities, including to enjoy the migrant's own culture(s), and to use the migrant's own language(s), either individually or in community with others, in public or private.
2. States shall not impede, but should encourage and support, migrants' efforts to preserve their cultures by means of educational and cultural activities, including the preservation of minority languages and knowledge related to a migrant's culture. Nothing in this Principle shall mean that States may not adopt measures to promote acquisition and knowledge of the majority, national, or official language or languages of the State.
3. States should take appropriate steps to promote public awareness and acceptance of the cultures of migrants by means of educational and cultural activities, including minority languages and knowledge related to the migrant's own culture.

Explanatory Note: *See* Article 17 (2) of the African Charter on Human and Peoples' Rights, which notes, "[e]very individual may freely, take part in the cultural life of his community." *See* also Article 27(1) of the Universal Declaration of Human Rights, which states, "[e]very one has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."

### PRINCIPLE 31 – FAMILY

1. Every migrant family is entitled to protection by the State.
2. States shall take all appropriate measures to facilitate the reunification of migrant family members with citizens or non-citizens, including in decisions about migration status.
3. States shall grant derivative immigration status and timely admission to family members of migrants.

Explanatory Note: See Article 18 (1) of the African Charter on Human and Peoples' Rights, which notes that "[t]he family . . . shall be protected by the State." See also Article 16 (3) of the Universal Declaration of Human Rights and Article 23 of the International Covenant on Civil and Political Rights. See also General Recommendation No. 26 on women migrant workers of the U.N. Committee on the Elimination of Discrimination against Women (CEDAW). U.N. Doc CEDAW/C/2009/WP.1/R.

## PRINCIPLE 32 – THE RIGHT TO FAVOURABLE ENVIRONMENT

1. All migrants shall have the right to a general satisfactory environment favourable to their development, including climate resilient development.
2. States shall recognise the adverse and extra-territorial effects of climate change and environmental degradation as important drivers of displacement and climate migration and adopt measures to mitigate climate change.
3. States shall develop adaptation and resilience strategies to sudden-onset and slow-onset disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought, and sea level rise, reducing climate risks and vulnerability and taking into account the need to create pathways for migration.

Explanatory Note: See Article 24 of the African Charter on Human and Peoples' Rights, which notes, "[a]ll peoples shall have the right to a general satisfactory environment favourable to their development." See Action 8 of the Africa Climate Mobility Initiative – Agenda for Action that calls for "nature positive development." See Article 3(c) of the Treaty Establishing the Community of Sahel-Saharan States notes that the sub-regional organization will focus on "combating desertification, drought and climate change through the preservation of natural resources and research in the field of renewable energies." Furthermore, Article 16 (1) of the Protocol on Free Movement of Persons in the Inter-Governmental Authority for Development Region guarantees migrants moving "in anticipation of, during or in the aftermath of disaster" entry into the territory of another member state to safeguard their right to favourable environment. Climate resilient development integrates adaptation measures and their enabling conditions (Section C) with mitigation to advance sustainable development for all. Climate resilient development involves questions of equity and system transitions in land, ocean and ecosystems; urban and infrastructure; energy; industry; and society and includes adaptations for human, ecosystem and planetary health. Pursuing climate resilient development focuses on both where people and ecosystems are co-located as well as the protection and maintenance of ecosystem function at the planetary scale. Intergovernmental Panel on Climate Change, Sixth Assessment Report: Impacts, Adaptation and Vulnerability. See also Article 11 (2 (a)) of the International Covenant on Economic, Social and Cultural Rights states "[t]he States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed [t]o improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge . . . and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources." See also U.N. General Assembly Resolution A/76/L.75 on the human right to a clean, healthy and sustainable environment; General Comment 36 on the Right to Life of the Human Rights Committee, U.N. Doc. CCPR/C/GC/36; Report of the Special Rapporteur of the Human Rights Council on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, U.N. Doc. A/HRC/31/52.

**PRINCIPLE 33 – EFFECTIVE REMEDY**

1. Every migrant has the right to an effective remedy and to adequate, effective and comprehensive reparation for acts violating the rights guaranteed to the migrant by the relevant domestic, regional, and international law, including the rights and freedoms recognized herein.
2. States shall coordinate to ensure migrants access to justice across borders.

Explanatory Note: The right to an effective remedy is recognized under Article 7 of the African Charter on Human and Peoples' Rights. Similarly, at the international level, Article 14 of the International Covenant on Civil and Political Rights states "[a]ll persons shall be equal before the courts and tribunals." See also Paragraph 48 of the General Comment No. 5 on the African Charter on Human and Peoples' Rights: The Right to Freedom of Movement and Residence (Article 12(1)), which notes that "indefinite, and any restrictions or conditions [on freedom of movement] must be subject to regular review by a judicial authority." See Article 83(a) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which provides access to remedy with a specific focus on migrant workers and their families. *See* also General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5).

**PRINCIPLE 34 – DIPLOMATIC PROTECTION AND CONSULAR ASSISTANCE**

1. States shall provide diplomatic protection and consular assistance for all its nationals, irrespective of their migratory status, dual or multiple citizenship.
2. The State of habitual residence shall provide diplomatic protection and consular assistance for migrants who are stateless.
3. States should harmonize market regulations and increase interoperability of remittance infrastructure.

Explanatory Note: *See* Article 36 of the Vienna Convention on Consular Relations and the Objective 20 of the Global Compact for Safe, Orderly and Regular Migration. Article 9 of the ILO Convention No 97 states that "Each Member for which this Convention is in force undertakes to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire." The ILO's Multilateral Framework on Labour Migration highlights that "the contribution of labour migration to employment, economic growth, development and the alleviation of poverty should be recognized and maximized for the benefit of both origin and destination countries" (Principle 15) –and among the guidelines that may prove valuable in giving practical effect to the above principle (15.5) providing incentives to promote the productive investment of remittances in the countries of origin; (15.6.) reducing the costs of remittance transfers, including by facilitating accessible financial services, reducing transaction fees, providing tax incentives and promoting greater competition between financial institutions.

**PART 4: CONFLICT & EMERGENCIES****PRINCIPLE 35 – PROTECTION OF MIGRANTS IN ARMED CONFLICT**

1. Migrants caught in situations of armed conflict are protected by international humanitarian and by human rights law. In particular, States shall ensure migrants caught in situations of armed conflict are protected under rules of international humanitarian law, including but not limited to the prohibition of the use of starvation as a method of warfare, or depriving civilians of objects indispensable to their survival; the prohibition of violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture; the taking of hostages, outrages upon personal dignity, in particular humiliating and degrading treatment. Rape and other forms of sexual violence are absolutely prohibited.
2. States shall recognize the specific vulnerabilities of migrants caught in armed conflict and take feasible measures to ensure their protection, including through the provision of humanitarian assistance.
3. States shall respect and ensure respect for the prohibition of forced displacement for reasons related to armed conflict, including displacement across international borders and the displacement of migrants caught in armed conflict.
4. During the conduct of hostilities, migrants caught in armed conflict and their belongings are protected from attack. Parties to the conflict must respect all rules related to the conduct of hostilities, including the principles of distinction, proportionality and precaution.
5. When sites or settlements are established as a temporary measure to shelter migrants or facilitate the provision of emergency assistance, they are or are made of civilian objects under international humanitarian law, entitled to protection against direct attack unless and for such time as such objects become military objectives. As such, States must preserve their civilian and humanitarian character. In situations of armed conflict, States shall take all feasible measures to account for all migrants reported missing as a result of armed conflict and to provide their family members with information on their fate; to search for, collect and evacuate the dead, recording all available information before disposing of their remains; and to mark the location of graves, with a view to identification.
6. States shall ensure that no migrant child take a direct part to hostilities and that no migrant child is recruited or used in hostilities.

Explanatory Note: *See* Article 22 of the African Charter on the Rights and Welfare of the Child, which states “(1) States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child. (2) States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child. (3) States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situation of internal armed conflicts, tension and strife. *See* General Comment on Article 22 of the African Charter on the Rights and Welfare of the Child: Children in Situations of Conflict. *See* also Article 11 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa stating “(1) States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women. (2) States Parties shall, in accordance with the obligations incumbent upon them under international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict. (3) States Parties undertake to protect asylum

seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction. (4) States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.” See also Article 12 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa (calling on African states to ensure protection of persons with disabilities in armed conflict).

#### **PRINCIPLE 36 – PROVISION OF HUMANITARIAN ASSISTANCE**

1. States shall recognize the specific vulnerabilities of migrants caught in armed conflict or other emergency situations and shall provide humanitarian assistance to migrants caught in armed conflict or other emergency situations, regardless of their migration status.
2. In situations of armed conflict, impartial humanitarian organizations have a right to offer their services in order to carry out humanitarian activities, in particular when the needs of the migrants affected by the armed conflict are not fulfilled.

Explanatory Note: The purpose of humanitarian assistance is to save lives, alleviate suffering, and maintain the human dignity of all persons, including migrants, regardless of their status. See generally the Migrants in Countries in Crisis Initiative, *Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster* (2016). See also the decision on the creation of the Specialised Technical Committee (STC) on Migration, Refugees and Internally Displaced Persons.

## PART 5: COOPERATION & IMPLEMENTATION

### PRINCIPLE 37 – COOPERATION OF AFRICAN UNION MEMBER STATES

1. States shall create safe migration corridors and routes to enable free movement of persons.
2. States shall cooperate to prevent, suppress and punish trafficking of migrants.
3. States shall cooperate to prevent the smuggling of migrants by land, sea, and air.
4. States should cooperate in saving lives and preventing the risk of death and injury of migrants.
5. States shall cooperate to establish, enable and support prompt and effective search and rescue operations and ensure prompt assistance is provided to all migrants in distress at land and at sea.
6. States shall cooperate to facilitate return and readmission of migrants in conditions and safety and dignity.
7. States shall cooperate to provide migrants diplomatic protection and consular assistance through bilateral and multilateral agreements for the mutual provision of such diplomatic protection and consular assistance.
8. States as well all the African Union and its Commission, and Regional Economic Communities shall in the spirit of African solidarity cooperate to implement these Guiding Principles.

Explanatory Note: The ACHPR has affirmed the importance of coordination in the context of missing migrants in its Resolution 486. ACHPR/Res. 486 (EXT.OS/XXXIII) 2021. *See also* Article 2 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. *See also* Articles 2 and 7 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. *See* Article 37 of the Vienna Convention on Consular Relations (concerning the obligation to inform the state of the nationality of a person deceased outside their country of nationality.) *See* Article II (4) of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (calling for cooperation in hosting migrants).

### PRINCIPLE 38 – SAVING CLAUSE

1. These Guiding Principles shall not be construed as affecting any provisions more protective to migrants which may be contained in the law of African Union Member States now or hereafter in force, or may be contained in any other convention, treaty, or agreement now or hereafter in force.
2. States should apply the most favorable interpretation to guarantee human and peoples' rights, and the most restrictive interpretation to any limitation on those rights. Where two or more interpretations of these Guiding Principles are applicable to a migrant's particular case or situation, States are obligated to apply the most favorable, offering the broadest protection to the rights of all migrants. States should apply the most favorable interpretation to guarantee human and peoples' rights, and the most restrictive interpretation to any limitation on those rights.

Explanatory Note: *See* Principle 3 of the Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking. *See also* the Preamble of the Convention on the Status of Refugees, which extends to migrants "the widest possible exercise of ... fundamental rights and freedoms" in conjunction with Article 31(1) of the Vienna Convention on the Law of Treaties.



**African Guiding  
Principles on the  
Human Rights of All  
Migrants, Refugees  
and Asylum Seekers**



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