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**Promotion and protection of human rights: human rights**

**Questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

**Recommended Principles and Guidelines on Human Rights  
at International Borders**

**Conference room paper**

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## **I. Introduction**

### **A. Human rights at international borders**

1. International borders are not zones of exclusion or exception for human rights obligations. States are entitled to exercise jurisdiction at their international borders, but they must do so in light of their human rights obligations. This means that the human rights of all persons at international borders must be respected in the pursuit of border control, law enforcement and other State objectives, regardless of which authorities perform border governance measures and where such measures take place.

2. Migration discourse is replete with terminology used to categorize people who migrate, such as “unaccompanied or separated children”, “migrants in irregular situations”, “smuggled migrants” or “victims of trafficking in persons”. In the complex reality of contemporary mobility it can be difficult to neatly separate people into distinct categories as people may simultaneously fit into several categories, or change from one category to another in the course of their journey. Every individual who approaches an international border has different motivations and it is important to remember that under international human rights law, States have obligations towards all persons at international borders, regardless of those motives.

3. States have legitimate interests in implementing border controls, including in order to enhance security, to protect human rights, and to respond to transnational organized crime. The Office of the High Commissioner for Human Rights (OHCHR) has therefore put together these Recommended Principles and Guidelines (“The Guidelines”) with a view to translating the international human rights framework into practical border governance measures. The Guidelines assert a human rights-based approach deriving from the core international human rights instruments and anchored in the interdependence and inalienability of all human rights, seek to establish accountability between duty-bearers and rights-holders, emphasis participation and empowerment, and focus on vulnerability, marginalization and exclusion.

4. Further, underpinning these Guidelines is a recognition that respecting the human rights of all migrants regardless of their nationality, migration status or other circumstances, facilitates effective border governance. Policies aimed not at governing migration but rather at curtailing it at any cost, serve only to exacerbate risks posed to migrants, to create zones of lawlessness and impunity at borders, and, ultimately, to be ineffective. Conversely, approaches to migration governance that adhere to internationally recognized human rights standards, serve to bolster the capacity of States to protect borders at the same time as they uphold State obligations to protect and promote the rights of all migrants. Ultimately then, these Guidelines are recommended to States and other stakeholders not only because they are obliged to put human rights at the forefront of border governance measures, but also because they have an interest in doing so.

### **B. Scope and Purpose of the Principles and Guidelines**

5. While States are required to protect and promote the human rights of all persons present at international borders, the focus of these Guidelines is primarily on international migrants, including migrants in an irregular situation.

6. These Guidelines are offered primarily to States to support them in fulfilling their obligations to govern their borders in accordance with international human rights law and

other relevant standards. They will also be of use to other actors including international organisations, civil society, and private actors concerned with border governance.

7. The principles that are offered at the outset of this document are derived from international human rights law and apply to the implementation of all the guidelines, whether on the basis of measures taken by individual States or private actors who perform border management functions for them, or undertaken on a collective basis with other States or entities.

8. The guidelines recommend practical measures for States, to achieve the human rights standards to which they are bound, vis-à-vis the rights-holders they encounter at international borders. The implementation of each guideline must adhere to the principles outlined.

9. These Guidelines shall not be interpreted as restricting, modifying or impairing the provisions of applicable international human rights law, international humanitarian law, international refugee law or other relevant legal instrument or rights granted to persons under domestic law.<sup>1</sup>

10. For the purposes of these Principles and Guidelines:

(a) The term ‘migrant at international borders’ is understood to mean all international migrants<sup>2</sup> present at international borders.

(b) The term ‘international borders’ refers to the politically defined boundaries separating territory or maritime zones between political entities and to the areas where political entities exercise border governance measures on their territory or extraterritorially (such areas include land checkpoints, border posts at train stations, ports and airports, immigration and transit zones, the high seas and so-called “no-man’s land” between border posts, as well as embassies and consulates).

(c) The term ‘migrants who may be at particular risk at international borders’ includes but is not limited to migrants in irregular situations, migrants in smuggling situations, trafficked persons, as well as migrants who are; children (accompanied by family members as well as unaccompanied and separated children), women (including pregnant women and new and/or breastfeeding mothers), persons who have suffered abuse including sexual and gender based violence, victims of torture and cruel, inhuman and degrading treatment and victims of violence and trauma, persons with disabilities, older persons, stateless persons, indigenous peoples, persons who are members of minority communities, persons with HIV or particular health concerns, and lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, human rights defenders and political dissidents.

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<sup>1</sup> In order to avoid duplication of authoritative guidance, the present Guidelines should be read in conjunction with the guidance provided by the Office of the United Nations High Commissioner for Refugees (UNHCR), including in the context of its 10-Point Plan of Action on Refugee Protection and Mixed Migration which emphasises the need for “protection sensitive entry systems” at international borders to identify, protect against non-refoulement and ensure access to asylum procedures for persons in need of international protection. For trafficked persons, the present Principles and Guidelines should be read in conjunction inter alia with OHCHR’s Recommended Principles and Guidelines on Human Rights and Human Trafficking.

<sup>2</sup> For the purposes of these Principles and Guidelines, and in the absence of a universally accepted definition, an “international migrant” refers to any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence. The term includes migrants who intend to move permanently or temporarily, and those who move in a regular or documented manner as well as migrants in irregular situations.

(d) The term ‘border authorities’ is understood to refer to border guards, consular and immigration officials, border police, staff at border detention facilities, immigration and airport liaison officers, coast guard officials and other front line officers and staff performing border governance roles.

(e) The terms ‘border governance’ and ‘border governance measures’ include but are not limited to legislation, policies, plans, strategies, action plans and activities related to the entry into and exit of persons from the territory of the State, including detection, rescue, interception, screening, interviewing, identification, reception, detention, removal or return, as well as related activities such as training, technical, financial and other assistance, including that provided to other States.

(f) The term ‘private actor’ includes non-State actors who perform border governance functions on behalf of States, including private companies employed to carry out border screening, border guard and other security functions, such as detention, at borders as well as personnel employed by private transport companies.

## **II. Recommended principles on human rights at international borders**

### **A. The primacy of human rights**

1. States shall implement their international legal obligations in good faith and respect, protect and fulfil human rights in the governance of their borders.
2. States shall ensure that human rights are at the centre of the governance of migration at international borders.
3. States shall respect, promote and fulfil human rights wherever they exercise jurisdiction or effective control, including where they exercise authority or control extraterritorially. The privatisation of border governance functions does not defer, avoid or diminish the human rights obligations of the State.
4. States shall ensure that all border governance measures protect the right of all persons to leave any country including their own and the right to enter their own country.
5. States shall ensure that measures aimed at addressing irregular migration and combating transnational organized crime (including but not limited to smuggling of migrants and trafficking in persons) at international borders, shall not adversely affect the enjoyment of the human rights and dignity of migrants.
6. The best interests of the child shall be a primary consideration applicable to all children who come under the State’s jurisdiction at international borders, regardless of their migration status or that of their parents. States shall ensure that children in the context of migration are treated first and foremost as children and ensure that the principle of the child’s best interest takes precedence over migration management objectives or other administrative considerations.
7. The right to due process of all migrants regardless of their status shall be protected and respected in all areas where the State exercises jurisdiction or effective control. This includes the right to an individual examination, the right to a judicial and effective remedy, and the right to appeal.

## **B. Non-discrimination**

8. The principle of non-discrimination shall be at the centre of all border governance measures. Prohibited grounds of discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, nationality, migration status, age, disability, statelessness, marital and family status, sexual orientation or gender identity, health status, and economic and social situation. Any differential treatment of migrants at international borders shall be in lawful pursuit of a legitimate and proportionate aim. Specifically, measures taken to address irregular migration, or to counter terrorism, human trafficking or migrant smuggling, shall not be discriminatory in purpose or effect, including by subjecting migrants to profiling on the basis of prohibited grounds, and regardless of whether or not they have been smuggled or trafficked.

9. States shall ensure that border governance measures address and combat all forms of discrimination by State and private actors at international borders.

## **C. Assistance and protection from harm**

10. States shall protect and assist migrants at international borders without discrimination. Human rights obligations, including in respect of civil, political, economic, social and cultural rights, must take precedence over law enforcement and migration management objectives.

11. States shall ensure that all border governance measures taken at international borders, including those aimed at addressing irregular migration and combating transnational organized crime, are in accordance with the principle of non-refoulement and the prohibition of arbitrary and collective expulsions.

12. States shall consider the individual circumstances of all migrants at international borders, with appropriate attention being given to migrants who may be at particular risk at international borders who shall be entitled to specific protection and individualized assistance which takes into account their rights and needs.

13. States shall ensure that all migrants who have suffered human rights violations or abuses as a result of border governance measures have equal and effective access to justice, access to effective remedies, adequate, effective and prompt reparation for harm suffered, and access to relevant information concerning violations and reparation mechanism. States shall investigate and, where warranted, prosecute human rights violations and abuses, impose sentences commensurate with the seriousness of the offence, and take measures to ensure non-repetition.

### III. Recommended guidelines on human rights at international borders

#### Guideline 1: Promotion and protection of human rights

States and, where applicable, international and civil society organizations, should consider<sup>3</sup>:

##### *Promotion of human rights*

1. Requesting and offering, as relevant, technical and financial assistance to States and relevant international organisations, intergovernmental organizations and civil society actors, for the purpose of developing, implementing and strengthening human rights-based border governance measures.
2. Supporting the media to gather and share accurate and non-discriminatory information about migration and the human rights implications of border governance, while avoiding messages that are stigmatizing, xenophobic, racist, alarmist or inaccurate. Media outlets and journalists should be supported, through training where appropriate, to protect the right to privacy and the confidentiality of sources of information.
3. Implementing programmes for improving knowledge and addressing negative perceptions of migrants with the aim of protecting migrants from xenophobia, violence and discrimination at international borders.
4. Ensuring that terminology used in legislation, policy and practice to refer to migration is consistent with international human rights law and standards. In accordance with UN General Assembly resolution No. 3449 (9 December 1975), the term 'illegal' should not be used to refer to migrants in an irregular situation.
5. Undertaking information campaigns in cooperation with civil society organizations, the media and other relevant actors to, inter alia, illuminate the situation of migrants at international borders and raise awareness of the risks and dangers of transnational organized crime and precarious migration which could assist potential migrants to make informed decisions about approaching and crossing borders.
6. Engaging in effective consultations with relevant stakeholders including national judicial, legislative and human rights bodies, academia and civil society actors, including migrants' organisations, in the development, adoption, implementation and review of border-related measures. The experiences of migrants should be drawn on in understanding the human rights impact of border governance.

##### *Monitoring and accountability*

7. Assessing the human rights-compliance of existing border governance measures, to ensure they do not adversely impact the enjoyment of the human rights and dignity of migrants at international borders. Particular attention should be given to policies and measures aimed at addressing irregular migration as well as combating transnational organized crime.
8. Encouraging independent monitoring of human rights at international borders and establishing or strengthening systematic reporting mechanisms, including through

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<sup>3</sup> Without prejudice to their obligations under applicable international law and/or relevant provisions of domestic law.

facilitating cooperation between border authorities and other actors including police, national human rights institutions, parliamentarians, civil society and international organizations. Supporting all relevant actors to bring complaints in the event of violations of human rights at borders.

9. Presenting detailed information concerning measures taken to strengthen human rights at international borders, to all relevant United Nations human rights treaty bodies and special procedures of the United Nations Human Rights Council, and in the context of the Universal Periodic Review process.

10. Establishing official mechanisms and/or procedures to provide effective remedies for violations of human rights at international borders, to provide reparation to victims and to bring State and private actors to account for such violations and abuses, including by investigation and prosecution when violations and abuses amount to criminal offences under national or international law.

## **Guideline 2: Legal and policy framework**

**States and, where applicable, international and civil society organizations, should consider<sup>4</sup>:**

### *Non-discrimination, protection and assistance*

1. Harmonizing domestic legislation with international human rights law to explicitly ensure that international human rights are respected, protected and fulfilled in all border governance measures at international borders and in all encounters with migrants at international borders.

2. Ensuring that non-discrimination provisions in legislation are applicable to all border governance measures at international borders. In addition, pre-screening and visa processes such as visa application, issuance, refusal, revocation and renewal processes should be reviewed to ensure compliance with international human rights standards including the principle of non-discrimination. Adopting or amending legislation to ensure the effective accountability of private actors engaged by the State to carry out pre-screening and visa processes.

3. Adopting or amending legislation to ensure that respect, protection and fulfilment of all human rights, including mandatory protection and assistance provisions, are explicitly included in all border-related legislation, including but not limited to legislation aimed at addressing irregular migration, establishing or regulating asylum procedures and combating trafficking in persons and smuggling of migrants.

### *Non-criminalization*

4. Adopting or amending legislation to ensure that irregular entry, the attempt to enter in an irregular manner, or irregular stay is not considered a criminal offence, given that border crossing is an administrative issue. Administrative sanctions applied to irregular entry should be proportionate and reasonable.

5. Adopting or amending legislation to ensure that administrative, civil and criminal sanctions imposed on migrant smugglers or others involved in the facilitation of irregular

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<sup>4</sup> Without prejudice to their obligations under applicable international law and/or relevant provisions of domestic law.



border crossing are proportionate to any offences or human rights abuses committed by them.

6. Adopting or amending legislation to ensure that private individuals including shipmasters who carry out rescues of migrants in distress are not penalised or criminalised for doing so.

*Monitoring and accountability*

7. Making legislative provisions for transparent, effective and proportionate administrative, civil and where appropriate, criminal penalties, for offences committed against migrants at international borders, including those committed by or involving the complicity of border authorities. Appropriate sanctions should be applied to border authorities who fail to report such criminal offences.

8. Adopting or amending legislation to ensure that powers exercised by border authorities are clearly defined and subject to judicial authorization and review in accordance with international human rights law.

9. Adopting or amending legislation to ensure that the use of force and use and possession of firearms and other weapons by border authorities are strictly regulated in accordance with international human rights law and that any misuse or excess thereof is appropriately sanctioned.

10. Adopting or amending legislation for the investigation and prosecution of excessive use of force (including lethal force) and any act of violence or violation of the human rights of migrants at international borders.

11. Adopting or amending legislation for the investigation, prosecution and punishment of corruption on the part of border authorities as well as the involvement or complicity of border authorities in transnational organised crime.

12. Adopting or amending legislation to ensure that any delegation of border management functions to private actors including private transport companies does not undermine human rights, including the principles of non-discrimination, non-refoulement and the right to leave any country including one's own. Such legislation should include concrete mechanisms to ensure accountability of private actors and remedies in the case of human rights abuses.

13. Establishing effective and independent legislative and other mechanisms or procedures to enable victims of human rights violations, violence and crime at international borders to access justice, report abuses and access effective remedy and reparation, irrespective of their migration status. Victims should be able to testify against perpetrators regardless of whether they are in the jurisdiction of the State or not, and without fear of detention or deportation as a consequence of seeking justice.

### **Guideline 3: Building human rights capacity**

**States and, where applicable, international and civil society organizations should consider<sup>5</sup>:**

#### *Investment and systems*

1. Allocating sufficient State budget resources to strengthen border governance including identification, screening and referral systems, and ensure facilities are equipped to provide human rights-based and proportionate responses to migrants arriving at international borders.
2. Requesting and offering financial, technical and other assistance from/to States and international organizations to strengthen human rights-based capacity for improving facilities and strengthening border governance in accordance with international human rights standards.

#### *Staffing and recruitment*

3. Reviewing and revising the role of border authorities to ensure that they are mandated to only perform tasks for which they have adequate training, capacity and resources in accordance with international human rights standards. Where border authorities cannot perform mandated tasks in accordance with international human rights law, appropriately trained personnel should be brought in to perform those functions.
4. Implementing rigorous recruitment and deployment procedures for border authorities, and ensuring that recruitment criteria include knowledge of or openness to learn relevant human rights law obligations. Consideration should be given to recruiting and deploying border authorities with capacity or willingness to learn to communicate with migrants in their own languages and to ensure non-discrimination.
5. Ensuring that border authorities are fairly remunerated, taking into consideration special factors such as the risks involved, their responsibilities as well as the demanding working hours, and providing free access to appropriate medical and psychological care, support and counselling services. Ensuring also that border authorities are regularly assessed for signs of professional fatigue, secondary trauma and other psychological conditions resulting from their work at international borders.
6. Equipping international borders with sufficient numbers of appropriately qualified personnel, specific to the situation at the border. Balanced numbers of male and female border authorities should be recruited and deployed (including on coastal patrol boats).
7. Recruiting specially trained personnel including, where appropriate, medical professionals and healthcare workers, child protection professionals, guardians for unaccompanied or separated children, legal aid providers, interpreters and cultural liaison officers. Consideration should be given to permanently posting such personnel at high-traffic international borders and/or maintaining an up-to-date list of qualified professionals to attend on a needs basis in person or, in exceptional cases when prompt access cannot be guaranteed, remotely by phone or video-conference.

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<sup>5</sup> Without prejudice to their obligations under applicable international law and/or relevant provisions of domestic law.

*Training and capacity building*

8. Training border authorities on international human rights law relevant to their work, including its practical implementation. Border-specific human rights and gender equality training materials should be tailored in cooperation with international organizations, civil society organizations and others, to practically build human rights capacity of border authorities in the performance of their day-to-day roles and responsibilities at international borders.

9. Mainstreaming human rights and gender equality training in all capacity building measures targeted at border authorities and private actors active at international borders. Such training should be ongoing to ensure that border authorities are kept abreast of emerging issues and human rights-based responses.

10. Mainstreaming non-discrimination in all training of border authorities to ensure that admission practices do not discriminate on prohibited grounds. Training should specifically aim to prevent discrimination against migrants, including as manifested in xenophobia, racism, racial discrimination and related intolerance.

11. Providing practical situational training to border authorities to ensure they are able to defend themselves effectively, with proportionate force and equipment, when strictly necessary, in accordance with international human rights law and related best practice, without causing disproportionate injury to migrants. Border authorities should be trained to intervene to stop their colleagues from using force that is not necessary and proportionate.

12. Sensitizing and training of border authorities to appropriately identify and support migrants who may be at particular risk at international borders. Border authorities should be sensitized to the fact that some migrants may be disproportionately exposed to a range of risks, including difficult and dangerous transportation methods, mistreatment by human traffickers, smugglers or others including public officials, and that their protection and assistance needs may change throughout the migration process.

*Monitoring and accountability*

13. Monitoring and periodically evaluating the impact of human rights training on border authorities, to evaluate effectiveness of such training in avoiding violations of human rights.

14. Developing and adopting binding codes of conduct for border authorities in accordance with international human rights standards and best practice, including the UN Code of Conduct for Law Enforcement Officials. Such codes of conduct should set out expected standards of behaviour and the consequences of failure to adhere to those standards.

15. Putting in place mechanisms through which border authorities and others can make complaints to appropriate authorities about conduct of their colleagues that is contrary to human rights standards, without fear for their own employment or reprisals from their colleagues, and ensuring fair hearings where complaints are made against them by their colleagues.

16. Monitoring the use of border surveillance technology to ensure that it is used to perform justifiable functions in accordance with human rights norms and standards, and does not unnecessarily and disproportionately interfere with the right to privacy where less intrusive alternatives are available, nor appropriately collect, store or share data in a way that could compromise human rights.

17. Preventing harmful practices by border personnel by investigating and prosecuting all instances of corruption, extortion, and exploitation and raising awareness among migrants at international borders that services of border personnel are free of charge.

18. Collecting comprehensive and disaggregated data on complaints, investigations, prosecutions, and convictions of all instances of excessive use of force, reports of assault, rape and other forms of sexual violence, torture, ill treatment, and other human rights violations and abuses perpetrated by border authorities and private actors, with a view to understanding causes, and sanctioning and preventing such practices.

19. Introducing mechanisms to commend, reward and disseminate best practices in relation to human rights-compliant work of border authorities.

#### **Guideline 4: Ensuring human rights in rescue and interception**

**States and, where applicable, international and civil society organizations, should consider<sup>6</sup>:**

##### *Ensuring protection of lives and safety*

1. Amending and revising processes and procedures to rescue migrants at international borders to accord with international human rights and refugee law obligations as well as the international law of the sea and other relevant standards.

2. Providing and maintaining rescue beacons along dangerous migration routes to enable migrants whose lives and safety are in danger to signal for help and be rescued.

3. Training border authorities responsible for carrying out rescue (including coast guard officials and intergovernmental entities) to uphold mandatory obligations to relieve imminent danger to lives and safety as their first priority, and ensure the human rights, safety and dignity of all persons rescued. Persons at imminent risk of death and migrants who may be at particular risk at international borders should be immediately identified and afforded appropriate assistance, within the capabilities of the ship for those rescued at sea.

4. Encouraging private shipmasters to adhere to their obligation to render assistance, rescue migrants in distress, and disembark rescued persons at the nearest place of safety in accordance with the international law of the sea, international human rights law and other relevant standards. Disincentives for private shipmasters to rescue migrants in distress at sea should be removed, and consideration given to compensating those who incur financial losses for rescuing migrants.

5. Ensuring that all necessary steps are taken during border management operations to respect, protect and fulfil the human rights including lives and safety of all migrants at international borders. States should scrupulously avoid dangerous interception measures, including arbitrary or collective expulsions.

6. Ensuring the accountability of private transport companies and other private actors that are involved in implementing entry restriction measures such as pre-departure screening and decisions on access to transportation, and providing effective remedies for those unlawfully denied transport. Developing and encouraging the adoption of human rights-based codes of conduct for private actors in this regard that set out expected standards of behaviour and the consequences of failure to adhere to those standards.

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<sup>6</sup> Without prejudice to their obligations under applicable international law and/or relevant provisions of domestic law.

*Strengthening rescue capacity*

7. Sensitizing border authorities to the primacy of their obligation to protect human rights including lives and safety, to remove migrants rescued or intercepted from situations in which their lives and safety are compromised, and to address particular protection and assistance needs. Border authorities should be provided with regularly updated reference cards or pamphlets summarising relevant policies and guidelines concerning treatment of migrants in accordance with international human rights law.

8. Ensuring that border authorities carry out risk assessments and appropriately plan rescue operations with clear, human rights-based objectives. Planning should include the appropriate number and type of staff, necessary transportation, emergency health equipment, food and water supplies.

9. Establishing, operating and maintaining adequate and effective rescue services at all international borders (including search and rescue (SAR) at sea services in coastal States), in accordance with international human rights law, international law of the sea, and other relevant standards. Rescue vessels should be equipped with appropriate equipment and supplies to assist migrants, including during mass arrivals.

*Protection from harm in rescue and interception operations*

10. Sensitizing and training border authorities on the principle of non-refoulement and chain or indirect refoulement, including the extraterritorial application of the principle wherever the State exercises jurisdiction or effective control. Practical guidelines should be developed and disseminated to clarify the principle of non-refoulement in all border governance measures. In the specific context of rescue and interceptions that take place in territorial waters, on the high seas and in disembarkation that follows, ensuring that migrants are only delivered to places where their safety and human rights are no longer threatened, and that disembarkation does not lead to onward refoulement.

11. Ensuring that border authorities provide all rescued or intercepted migrants with accessible information about their rights in a language they understand and in accessible formats, including their right to consular assistance if they so wish. Border authorities should be aware of the particular risks posed to certain groups, such as asylum seekers and refugees as well as irregular migrants and LGBTI individuals, of being brought to the attention of consular authorities without their knowledge and informed consent.

12. Ensuring that any photographs, declarations, personal data and belongings of migrants are only taken and used in accordance with international human rights law, inter alia the right to privacy and data protection, and in a way that does not jeopardize the safety of the individual.

*Coordination and cooperation*

13. Agreeing within and between States what constitutes a situation of distress, nearest place of safety and safe ports with a view to enhancing human rights protection for migrants. At sea, disputes arising as to where migrants should be disembarked must be swiftly resolved in accordance with international human rights law and international refugee law, in particular the right to life and the principle of non-refoulement.

14. Requesting and offering assets, equipment and other assistance (for instance, through secondment of staff) to strengthen the search and rescue capacities of States in accordance with international human rights law, international law of the sea, and other relevant standards. Training in appropriate and human rights-compliant use of assets and equipment should be provided and its use monitored.

15. Suspending, amending and revising any rescue and interception cooperation agreements or arrangements, including ship-rider agreements and joint coastal patrols that may compromise human rights at international borders.

*Monitoring and accountability*

16. Holding border authorities accountable for human rights violations during rescue and interception operations, including those that occur extraterritorially. Data recording instruments should be used so intentional failure to rescue can be investigated and appropriately sanctioned.

**Guideline 5: Human rights in the context of immediate assistance**

**States and, where applicable, international and civil society organizations, should consider<sup>7</sup>:**

*Immediate assistance*

1. Providing immediate assistance where necessary, including at or near places of rescue or interception, or disembarkation in the case of migrants who have travelled by sea. Such assistance should include in particular medical care, adequate food and water, blankets, clothing, sanitary items and opportunity to rest.
2. Providing individual health and medical screenings as a matter of priority. Competent medical staff should be present at the point of rescue or interception, or disembarkation for migrants at sea, to carry out screenings and refer persons for further medical attention including mental health referrals where appropriate.
3. Establishing or improving reception processes to ensure that necessary assistance is provided to all migrants, on a non-discriminatory basis regardless of their migration status or the circumstances in which they arrived at the border. Identifying and eliminating barriers to the ability of migrants with disabilities inter alia to access assistance at international borders and take appropriate steps to ensure that reasonable accommodation is provided.
4. Cooperating with national protection bodies, international organizations and civil society organizations in the provision of assistance, specifically in the identification and referral of migrants who may be at particular risk at international borders.
5. Ensuring that consular personnel are able, including through training where necessary, to provide assistance to their nationals at international borders.

*Criteria in respect of temporary reception facilities*

6. Ensuring that temporary accommodation does not last longer than strictly necessary to allow authorities to verify identity or other essential information and organize transfers or referrals as appropriate.
7. Ensuring that all temporary reception facilities comply with international human rights standards, including in respect of adequate space, nutritional and culturally appropriate food, clean water, sanitation, adequate medical care and access to legal aid.

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<sup>7</sup> Without prejudice to their obligations under applicable international law and/or relevant provisions of domestic law.

8. Ensuring that staff at temporary reception facilities are carefully selected and receive appropriate human rights training, including sensitivity on gender, culture and religion as well as basic language skills in languages of the majority of persons accommodated.

*Monitoring and accountability*

9. Cooperating with National Preventive Mechanisms, national human rights institutions, international organizations, parliamentarians, civil society organizations and other actors in the monitoring of reception conditions and arrangements and in the investigation and, where appropriate, prosecution of human rights violations during assistance and reception processes.

## **Guideline 6: Screening and interviewing**

**States and, where applicable, international and civil society organizations, should consider<sup>8</sup>:**

*Screening processes*

1. Assessing and amending screening and referral processes at international borders to ensure that each individual's situation and reasons for entry are determined and that migrants who may be at particular risk at international borders are identified and appropriately referred.

2. Assessing and amending screening processes to uphold the right to privacy including in relation to searches and appropriate handling of property in accordance with international human rights law. Personal property (including travel and identity documents, documents authorizing entry or stay, residence or establishment in the territory, work permits, money, mobile phones, or personal documentation) should only be confiscated by border authorities when duly authorized by law and in accordance with international human rights standards in clearly defined, limited circumstances. Receipts shall be given for all confiscated property, and property should be returned as expeditiously as possible.

*Data collection*

3. Ensuring that the collection of data at borders (particularly biometric data) is proportionate to a legitimate aim, obtained lawfully, is accurate and up-to-date, stored for a limited time and disposed of safely and securely. Personal data should be anonymised when stored for statistical purposes.

4. Introducing technology only alongside training of border authorities on the risks, limitations and human rights impacts of such technology, to ensure that the use of technology, in particular biometric data, to identify migrants does not result in over-reliance on technology and reduced exercise of judgment in screening processes.

*Human rights-compliant entry restrictions*

5. Repealing any entry restrictions imposed on discriminatory grounds, including on the basis that people are living with HIV, are pregnant or on the basis of disability or their sexual orientation or gender identity. Prohibiting physical screenings or examinations at the border to make such determinations in order to apply entry restrictions.

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<sup>8</sup> Without prejudice to their obligations under applicable international law and/or relevant provisions of domestic law.

6. Ensuring that public health is only invoked as a ground to limit rights of entry where there are serious threats to the health of the population or to individuals, due regard being paid to the International Health Regulations of the World Health Organization.

7. Ensuring that any physical health screenings related to entry or stay restrictions, including testing for communicable diseases, conform with human rights standards by emphasising voluntary testing, obtaining informed consent, providing adequate pre- and post-test counselling, and upholding confidentiality. Prohibiting compulsory testing for conditions such as HIV, tuberculosis and pregnancy as part of migration policy.

8. Developing and putting in place procedures to inform those denied entry orally and in writing of the reasons for their exclusion and of their right to challenge their exclusion before a court or other independent and effective authority.

#### Interviewing

9. Developing interview guidelines and procedures in full respect for human rights and dignity. Interviews should be conducted by border authorities in a professional, open and non-threatening way, in a private and appropriate place with adequate facilities to meet basic needs, and with the clear objective of appropriately referring migrants who may be at particular risk at international borders to competent authorities. Interviews should only be recorded with the informed consent of the interviewee and border authorities should treat information provided in confidence and assure migrants of this.

10. Providing appropriate training and guidelines to border authorities conducting interviews. Border authorities should be trained in the use of non-coercive interviewing techniques and preparing appropriate questions.

11. Using interviewers with skills in languages that interviewees are known to understand, or using competent and impartial interpreters whose involvement will not endanger or harm the interviewee or compromise the interview process.

#### *Age, gender and other considerations*

12. Sensitizing border authorities to the risk of stereotypes and bias on behalf of both border authorities and interviewees that can be detrimental to the interview process and its outcomes, including negative stereotypes and perceptions about migrants.

13. Training border authorities to effectively communicate (both verbally and with body language) in a way that is age, culture and gender sensitive, and to assist migrants by use of easy-to-understand language and appropriate written communication.

14. Ensuring that border authorities do not presume women to be vulnerable or to lack agency, while also giving adequate attention to specific needs relating to their situation at the border. Border authorities should communicate separately with female members of family groups to facilitate identification of their distinct human rights situation.

15. Ensuring that persons with disabilities can access the interview process on an equal basis with others, through the provision of sign-language interpreters, documentation in Braille and other relevant measures, and guaranteeing that reasonable accommodation is provided.

16. Ensuring that border authorities are sensitized to the specific challenges and needs relating to the situation of LGBTI migrants at borders, and that they do not express through verbal or body language any judgment relating to the migrant's sexual orientation, gender identity, or gender expression.

17. Limiting interviews carried out by border authorities with children to only gather basic information about the child's identity. Children identified as being unaccompanied or



separated should be immediately referred to child protection agencies, and only be interviewed in the presence of an appropriately trained childcare worker. Children travelling with adults should be verified as being accompanied by or related to them, including through separate interviews with appropriately trained and qualified personnel.

*Monitoring and accountability*

18. Conducting regular independent monitoring and evaluation of border screening and interview processes to ensure that all migrants are treated in accordance with international human rights standards.

## **Guideline 7: Identification and referral**

**States and, where applicable, international and civil society organizations, should consider<sup>9</sup>:**

*Identification and referral of migrants who may be at particular risk at international borders*

1. Establishing or strengthening national referral mechanisms and communication channels between relevant State authorities, national human rights institutions, international and civil society organizations. Border authorities should be trained to use referral mechanisms and be provided with information and facilities to give them the means of doing so.
2. Developing practical guidelines and standardized procedures for border authorities to permit the rapid and accurate identification and referral of migrants who may be at particular risk at international borders. Such guidelines and procedures should be developed in cooperation with relevant national, international and civil society organizations.
3. Ensuring that relevant service providers are present at international borders, such as competent interpreters including sign-language interpreters, legal aid service providers, health service providers, guardians for separated children and others.
4. Creating expert units or rosters of human rights experts for deployment to international borders to assist in the identification of migrants who may be at particular risk at international borders and their referral to responsible authorities.
5. Ensuring that entry system regulations provide the opportunity for asylum seekers to access information on the right to claim asylum and to access fair and efficient asylum procedures.
6. Ensuring that measures taken in respect of women who are pregnant, new and/or breastfeeding mothers include access to maternal health services, pre- and post-natal care, emergency obstetric services and access to sexual and reproductive health information and services.
7. Ensuring that children are promptly identified and that anyone claiming to be a child is treated as such and where appropriate given access to proper age determination processes, appointed a guardian, and referred to child protection authorities and other relevant services. Age determination processes should be a measure of last resort and be carried out in a prompt, child-friendly, gender-sensitive and multi-disciplinary manner, and

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<sup>9</sup> Without prejudice to their obligations under applicable international law and/or relevant provisions of domestic law.

be conducted by child protection officials or officials with sufficient and relevant expertise and training. The benefit of the doubt should be given to the individual being assessed, who should have the opportunity to appeal the decision before an independent body.

8. Ensuring that survivors of torture, cruel, inhuman and degrading treatment, violence and trauma, including victims of sexual and gender-based violence, are referred to appropriate and competent medical and psycho-social services, and that any measures taken at international borders avoid re-traumatisation.

*Providing information*

9. Establishing procedures to ensure that persons are immediately informed in accessible formats and in a language they are known to understand, of the identification and referral procedures that will be followed, their rights and obligations during the procedure, possible consequences of their non-compliance and remedies available to them.

10. Ensuring that migrants are provided information about national and international organisations that provide legal and other assistance to migrants, including up-to-date contact information and means of making contact with such organisations. Also ensuring that all persons in need of international protection are provided information about organisations that provide relevant assistance.

*Monitoring and accountability*

11. Investigating and appropriately disciplining any border authorities who obstruct access to protection and assistance services by failing to refer migrants to appropriate protection and assistance services, and putting in place measures to ensure non-repetition.

## **Guideline 8: Avoiding detention**

**States and, where applicable, international and civil society organizations, should consider<sup>10</sup>:**

*Prohibition of arbitrary detention*

1. Amending legislation to establish a presumption against detention in law, and legally prescribing human rights-compliant alternatives to detention, so that detention is a last resort imposed only where less restrictive alternatives have been considered and found inadequate to meet legitimate purposes.

2. Preventing arbitrary detention by ensuring that any deprivation of liberty that takes place at international borders (including transportation at or around border zones) is a measure of last resort and that the reasons for any detention are clearly defined in law, of limited scope and duration, necessary and proportionate, and that reasons for such detention are explained to migrants.

3. Individually screening and assessing migrants at international borders to ensure that detention is only imposed for limited lawful objectives in accordance with international human rights law, and only when no alternatives to detention are available.

4. Establishing and strengthening procedural safeguards on detention including judicial authorisation and oversight, possibility to appeal and legal aid, to ensure the legality,

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<sup>10</sup> Without prejudice to their obligations under applicable international law and/or relevant provisions of domestic law.

proportionality and necessity of any deprivation of liberty and to periodically review the necessity and proportionality of continued detention.

5. Repealing any legal provisions explicitly or implicitly allowing for indefinite detention so that persons in situations that may potentially lead to indefinite or protracted detention are not subjected to this type of deprivation of their liberty. Granting temporary residence status to all migrants who cannot be removed, to persons who are stateless and refused admittance into the territory of their former country of origin or residence, or for whom there are practical obstacles to return to their country of origin or residence.

6. Ensuring in legislation, policy and practice that children are never detained on the basis of their or their parents' migration status, irregular entry or stay including through release or, where appropriate, adopting human rights-based, non-custodial, community-based alternatives to detention in accordance with the best interests of the child.

#### *Conditions of detention*

7. Ensuring that conditions in detention facilities adhere to the UN Standard Minimum Rules on the Treatment of Prisoners and all other relevant international standards on conditions of confinement.

8. Ensuring that staff at detention centres are carefully selected and receive human rights and gender training, as well as training on relevant cultural and religious practices and basic language skills in languages spoken by the detained migrants.

9. Ensuring that migrants in administrative detention are detained in appropriate and suitable facilities and are not detained with suspected or convicted criminal offenders.

10. Ensuring that men and women are detained separately unless they belong to the same family, and that adequate numbers of male and female staff are recruited and rostered at detention centres so that female staff members are always present where women are detained.

11. Ensuring that in the exceptional cases where children are detained, they are housed with their family members unless there are compelling reasons for separation; that unaccompanied children are not housed with unrelated adults; and that all children have access to adequate healthcare and education. Child protection agencies, rather than immigration agencies should take primary responsibility for children.

12. Ensuring that detention does not put migrants at risk of violence, ill-treatment or physical, mental or sexual abuse. When physical and mental security cannot be guaranteed in detention, authorities should provide alternatives to detention.

#### *Access to human rights-based assistance*

13. Providing migrants in detention with unconditional access to adequate medical and health care. Such care should be age, gender, culturally and linguistically appropriate and provided by qualified staff whose primary role is to ensure the health of persons in detention. Persons with specific health needs, including those related to pre- and post-natal care, HIV and mental health, should receive appropriate care.

14. Providing migrants in detention with unconditional access to competent, free and independent legal aid as well as any necessary interpretation services, for the purpose of exercising their right to habeas corpus, to judicial review of the lawfulness of their detention or for other purposes such as accessing an effective remedy for human rights violations and abuses as well as asylum procedures.

15. Ensuring that unaccompanied children are provided with competent guardians who are able to assist children in all forms of decision-making.

16. Ensuring the right to consular assistance, by putting in place practical measures to facilitate contact between migrants in detention and their consular or diplomatic authorities, including access to information on consular assistance, contact information, and access to telephones and other means for the purpose of making such contact. Consular authorities should only be contacted if requested by or with the free, informed consent of the person concerned, in light of the risks posed to asylum seekers and refugees as well as other groups such as irregular migrants and LGBTI individuals, of being brought to the attention of their consular authorities without their knowledge and informed consent.

17. Providing timely access to fair and efficient asylum procedures for asylum-seekers in detention.

18. Facilitating contact and access to national human rights institutions, relevant international organizations, civil society organizations and others in the provision of legal and other assistance to migrants in detention, and informing migrants of their right to contact such organizations.

#### *Monitoring and accountability*

19. Facilitating independent monitoring and evaluation of detention at places of immigration detention, including by National Preventive Mechanisms, national human rights institutions, international organizations, parliamentarians, civil society organizations and others, and by allowing them to access detainees and places of detention.

20. Investigating and prosecuting allegations of violence, sexual abuse or other forms of ill-treatment at places of detention and putting in place measures to ensure non-repetition, and particularly ensuring that women, children, older persons, disabled persons and LGBTI individuals are supported to report such abuse.

### **Guideline 9: Human rights-based return or removal**

**States and, where applicable, international and civil society organizations, should consider<sup>11</sup>:**

#### *Human rights-based return or removal*

1. Ensuring that returns from all areas where the State exercises jurisdiction or effective control, including extraterritorially, are only carried out in accordance with international law and with due procedural guarantees. Arbitrary or collective expulsions that violate the principle of non-refoulement and/or the prohibition of collective expulsion should be strictly prohibited.

#### *Voluntary return*

2. Promoting voluntary return in preference to forced return, including by providing information about voluntary return processes in accessible formats and languages migrants are known to understand. Where appropriate civil society organizations should be involved in the provision of such information.

3. Ensuring that any consent given to voluntary return processes is fully informed and given free of any coercion, such as the prospect of indefinite detention or detention in inadequate conditions.

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<sup>11</sup> Without prejudice to their obligations under applicable international law and/or relevant provisions of domestic law.

*Removal orders*

4. Ensuring that returns are only carried out by competent authorities pursuant to removal orders that are provided in accessible formats and in writing in a language the concerned migrants are known to understand. Such orders should only be issued following consideration of individual circumstances with adequate justification in accordance with the law and international human rights standards, inter alia the prohibition of arbitrary or collective expulsions and the principle of non-refoulement.
5. Ensuring that migrants clearly understand the grounds on which removal orders are based, the execution of removal orders, remedies available to challenge the validity of removal orders, reasonable time limits to challenge the order, and other relevant information including consequences of non-compliance.
6. Affording remedies against removal orders where there are substantial grounds for believing that a migrant would be at risk of serious violations of human rights such as torture, cruel, inhuman or degrading treatment or punishment, or persecution, if returned to, readmitted to or subject to onward return to a place where they might be at such risk.
7. Ensuring that a guardian will accompany children throughout the return process, that the family or guardian has been identified, and that there is clarity about reception and care arrangements of children in countries to which they are being returned. Children should only be returned where it has been determined through an adequate and participatory process that it is in the best interests of the child.

*Pre-removal detention*

8. Ensuring that any legitimate and necessary pre-removal detention accords with international human rights law, and follows a determination in each individual case that non-custodial measures would not be appropriate. Detained individuals should be informed in accessible formats and in a language they understand of the grounds on which their pre-removal detention order is based, possible remedies against the order, and how to access legal aid.

*Readmission*

9. Carrying out return processes in accordance with the human right to freedom of movement, including the right to leave any country including one's own, and by allowing returnees to choose the State to which they are returned, subject to the agreement of that State.
10. Ensuring that border authorities and migrants are aware of the documentation requirements of the country from and to which they are being returned and, where applicable, taking steps to issue documents to facilitate return.
11. Protecting the confidentiality of all information in any cooperation between States during return processes. Identification and documentation arrangements necessary to carry out returns should be made in accordance with international legal obligations to protect confidentiality, including data relating to irregular migration status, asylum claims, health status, disability and HIV status, and sexual orientation and gender identity.
12. Making reception arrangements to ensure returns only take place to safe places in the country of return. This means, for instance, that migrants should not be returned to situations of destitution or inhospitable conditions where their safety or human rights are threatened, such as through deportation to so-called "no-man's land" between borders. Return should be avoided to situations where migrants' human rights are threatened by a lack of adequate healthcare, food, water and sanitation. Returns should not be carried out at night. Cooperating States shall protect returning migrants and their families from reprisals

by and retaliation from criminal groups, in the country they are returned to or from which they are being returned.

13. Ensuring children are never handed over to border authorities of receiving countries if it is unclear how they will be cared for. Families should not be separated during removal procedures. Unaccompanied and separated children should not be returned without ensuring that proper care and custodial arrangements are in place and that family members have been traced in the country of return.

*Forced removal*

14. Ensuring that expulsions of groups of migrants uphold the due process requirement to consider, with due diligence and in good faith, the full range of circumstances that may prohibit expulsion of each individual, in light of the international law prohibition against collective expulsions.

15. Ensuring that return procedures are not carried out at all costs, but are interrupted where the human rights of the migrant are compromised or where continuation of the return process would endanger the safety and dignity of the migrant or of the personnel carrying out the return.

16. Border authorities carrying out returns should comprise at least one person of the same sex as the migrant and where possible, efforts should be made to select personnel who can communicate with migrants in accessible formats and in a language they are known to understand, and providing interpretation services where this is not possible.

17. Carefully selecting and appropriately training border authorities, to ensure all return processes are carried out in a safe and dignified manner. Training should include good practices as well as practical situational training in the use of force or coercive measures that are lawful, strictly necessary and proportionate, and do not violate the human rights of the migrant.

18. Ensuring that any forms of physical restraint used are strictly necessary and proportionate to the actual or reasonably anticipated resistance of the migrants, and respect their dignity. The use of any means of coercion, restraint or force likely to obstruct the migrant's nose or mouth, or force her or him into positions that risk asphyxiating her or him shall be strictly prohibited.

19. Ensuring that no migrant is removed unless they are medically fit to travel. Where there are known medical conditions, where medical treatment is required, or where the use of restraint techniques is foreseen, independent medical examinations should determine fitness to travel.

20. Prohibiting the use of non-medically justified measures or treatment, such as use of tranquilizers, sedatives or other medication to facilitate deportation. Medication should only be administered to persons during their removal on the basis of their informed consent and a medical decision taken in respect of each individual being returned, and only where there is a medical need on the part of the migrant unrelated to the State's interest in removal.

*Monitoring and accountability*

21. Ensuring and facilitating independent monitoring of pre-removal processes, return processes, and reception of migrants in receiving States to guarantee they are carried out in accordance with international human rights law and standards including for the prevention of torture and ill-treatment and refoulement.

22. Ensuring that migrants are informed of their right to report violations and that those whose rights are violated during return processes can file complaints during or after the return process, remain contactable and able to testify against perpetrators of crimes and violations of human rights (for instance, through return to the country or by video link) and access an effective remedy in or from the returning country. Personnel who carry out return orders should be clearly identifiable to migrants through names or personal numbers and should not wear masks or otherwise hide their appearance, to ensure that violations of human rights can be reported to competent authorities.

## **Guideline 10: Cooperation and coordination**

**States and, where applicable, international and civil society organizations, should consider<sup>12:</sup>**

### *Frameworks for cooperation*

1. Signing, ratifying and implementing all core international human rights instruments,<sup>13</sup> the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, the 1954 Convention Relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, international instruments and guidelines on the treatment of persons rescued at sea, the United Nations Convention against Transnational Organized Crime and its supplementary protocols on trafficking in persons and smuggling of migrants, as well as ILO standards relevant to the protection of migrant workers, so as to broaden bases for cooperation in accordance with human rights.
2. Establishing platforms for cooperation on border governance, including by designating a central authority to facilitate human rights-based coordination of relevant actors at the domestic, bilateral, regional and international levels.
3. Cooperating across borders to promote human rights-based, equitable, dignified, lawful and evidence-based migration and border governance measures. Specifically, consideration should be given to coordinating policies and resources to ensure potential migrants have access to sufficient regular channels for migration, including in response to actual migrant labour needs at all skills levels as well as for family reunification purposes.

### *Human rights guarantees*

4. Ensuring that bilateral, regional and international cooperation agreements, arrangements, laws and policies do not have a deleterious effect on the human rights of migrants at borders, in accordance with international human rights law.
5. Suspending any bilateral or regional cooperation agreements, arrangements or mechanisms in which human rights are not explicitly guaranteed, particularly where such

<sup>12</sup> Without prejudice to their obligations under applicable international law and/or relevant provisions of domestic law.

<sup>13</sup> The ten core international human rights instruments are; 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 Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the International Convention for the Protection of All Persons from Enforced Disappearances, and the Convention on the Rights of Persons with Disabilities.

agreements violate human rights standards including the principle of non-refoulement. Agreements on border governance should be made public and transparent and not be upheld nor entered into with countries unable to demonstrate human rights respect, protection and fulfilment at international borders.

6. Suspending, amending and revising any cooperation arrangements, ship-rider agreements, joint patrols, data-sharing agreements and agreements concerning posting of border and airport liaison officers in extraterritorial jurisdictions that are not in accordance with human rights law and standards.

7. Including explicit human rights guarantees in operational agreements and arrangements, including border or airport liaison officer agreements and cross-border joint operation teams. Specifically, joint operations that violate, or assist in the violation of, human rights law and standards should be terminated with immediate effect.

*Multi-stakeholder cooperation*

8. Involving a range of relevant stakeholders including national human rights institutions, parliamentarians, international organizations and civil society organisations including migrants' associations in the creation, amendment and implementation of border governance agreements or arrangements, to ensure human rights compliance.

*Data collection and protection*

9. Increasing cooperation with other States, as well as other relevant actors, including international organizations and civil society organizations, to collect and exchange data and information relevant to the human rights-based governance of migration at international borders.

10. Standardizing the collection and analysis of data on border governance, including on regular and irregular border crossings, smuggling of migrants and trafficking of persons, instances of deaths of migrants attempting to approach and/or cross borders, and complaints of discrimination, violence and abuse at international borders.

11. Including explicit data protection guarantees in information sharing and exchange agreements between States and within States, including through establishing 'firewalls' between immigration enforcement and public services.

*Monitoring and accountability*

12. Developing and implementing independent monitoring mechanisms to apply to all border authorities involved in border control operations that are carried out jointly with other States and other relevant entities.

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