

Factsheet 1: What are human rights?

1. Where do human rights¹ come from?

Human rights were developed and articulated in the Universal Declaration of Human Rights (1948) as a response to the atrocities of World War II. The **UDHR** spelled out fundamental civil, political, economic, social and cultural rights that all human beings should enjoy for the first time in human history. Although the Universal Declaration of Human Rights is a **declaration** and not a treaty, it is considered to be part of customary international law and to be binding on States.

2. What is the International Bill of Human Rights?

The rights set out in the UDHR have subsequently been divided into two broad categories and incorporated into two treaties: the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). These three documents together comprise what is called the **International Bill of Human Rights**.²

The most important rights protected by the International Covenant on Civil and Political Rights (**ICCPR**) are:

- the right to life, liberty and security, which includes protection from **arbitrary arrest and detention**;
- the right to equality before the law;
- the right to be free from **slavery, servitude and forced labour**;
- the right to a fair trial;

- the right to freedom from torture or cruel, inhuman or degrading treatment or punishment;
- the right to freedom of thought, conscience and religion;
- the right to **participation** in public affairs;
- the right to freedom of association;
- the right to freedom of opinion and freedom of expression.

The most important rights protected by the International Covenant on Economic, Social and Cultural Rights (**ICESCR**) are:

- the right to an adequate standard of living;
- the right to health;
- the right to education;
- the right to adequate housing;
- the right to just and favourable conditions of work;
- the right to form trade unions and free associations.

3. What are the core human rights treaties?

A human rights treaty (or convention or covenant) is a written document binding States under international law. The ICCPR and the ICESCR, together with seven other conventions, form the core human rights treaties. States can subscribe to them by becoming a party to the treaty concerned. Once it has become a party to a treaty, States have the legal obligation to take steps to ensure that everyone in their State can enjoy the **human rights** set out in the treaty in question. If State agencies or

¹ Sources: Getting it right, Rights & Democracy 2008; Undocumented Migrants have rights! An overview of the International Human Rights Framework, PICUM, 2008; website UN HCHR.

² Factsheets on the International Bill of Human Rights, the treaty system and the various human rights can be found at the website of the UN High Commissioner for Human Rights. See: www2.ohchr.org.

other actors (including national or international organisations and **NGOs**) violate these rights, it is the responsibility of the **government** to protect its people and to ensure that their human rights are respected and fulfilled.

INTERNATIONAL BILL OF HUMAN RIGHTS

- Universal Declaration of Human Rights (UDHR), 1948
- International Covenant on Civil and Political Rights (ICCPR), 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

OTHER CORE HUMAN RIGHTS INSTRUMENTS

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984
- Convention on the Rights of the Child (CRC), 1989
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990
- Convention on the Rights of Persons with Disabilities (CRPD), 2006
- International Convention for the Protection of All Persons from Enforced Disappearance, 2006

4. What are the other treaties about?

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) aims at preventing and combating all forms of discrimination against women in both private and public life. It defines discrimination as every form of distinction, exclusion or restriction that impairs the rights of women. Gender based violence is considered to be a form of discrimination against women because it

impairs women's ability to enjoy their rights and freedoms on a basis of equality with men (General Recommendation no. 19). The Convention indicates methods for combating discrimination, and lays down what States must do to improve the position of women in their country. By ratifying the Convention, States commit themselves to incorporating the principle of equality of men and women in their legal system, abolishing all discriminatory **laws**, and ensuring the elimination of all acts of discrimination against women by persons, organisations and enterprises. Over 185 States have ratified the Convention. Article 6 CEDAW obliges State parties to "take all appropriate **measures**, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) prohibits racial discrimination, e.g. any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibits any form of torture as well as other acts of cruel, inhuman or degrading treatment or punishment. Article 3 of the Convention prohibits countries from returning ('refouler') or extraditing persons to their State of origin (or any other State), if there are substantial grounds for believing they would be at risk of being subjected to torture. This is called the **principle of non-refoulement**. It also forbids activities which might not be considered torture per se, but which constitute cruel or degrading treatment.

The Convention on the Rights of the Child (CRC) specifically addresses the rights of children, since people under 18 years old often need special care and protection that adults do not. The Convention sets out the basic human rights

that children everywhere have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and **exploitation**; and to participate fully in family, cultural and social life. The four core principles of the Convention are: **non-discrimination**; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) protects the rights of **migrant workers** and their families, but only 39 States have ratified it. No country in the Global North has ratified it. According to the Convention migrant workers are entitled to enjoy their basic human rights regardless of their legal status. It seeks to prevent and eliminate the exploitation of migrant workers throughout the entire migration process by providing a set of binding international standards to address the treatment, welfare and human rights of both documented and undocumented migrants. It also details the measures to be taken to combat the illegal or clandestine recruitment and trafficking of migrant workers.

5. What does ratification mean?

Ratification (or accession) is the procedure by which a State becomes party to a treaty. Once it has ratified the treaty, the State is legally bound. **Signature** often precedes ratification. Signing the treaty creates the obligation on the State to refrain from acts that would defeat the objectives of the treaty or take measures to undermine it, and implies a commitment to ratify. This means that if your country has only signed and not (yet) ratified a particular treaty, you can still hold your State to its intentions. In international law the government is the representative of the State.

6. What are reservations?

Sometimes a State ratifies a treaty but makes '**reservations**'. This means that it is bound to the treaty, except for the specific provisions

to which it made a reservation. However, reservations may not be incompatible with the object and purpose of the treaty. This means, for example, that a State cannot ratify the Women's Treaty and make a reservation to the obligation to pursue an active **policy** to eliminate the discrimination of women (art. 2). If you discover that a provision of a treaty is not implemented in your country, you may want to check whether your country has made a reservation to this particular provision (see: www.whatlaw.org).

7. Who monitors whether States keep to their commitments?

Each of the core human rights treaties has a **treaty monitoring body** or **supervisory committee** (also called **treaty bodies**), whose purpose is to monitor the implementation of its provisions by the State parties. The members of the supervisory committees are independent experts. They are elected by the member States, but do not represent any State. State parties have to submit **periodic reports** to the treaty bodies on the implementation of the treaty in their national law and practice. **Non-governmental organisations** (NGOs) can provide important input to this process by submitting so-called alternative or **shadow reports**, in which they offer their views and comments on the State report. The monitoring body will study the reports of the State and the NGOs to assess whether the State complies with its obligations. It will then issue recommendations, called **Concluding Observations**, on what States should improve. These recommendations are not free of obligation. Commitment by the State to the treaty implies that it has to take the recommendations of the supervisory committee seriously.

The treaty bodies also publish **General Recommendations**. These provide States with additional guidelines for the interpretation and implementation of the treaty in question. General recommendation no. 26 of CEDAW, for example, specifically addresses the situation of women migrant workers.

Most of the core human rights treaties also offer the possibility for individuals or groups to submit complaints to the treaty monitoring body. This possibility is laid down in so-called **Optional Protocols**, which authorise the relevant treaty body to consider complaints from individuals or groups about violations of the rights contained in the treaty. States must separately ratify these protocols. There are three main procedures for bringing complaints about violations of the provisions of the human rights treaties before one of the human rights treaty bodies:

- Individual communications: complaints or communications set forth by individuals;
- State-to-State complaints: one State party may complain about alleged violations of the treaty by another State party;
- Inquiries: CAT and CEDAW may initiate inquiries if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions by a State party.

Finally, the human rights record of each Member State of the UN is periodically reviewed by the Human Rights Council. This is called the **Universal Periodic Review**. Every four years, UN Member States undergo an assessment of human rights progress, challenges and needs for improvement. The process includes national consultations in the preparation of the State report to the Human Rights Council. Civil society organisations are encouraged to submit information and participate in the preparatory, review and follow-up process of the Universal Periodic Review (UPR).³

8. What are Special Rapporteurs?

Special Rapporteur is a title given to individuals working on behalf of the UN to investigate, monitor and recommend solutions to human rights problems. They are appointed by the UN Secretary General and act independently of governments. Special Rapporteurs often conduct fact-finding missions to countries to investigate allegations of human rights violations. They can only visit countries that have agreed to invite them. In addition, Rapporteurs regularly assess and verify complaints from alleged victims of human rights violations. Once a complaint is verified as legitimate, they can send an urgent letter or appeal to the government that has allegedly committed the violation. There are Special Rapporteurs on trafficking in persons, on violence against women, on the human rights of migrants, and on contemporary forms of slavery.⁴

9. What are consensus documents?

Next to international human rights treaties, so-called **consensus documents** are important. These are not legally binding, but governments have a moral obligation to abide by them as they are based on political agreement. An example is the Declaration on the Elimination of Violence Against Women (1993) or the Beijing Platform for Action (1995). Resolutions and Declarations are adopted by the General Assembly of the United Nations. The General Assembly is composed of representatives of all Member States and is the main deliberative organ of the United Nations. While the decisions of the General Assembly have no legally binding force for Governments, they carry the weight of world opinion on major international issues, as well as the moral authority of the world community.⁵

³ You can find the reports submitted by your State, a summary of the reports submitted by other stakeholders, and the outcomes of the review at www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx. Click on 'documentation' at the left side of the page, and fill in the name of your country.

⁴ See for the most recent reports of the various Special Rapporteurs the website of the UN High Commissioner for Human Rights: www.ohchr.org/EN/Pages/WelcomePage.aspx. Fill in the name of your country in the box 'human rights per country'. You will then see all recent documents concerning your country. For a full list of all reports of Special Rapporteurs on your country, click on: 'Full list of documents in the Charter-based bodies Database'.

⁵ See for Resolutions and Declarations of the General Assembly of the UN: www.un.org/ga.

10. What is the International Labour Organisation?

The **International Labour Organisation (ILO)**, founded in 1919, is a specialised UN agency that brings together governments, employers and workers, and seeks the promotion of social justice and internationally-recognised human and labour rights. The ILO formulates **international labour standards** in the form of conventions and recommendations. These set minimum standards for basic labour rights and other labour conditions across the entire spectrum of work-related issues. Basic labour rights are, for example, freedom of association, the right to organise, the right to collective bargaining, abolition of forced labour, and equality of opportunity and treatment. Most States (183 in the year 2009) are members of the ILO.

THE 8 FUNDAMENTAL ILO CONVENTIONS ON HUMAN RIGHTS ARE:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182).

ANOTHER IMPORTANT ILO TREATY IS:

- ILO Convention on Migrant Workers, 1975 (No. 143), which specifically addresses the rights of undocumented migrant workers.

The core document on basic labour standards is the ILO Declaration on Fundamental Principles and Rights at Work (1998) and its Follow-Up. This Declaration establishes a set of minimum standards of rights that should apply to all workers, national and migrants, documented and undocumented.⁶

11. What are regional human rights treaties?

In addition to the international human rights treaties, regional treaties can play an important role in complementing and reinforcing the international human rights system. For an overview of the most important regional human rights and anti-trafficking instruments, see **step 4**.

⁶ More information you can find at the ILO website: www.ilo.org. Here, you will also find the reports of the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) by country, convention or subject (www.ilo.org/ilolex/gbe/ceacr2009.htm).

Factsheet 2: The major human rights

This factsheet lists the major human rights and provides a short description of each of them. The first four – non-discrimination, access to an effective remedy, participation and **gender equality** - are not only specific rights, but also crosscutting principles that apply to every right. Under ‘sources’ you will find the articles of the international conventions that protect this right. For the full name of the different conventions, see the Glossary and Factsheet 1. ILO conventions are indicated with C + the number

of the convention (e.g. C 29). The rights marked with an asterisk* are explained in separate factsheets. You can find the full text of the different human rights treaties on the website of the UN High Commissioner for Human Rights (www.ohchr.org). In the table below, we included the Convention on the Rights of the Child (CRC). In the toolkit, however, the CRC is not treated in depth since the tool focuses on the rights of adults (18 years and older).

| Right | Description ⁷ |
|---|--|
| Right to Non Discrimination, Equality before the Law and Equal Protection by the Law* | All persons are equal before the law and are entitled to the equal protection of the law, including protection against discrimination on the grounds of gender , race, citizenship, sexual orientation, etc. Everyone should enjoy all economic, social, cultural, civil and political rights on an equal basis. No discrimination of any kind should be made. Everyone has the right to be recognised as a person before the law. Sources: UDHR 2, 6, 7 & 8; ICCPR 2(1), 14, 16 & 26; ICESCR 2(2) & 3; CEDAW 1 & 2; CERD 1 & 5; ICRMW 1 & 24; ECHR 14 |
| Right to Justice and Access to Effective Remedy* | Everyone should have access to legal recourse in the event that their rights or freedoms are not being respected. Governments should ensure that individuals and communities have access to mechanisms where they can seek redress in case of violations of their human rights. |
| Right to Participation and Access to Information* | In order to ensure the true enjoyment of their rights, individuals must be able to participate in the decision-making process about their rights. Individuals must be able to access important information about decisions that might affect the enjoyment of their rights. |

⁷ Sources: Basic Documents on Human Rights, Brownlie, Oxford: Clarendon Press 1997; Getting it Right, Rights & Democracy 2008; website UN HCHR.

| Right | Description ⁷ |
|---|---|
| Right to Gender Equality* | Men and women should enjoy all economic, social, cultural, civil and political rights on an equal footing. No discrimination should be made based on gender. |
| Right to Life, Liberty and Security of the Person* | Everyone has the right to live and to live in freedom and safety. Everyone has the right to be free from unlawful or arbitrary arrest, detention or deprivation of his or her liberty. Everyone, including migrant workers, is entitled to protection against violence, physical injury, threats and intimidation by State officials or private individuals, groups or institutions. Sources: UDHR 3 & 9; ICCPR 6 & 9; ICERD 5; CRC 6; CRC 37; ICRMW 9 & 16; ILO C 143,1; ECHR 2 & 5 |
| Right to Freedom from Forced Labour, Slavery, Slavery like Practices and Servitude* | Everyone has the right to be free from forced labour, unless it is a lawfully imposed punishment for a crime. Everybody has the right to be free from slavery, slavery-like practices , including debt bondage and forced or servile marriage, and servitude. Sources: UDHR 4; ICCPR 8; ICESCR 10; CEDAW 6; CRC 11, 32, 34, 35 & 36; Slavery Convention ; Supplementary Convention on the Abolition of Slavery and Practices Similar to Slavery; ICRMW 11; ILO C 29, 11; ILO C 105, 1 & 2; ILO C 182, 1 & 3; ECHR 4 |
| Right to Freedom from Torture and Cruel or Degrading Treatment or Punishment | Everyone should be free from torture and cruel, inhuman or degrading treatment or punishment. Under all circumstances torture is a violation of an individual's human rights. Sources: UDHR 5; ICCPR 7; CAT 2, 4 & 16; ICERD 5; CRC 19 & 37; ICRMW 10; ECHR 3 |
| Right to Freedom of Movement and to Choose a Residence* | Everyone has the right to come and go as he or she wishes within his or her country. Everyone has the right to leave and return to his or her country. This right is subject to very few limitations. Sources: UDHR 13; ICCPR 12; CEDAW 15(4); ICRMW 8 |
| Right to Privacy and Family Life, Reputation and Honour* | Everyone has the right to be free from arbitrary interference with their private and family life, home or correspondence and from attacks on honour and reputation. Everyone's privacy should be protected. For example, one's personal correspondence must be delivered without being opened, telephone conversations and other communications with other people not recorded, and personal information not divulged to unauthorised people or held on computers unless regulated by law. Sources: UDHR 12 & 16; ICCPR 17 & 23; ICESCR 10; CRC 9, 10 & 20; ICRMW 14; ECHR 8 |

| Right | Description ⁷ |
|---|---|
| Right to Marry and Found a Family | <p>Everyone has the right to marry and to found a family. Marriage shall only be entered with the full and free consent of the spouses.</p> <p>Sources: UDHR 16; ICCPR 23; ICESCR 10; Supplementary Convention on Practices Similar to Slavery; ECHR 12</p> |
| Right to Property | <p>Everyone has the right to property. No one shall be arbitrarily deprived of their property.</p> <p>Sources: UDHR 17; ICRMW 15</p> |
| Right to Seek Asylum and to Non-Refoulement* | <p>Everyone has the right to seek asylum and to be not returned to situations of inhuman or degrading treatment or torture.</p> <p>Sources: UDHR 14; CAT 3; Refugee Convention</p> |
| Right to a Fair Trial | <p>Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Everyone shall be presumed innocent until proved guilty by the law.</p> <p>Sources: UDHR 6, 7, 10 & 11; ECHR 6, 7</p> |
| The Right to an Adequate Standard of Living* | <p>Everyone has the right to his or her basic needs. This means that an individual and his or her family should not be denied health care or food due to lack of income. Everyone should have adequate clothes and housing. Everyone should receive assistance when unemployed, ill, aged, widowed, or incapable of earning a living due to other reasons. Expecting mothers and their children are entitled to special care. All children have the same rights, whether or not their mother is married.</p> <p>Sources: UDHR 22 & 25; ICESCR 10 & 11</p> |
| Right to Free Choice of Employment and to Just and Favourable Conditions of Work* | <p>Everyone has the right to be free to choose his or her work and to receive a salary which is adequate to support his or her family. Everyone has the right to equal pay for equal work. If a man and a woman do the same or equivalent work, they should receive the same salary. The place of work should be safe and the terms of employment should be fair.</p> <p>Sources: UDHR 23, 24 & 25; ICESCR 6 & 7; CRC 32; ICRMW 25; ILO C 143, 9</p> |
| The Right to Peaceful Assembly & Freedom of Association* | <p>Everyone has the right to form a trade union or join one that already exists. Everyone has the right to strike as long as it is exercised lawfully. Everyone has the right to organise and to attend peaceful meetings. No one should be forced to belong to a group.</p> <p>Sources: UDHR 20 & 23; ICCPR 21 & 22; ICESCR 8; ICERD 5; CEDAW 14; ICRMW 26; ILO C 87, 11; ILO C 98, 1; ECHR 11</p> |

| Right | Description ⁷ |
|---|--|
| Right to Freedom of Opinion and Expression | <p>Everyone has the right to speak his or her mind, provided it is done in full respect of the rights and reputations of others. This includes the freedom to seek, receive and impart information.</p> <p>Sources: UDHR 18 & 19; ICCPR 19; ICRMW 13; ECHR 10</p> |
| Right to Freedom of Thought, Conscience or Religion | <p>Everyone has the right to practice his or her religion freely, to change it, and to practice it either individually or with other people.</p> <p>Sources: UDHR ICCPR; ECHR 9</p> |
| Right to Participate in Cultural Life | <p>Everyone has the right to participate in the cultural life of the community. Everyone has the right to enjoy his or her own culture and to disseminate it. This includes the right to maintain and use one's own language, the right to practice his or her religion, the right to have access to cultural facilities, and the right to have access to an education system that respects one's culture.</p> <p>Sources: UDHR 26 & 27(1); ICESCR 15</p> |
| The Right to Participate in Public Affairs | <p>Everyone has the right to participate in the public affairs of his or her country, including voting, holding public office, and equal access to public services. Everyone has the right to be involved in the planning, decision-making, and the implementation of decisions affecting his or her human rights. This also means that individuals need to be able to seek information that will enable them to meaningfully participate in the decision-making process.</p> <p>Sources: UDHR 21; ICCPR 25</p> |
| Right to Health | <p>Everyone has the right to the highest attainable standard of physical and mental health. Everyone has the right to control his or her health and body (including sexual and reproductive freedom). Everyone should have access to health facilities located close to one's community. Such facilities should be culturally appropriate, have electricity, water, trained personnel and medicines, and be accessible to all, irrespective of level of income.</p> <p>Sources: UDHR 25; ICESCR 12; ICERD 5; CEDAW 14; CRC 24, 25 & 39; ICRMW 28; ECHR 3</p> |
| Right to Adequate Housing | <p>Everyone has the right to safe and affordable housing in which they can live without fear of being harassed or evicted.</p> <p>Sources: UDHR 25; ICESCR 11; ICERD 5; CEDAW 14; CRC 27</p> |

| Right | Description ⁷ |
|--------------------|--|
| Right to Education | <p>Everyone has the right to go to school and primary schooling should be free and compulsory. Schools need to be available, easily accessible to the community, and functioning properly (staff, equipment, etc...). They need to be affordable to all. Students learning needs to be acceptable both to parents and children. Finally, content should be relevant to the different social and cultural components of society.</p> <p>Sources: UDHR 26; ICESCR 13 &14; ICERD 5; CRC 28 & 29; ICRMW 30</p> |
| Right to Food | <p>Everyone has the right to be free from hunger. The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or the means for its procurement.</p> <p>Sources: UDHR 25; ICESCR 11</p> |

Factsheet 3: UN Trafficking Protocol

1. What is the UN Trafficking Protocol or the Palermo Protocol?

The **UN Trafficking Protocol** (also known as the **Palermo Protocol**) is an international agreement created through negotiations between over 100 governments. It is one of three protocols attached to the UN Convention against Transnational Organized Crime. The Convention, the Trafficking Protocol and a Protocol on smuggling were adopted in November 2000. They are primarily law-enforcement instruments to promote cross-border cooperation by governments, and to ensure that all countries have adequate laws to address these crimes. The Trafficking Protocol consists of three instruments: the Protocol, relevant sections of the Convention, and the Interpretative Notes (travaux préparatoires), which are explanations of some of the provisions of the Protocol.⁸

2. Has my government signed the Protocol and, if so, what does this mean?

All Member States of the European Union have ratified the Protocol. If you are living outside the EU, you can check if your country has done so at: www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html.

After ratification, governments must incorporate the contents of the Protocol and Convention into their domestic legislation.

3. Why is the Protocol important?

The Protocol is the first international instrument that addresses trafficking in all sectors and industries. It is the first to contain an internationally agreed-upon, legally binding definition of **trafficking in persons**. It contains provisions on the criminalisation of trafficking in

persons and cross-border cooperation, as well as on the prevention and protection of victims, although most of the latter provisions are not mandatory. The Protocol also links trafficking with the human rights treaties on forced labour, slavery, slavery-like practices and servitude, instead of treating these as separate and distinct categories of human rights abuses. The Protocol, however, is not a human rights instrument. It is a political compromise, developed in the context of crime and border control. It does not speak of labour, migrants' or sexual rights, but it does include a clause stating that nothing in the Protocol shall affect people's rights under **international human rights law**. It also includes a non-discrimination clause. According to this clause the measures it sets forth should be interpreted and applied in a way that is consistent with internationally recognised principles of non-discrimination, and that is not discriminatory to persons on the ground that they are victims of trafficking (art. 14).

4. Definition of Trafficking

The definition of trafficking in Art.3 of the Protocol consists of three distinct but interconnected elements:

- A set of actions: the recruitment, transportation, transfer, harbouring or receipt of persons
- The means by which those actions are carried out: 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
- The purpose for which people are recruited or moved: for the purpose of exploitation.

⁸ See for the full text and the Interpretative Notes: www.unodc.org/unodc/en/treaties/CTOC/index.html

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

In the case of adults, all three elements must be fulfilled to be considered trafficking. However, in the case of children and adolescents (persons under 18), the use of any of the coercive or deceptive means listed in the Protocol is not required, as the legal status of minors is different from adults. Any recruitment etc. of a child for the purpose of exploitation is considered 'trafficking'.

THE FULL DEFINITION OF TRAFFICKING IN ART. 3 OF THE PROTOCOL

- a. 'Trafficking in persons' shall mean:
- the recruitment, transportation, transfer, harbouring or receipt of persons;
 - by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
 - for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c. The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a);
- d. 'child' shall mean any person under eighteen years of age.

5. Understanding the definition

'Fraud or deception'

This can refer to the nature of the work or services (e.g. if the person is promised a job as domestic worker but is forced to work in prostitution), but it can also refer to conditions of work (e.g. if he or she is promised a work permit, proper payment and good working conditions, but is in reality not being paid any or all of the promised wages, is forced to work extremely long hours, is deprived of her or his identity papers and/or is locked into the workplace). It should also be kept in mind that the initial recruitment can be voluntary, and that the coercive mechanisms to keep a person in an exploitative situation may come into play at a later stage.

'Abuse of a position of vulnerability'

According to the Interpretative Notes to the Protocol, 'abuse of a position of vulnerability' refers to "any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved". This can include situations where the victim does not speak the local language, has her or his identity papers taken away, and is unable to contact friends, family or the outside world.

'Forced labour or services, slavery or practices similar to slavery and servitude'

These are not defined in the Trafficking Protocol, but are explained in other international treaties and conventions.⁹ ILO Convention No. 29 Concerning Forced Labour (1930) and No. 105 on the Abolition of Forced Labour (1957) define forced labour as, "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". Conditions of forced labour include the use of physical or sexual violence, threats of violence, debt bondage, withholding of wages or no payment at all, restriction of movement, the retention of passport and identity documents and the threat of denunciation to the authorities.¹⁰ Since the coming into force of Convention No.

⁹ See also factsheet 9.

¹⁰ Human Trafficking and Forced Labour Exploitation, Guidance for Legislation and Law Enforcement, ILO Special Action Programme to Combat Forced Labour, 2005. See: www.ilo.org/sapfl/Informationresources/ILOPublications/lang--en/docName--WCMS_o81999/index.htm.

29, the ILO Committee of Experts has treated trafficking for the purpose of enforced sexual services as one form of forced labour, also when prostitution is illegal under national law.

‘Practices similar to slavery’ include servile marriage and debt bondage.¹¹ **‘Debt bondage’** occurs when, for example, the trafficked person is required to repay a large sum for travel expenses, but the debt keeps growing due to exorbitant interest rates and endlessly increasing expenses for housing, transportation, clothing, food, etc., making it effectively impossible to pay off the debt.

‘Servitude’ refers to conditions of work or service that the individual cannot change or from which she or he cannot escape. According to the European Court of Human Rights, servitude can be defined as “an obligation to provide one’s services that is imposed by the use of coercion, and is linked to the concept of slavery”.¹²

‘Exploitation of the prostitution of others or other forms of sexual exploitation’

Neither ‘exploitation’ nor ‘sexual exploitation’ is defined in the Protocol or elsewhere in international law. The only international convention in which ‘exploitation of prostitution’ is defined is the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. Here, the term refers to all cases in which a third person profits from the income of the prostitution of another person, regardless of the consent of the person concerned. But this convention is generally considered obsolete as it makes no distinction between trafficking and prostitution, and is only ratified by 74 of the 192 UN Member States.¹³ By contrast, the UN Protocol makes a clear distinction between trafficking and prostitution. According to the Protocol, ‘exploitation of prostitution’ only amounts to trafficking when coercion or deceit is used, and when there is the element of recruitment, transportation, etc.

In the Trafficking Protocol, the terms ‘exploitation of the prostitution of others’ and ‘sexual exploitation’ were intentionally left undefined in order to allow its ratification by all States, independent of their domestic policies on prostitution. This is reflected in the Interpretative Notes:

“The Protocol addresses the exploitation of prostitution of others and other forms of sexual exploitation only in the context of trafficking in persons. The terms ‘exploitation of the prostitution of others’ and ‘sexual exploitation’ are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic law”.

The Protocol only deals with prostitution or the exploitation of prostitution when any of the coercive means listed in the definition of trafficking is used. It does not require States to criminalise prostitution. Different legal systems – whether they decriminalise, legalise or regulate prostitution – can all be in full compliance with the Protocol.

It is not relevant whether or not a person was previously engaged in prostitution (or domestic work or any other kind of work), or knew she or he would be so, once all the elements of the definition are fulfilled, notably: the presence of one of the actions, the use of one of the coercive or deceptive means, and the purpose of exploitation.

6. What is the relevance of consent?

The consent of the trafficked person to the intended exploitation is irrelevant, once any of the coercive or deceptive means listed in the definition has been used. A person can thus consent to migrate to work as a domestic worker or sex worker, or to work illegally abroad, but this does not imply that he or she consents to work in forced labour or slavery-like conditions, and therefore does not exclude the person from being a victim of trafficking.

¹¹ UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery: www2.ohchr.org/english/law/slavetrade.htm.

¹² ECtHR, Siliadin v. France, no.73316/01, 26 July 2005. See: www.echr.coe.int/Eng/Press/2005/July/ChamberJudgmentSiliadinvFrance260705.htm

¹³ For a list of States that ratified the 1949 Convention, see: http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=VII-11-a&chapter=7&lang=en

7. What is the position of children?

The UN Convention on the Rights of the Child and the ILO Convention on the Worst Forms of Child Labour identify specific types of exploitation of children. The engagement of children under 14 (15 in developed countries) in any form of full-time work, and of children under 18 in hazardous work (such as mining, seafaring or **sex work**) is always defined as exploitation.

8. Does the Protocol require some element of cross-border activity, or the involvement of organised crime?

The definition in the Protocol does not require the crossing of borders as part of the crime. According to the parent Convention on organised crime, domestic law must establish trafficking as an offence independently of the transnational nature or the involvement of an organised criminal group. This is in line with the Council of Europe Convention on Action Against Trafficking in Human Beings, which obliges State Parties to criminalise all forms of trafficking in human beings, whether national or transnational, and whether connected or not with organised crime.

9. What is the relationship between trafficking and smuggling under the Protocol?

The Protocol makes a clear distinction between human trafficking and human smuggling.

Smuggling is a violation of domestic laws that protect the State by regulating who can cross its border and how. **Trafficking** concerns the protection of human beings against human rights abuses, and can take place with or without crossing borders.

10. Beyond the Protocol

The Experts Group on Trafficking in Human Beings established by the European Commission¹⁴ has criticised the definition in the Protocol because of its focus on the means by which people arrive in a situation of exploitation, rather than on the exploitation itself. From a human rights perspective, there is no reason to distinguish between a victim of trafficking, a smuggled person, an undocumented migrant or a citizen held in forced labour, slavery-like practices, slavery or servitude. The Experts Group therefore holds that States should go beyond their obligations under the Protocol and criminalise *any* exploitation of human beings through forced labour, slavery-like conditions, slavery and servitude, whether in the sex industry or in other industries. This is in line with the major human rights treaties, which clearly prohibit these abuses. The European Court of Human Rights recently confirmed this view in its judgement on *Rantsev v. Cyprus and Russia*.¹⁵ According to the Court, trafficking falls within the scope of Article 4 of the European Convention on Human Rights, which prohibits slavery, servitude and forced labour, without the need to determine which of the three types of prohibited conduct is involved. In its judgement it states:

“Like slavery, trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements were often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions”.

¹⁴ See: http://ec.europa.eu/home-affairs/doc_centre/crime/crime_human_trafficking_en.htm.

¹⁵ ECtHR, *Rantsev v. Cyprus and Russia*, No. 25965/04, 7 January 2010. See: www.interights.org/rantsev.

Accordingly, the Court held that trafficking itself was prohibited by Article 4 of the Convention.

Another criticism by many NGOs, for example the Global Alliance Against Trafficking (GAATW)¹⁶, is that the Protocol fails to establish strong protections for **trafficked persons**.

While the law enforcement provisions contain mandatory language, the provisions on protection and assistance for trafficked persons are much weaker and contain language such as “in appropriate cases” and “to the extent possible” (see art. 6 & 7 Protocol and art. 24 & 25 Convention).

¹⁶ See: www.gaatw.org

Factsheet 4: Guidelines for interviews and meetings

You will need to collect a lot of information during the assessment process. A way to do so is by arranging interviews and meetings with the groups affected by the policy. You will probably want to hold discussions with them about the effects of the policy and the specific rights on which you focus. Two human rights principles are important here: 'do not harm' and 'participation'.

The first principle implies that you have to be aware of ethical issues and concerns that may arise throughout the process involving professional integrity, the relationship with research participants, informed consent, anonymity, privacy and confidentiality. Participation in research should always be based on voluntary, informed consent on the part of your interview partners. This implies a responsibility for you to explain, in appropriate detail and in terms participants understand, what the research is about, who is undertaking and financing it, why it is being undertaken, and how it is to be disseminated and used. Always be aware of the possible consequences of your work. Keep in mind that decisions made on the basis of your study may have effects on individuals as members of a group, even if specific participants are protected by confidentiality and anonymity. Wherever possible, attempt to anticipate, and to guard against, consequences for participants that can be harmful. The second principle relates to sharing your findings with research participants, in particular the affected groups, and questions around ownership of the outcomes of your study.

This factsheet provides a set of guidelines for conducting interviews and meetings.¹⁷ They are of particular importance when working with members of the affected groups, but they apply to any interview or meeting. You might want to discuss them at the beginning of the process, and use them to develop your own ethical guidelines for the research. In addition, the factsheet offers tips and different techniques for group meetings. It also briefly discusses how to organise, record and analyse your findings, and how to deal with conflicting information.

1. Interviews and meetings

Depending on the situation, you can choose to organise group meetings or individual interviews, or both. You might want to ask specific questions, or to hold informal meetings and use the information you collected as a basis for answering the questions. When conducting your interviews and consultations, try to meet with as many groups as possible, in order to get a broad range of views. This will help you to produce a nuanced picture of the situation, and will add to quality and credibility of your recommendations.

If you want to hold interviews, these can be structured or semi-structured. 'Structured' means you have a fixed set of questions that you systematically go through with your respondent. 'Semi-structured' means that you prepare a list of topics and open-ended questions you want to discuss. Semi-structured interviews are more like discussions than formal interviews.

¹⁷ Sources: Getting it Right, Rights & Democracy, International Centre for Human Rights and Democratic Development in Canada; the ethical guidelines developed by X:Talk, one of the testing organisations, in the framework of this project; Ethical and safety recommendations for interviewing trafficked women, World Health Organisation, 2003 (guidelines in the box). See for the latter: <http://whqlibdoc.who.int/publications/2003/9241546255.pdf>.

2. Guidelines for interviews and meetings

Whether you are conducting interviews or holding meetings or consultations, you must always attend to a number of issues. Before you begin, carefully go through the guidelines below and those listed in the box.

- **Preparation:** Carefully prepare interviews and meetings. Go through the questions set down in the step(s) concerned, and prepare a list with the topics or questions you want to discuss with your interview partners.
- **Selection of interview partners:** It is not always easy to decide whom to interview or invite to a meeting. It may be useful to try and meet people in different situations, and from different backgrounds, to find out whether there are differences in concerns, views and experiences, and to learn more about the specificities of their situation with regard to the different rights. Take into account that women, men and transgenders can be differently affected by the policy. Also take into account the fact that different groups within one community may have different experiences and views about the policy and its impact.
- **Privacy and safety:** Always consider issues of privacy and safety, regarding both yourself and your interview partners. Think about your own security and that of the people you are approaching before you set out to gather information. Keep this in mind throughout the process of setting up interviews and meetings. Discuss with your interview partners how their privacy and safety can best be safeguarded. Some people might not want to talk with you because their job might be at risk, or it may endanger them in other ways. Discuss what you can do to minimise these risks and always fully respect if somebody does not want to talk with you. Always offer to keep the identity of your interview partners confidential, and ensure that every participant has the opportunity to choose whether they want to have their names used. Measures you can take:
 - Use different ways of contacting participants to keep their identity and involvement confidential.

GUIDING PRINCIPLES FOR INTERVIEWS AND MEETINGS

- **Do no harm.** Ask yourself if there are any security, emotional, social, economic, or other risks that you might impose on your interview partners, and how to anticipate these.
- **Prioritise personal safety and security,** regarding both yourself and your interview partners. Identify and minimise risks:
 - carefully plan your interviews/meetings and understand the risks involved
 - if necessary, work with a partner and carry a mobile phone
- **Get informed consent.** Inform your interview partners of:
 - who you are;
 - the purpose of the interview/meeting;
 - how confidentiality will be maintained;
 - their right to ask any questions at any time;
 - their right not to answer questions or to end the interview for any reason;
 - ask if they have any concerns or questions about the interview/ meeting.
- **Ensure anonymity and confidentiality to the greatest extent possible** and discuss this issue with your interview partners:
 - do not record identifying information;
 - do not discuss individual cases with any third persons;
 - alter personal details and identifying characteristics for any public presentation.
- **Adequately prepare interviews:**
 - review the guidelines and discuss with your team how they might be relevant to the situation you are working in;
 - walk through potentially difficult scenarios and take time to carefully prepare any interview/meeting.
- **Prepare referral information** and be prepared for emergency situations or requests for assistance.
 - Find a location that is suitable to your interview partner(s). Ensure that the interview/meeting takes place in a safe and familiar location. Let participants choose a location where they feel comfortable.
 - Do not record identifying information.

- Do not discuss individual cases with any third persons.
- Alter personal details and identifying characteristics for any public presentation.
- **Introduction:** At the beginning of an interview or meeting, explain clearly the objectives of the assessment, how you will use the information, and what type of materials you will produce with the information. Discuss the expectations participants have of the assessment and be clear about what you can and will do, and what you cannot do. Make it clear, for example, that the assessment in itself will not change the situation overnight, but the outcomes can be used to get the attention of local and national governments (and/or the international community) and lobby for better policies based on the evidence gathered. Clarify, also, the extent to which participants are allowed to see transcripts of interviews and field notes, and to alter the content, withdraw statements, provide additional information, or add comments. Clarification should also be given to participants regarding the degree to which they will be consulted prior to publication. Where possible, they should be offered feedback on findings, for example in the form of a summary report.
- **Language:** It is always better if people can communicate in their own language. If you need an interpreter, try to find an independent one who is trusted by the respondent(s). Carefully explain to the interpreter his or her role. You do not want the interpreter to choose his or her own line of interviewing, or influence or add to the interview. Clearly state that his or her role is to facilitate the exchange of ideas and information.
- **Recording the interview/meeting:** Always take notes during the interview. To this aim, always conduct interviews in pairs and divide roles. You may also want to record the interview using audio or video equipment. If so, always get the consent of the persons you interview and explain how the recording will be used.

- **Concluding interviews/meetings:** It is a good idea to ask people you interviewed if they know other people in a similar situation who might be interested in talking to you. At the end of the interview/meeting, always ask if there are issues that were not covered and that are important to them.

3. Group meetings

If you want to hold group meetings, there are different techniques you might want to use. A few of them are:

- **Mapping and modelling:** In this technique, people are asked to map, draw or colour some aspects of their reality. People can draw, for example, a picture of their working situation, their family, their relationship with the police, etc. By mapping their reality, people can illustrate their perception of the situation. While doing the mapping (or once it is completed), the assessment team and participants can engage in a discussion about the changes the policy brought or may bring, the concerns participants have, or ideas on how to improve the situation.
- **Focus group discussions:** A focus group discussion usually involves 6 to 12 persons guided by a facilitator, during which group members talk freely and spontaneously about a certain topic. Its purpose is to obtain insight into the situation and explore experiences, opinions and suggestions. It is useful to prepare a set of open-ended questions to provide an overall direction for the discussion and keep it focused.¹⁸
- **Using images:** This method consists of showing images, pictures or other types of illustrations to people and asking what the picture represents for them. These can be pictures relating to the policy or the rights you want to discuss, for example, pictures about migration, employers, clients, police, health, organising, etc. Using pictures may help in addressing sensitive issues, and will encourage free discussion on specific topics. However this technique requires skills within

¹⁸ For more information on this technique see: www.idrc.ca/en/ev-56615-201-1-DO_TOPIC.html.

the assessment team, so as to guide the discussion and keep it sufficiently focused to provide useful information.

- **Role playing:** In this method, participants are asked to play a role that is not necessarily theirs. The assessment team can describe a situation and allocate different roles to each participant. For the purpose of the game, participants could, for example, be a representative of the local or national government, police official, border guard, representative of a support organisation, migrant worker, trafficked person, family member, etc. During the game, participants are not allowed to abandon their role. This method enables participants to express their perception of the situation without stating it directly. You can ask people to change roles after a certain period of time, or set another context.

4. How to organise your findings?

Before you start collecting information, it is useful to think about how you are going to organise the information you collect. A simple method is to organise your findings per (sub) question and/or per right involved. However, there are many ways to document and organise your findings, so you might find other ways that are more useful or practical. When recording your findings, it is useful to distinguish between the information you get from different stakeholders and other sources. Always document the source of your information so you can find it later and can account for your conclusions in your final report.

5. How to analyse your findings?

There are several ways to analyse your findings:

- Discussing your findings in your team while you collect information helps you to organise and interpret your data, and to identify missing elements. In some cases, it may lead you to add new questions to your list or follow up on specific issues. Team meetings can also help to reduce tensions, stay focused, and tackle problems you encounter.

It may be useful to record your meetings so you can recall the details of important discussions.

- Summarising the main issues at the end of an interview or meeting with participants helps you to ensure that you have not misinterpreted their information or views, and that you have noted the most important issues.
- Transcribing interviews is time-consuming but can be of great value. It enables you to take a closer look at the findings, to reflect on the issues, and to prepare for subsequent interviews or meetings.
- Structuring your findings from the outset helps you to keep an overview and avoid getting lost in all the information you collect.
- Keeping a journal in which you document the activities you undertook, short summaries, and your current thinking, can help you keep track of the process. It will also help in organising your information and analysing your findings at the end of the process.

6. How to deal with conflicting information?

You may find that people give you conflicting information or different interpretations of the facts. If you want to use this information in your report, try to find more than one source. It is important to ensure that the information you use is correct. This contributes to the credibility of your report. Another method is to refer in your report to the conflicting information and/or interpretation of facts or views about the issue concerned.

Factsheet 5: Cross-cutting principles

Cross-cutting principles

The principles described below constitute, first and foremost, specific human rights. However, they are also cross-cutting principles that apply to every right. For example, a policy might negatively impact on the access to health services for sex workers. The right in question is the right to health, but the cross-cutting principle is non-discrimination. **Factsheet 6** explains the right to non-discrimination, equality before the law, and equal protection by the law more in depth.

Participation and access to information

*“All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. **Rights based approaches** require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.”* (UN Population Fund, *Human Rights Principles*).¹⁹

A human rights framework requires the meaningful participation of the individuals or communities who hold the rights enshrined in the various human rights treaties. This reflects the right to take part in public affairs, directly or through chosen representatives, as laid down in art. 25 of the International Covenant on Civil and Political Rights. In order to ensure a true enjoyment of their rights, individuals must be able to participate in the decision-making process regarding their rights. They must be able to access important information about decisions that might affect enjoyment of their rights.

General Recommendation no. 26 of the CEDAW-Committee on female migrant workers specifically calls upon States for the active involvement of women migrant workers and relevant non-governmental organisations in policy formulation, **implementation**, monitoring and evaluation.²⁰

Non-discrimination²¹

The **principle of non-discrimination** is a cornerstone of international human rights law. All of the core human rights treaties reflect the general principle adopted by the UDHR that the rights set out in the treaties should be enjoyed without distinction of any kind. Article 2 UDHR sets out a non-exhaustive list of prohibited grounds for discrimination, including race or colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The same list is included in both the ICCPR and the ICESCR. Subsequent treaties have extended the list, including race and ethnicity, marital status, age, health status/disability and sexual orientation. Two treaties, ICERD and CEDAW, are specifically aimed at the elimination of particular forms of discrimination: racial discrimination and discrimination against women. Recently CEDAW adopted General Recommendation no. 28 in which it reaffirms that discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, sexual orientation and gender identity.

The UN Protocol and the CoE Convention on Action Against Trafficking both contain non-

¹⁹ www.unfpa.org/rights/principles.htm.

²⁰ www2.ohchr.org/english/bodies/cedaw/comments.htm.

²¹ See for a more detailed explanation of the principle of non-discrimination factsheet 6.

discrimination clauses. According to art. 14 of the Protocol “the interpretation and application of the measures contained in the Protocol shall be consistent with internationally recognised principles of non discrimination”. Art. 2 of the CoE Convention on trafficking stipulates that the implementation of its provisions “in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

Examples of groups that may be discriminated against are (undocumented) migrants, sex workers, gays, lesbians and transsexuals and people living with HIV/AIDS. Below are a number of documents and bodies that are particularly relevant to these groups in the light of the prohibition on discrimination.

Migrants

- ILO Convention No. 143 concerning Migrant Workers
- United Nations Special Rapporteur on the Human Rights of Migrants²²

Gays, lesbians and transsexuals

- The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity (2007)²³

People living with HIV/AIDS

- International Guidelines on HIV/Aids and Human Rights, Office of the UN High Commissioner for Human Rights (2006)²⁴
- Mandate entrusted to the Secretary-General on human rights and HIV/AIDS²⁵
- UNAIDS Guidance Note on HIV and Sex Work (2009)²⁶

Gender equality

“Sex or gender inequality is a problem experienced primarily by women. The systems and assumptions which cause women’s inequality in the enjoyment of economic, social and cultural rights are often invisible because they are deeply embedded in social relations, both public and private, within all States. Acknowledging this systemic and entrenched discrimination is an essential step in implementing guarantees of non-discrimination and equality” (Montreal Principles on Women’s Economic, Social and Cultural Rights).

A human rights framework pays special attention to equality between men and women by examining how women might be affected differently from men. In addition to the Women’s Convention (CEDAW), gender equality is protected under both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

According to the Women’s Treaty (CEDAW) States must:

- eliminate not only their own discriminatory practices, but also those of private individuals, organisations or enterprises;
- address direct, as well as indirect, discrimination;
- take measures to ensure that women and men can and do participate in society on an equal basis, including by removing the barriers women face in gaining access to the same rights;
- take measures to combat gender-stereotyped roles and prejudices based on ideas of the superiority of one of the sexes.

Art. 17 of the CoE Convention against trafficking states that each State Party, in applying measures to protect and promote the rights of victims set out in the convention, “shall

²² www.unhchr.ch/html/menu2/7/b/mmig.htm.

²³ www.yogyakartaprinciples.org/principles_en.htm; en.wikipedia.org/wiki/Yogyakarta_Principles.

²⁴ www2.ohchr.org/english/issues/hiv/guidelines.htm.

²⁵ www.unhchr.ch/html/menu2/7/b/maids.htm.

²⁶ www.reliefweb.int/rw/lib.nsf/db900SID/JBRN-7UMGFW?OpenDocument.

aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of measures”.

Access to justice & effective remedy

“All are equal before the law and are entitled without any discrimination to equal protection of the law. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him or her by the constitution of by law” (UDHR, art. 7 & 8)

If your rights are violated, either as an individual or as a group, you must have access to an effective judicial remedy. To this end, States should ensure that effective complaint mechanisms and procedures are in place, that victims of human rights violations have access to justice to seek redress, and that the law provides for appropriate remedies, notwithstanding if the violation is committed by a State or by a private individual or organisation. The right to seek redress and to an effective remedy is protected in all major human rights treaties, including the ICCPR (art. 2 & 8), ICERD (art. 5 & 6), CAT (art. 12, 13 & 14). It also applies to non-documented migrant workers. Art. 18 of the International Convention on the Protection of the Rights of Migrant Workers (ICRMW) states:

“Migrant workers and members of their families have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

General Recommendation no. 26 of the CEDAW-Committee on female migrant workers calls upon States to take measures to ensure that women migrant workers have access to remedies when their rights are violated, including the abolition of laws that prevent

women migrant workers from using the courts and other systems of redress (for example the loss of work permits and possible deportation when filing a complaint), and access to legal assistance. Women who leave abusive employers, husbands or other relatives should have access to temporary shelters.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

(UN General Assembly Resolution 60/147 of 16 December 2005)²⁷ spell out the implications of this right. States should, for example, provide victims of human rights abuses with: equal and effective access to justice regardless of who may ultimately be responsible for the violation; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.

A crucial element of the right to an effective remedy is judicial independence. Judicial independence may be compromised by outside influence (including by the government and other actors), as well as through bribery and corruption, or intimidation by armed groups. Other factors that may compromise the ability of judicial mechanisms to remedy human rights violations are: insufficient personnel and financial resources; limited or restricted funding and training of officials; backlogs of cases; failure to enforce court judgements; and lack of protection for victims, witnesses or lawyers.

International treaties also require meaningful access to justice for those charged with a criminal offence. The UDHR states that “everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence”. The same right to a fair trial is contained in the ICCPR (art.15) and the European Convention on Human Rights (art.6).

²⁷ See: www2.ohchr.org/english/law/remedy.htm.

Factsheet 6: Right to non-discrimination, equality before the law and equal protection by the law

1. What does the right mean?

The general principle of equality and non-discrimination consist of a number of elements:

- You have the right to be treated equally before the law and to enjoy equal protection by the law, without any discrimination.
- You have the right to be protected against discrimination and any incitement to discrimination.
- If your rights are violated you must have access to effective remedies (see **factsheet 7**).

States must eliminate not only their own discriminatory practices, but also those of private actors. They must address both direct and indirect discrimination, and take measures to ensure that everyone can participate in society on an equal basis. This includes removing barriers faced by women or other discriminated groups in gaining access to their rights.

The grounds for discrimination that are prohibited are gender, race and ethnicity, marital status, age, health status/disability, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, or other status. However, not every distinction or difference in treatment will amount to discrimination. In general, a violation of the principle of non-discrimination arises if:

- equal cases are treated in a different manner;
- a difference in treatment does not have an objective and reasonable justification;
- if there is no proportionality between the aim sought and the means employed.

All core human rights treaties contain a number of rights that are applicable to everyone, including undocumented migrants or sex workers. These are spelled out in the various non-discrimination clauses in these treaties.

2. Where can you find this right?

UDHR, art. 2 & 7: Everyone is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (art. 2). All persons are equal before the law and entitled to equal protection against discrimination in violation with the Declaration and any incitement to such discrimination (art. 7).

ICCPR, art. 2, 3 & 26: States must guarantee the rights laid down in the Convention to all individuals within their territory and subject to their jurisdiction without distinction of any kind (art. 2). All persons are equal before the law and are entitled without any distinction to the equal protection by the law. The law must prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (art. 26). Art. 3 specifically addresses gender equality in enjoying the rights laid down in the Convention.

Some of the rights in the Covenant are only applicable to nationals, such as the right to vote or to be elected and to have access, on general terms of equality, to public services (art. 25). However, according to **General Comment no. 15** on the position of aliens, all of the rights outlined in the ICCPR (with the exception of art. 25) must be guaranteed without

discrimination between citizens and aliens.²⁸ Art. 13 of the Covenant limits procedural safeguards for non-nationals against expulsion to documented migrants. This safeguard is extended to undocumented migrants in art. 22 ICRMW.

The meaning of art. 26 (equal protection by the law) is explained in **General Comment no. 18** on non-discrimination issued by the Human Rights Committee, the monitoring body of the ICCPR. It states that discrimination in law or in fact is prohibited in any field regulated and protected by public authorities. This means that any legislation adopted by a State Party and its application must comply with the requirement that its content should not be discriminatory.

ICESCR, art. 2 & 3: All the social, economic and cultural rights laid down in the convention are applicable to all “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (art. 2). States must also ensure the equal right of men and women to enjoy their social, cultural and economic rights (art. 3).

CAT: The prohibition on torture and other cruel, inhuman or degrading treatment or punishment applies to every human being. Moreover, art. 3 prohibits States from expelling, returning or extraditing a person to another State if there are substantial grounds for believing that he or she would be in danger of being subjected to torture (principle of non-refoulement). **General Comment no. 2** specifically addresses protection against torture and ill-treatment of individuals and groups made vulnerable by discrimination or marginalisation. It reinforces that States must ensure protection of all persons “regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained,

including persons accused of political offences or terrorist acts, asylum seekers, refugees or others under international protection, or any other status or adverse distinction”. States must ensure the protection of members of groups especially at risk of being tortured by fully prosecuting and punishing all acts of violence and abuse against these individuals.²⁹

CEDAW, art. 1, 2 & 3: The Women’s Convention prohibits any form of discrimination against women. States must take measures to eliminate discrimination against women in all its forms, refrain from engaging in any act or practice of discrimination against women, and ensure the practical realisation of the principle of equality of men and women (art. 2). Moreover, they must take all appropriate measures to ensure the advancement of women and the protection of their human rights on an equal footing with men (art. 3). The Women’s Convention defines discrimination in the following way:

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (art.1).

According to **General Recommendation no. 19**, gender-based violence is a form of discrimination against women since it impairs women’s ability to enjoy their rights and freedoms on a basis of equality with men.⁴⁰

General Recommendation no. 26 specifically addresses the rights of women migrant workers, including undocumented women migrant workers.³¹ It stresses that all women must be protected against all forms of discrimination covered by the convention, including gender-based violence. It also refers to the “sex specific divisions of labour in the formal and

²⁸ www.unhcr.ch/tbs/doc.nsf/0/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument.

²⁹ www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf.

³⁰ www2.ohchr.org/english/bodies/cedaw/comments.htm.

³¹ www2.ohchr.org/english/bodies/cedaw/comments.htm.

informal manufacturing and service sectors in countries of destination, as well as a male-centred culture of entertainment, the latter creating a demand for women as entertainers". The Recommendation calls upon States to lift discriminatory bans or restrictions on women's emigration and immigration, for example the exclusion of certain female-dominated occupations from visa schemes; to take measures to address exploitative and abusive recruitment practices as well as compulsory HIV and AIDS testing practices; to ensure that labour legislation provides protection for the rights of women migrant workers, including in female-dominated occupations such as domestic work and some forms of entertainment; and for independent residence permits that allow women who flee abusive employers or spouses to stay in the country. Special attention is paid to protecting the rights of undocumented women migrant workers, including access to legal remedies in cases of abuse and their treatment when arrested or detained.

ICERD, art.1 & 2: The Convention on the Elimination of All Forms of Racism specifically prohibits racial discrimination, defined as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

Some of the rights in the Convention are only applicable to nationals, but, according to **General Comment no. 30**, internationally recognised human rights are, in principle, applicable to all persons:

"although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognised under international law".³²

ICRMW: The Convention applies to all migrant workers and members of their families, without distinction of any kind (art. 1). A migrant worker is defined as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national" (art. 2). States must respect and ensure enjoyment of the rights laid down in the convention without distinction of any kind as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status (art. 7).

Part III of the Convention grants a wide range of human rights to all migrant workers, regardless of their immigration status (art. 8-24). In recognising the vulnerable situation in which undocumented workers find themselves, the Convention calls upon States to protect the fundamental rights of migrant workers regardless their immigration status, and to ensure that all migrant workers and their families are granted the same treatment as nationals in relation to conditions of employment. This includes the right to join a union (art. 25-26), social security rights in so far as they fulfil the legal requirements (art. 27), emergency medical care (art. 28) and education (art. 30).

ILO Convention no. 111 on Discrimination in respect of employment and occupation: art.1 defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in the employment or occupation".

UN Trafficking Protocol, art. 2 & 14: Protection and assistance of victims must take place with full respect for their human rights (art. 2). The measures contained in the Protocol must be applied and interpreted consistent with internationally recognised principles of non discrimination (art. 14).

³² www.unhcr.ch/tbs/doc.nsf/0/e3980a673769e229c1256f8d0057cd3d?Opendocument.

ECHR, art. 14: States must ensure the enjoyment of the rights and freedoms set forth in the convention without discrimination on any ground, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Council of Europe Convention on Action Against Trafficking, art. 2: The implementation of its provisions “in particular the enjoyment of measures to protect and promote the rights of victims” must be secured “without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

3. Other relevant documents

UN HCHR Principles and Guidelines on Human Rights and Human Trafficking: Guideline 1(4) urges States to take “particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensuring that such measures are not applied in a discriminatory manner”. It also states that protection and support should be extended to all trafficked persons without discrimination (guideline 6).

ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up hold that all Member States of the ILO, even if they have not ratified the conventions in question, have an obligation “to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, among them being the elimination of discrimination in respect of employment and occupation”.

Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live (1985).³³ The ten articles of this Declaration embody basic principles for the protection of human rights without discrimination based upon residence status. In particular, art. 5 lists some basic civil rights, such as the right to life and security of person, the right to equality before the courts, the right to freedom of thought, opinion, conscience and religion, the right to peaceful assembly, the right to own property and other basic rights.

The **Yogyakarta Principles**, no. 1-3, specifically address the application of human rights to all persons without discrimination regardless of sexual orientation or gender identity.³⁴

³³ www.un.org/documents/ga/res/40/a40r144.htm.

³⁴ www.yogyakartaprinciples.org/principles_en.htm; en.wikipedia.org/wiki/Yogyakarta_Principles

Factsheet 7: Human rights standards for preventing and combating trafficking and the protection of the rights of trafficked persons

1. What are the human rights obligations of States in relation to trafficking?

Under international human rights law, States have a duty to prevent **trafficking**, punish traffickers, and provide adequate remedies to trafficked persons. However, most anti-trafficking instruments, including the UN Trafficking Protocol,³⁵ are not human rights instruments but primarily law-enforcement instruments. An exception is the *Guidelines on Human Rights and Human Trafficking*, issued by the UN High Commissioner for Human Rights. These guidelines are not legally binding, but are based on internationally recognised human rights³⁶. On the European level, the Council of Europe Convention on Action against Trafficking in Human Beings (CoE CAT) aims to take a human rights based approach.³⁷

The fact that there are few human rights based anti-trafficking instruments does not mean that States have no obligation to respect, protect and fulfil the human rights laid down in the human rights treaties they have ratified. They do, in fact, have an obligation to prevent trafficking as a human rights violation, to assist and protect trafficked persons and, while doing so, not undermine or negatively affect the human rights of trafficked persons or other people, including sex workers, migrant workers or refugees.

2. What are the most important international anti-trafficking instruments?

The most important international anti-trafficking instruments are the UN Trafficking Protocol and

the Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the Office of the UN High Commissioner for Human Rights (UN HCHR 2002).

UN Trafficking Protocol

Although the Protocol is primarily a law enforcement instrument, art. 6, 7 & 8 contain a number of provisions on victim assistance and protection. Moreover, it explicitly states, as one of its purposes “to protect and assist the victims of trafficking with full respect for their human rights” (art.2). Art.14 states that nothing in the Protocol shall affect the rights, obligations and responsibilities of States under international humanitarian and human rights law, and that the interpretation and application of the measures contained in the Protocol shall be consistent with internationally recognised principles of non-discrimination.

Recommended Principles and Guidelines on Human Rights and Human Trafficking

While States have not made explicit commitments to these new standards, they have, in many cases, ratified the existing international instruments on which these standards are based, and can be held accountable for respecting them.

The guidelines formulate three important principles:

- The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.
- States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and

³⁵ See: www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html.

³⁶ See: www.ohchr.org/Documents/Publications/Traffickingen.pdf.

³⁷ See: www.coe.int/trafficking.

protect victims of trafficking.

- Anti-trafficking measures shall not adversely affect the human rights of people, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum seekers ('do no harm').

3. What are the most important European anti-trafficking instruments?

The most important is the **Council of Europe Convention on Action against Trafficking in Human Beings (CoE CAT)**. Countries who are not members of the Council of Europe can also become party to this treaty. For Member States of the European Union, there are a number of additional instruments, in particular *the Directive on a temporary residence permit for trafficked persons who cooperate with the authorities, the Framework Decision on combating trafficking in human beings, and the Framework Decision on the position of victims in criminal proceedings*.³⁸ All EU instruments are legally binding for the Member States of the EU. The **Organisation for Security and Cooperation in Europe (OSCE)** has developed a set of political commitments that support international instruments and guide States' interpretation, political approach and actions. These include the 2003 OSCE *Action Plan to combat trafficking in human beings, Decision No. 8/07 on Combating trafficking in human beings for labour exploitation, and Decision No. 5/08 on Enhancing criminal justice responses to trafficking through a comprehensive approach*.³⁹

Council of Europe Convention on Action against Trafficking in Human Beings (CoE CAT)

The Council of Europe Convention strongly focuses on the protection of victims of trafficking and the safeguarding of their rights. It also aims at preventing trafficking and prosecuting traffickers. It contains various measures to protect and promote the rights of victims including: the proper identification of victims; the protection of their private life; the

provision of material, psychological, medical and legal assistance; the right to compensation; and the right to a reflection period and temporary residence. Moreover, it obliges State parties to take measures to ensure that support to victims is not made conditional on their willingness to act as witnesses, and reinforces the principles of non-discrimination and gender equality.

EU Directive on a temporary residence permit (EU Dir res. permit)

The full name of this directive is 'Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004/81/EC, 29 April 2004)'. It stipulates that victims who cooperate with the authorities should be granted a reflection period and temporary residence permit during criminal proceedings, as well as material, medical, legal and other assistance, and access to education and the labour market.

EU Framework Decision on combating trafficking in human beings (EU FD on THB)

The Council Framework Decision on combating trafficking in human beings (2002/629/JHA 19 July 2002) is meant to harmonise criminal law on trafficking within EU Member States. It reinforces the UN Protocol's definition of trafficking and obliges Member States to criminalise trafficking.

EU Framework Decision on the position of victims (EU FD pos victims)

The Council Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA, 15 March 2001) specifies the right of victims to receive information, to have access to legal aid, to have their safety and privacy protected, and to have access to compensation.

³⁸ See: ec.europa.eu/home-affairs/doc_centre/crime/crime_human_trafficking_en.htm.

³⁹ See: www.osce.org/cthb/.

4. What human rights standards do States have to meet?⁴⁰

The main ‘anti-trafficking’ obligations of States under international law are listed below. For each obligation, a set of standards States should meet is provided. These standards are drawn from the UN Protocol (UN Prot.), the Recommended Principles and Guidelines on human rights and human trafficking of the High Commissioner for Human Rights (UN HCHR), the Council of Europe Convention on Action Against Trafficking (CoE CAT), and the various provisions of the major human rights treaties. You can use these standards as **indicators** to determine whether your government meets its legal obligations. Where applicable, the sources from which the standards are derived are indicated between brackets (see the Glossary for the abbreviations used). In addition to the standards listed below, the UN Trafficking Protocol and the Council of Europe Trafficking Convention also oblige States to cooperate with other countries, for example by entering into international, regional or bilateral agreements on cooperation between law enforcement officials, the exchange of evidence, the extradition of suspects, and the repatriation of trafficked persons. For Member States of the OSCE you might also want to check the OSCE Action Plan, which gives guidance on how States should interpret their obligations.

I Obligation to criminalise all forms of trafficking

According to art. 5 of the UN Trafficking Protocol, all State Parties must criminalise trafficking and provide for appropriate penalties. The European Convention on Action against Trafficking in Human Beings spells out a similar obligation, as does the EU Framework Decision on Combating Trafficking. None of these obliges States to criminalise the forced labour and slavery-like outcomes of trafficking as such. However, these human rights abuses are already prohibited under the Forced Labour and Slavery Conventions, the Convention on the

Rights of the Child, the International Covenant on Civil and Political Rights (ICCPR), and the European Convention on Human Rights (ECHR). The Guidelines of the UN HCHR also hold that States are required not only to criminalise trafficking, but also its component acts and related conduct.

Standards

- Trafficking is a criminal offence under national law (UN Traf Prot; UN HCHR Guidelines no. 4,1; CoE CAT; EU FD THB).
- Trafficking is defined in accordance with the UN Trafficking Protocol (UN Traf Prot; UN HCHR Guidelines no. 4,1; CoE CAT; EU FD THB).
- Law enforcement officials understand the definition of trafficking.
- The component acts i.e. slavery and servitude, forced labour, the worst forms of child labour, forced marriage, debt bondage, and forced prostitution/sexual servitude, are criminalised under national law (Forced Labour and Slavery Conventions; ICCPR; UN HCHR Guidelines no. 4,1; ECHR art. 4).
- Effective and proportionate penalties are applicable to these offences and are applied (UN Traf Prot; UN HCHR Guidelines no. 4,3; CoE CAT; EU FD THB).

II Obligation to actively identify victims of trafficking

States have a duty to properly identify trafficked persons, as a failure to do so is likely to result in a further denial of those persons’ rights. This is confirmed in the Guidelines of the UN HCHR and art. 10 & 14 of the Council of Europe Convention (CoE CAT).

Standards

- Guidelines and procedures for relevant State authorities and officials are in place to permit the rapid and accurate identification of trafficked persons (UN HCHR Guidelines no. 2.1; CoE CAT art. 10).
- The relevant State authorities and officials have been trained in correct identification

⁴⁰ Sources: Human Trafficking: international law and international responsibility, Ann Gallagher, dissertation, University of Utrecht 2006; Compensation for Trafficked and Exploited Persons in the OSCE Region, OSCE/ODIHR 2008; Undocumented migrants have rights. An overview of the international human rights framework, PICUM 2007.

procedures (UN HCHR Guidelines no. 2.2; CoE CAT art.10).

- Law enforcement officials work together with NGOs to facilitate identification and assistance of trafficked persons (UN HCHR Guidelines no. 2.3; CoE CAT art. 14).
- Migrants and other groups that might be vulnerable to trafficking receive information that enables them to seek assistance when needed (UN HCHR Guidelines no. 2.4).

III Obligation to investigate and prosecute trafficking cases with due diligence

According to the Guidelines of the UN HCHR, States have a responsibility under international law to act with due diligence to investigate and prosecute traffickers (Principle 2). This **positive obligation** was recently confirmed by the European Court on Human Rights in its judgement in the case *Rantsev v. Cyprus and Russia* (ECHR no. 25965/04, 7 January 2010).⁴¹ A similar duty exists for forced labour and servitude, as confirmed in the Court of Human Rights' judgement of the in *Siliadin v. France* (ECHR no. 73316/01, 26 July 2005).⁴²

Standards

- There is an adequate legislative framework in place for the investigation and prosecution of trafficking cases (UN Traf Prot; UN HCHR Guidelines no. 4 & 5; CoE CAT; EU FD on THB).
- Law enforcement agencies are provided with adequate training in the investigation and prosecution of trafficking cases (UN HCHR Guidelines no. 5,2; CoE CAT art. 29).
- Complaints of trafficking are readily made to law enforcement agencies and complaints are taken seriously (obligation to investigate and prosecute).
- Measures are taken to encourage trafficked persons to seek help, report to the authorities, and cooperate in investigation and prosecution (UN HCHR Guidelines no. 5).
- Data is available on the number of complaints, arrests, prosecutions and convictions.

IV Obligation to assist and protect victims of trafficking, including their position as witnesses

The basis for this obligation is the duty of States to provide for effective remedies in cases of human rights violations. Most provisions on the assistance and protection of trafficked persons in the Trafficking Protocol are not mandatory. However, standards can be drawn from international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights. The UN HCHR Guidelines also contain an extensive range of recommendations on protection and assistance in order to ensure that trafficked persons are protected from further exploitation and harm and that legal proceedings involving trafficked persons are not prejudicial to their rights or well-being. According to principle 8 UN HCHR Guidelines trafficked persons should have access to adequate physical and psychological care, “[which] shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings”. This principle was recently reconfirmed by the Supervisory Committee of the Women’s Treaty (CEDAW) in its Concluding Observations regarding the Netherlands:

*“The Committee also reiterates its concern that victims of trafficking who do not cooperate with the police in the investigation and prosecution of traffickers are excluded from the protection of the so-called B9 regulation. The Committee considers that by imposing this requirement, the Government of the Netherlands seriously hampers its capacity to reach and support victims of trafficking with adequate help” (Concluding Observations Netherlands, CEDAW, 2 February 2010).*⁴³

For EU Member States and State Parties to the Council of Europe Convention, the EU Directives and the CoE Convention against trafficking contain several obligations to assist and protect victims of trafficking and to provide them with a reflection period and temporary residence permit.

⁴¹ See: www.interights.org/rantsev.

⁴² See: www.echr.coe.int/Eng/Press/2005/July/ChamberJudgmentSiliadinvFrance260705.htm.

⁴³ See: www.steo.nl/_documenten/vvn/Genevefeb2010/COBS2010.pdf.z

Standards

- Trafficked persons are not automatically detained or deported.
- Measures are taken to protect trafficked persons from further harm and to protect their safety (Traf Prot. art. 6; UN HCHR Guidelines, principle 8 & guideline no. 6; CoE CAT art. 12 & 28; EU Dir 2004/81/EC art. 7).
- Trafficked persons have access to (emergency) shelter, medical assistance and legal advice. Basic assistance (including housing, material, medical and psychological assistance) is given, irrespective of whether the victim agrees to cooperate in the prosecution of the traffickers (UN HCHR Guidelines, principle 8 & guideline 6; CoE CAT art. 10, 12 & 28).
- Trafficked persons are granted a reflection period and a temporary residence permit. During this period, they have access to material, medical, psychological and legal assistance. If granted a temporary residence permit they also should have access to the labour market, vocational training and education (CoE CAT art. 12-14; EU Dir. 2004/81/EC art.6-9).
- The privacy and identity of trafficked persons is protected (Traf Prot. art. 6; ICCPR art. 17; UN HCHR Guidelines no. 6,6; CoE CAT art. 11).
- Trafficked persons are given information on relevant court and administrative proceedings, and assistance to enable their views and concerns to be presented (Traf Prot. art. 6; UN HCHR Guidelines no. 6,5; CoE CAT art. 12).
- Trafficked persons who act as witnesses (and, where appropriate, their family and others close to them) are provided with effective protection from potential retaliation or intimidation, including possibilities for relocation, giving testimony in a way that ensures their safety e.g. through video links, etc. (UN TOC art. 25; UN HCHR Guidelines no. 5,8 & 6,6).
- The safety of the trafficked person and his or her family, including protection against re-trafficking, is taken into account in any decision on repatriation (Traf Prot. art. 8.2; UN HCHR Guidelines principle 11 & guideline no. 6,7 ; CoE CAT art. 16).

- Trafficked persons are protected from summary deportation or return when there are reasonable grounds that this would constitute a risk for the person or his or her family (UN HCHR Guidelines no. 4.6; CoE CAT art. 16).

V Obligation of non-detention of trafficked persons and non-prosecution for status-related crimes

According to the UN HCHR Guidelines, States must ensure that trafficked persons are not held in detention centres or other forms of custody, and that they are not prosecuted for crimes related to their being victims of trafficking). The International Covenant on Civil and Political Rights (ICCPR) protects the right to freedom of movement (art. 12) and to personal liberty, and prohibits arbitrary arrest or detention (art. 9.1). It also prohibits sex-discrimination (art. 3). This is relevant because the detention of trafficked persons in closed shelters disproportionately affects women and girls.

Standards

- Trafficked persons are not held in immigration detention, or other forms of custody (UN HCHR Guidelines no. 2.6).
- Trafficked persons are not detained by law enforcement authorities for any reason other than their immediate physical protection. They are never detained for reasons of collecting evidence, including statements (ICCPR art. 9 & 12).
- Trafficked persons are not detained by welfare authorities, unless they are in agreement (in which case they are not detained) or unless i) the detention is for a specific purpose directly related to the immediate needs of that victim, and ii) for the shortest possible period of time (ICCPR art. 9 & 12).
- Trafficked persons are not prosecuted for violations of immigration law or for the activities in which they have been involved as a direct consequence of their being trafficked (UN HCHR Guidelines principle 7 & guideline no. 2.5 & 4.5; CoE CAT art. 26).

VI Obligation to provide victims with adequate and appropriate remedies

A key international instrument on the right to an adequate remedy is the *Basic Principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law* (UN General Assembly, 16 December 2005).⁴⁴

Reparation includes restitution (e.g. restoration of liberty, return to one's place of residence, return of property), compensation (including for harm, lost earnings and medical costs), rehabilitation (e.g. medical, psychological care), satisfaction and guarantees of non-repetition. Another relevant document is the *Declaration of Basic Principles of Justice for Victims of Crime and abuse of Power*⁴⁵ (UN General Assembly, 29 November 1985). Both are resolutions and not legally binding instruments, but they are politically binding.

Both the UN Convention on Transnational Organised Crime (UN TOC) and the Trafficking Protocol oblige State Parties to establish appropriate procedures to provide access to compensation and restitution for victims of trafficking. This may include the use of confiscated proceeds of crime or property to compensate victims. Also the Council of Europe Convention on Trafficking contains provisions on compensation and legal redress.

The 1930 ILO Forced Labour Convention does not specify a right to compensation, but its Committee of Experts issued the following commentary to art. 25 (which deals with penalties for forced labour):

“Where a form of forced labour is found to exist, those responsible must be effectively punished in accordance with the penal sanctions established by law. The State has to ensure that the victims of such practices are able to complain to the competent authorities, have access to justice and obtain compensation for the harm they have suffered” (ILO Forced Labour Survey 2007, p. 75, para. 139).⁴⁶

The *ILO Guidelines on Human Trafficking and Forced Labour Exploitation*⁴⁷ state that (in addition to criminal remedies) civil, administrative and labour law remedies are critical, and that workers will often require assistance to bring claims. States are asked, in particular, to use their administrative legal system to protect foreign workers and provide them with remedies against exploiters (p. 26-29). The ILO Conventions on migrant workers (no. 97 and 143) also set standards to ensure migrants are not deprived of their right to be paid for work they have performed. Similar provisions are contained in the International Convention on the Protection of Migrant Workers and Their Families (art. 25.3). However, all migrant workers conventions have been sparsely ratified. ILO Convention No. 95, on Protection of Wages, obliges State Parties to ensure the existence of “adequate penalties and other appropriate remedies” for violations of laws that implement the convention (art. 15). A similar provision is held by Convention No. 181 on Private Employment Agencies (art. 14.3).

For Member States of the European Union, two other, legally binding, documents are relevant:

- Council Directive relating to (cross border) compensation to crime victims (2004/80/EC).
- Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA).

⁴⁴ See: www2.ohchr.org/english/law/remedy.htm.

⁴⁵ See: www2.ohchr.org/english/law/victims.htm.

⁴⁶ See: www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1b.pdf.

⁴⁷ See: www.ilo.org/sapfl/Informationresources/ILOPublications/lang--en/docName--WCMS_081999/index.htm

Standards

- Trafficked persons are provided with information on available remedies and with access to legal assistance (Traf Prot. art. 6; UN HCHR Guidelines principle no. 9 & guideline no. 4.8; CoE CAT art. 15).
- Trafficked persons have a right to remain in the country pending the completion of legal proceedings, including proceedings for compensation (UN HCHR Guidelines principle no. 9 & guideline no. 4.7).
- There is a legislative and practical possibility for trafficked persons to obtain compensation for damages suffered. (UN TOC art. 14.2 & 25, Traf Prot. art. 6.6; ICRMW art. 25(3); ILO C 97 & 143; UN HCHR Guidelines principle 17; CoE CAT art. 15; EU Dir Comp.).
- Trafficked persons are enabled to present their views and concerns at appropriate stages of the criminal proceedings (UN TOC art. 25, Traf Prot. art. 6).
- There is a provision for payment of compensation from the State where such compensation cannot be obtained from the trafficker (UN HCHR Guidelines no. 4.4; CoE CAT art. 15).

VII Obligation to prevent trafficking and related exploitation while ensuring that measures do not violate established rights

Under international human rights law, States have an obligation to take positive measures to prevent trafficking. This includes examining the factors that increase the vulnerability of people to trafficking and exploitation and/or create or maintain an environment in which traffickers can operate with impunity. All preceding obligations intersect with, and support, a general obligation to take measures to prevent trafficking. Protection and support for trafficked persons (rather than criminalising and detaining them) are a vital part of ensuring that victims are able to play an effective role in the investigation and prosecution of trafficking cases. A crucial principle, especially in relation to prevention measures, is that anti-trafficking measures may not adversely affect the human rights and dignity of persons affected by those measures. Art. 5 of the Council of Europe Convention states that States “shall promote a human rights based approach” in the

development, implementation and assessment of prevention policies and programmes.

The UN Trafficking Protocol contains a number of provisions on prevention. These are a combination of border control and law enforcement strategies and social programmes aimed at reducing the vulnerability of victims and discouraging the demand “that fosters all forms of exploitation of persons, that leads to trafficking”. Moreover, States must take measures to protect victims from re-victimisation. The CoE Convention contains similar provisions, but adds the obligation to take measures to enable migration to take place legally, including through the provision of adequate information (art. 5.4). The UN HCHR guidelines call on States to review and modify policies that may compel people to resort to irregular and vulnerable labour migration, and to examine ways of increasing opportunities for legal, gainful and non-exploitative labour migration. This process should include examining “the effect on women of repressive and/or discriminatory nationality, property, immigration, emigration and migrant labour laws” (guideline 7).

Standards

- Policies and **practices** of the State regarding those vulnerable to trafficking, such as migrant workers, ethnic minorities and sex workers, are aimed at promoting their rights rather than exacerbating their vulnerability.
- Policies and practices address the factors that increase vulnerability to trafficking, including poverty, inequality and all forms of discrimination (UN Prot art. 9; UN HCHR Guidelines principle 5 & guideline no. 7).
- The State has taken measures to protect victims from re-victimisation (UN Prot. art. 9).
- Prevention strategies are based on existing experience and accurate information (UN HCHR Guidelines no. 7).
- The State has taken concrete steps to address public sector involvement or complicity in trafficking (UN TOC, art. 8; UN HCHR Guidelines principle 6).
- The State has taken concrete steps to address the demand for the products of trafficking (including exploitative commercial

sexual services and exploitative labour), e.g. through legislation targeting those who knowingly use or take advantage of the labour and/or services produced through the exploitation of trafficked persons (Traf Prot art. 9.5 & 19; UN HCHR Guidelines no. 7.1; CoE CAT art. 6).

VIII General obligations

States have an obligation to ensure that anti-trafficking efforts do not breach established rights. As expressed by the UN HCHR, measures to prevent or suppress trafficking may not adversely affect human rights, or result in violations of the human rights of particular groups (UN HCHR Guidelines no. 1). Examples are: measures that restrict the freedom of movement of certain categories of migrants or prevent people from seeking asylum; raids on brothels that criminalise workers and fail to provide support to (potential) victims; detention and **criminalisation** of trafficked people; and compulsory medical examinations including HIV/AIDS testing.

This principle is implicitly recognised in the UN Trafficking Protocol, which debars anything contained in it from affecting the responsibilities of States under international law, including human rights law (art. 14). A similar provision is set out in the Council of Europe Convention on Trafficking (art. 40). The exact content of this obligation will depend on the specific human rights treaties to which the State is a party. Both the Trafficking Protocol (art.14) and the Council of Europe Convention on Trafficking (art. 3) also contain non-discrimination clauses. In addition, the Council of Europe Convention explicitly states that services are provided on a consensual and informed basis (art. 7).

The Guidelines of the UN HCHR further urge governments to:

- ensure that all relevant laws, policies, programmes and interventions, as well as bilateral, regional and international cooperation agreements, do not affect the rights, obligations and responsibilities of States under international law, including international human rights, humanitarian and refugee law (1.6 & 1.9);
- consult with judicial and legislative bodies, national human rights institutions and relevant sectors of civil society in the development, implementation and evaluation of anti-trafficking policies (1.2);
- establish mechanisms to monitor and evaluate the human rights **impact** of anti-trafficking laws, policies and interventions. NGOs working with trafficked persons should be encouraged to participate in monitoring and evaluating the human rights impact (1.7);
- protect the right of freedom of movement and ensure that anti-trafficking measures do not infringe on this right (1.5).

Standards

- No aspect of the State's response to trafficking discriminates, for example, on the basis of race or sex. There are no gender-based restrictions on freedom of movement including emigration (Traf Prot art. 14; CoE CAT art. 3; UN HCHR Guidelines no. 1; all the major human rights treaties).
- No aspect of the State's response to trafficking violates other established rights, e.g. no compulsory HIV testing or arbitrary detention (Traf Prot art. 14; CoE CAT art. 40; UN HCHR Guidelines no. 1; all the major human rights treaties).

Factsheet 8: Right to Life, Liberty and Security

1. What does the right mean?

Everyone has the right to live in freedom and safety. The right to life means that nobody – including the government – can try to end your life. It also means that you have the right to be protected if your life is at risk. Public authorities must take your right to life into consideration when making decisions that might put you in danger or affect your life expectancy. The right to life includes protection against arbitrary killing of individuals and disappearances. As to the death penalty, the right to life states that its use should be limited to the most serious crime.

The right to liberty and security means you have a right to your personal freedom. It also implies that nobody should be deprived of his or her physical liberty in an arbitrary fashion. The government cannot take away your freedom by arresting and detaining you without good reason – even for a short period. If arrested, you have the right to:

- be told in a language you understand why you have been arrested and what charges you face;
- be brought promptly before a judge or other officer authorised by the law;
- have a trial within a reasonable time;
- go to court to challenge your detention if you think it is unlawful;
- be treated with humanity and respect;
- compensation if you have been unlawfully detained.

Only a legal cause, established in the country's laws, can justify detention. Arrest and detention must take place in accordance with the procedures established by the law.

The right to life, liberty and security also means that you should not be forced by other persons

to provide sexual or other services against your will or under conditions to which you do not consent.

2. Where can you find this right?

UDHR, art. 3 & 9: Everyone has the right to life, liberty and security of person. No one shall be subjected to arbitrary arrest, detention or exile.

ICCPR, art. 6(1), 9 & 10(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty, except on such grounds, and in accordance with such procedures, as are established by law. All persons deprived of their liberty must be treated with humanity and respect for the inherent dignity of the human person.

General Comment no. 21 of the Supervisory Committee of the ICCPR specifically states:

“Anyone who is held in prisons, hospitals (particularly psychiatric hospitals), detention camps or correctional institutions or elsewhere must be treated with humanity and respect for the inherent dignity of the human person. Persons deprived of their liberty may not be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including medical or scientific experimentation, or to any hardship or constraint other than that resulting from the deprivation of liberty. Respect for their dignity must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty have all the rights set forth in the ICCPR, subject to the restrictions that are unavoidable in a closed environment.”⁴⁸

⁴⁸ www1.umn.edu/humanrts/gencomm/hrcomms.htm

ICRMW, art. 9(1) & 16: The right to life of all migrant workers and members of their families shall be protected by the law, regardless of their immigration status. This includes protection against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions. They shall not be subjected, individually or collectively, to arbitrarily arrest or detention. They shall not be deprived of their liberty, except on such grounds, and in accordance with, such procedures as established by law.

ECHR, art. 2 & 5: The European Convention on Human Rights protects the right to life, liberty and security in a similar way to the ICCPR. The Court of Human Rights recently stated in its judgment in the case of *Rantsev v. Cyprus and Russia* that, to determine whether someone has been deprived of his or her liberty, the starting point must be his or her concrete situation, and account must be taken of criteria such as the type, duration, effects and manner of implementation of the measure in question.⁴⁹

3. Other relevant documents

Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live (Resolution 40/144 of the UN General Assembly, adopted 16 December 1985): No alien shall be subjected to arbitrary arrest or detention; no alien shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law (art. 5a).⁵⁰

The Yogyakarta Principles, no. 4, 5, 7 & 9: reinforce the right to life, liberty and security of all persons, regardless of their sexual orientation and gender identity. This includes the determination of one's sexuality, the right to be free from arbitrary detention and the right to a humane treatment while in detention.⁵¹

4. Questions to consider

Before you set out to answer the questions, go through them carefully and select only those relevant to your situation.

I General

1. *What are your reasons to believe the policy affects the right to life, liberty and security? How? What groups are affected?*

II Affected groups and protection of the right to life, liberty and security

2. *Has the policy led to cases of physical or sexual abuse (e.g. by the police or government officials), arbitrary arrest and detention and/or confinement for an indefinite period (either in State or private facilities)? If so:*
 - Can you describe these cases?
 - Is the government aware of these cases? Did it take any measures to prevent such abuses, assist and protect the victims, and punish the perpetrators?
 - Are there mechanisms through which those affected can file a complaint or seek redress in cases of abuse, arbitrary arrest and detention and/or confinement for an indefinite period? Are these accessible to them? If not, what are the barriers or obstacles? Do you know of complaints that were filed? If so, were these complaints taken seriously? What were the outcomes?
3. *Does the policy increase the risks of physical or sexual abuse (e.g. by the police or government officials), arbitrary arrest and detention and/or confinement for an indefinite period (either in State or private facilities)? If so:*
 - Is the government aware of this? Did it take any measures to address this situation?
4. *Does the policy negatively affect the ability of the affected groups to protect their life and safety? For example, by creating a situation in which it is more difficult to*

⁴⁹ ECtHR, *Rantsev v. Cyprus and Russia*, application no. 25965/04, 7 January 2010. See: www.interights.org/rantsev.

⁵⁰ www.un.org/documents/ga/res/40/a40r144.htm.

⁵¹ www.yogyakartaprinciples.org/index.php?item=25.

defend themselves against abuse or violence and/or to leave abusive situations. For sex workers, think, for example, of access to/ confiscation of condoms, or the ability to negotiate safe sex.

- Is the government aware of this? Did it take any measures to address this situation?
5. *Does the policy negatively affect the ability of the affected groups to file a complaint and/or obtain a remedy in cases of physical or sexual abuse (either by State officials or private individuals), arbitrary arrest and detention and/or confinement for an indefinite period? If so:*
- Is the government aware of this? Did it take any measures to address the situation?
6. *Does the policy target specific groups in practice? Do particular groups (e.g. women, sex workers or undocumented migrant workers) disproportionately suffer from physical or sexual abuse, arbitrary arrest and detention, and/or confinement for an indefinite period as a result of the policy? If so:*
- Is the government aware of this? Did it take any measures to redress this situation?

III The government and protection of the right to life, liberty and security

7. *Are there laws and policies protecting the right to life, liberty and security?*
8. *Is the government aware that the policy may lead to violations of the right to life, liberty and security of members of the affected groups, for example the arbitrary use of force, physical or sexual abuse (either by State or private actors), arbitrary arrest and detention, and/or confinement for an indefinite period (either in State or private facilities)? If so:*
- Did it take measures to prevent such abuses and to protect the affected groups? What measures? Are these effective?
9. *Is the government aware of cases of arbitrary use of force, physical or sexual abuse, arbitrary arrest and detention, and/or confinement for an indefinite period, as a result of the policy? If so:*

- Can it describe these cases?
 - Did it take measures to redress the situation?
10. *Are there mechanisms through which people can make a complaint and/or obtain a remedy?*
- Are these accessible for people from the affected groups? Have complaints ever been made? If so, were people able to obtain an adequate remedy?
11. *Has any civil society organisation, national human rights institution, researchers, journalist or others documented and/or reported cases of arbitrary use of force, physical or sexual abuse, arbitrary arrest and detention and/or confinement for an indefinite period of people of the affected groups, including trafficked persons, as a result of the policy?*
12. *Do the Concluding Observations of the Human Rights Committee (the supervisory body for the ICCPR) mention such cases or say anything about the protection of life, liberty and security in your country?*
13. *How does the government respond to accusations regarding the arbitrary use of force, physical or sexual abuse, arbitrary arrest and detention and/or confinement for an indefinite period?*

IV Trafficked persons and protection of the right to life, liberty & security

14. *Does the policy put the life, liberty or safety of trafficked persons and/or victims of forced labour or slavery-like practices at risk? For example, by requiring them to press charges/give testimony without adequate protection, or by deporting them without a proper risk assessment? If so:*
- Have there been cases in which the life, liberty or safety of trafficked persons and/or victims of forced labour or slavery-like practices was endangered as a result of the policy? How did this happen?
 - Is the government aware that the policy may put the life, liberty or safety of trafficked persons and/or victims of forced labour or slavery-like practices at risk? If so, has it taken any measures to address this situation?
 - Are there mechanisms through which

trafficked persons and/or victims of forced labour or slavery-like practices can file a complaint or seek redress, when their right to life, liberty and safety is violated? Has this ever happened? Were they able to obtain an adequate remedy?

15. *Does the policy put trafficked persons and/or victims of forced labour or slavery-like practices at risk of arbitrary use of force (by the police, government officials, security forces, etc.), physical or sexual abuse, arbitrary arrest and detention and/or detention for an indefinite period (either in State or private facilities)? If so:*
- Have there been cases of arbitrary use of force, physical or sexual abuse, arbitrary arrest and detention and/or detention for an indefinite period of trafficked persons or victims of forced labour or slavery-like practices? How did this happen?
 - Is the government aware of these risks? Did it take any measures to address this situation?
 - Are there mechanisms through which trafficked persons and/or victims of forced labour or slavery-like practices can file a complaint or seek redress in the event of the above abuses? Has this ever happened? If so, were they able to obtain an adequate remedy?
16. *Does the policy negatively influence the ability of trafficked people and/or victims of forced labour or slavery-like practices to escape this situation and to obtain an adequate remedy?*

V In the case of a policy being planned

17. *Do you have reasons to believe that the planned policy may lead to the physical or sexual abuse, arbitrary arrest and detention and/or confinement for an indefinite period of trafficked persons or other people affected by the policy, or that it could jeopardise their life, liberty or safety? If so:*
- What experiences or arguments lead you to think this?
 - Do you think that women or other particular groups, such as sex workers, migrant domestic workers or undocumented workers, could be disproportionately affected?
 - Is the government aware of the situation? Has it taken any measures to address these risks? If so, do you consider these measures to be adequate?

Factsheet 9: The Right to Freedom from Forced Labour, Slavery, Slavery-like Practices and Servitude⁵²

1. What does this right mean?

Nobody has the right to ‘own’ you, or to force you to work under threat of punishment. Everyone has the right to be free from slavery, slavery-like practices (which include debt bondage and forced or servile marriage), servitude and forced labour. States must take measures to eliminate and criminalise forced labour, slavery-like practices and servitude, and provide assistance and protection to victims of such practices, no matter how people arrive in such situations and what kind of work or service is involved.

Slavery commonly refers to the ‘classical’ form of slavery, when one person is actually owned by another person like a piece of property. However, the International Criminal Tribunal for Former Yugoslavia concluded that the traditional concept of ‘slavery’ has evolved to encompass various contemporary forms of slavery based on the exercise of any or all of the powers attaching to the right of ownership. In order to assess whether a situation amounts to a contemporary form of slavery, relevant factors are whether there was control of a person’s movement or physical environment, whether there was an element of psychological control, whether measures were taken to prevent or deter escape, and whether there was control of sexuality and forced labour.⁵³

Slavery-like practices include debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents.

Debt bondage or **bonded labour** refers to the system by which workers are kept in bondage

by making it impossible for them to pay off their (real, imposed or imagined) debts. It is considered to be a form of forced labour as well as a slavery-like practice.

Servile forms of marriage include all forms of marriage in which women have no right to refuse.

Servitude is a wider concept than slavery. It covers exploitative conditions of work or service, which you cannot change, or from which you cannot escape. You might live in the other person’s property, work for them and be unable to leave, but they don’t officially own you (as in slavery). According to the European Court of Human Rights, servitude can be defined as “an obligation to provide one’s services that is imposed by the use of coercion, and is linked to the concept of slavery”.⁵⁴

Forced or compulsory labour: Any work being done under the threat of any kind of penalty constitutes forced labour. Nobody may force you to work or provide services by, for example, threatening you (or people close to you) with physical or sexual violence or with financial penalties (such as withholding or non-payment of wages), confiscating your identity papers, threatening to denounce you to the police or immigration authorities, restricting your freedom of movement or locking you up, or by depriving you of food, shelter or other necessities. Also when you initially freely agreed to the work, your right to free choice of employment remains inalienable. This means that you must be free to leave a job whenever you want. A domestic worker, for example, is in a forced labour situation when the head of the household takes

⁵² See also factsheet 3 about the UN Trafficking Protocol.

⁵³ ECtHR, *Siliadin v. France*, no.73316/01, 26 July 2005, consideration 280.

See: www.echr.coe.int/Eng/Press/2005/July/ChamberJudgmentSiliadinvFrance260705.htm.

⁵⁴ ECtHR, *Siliadin v. France*, no.73316/01, 26 July 2005.

See: www.echr.coe.int/Eng/Press/2005/July/ChamberJudgmentSiliadinvFrance260705.htm.

away her identity papers, forbids her to go outdoors, and threatens her with beatings or non-payment of salary in the event of disobedience.

It is important to keep in mind that a forced labour situation is determined by the nature of the relationship between a person and an ‘employer’, and not by the type of work or services you perform. It is not relevant whether the work or activity is legal or illegal under national law, or is recognised as an ‘economic activity’. Forced labour can therefore apply to construction or factory work, as well as sex work (also when illegal) or begging when performed under coerced conditions. There are many ways people can get into a situation of forced labour, for example through debt bondage or through trafficking. States must criminalise forced labour and provide victims with assistance and protection, no matter how they arrive in this situation.

2. Where can you find this right?

UDHR, art. 4: Stipulates that no one shall be held in slavery or servitude.

ICCPR, art. 8: Prohibits all forms of slavery, slavery-like practices and forced labour (unless it is a lawfully imposed punishment for a crime).

ICESCR, art. 10: Calls for special measures to protect and assist all children and young persons from economic and social exploitation. It prohibits the employment of children in work that can be harmful or dangerous to their health and life or that is likely to hamper their normal development.

CEDAW, art. 6: Obliges States “to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.

ICRMW, art. 11: Provides for protection of migrant workers and their families from slavery, servitude and forced or compulsory labour, whether they are documented or non-documented.

ECHR, art. 4: Stipulates that no one shall be held in slavery or servitude, or be required to

perform forced or compulsory labour. According to the recent judgment of the European Court of Human Rights in *Rantsev v. France and Russia*, trafficking falls under the scope of art. 4, without the need to identify whether the situation in question has to be defined as slavery, servitude or forced labour.⁵⁵

The Court states:

“Like slavery, trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements were often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions”.

According to the Court, States have a positive obligation to take measures to protect (potential) victims “if the State authorities were aware, or ought to have been aware of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited in the meaning of art. 3 of the Palermo Protocol”. They have an obligation to investigate possible situations of trafficking (and cooperate with other States where needed), and to incorporate adequate safeguards in their national legislation to ensure the practical and effective protection of the rights of (potential) victims of trafficking. They must establish adequate measures regulating businesses often used as a cover for human trafficking, and immigration rules must address relevant concerns relating to the encouragement, facilitation or tolerance of trafficking. In this context, the Court notes that, according to the immigration system in Cyprus, the cabaret-owners had to apply for an artist visa (rather than the worker herself). This made the worker concerned dependent on the agent or cabaret-owner and thus more vulnerable to exploitation and abuse. In an earlier case, *Siliadin v. France*, the court found that a girl from Togo had been subjected to forced labour since she had worked for years for the family that exploited her “without respite, against her will, and

⁵⁵ ECtHR, *Rantsev v. Cyprus and Russia*, application no. 25965/04, 7 January 2010. See: www.interights.org/rantsev.

without being paid”, while residing illegally in a foreign country, afraid of being arrested by the police. The Court also found that she had been subjected to servitude, which it defined as “an obligation to provide one’s services under coercion, which is linked to slavery”.

The **Slavery Convention**: Prohibits all forms of slavery and the slave trade.

The **Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery**: Specifically prohibits debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents.

ILO Conventions No. 29 and 105 on Forced Labour: Prohibit forced labour, which is defined as, “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. This includes forced labour exacted by public authorities as well as by private persons. Since the coming into force of the Convention on Forced Labour, the ILO Committee of Experts has treated forced prostitution as a form of forced labour.

3. Other relevant documents

The **Declaration on Fundamental Principles and Rights at Work** of the International Labour Organisation (ILO) obliges Member States to eliminate forced labour. A work relationship should be freely chosen and free from threats.⁵⁶ Member States that have not ratified one or more of the core ILO Conventions must report each year on the status of the relevant rights and principles within their borders and the progress they made.⁵⁷

In its **Guidelines on Human Trafficking and Forced Labour Exploitation**⁵⁸ the ILO identifies six major elements that indicate a forced labour situation:

- Physical or sexual violence;
- Restriction of movement of the worker;
- Debt bondage/bonded labour;

- Withholding wages or refusing to pay the worker at all;
- Retention of passports and identity documents;
- Threat of denunciation to the authorities.

4. Questions to consider

Before you set out to answer the questions, go through them carefully and select only those relevant to your situation.

I General

1. *What are your reasons to believe that the policy affects the right to be protected against forced labour, servitude and slavery-like practices? What groups are affected?*

II Affected groups and the right to protection against forced labour, servitude and slavery-like practices.

2. *Has the policy led to cases of people from the affected groups being subjected to forced labour or servitude? If so:*
 - Can they describe these cases? Did the government take any measures to prevent this from happening, and to provide assistance and protection to the victims and punish the perpetrators?
 - Are there mechanisms through which people in such situations can file a complaint or seek redress? If not, what are the barriers or obstacles? Do they know of people who filed a complaint? If so, what were the outcomes? Were they provided with an adequate remedy?
3. *Does the policy lead to an increased risk of their being subjected to forced labour or servitude (for example by increasing dependency on middlemen, agencies or employers)? Does it make it more difficult to escape from such situations? If so:*
 - Is the government aware of this? Did it take any measures to address the situation?
4. *Does the policy negatively affect their ability to protect themselves from being compelled to work under conditions of forced labour*

⁵⁶ See for the Declaration: www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm.

⁵⁷ You can find the review of annual reports under the follow up of the Declaration at: www.ilo.org/declaration/follow-up/annualreview/annualreports/lang-en/index.htm.

⁵⁸ Human Trafficking and Forced Labour Exploitation, Guidance for legislation and Law Enforcement, Geneva: ILO 2005.

or servitude? If so:

- Is the government aware of this? Did it take measures to address the situation?
5. *Does the policy negatively affect their ability to file a complaint and/or obtain a remedy in cases of forced labour or servitude? If so:*
- Is the government aware of this? Did it take measures to address the situation?
6. *Does the policy exposes particular groups of people, such as women, sex workers, migrant domestic workers, undocumented migrant workers or other groups to an increased risk of forced labour or servitude? If so:*
- Is the government aware of this? Did it take measures to protect them?

III Government and the right to protection against forced labour, servitude and slavery-like practices

7. *Are there laws, policies or programs against forced labour, servitude and slavery-like practices? Do these include forced labour and servitude in the sex industry, and in private households?*
8. *Is the government aware that the policy can lead to exposure of the affected groups to situations of forced labour or servitude? Or that it may make it more difficult for people to escape such situations? If so:*
- Did it take measures to prevent such abuses and to protect the affected groups? Are these effective?
9. *Is the government aware of cases of forced labour, servitude or slavery-like practices as a result of, or in relation to, the policy? If so:*
- Can it describe these cases?
 - Did it take measures to provide victims with assistance and protection (including temporary residency permits where foreigners are involved) and punish the perpetrators?
 - Did it take measures to prevent victims from being returned to situations that may lead to further harm (including in their own country)?
10. *Are there mechanisms through which people can make a complaint and/or obtain an effective remedy if they are compelled to work under forced labour or slavery-like conditions? If so:*
- Are these accessible to people from the affected groups? Have they ever been successfully used by them?

11. *Has any civil society organisation, national human rights institution, researcher, journalist or others documented and/or reported cases of forced labour, servitude and slavery-like practices that result from, or are related to, the policy?*
12. *Do the Concluding Observations of the Human Rights Committee (the supervisory body for the ICCPR) or the Supervisory Committee on the Covenant on Economic, Social and Cultural Rights (ICESCR) mention cases of forced labour, servitude or slavery-like practices in your country?*
13. *Do reports of the ILO about your country mention problems with forced labour?*

IV Trafficked persons and the right to protection against forced labour, servitude and slavery-like practices

14. *Does the policy exclude certain groups of people trafficked into forced labour, servitude or slavery-like practices from protection and assistance (for example people working in the sex industry or in private households)? If so, have there been such cases? Can you describe them?*
15. *Does the policy lead to people trafficked into forced labour, servitude or slavery-like practices being returned to situations that may expose them to further harm? If so, have there been such cases? Can you describe them?*
16. *Do you think the policy will particularly affect certain groups of people trafficked into forced labour, servitude or slavery-like practices, for example women or people working in specific sectors?*

V In case of a policy being planned

17. *Do you have reasons to believe that the planned policy will lead to an increased risk of people from the affected groups being subjected to forced labour, servitude or slavery-like practices? If so:*
- What experiences and arguments make you think so?
 - Do you think that women or other specific groups, such as sex workers, migrant domestic workers or undocumented migrant workers, might be particularly at risk as a result of the policy?
 - If the government aware of the situation? Did it take any measures to address these risks? Do you consider these measures to be adequate?

Factsheet 10: Right to Freedom of Movement and to choose a Residence

1. What does this right mean?

You have the right to come and go as you wish within your country without any hindrance, to freely choose your place of residence, to leave any country, including your own, and to return to your own country. This applies to all persons, including trafficked persons, women or any other specific group. Anyone has the right to move freely and to choose their residence, without any interference, by law or by practice, or by any person, for example a husband or family member. The right to choose your place of residence in the country where you are lawfully residing also implies that the State is not permitted to prevent entry or residence in a defined part of the country. The right to leave a country includes the right to obtain the necessary travel documents (e.g. a passport). However, it does not guarantee an unrestricted right to travel from one country to the other, since it does not include the right to enter another country.

According to the International Covenant on Civil and Political Rights (ICCPR), the right to freedom of movement may only be restricted when this is necessary to protect national security, public order, public health (e.g. quarantine in case of infectious diseases), morals, or the rights and freedoms of other people. However, any restrictions must be laid down in the law, and be proportionate to the aim.

2. Where can you find this right?

UDHR, art. 13: Everyone has the right to freedom of movement and residence within the borders of each State; everyone has the right to leave any country, including his own, and to return to his country.

ICCPR, art. 12: Everyone who is lawfully within the territory of a State has the right to liberty of movement and freedom to choose his or her residence. Everyone has the right to leave any country, including his or her own. No one shall be arbitrarily deprived of the right to enter his or her own country. **General Comment no. 27** of the Human Rights Committee (the supervisory committee for the ICCPR) on Freedom of Movement addresses the issue of balancing human rights and measures to protect specific groups or individuals. It emphasizes that restrictive measures must conform to the principle of proportionality. This means that they must be appropriate to their protective function; they must be the least intrusive instrument among those that might achieve the desired result; and they must be proportionate to the interest they aim to protect. The **principle of proportionality** has to be respected in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law.⁵⁹

ICERD, art. 5: Everyone who is lawfully within the territory of a State has the right to liberty of movement and freedom to choose his or her residence; to leave any country, including his or her own; no one shall be arbitrarily deprived of the right to enter his or her own country.

CEDAW, art. 15: States must accord to women the same rights as men with regard to the right to freedom of movement and the freedom to choose one's residence and domicile.

ICRMW art. 8 & 39: All migrant workers and their families must be free to leave any country, including their country of origin, and to enter and remain in their country of origin; documented workers and their families have the right to liberty of movement in the State of their employment and freedom to choose their residence there.

⁵⁹ See: www1.umn.edu/humanrts/gencomm/hrcom27.htm.

ECHR, art. 2, Protocol 4: uses very similar wording as the ICCPR. States may only restrict a persons' freedom of movement when this is provided by law, necessary in a democratic society, and proportionate to the aim. To be necessary in a democratic society, the infringement may go no further than necessary and there must be no other, less intrusive, means that would achieve the same result.

2. Other relevant documents

The **Yogyakarta Principles no. 22 and 23** specifically address the right of people to seek asylum from persecution based on sexual orientation or gender identity.

3. Questions to consider

Before you set out to answer the questions, go through them carefully and select only those relevant to your situation.

I General

1. *What are your reasons to believe that the policy affects the right to freedom of movement? What groups are affected?*

II Affected groups and the right to freedom of movement

2. *Has the policy led to restrictions on their freedom of movement (either by the State or by non-State actors)? If so:*
 - Can they give examples? Did the government take any measures to address this situation?
 - Are there mechanisms through which they can file a complaint or seek redress? Are these accessible to them? If not, what are the barriers or obstacles? Do they know of complaints that were made? What were the outcomes?
3. *Does the policy increase the risk of restrictions on their freedom of movement? If so:*
 - Is the government aware of this? Did it take any measures to address this situation?

4. *Does the policy negatively affect their ability to file a complaint and/or obtain a remedy when their freedom of movement is restricted? If so:*
 - Is the government aware of this? Did it take any measures to address this situation?
5. *Does the policy negatively affect the ability of specific groups, for example women or (female) migrant workers, to move freely within their community or country (including the freedom to leave or return to one's residence, visit family or access services) and/or to freely leave their country and return to it?*
 - Is the government aware of this? Did it take any measures to address this situation?

III Government and the right to freedom of movement

6. *Are there laws or policies protecting the right to freedom of movement?*
7. *Is the government aware that the policy can lead to violations of the freedom of movement of the affected groups? If so:*
 - Did it take measures to redress this situation? Are these effective?
8. *Is the government aware of cases in which the freedom of movement of people from the affected groups was restricted?*
 - Can it describe these cases?
 - Did it take measures to redress the situation?
9. *If the restriction on the freedom of movement of (members of) the affected groups is a conscious policy, are these restrictions proportional to the interest they aim to protect? Are there other means to achieve the desired result that do not or less violate the freedom of movement of the affected groups? Are the restrictions based on law?*
10. *Are there mechanisms through which people can make a complaint and/or obtain remedy if their right to freedom of movement is violated? If so:*
 - Are these accessible to people from the affected groups? If not, what are the barriers or obstacles? Have they ever been used successfully by them?

11. *Has any civil society organisation, national human rights institution, researcher, journalist or others documented and/or reported cases of violations of the freedom of movement of people from the affected groups, including trafficked persons, as a result of, or in relation to, the policy?*
12. *Do the Concluding Observations of the Human Rights Committee (the supervisory body for the ICCPR) mention cases of violations of the right to freedom of movement in your country?*
13. *How does the government respond to alleged violations of the right to freedom of movement?*

IV Trafficked persons and the right to freedom of movement

14. *Does the policy restrict the freedom of movement of trafficked persons or victims of forced labour, servitude or slavery-like practices? (for example confining trafficked persons to closed shelters or detention centres, or prohibiting trafficked persons to leave their village or country). If so:*
 - Have there been cases in which the freedom of movement of trafficked persons or victims of forced labour, servitude or slavery-like practices has been violated? How did this happen?
 - Is the government aware of this situation? If so, has it taken any measures to redress this situation? If not, why not?
 - Are there mechanisms through which trafficked people or victims of forced labour, servitude or slavery-like practices can make a complaint or seek redress? Has this ever happened? Were they able to obtain an adequate remedy?
15. *If restriction of the freedom of movement of trafficked people or victims of forced labour, servitude or slavery-like practices is a conscious policy, are these restrictions proportional to the interest they aim to protect? Are there other means to achieve the desired result that do not, or to a lesser extent, violate the freedom of movement of trafficked people or victims of forced labour, servitude or slavery-like practices? Are the restrictions based on law?*

V In the case of a policy being planned

16. *Do you have reasons to believe that the planned policy may lead to restrictions of the freedom of movement for trafficked persons or other groups? If so:*
 - What experiences or arguments lead you to think so?
 - Do you think that the policy will disproportionately affect women or other specific groups?
 - Is the government aware of the situation? Did it take measures to address these risks? If so, do you consider these measures to be adequate?

Factsheet 11:

Right to Seek Asylum and to Non-refoulement

1. What does the right mean?

If you have a well-founded fear of persecution because of your race, religion, nationality, membership of a particular group or political opinion, and your country is not able or willing to protect you, you have the right to seek asylum in another country. Another State may not return you ('refouler' in French) to a situation where you would be at risk of torture or other serious human rights violations. The latter is called the principle of non-refoulement. Trafficked persons must always have the right to seek asylum, and must not be returned to their country when there is a risk that they will be exposed to ill-treatment or other human rights abuses. Please keep in mind that the right to seek asylum does not mean that you have the right to be granted asylum.

2. Where can you find this right?

UDHR, art. 14: Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Convention relating to the Status of Refugees, art. 1 & 33: According to art. 1, a refugee is "any 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, is unable or, owing to such fear, is unwilling to return to it". Art.33 forbids States to expel or return a refugee, in any manner whatsoever, to the frontiers of territories where his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion.

ICCPR, art. 7: States may not return a person to situations where he or she might suffer torture or other cruel, inhuman and degrading treatment or punishment.

CAT, art. 3 & 14: States may not expel, return or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture (art. 3, principle of non-refoulement). Everyone has the right to seek and to enjoy in other countries asylum from persecution (art. 14).

ICRMW, art. 22: Migrant workers and members of their families should not be subject to measures of collective expulsion. Each case of expulsion should be examined and decided individually. Migrant workers and members of their families may be expelled from the territory of a State Party only in pursuance of a decision taken by the competent authority in accordance with the law.

ECHR, art. 3: Prohibits the return of persons where there is a risk of torture.

3. Other relevant documents

The 2002 **Guidelines on gender-related persecution** of the High Commissioner for Refugees call for a gender-sensitive interpretation of the Refugee Convention, in particular the recognition of gender and sex-based violence, such as trafficking, domestic violence, rape, female genital mutilation, dowry-related violence and persecution on the ground of one's sexual orientation. Women trafficked for the purpose of prostitution can be considered refugees when their State has been unable or unwilling to provide protection against such harm or threats of harm.⁶⁰

⁶⁰ See: www.unhcr.org/3d58ddef4.html.

4. Question to consider

Before you set out to answer the questions, go through them carefully and select only those relevant to your situation.

I General

1. *What are your reasons to believe that the policy affects the right to asylum and non-refoulement? Which groups are affected?*

II Affected groups and the right to seek asylum and non-refoulement

2. *Has the policy led to cases in which members from the affected groups were denied the right to seek asylum or residence on humanitarian grounds? Or where they were sent back to a situation where they might suffer torture or other cruel, inhuman and degrading treatment or punishment? If so:*
 - Can they give examples? Did the government taken any measures to redress this situation?
 - Are there mechanisms through which they can file a complaint or seek redress? Are these accessible to them? If not, what are the barriers or obstacles? If yes, do they know of complaints that were made? What were the outcomes?
3. *Does the policy negatively affect their ability to seek asylum or apply for residence on humanitarian grounds? Or does it increase the risk of their being sent back to situations where they might suffer torture or other cruel, inhuman and degrading treatment or punishment?*
 - Can they give examples?
 - Is the government aware of this? Did it take any measures to address this situation?
4. *Does the policy affect the ability of specific groups, for example women, sex workers, migrant domestic workers or undocumented migrant workers, to seek asylum or apply for residence on humanitarian grounds? If so:*
 - Is the government aware of this? Did it take measures to address this situation?

5. *Does the policy lead to specific groups, for example women, sex workers or (undocumented) migrant workers, being returned to situations where they might suffer torture or other cruel, inhumane and degrading treatment or punishment? If so:*
 - Is the government aware of this? Did it take measures to address this situation?

III Government and the right to asylum and non-refoulement

6. *Are there laws or policies protecting the right to seek asylum and to not be returned to a situation where one might suffer torture or other cruel, inhuman and degrading treatment or punishment? Does the government recognise gender-based violence, including trafficking, as grounds for asylum or for granting residence on humanitarian grounds?*
7. *Is the government aware that the policy may lead to violations of the right to seek asylum, and/or to not be returned to a situation where one might suffer torture or other cruel, inhuman and degrading treatment or punishment? If so:*
 - Did it take measures to address this situation? Are these effective?
8. *Is the government aware of cases where people were denied the right to seek asylum as a result of the policy? Or where they were sent back to situations where they might suffer torture or other cruel, inhumane and degrading treatment or punishment? If so:*
 - Did it take measures to redress the situation?
9. *Are there mechanisms through which people can file a complaint or seek redress?*
 - Are these accessible to people from the affected groups? If not, what are the barriers or obstacles? Have they ever been successfully used by them?
10. *Has any civil society organisation, national human rights institution, researcher, journalist or others documented and/or reported cases where members of the affected groups, including trafficked persons, were denied the right to seek asylum or were sent back to situations where they might suffer torture or other*

cruel, inhuman and degrading treatment or punishment?

11. *Do the Concluding Observations of the supervisory bodies for the ICCPR, CEDAW or CAT say anything about (violations of) the right of members of the affected groups, including trafficked persons, to claim asylum and/or to not be returned to situations where they might suffer torture or other cruel, inhumane and degrading treatment or punishment?*

IV Trafficked persons and the right to seek asylum and non-refoulement

12. *Does the policy lead to victims of trafficking, forced labour, servitude or slavery-like practices being denied the right to seek asylum or to apply for residence on humanitarian grounds (for example by deporting them before they have a chance to do so)? Does the policy lead to victims of trafficking, forced labour, servitude or slavery-like practices being returned to situations where they might suffer torture or other cruel, inhuman and degrading treatment or punishment? If so:*
 - Have there been such cases? How did this happen?
 - Is the government aware that the policy may lead to such situations? If yes, has it taken any measures to redress this situation?
 - Are there mechanisms through which victims can make a complaint if their right to seek asylum is violated and/or if they are threatened to be returned to a situation where they might suffer torture or other cruel, inhuman and degrading treatment or punishment? Have they ever successfully made use of these mechanisms?
13. *Does the policy negatively affect the opportunities for victims of trafficking, forced labour, servitude or slavery-like practices to be granted asylum or residence on humanitarian grounds?*

V In case of a policy being planned

14. *Do you have reasons to believe that the planned policy will negatively affect the ability of people from the affected groups,*

including victims of trafficking, forced labour, servitude or slavery-like practices, to seek asylum or apply for residence on humanitarian grounds? If so:

- What experiences or arguments lead you to think so?
 - Do you think that the policy will disproportionately affect women or other specific groups?
 - Is the government aware of the situation? Did it take measures to address these risks? If so, do you consider these measures to be adequate?
15. *Do you have reasons to believe that the planned policy will negatively affect opportunities for victims of trafficking, forced labour, servitude or slavery-like practices to be granted asylum or residence on humanitarian grounds? If so:*
 - What experiences or arguments lead you to think so?
 - Do you think that the policy will disproportionately affect women or other specific groups?
 - Is the government aware of the situation? Did it take measures to address these risks? If so, do you consider these measures to be adequate?
 16. *Do you have reasons to believe that the planned policy may lead to victims of trafficking, forced labour, servitude or slavery-like practices to be returned to a situation where they might suffer torture or other cruel, inhumane and degrading treatment or punishment? If so:*
 - What experiences or arguments lead you to think so?
 - Do you think the policy will disproportionately affect women or other specific groups?
 - Is the government aware of the situation? Did it take measures to address these risks? If yes, do you consider these measures to be adequate?

Factsheet 12: Right to Privacy and Family Life

1. What does this right mean?

Everybody has the right to his or her private and family life. Every person has the right to be free from arbitrary interference with his or her private and family life, home or correspondence, and from unlawful attacks on his or her honour and reputation. Privacy applies to a wide spectrum ranging of issues, from phone tapping to sexual orientation. It encompasses a person's intimacy, identity, name, gender, honour, dignity, appearance, feelings and sexual orientation.

The right to privacy extends to the home, the family and correspondence. 'Home' may include a professional person's office or any other place where that person carries out activities relating to a profession or business.

The right to a private life means that you have the right to carry on your life privately, without government interference, as long as you respect the rights of other people. This includes your right to choose your sexual identity, lifestyle, and the way you look and dress. It also includes your right to control who sees and touches your body. Public authorities cannot, for instance leave you undressed in a busy hospital ward, or take a blood sample without your permission. It also covers your right to develop your personality and to develop friendships and other relationships.

The right to private life also implies that you must be able to freely communicate with others without government interference, and that the media and others can be prevented from interfering in your life. For example, your personal correspondence must be delivered without being opened, you must not be recorded when you speak on the phone or when you communicate with other people, and your personal information must not be divulged to unauthorised people or held on

computers, unless regulated by law. Personal information about you (including official records, photographs, letters, diaries and medical records) should be kept securely and not shared without your permission. States are obliged to ensure effective data protection, as public authorities and commercial organisations are in a position to exploit personal data, thus threatening the privacy of individuals.

Respect for your private and family life also means that you have the right to enjoy your family relationships without interference from the government. This includes the right to live with your family and, where this is not possible, the right to regular contact. 'Family life' can include the relationship between an unmarried couple, an adopted child and the adoptive parent, and a foster parent and fostered child. The right to privacy may be restricted in the wider social interest, under specific conditions, provided that the interference is not arbitrary or unlawful.

2. Where can you find this right?

UDHR, art. 12 & **ICCPR**, art. 17: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation; everyone has the right to protection of the law against such interference or attacks. According to General Comment no. 16 of the Supervisory Committee of the ICCPR, the right to respect for the home extends to commercial or business space.

ICRMW, art. 14: Protects migrant workers and their family from arbitrary interference with their family, home, correspondence, or other communications, and to unlawful attacks on their honour or reputation.

CEDAW, art. 15: Obliges States to accord women equality with men before the law. General Comment no. 21 of the CEDAW Committee on equality in marriage and family relations states that “migrant women who live and work temporarily in another country should be permitted the same rights as men to have their spouses, partners and children join them”.⁶¹

ECHR, art. 8: sets out the right to respect for private and family life, home and correspondence. Respect for private life extends to the right to develop one’s own personality and to engage in relations with others. According to the Court of Human Rights, private life includes gender identity and sexuality, and the corresponding right to develop relationships with whom you want. Art. 8, for example, has been critical in providing basic protection to the rights of homosexual and transsexual people. Authorities may interfere in the exercise of this right or restrict it, but only when the following conditions are met: the interference must be ‘in accordance with the law’, it must be ‘necessary in a democratic society’, and it must pursue one of the following aims: national security, public safety, the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others. To be ‘necessary in a democratic society’, the infringement may not go further than necessary and there must be no other, less intrusive, means that would achieve the same result.

3. Other relevant documents

The **Yogyakarta Principles no. 6** specifically addresses the right to respect for one’s private and family life, regardless of one’s sexual orientation or gender identity. The right to privacy includes the choice to disclose or not to disclose information relating to one’s sexual orientation or gender identity, as well as decisions and choices regarding both one’s own body and consensual sexual and other relations with others.

4. Questions to consider

Before you set out to answer the questions, go through them carefully and select only those relevant to your situation.

I General

1. *What are your reasons to believe that the policy affects the right to privacy and family life? What groups are affected?*

II Affected groups and the right to privacy and family life

2. *Has the policy led to violations of the private or family life of members of the affected groups? This includes:*
 - *violations of their right to establish and develop relationships (for example, by labelling partners, adult children, colleagues or friends of sex workers as ‘pimps’);*
 - *restrictions in determining the number or spacing of their children, or challenging their fitness to be parents or have custody over their children;*
 - *attacks on their reputation and honour;*
 - *restrictions in their ability to freely communicate (without interference) with others.*

If so:

 - *Can they give examples? Did the government take any measures to address these situations?*
3. *Are there mechanisms through which they can file a complaint or seek redress? Are these accessible to them? If not, what are barriers or obstacles? Have they ever been successfully used by them?*
4. *Does the policy increase the risk of violations of their privacy and family life?*

If so:

 - *Is the government aware of this? Did it take measures to address the situation?*
5. *Does the policy negatively affect their ability to protect their privacy and family life?*

⁶¹ See: www.unhcr.ch/tbs/doc.nsf/0/7030ccb2de3baae5c12563ee00648f1?Opendocument.

- Is the government aware of this? Did it take measures to address the situation?
6. *Does the policy negatively affect their ability to file a complaint and/or obtain an effective remedy in the event of violation of their private and family life? If so:*
 - Is the government aware of this? Did it take measures to address the situation?
 7. *Does the policy negatively affect the right to privacy and family life of specific groups, such as women, sex workers, migrant domestic workers, undocumented migrant workers? If so:*
 - Is the government aware of this? Did it take measures to address the situation?

III Government and the right to privacy and family life

8. *Are there laws or policies protecting the right to privacy and family life?*
9. *Is the government aware that the policy may lead to violations of the right to privacy and family life of the affected groups? If so:*
 - Did it take any measures to address this situation?
10. *Is the government aware of cases in which the right to privacy and family life of members from the affected groups has been violated? If so:*
 - Can it describe these cases?
 - Did it take measures to redress the situation?
11. *If the restrictions on the right to privacy and family life are a conscious policy: are these restrictions proportional to the interest they aim to protect? Are there other means to achieve the desired result that do not, or to a lesser degree, violate the right to privacy and family life of the affected groups? Are the restrictions based on law?*
12. *Are there mechanisms through which people can file a complaint and/or obtain an effective remedy if they feel that their right to privacy and family life is violated? If so:*
 - Are these accessible to people from the affected groups? Have they ever been successfully used by them?
13. *Has any civil society organisation, national human rights institution, researcher, journalist or others documented and/or*

reported cases of violations of the private and family life of members of the affected groups, including trafficked persons, as a result of the policy?

14. *Do the Concluding Observations of the Human Rights Committee (the supervisory body for the ICCPR) mention cases of violations of the right to privacy and family life in your country?*
15. *How does the government respond to alleged violations of the right to privacy and family life?*

IV Trafficked persons and the right to privacy and family life

16. *Has the policy led to, or risks does it lead to, violations of the right to privacy and family life of trafficked persons or victims of forced labour, servitude or slavery-like practices? This includes:*
 - violations of their right to establish and develop relationships;
 - restrictions in determining the number or spacing of their children, or challenging their fitness to be a parent or have custody over their children;
 - attacks on their reputation and honour;
 - restrictions in their ability to freely communicate (without interference) with others.

If so:

 - Have there been such cases? How did this happen?
17. *Is the government aware that the policy may lead to violations of the right to privacy and family life of trafficked persons or victims of forced labour, servitude or slavery-like practices? Did it take any measures to redress the situation?*
18. *Are there mechanisms through which victims can file a complaint or seek redress in case of violations of their privacy and family life? Has this ever happened? Were they able to obtain an effective remedy?*

V In case of a policy being planned

19. *Do you have reasons to believe that the planned policy may lead to violations of the right to privacy and family life of the affected groups, including trafficking persons? If so:*

- What experiences or arguments lead you to think so?
- Do you think that the policy will disproportionately affect women or other particular groups?
- Is the government aware of the situation? Did it take measures to address these risks? If so, do you consider these measures to be adequate?

Factsheet 13: Right to Free Choice of Employment and to Just and Favourable Conditions of Work

1. What does the right mean?

You have the right to a job, to freely choose your work and to receive a salary which is sufficient to cover the basic needs of you and your family, such as food, housing, medical care and other social services. Moreover, you have the right to safe, just and favourable working conditions. This means you have the right to:

- fair wages and equal remuneration for work of equal value;
- safe and healthy working conditions;
- rest, leisure and reasonable limitation of working hours and periodic holidays;
- equal opportunities for everyone.

Working places should be clean and safe, and the terms of employment should be fair. You should not work excessive hours and should have a day off every week. Any physical abuse, intimidation or harassment by the employer is a contravention of worker's rights. No one should be arbitrarily dismissed.

Men and women who do the same or equivalent work should receive the same salary. There should be no discrimination in recruitment, wages or promotion opportunities, and in the treatment of migrants.

Wages due should be paid, whether a worker is documented or undocumented. If you are arrested (because you don't have a visa or work permit), you still have the right to be paid for work you have completed!

Migrants who are residing lawfully in a country should be treated on an equal footing with nationals with regard to wages and other working conditions. Undocumented migrant workers should enjoy equal treatment in respect of rights arising out of past employment with regard to remuneration, social security and other benefits.

No matter what type of work you do, you are entitled to respect for and protection of your human rights, and to live and work in a decent and dignified way, free from harassment and exploitation.

The right to a job and to free choice of employment are key in the prevention of trafficking and exploitation. However, countries have a right to decide who may enter their country and who may not, and to exclude migrant workers from certain jobs or from their entire labour market, and to tie working permits to specific employers.

What is work?

The International Labour Organisation (ILO) uses a wide definition of work as 'any economic activity that people can do or can be forced to do'. This means that all ILO conventions that relate to work (as opposed to employment) cover sex work. This includes the ILO's fundamental human rights conventions such as the Forced Labour Convention and the Freedom of Association Convention, which only speak about work and not about employment. The ILO Committee of Experts has, for example, always treated forced prostitution as a form of forced labour.

When does work become forced labour?

Working conditions can turn into forced labour or servitude when, for example, your employer refuses to pay you or let you leave the house, uses coercion, deception or force (by threatening you, assaulting you, sexually abusing you), or confiscates your personal documents (ID, passport, work permit). If you suffer any of these abuses you are entitled to report them to the authorities, and they are obliged to act on your behalf. See for more information [factsheet 9](#) on forced labour.

2. Where can you find this right?

UDHR, art. 23 & 24: Everyone has the right to work, to equal pay for equal work, and to just and favourable remuneration. Everyone has the right to rest and leisure, reasonable limitations in working hours, and periodic holidays with pay.

ICESCR, art. 6 & 7: Everyone has the right to the opportunity to gain his or her living by work which he or she freely chooses or accepts. States must take appropriate steps to safeguard this right. They should work towards achieving steady economic, social and cultural development, and full and productive employment under conditions that safeguard people's fundamental political and economic rights (art. 6). Everyone has the right to enjoy just and favourable conditions of work. This includes the right to fair wages and equal remuneration for work of equal value, to safe and healthy working conditions, and to rest, leisure and reasonable limitation in working hours, and periodic holidays with pay. Women should be guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work (art. 7). The convention applies to everybody, without any discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CEDAW, art. 11: States must take all appropriate measures to eliminate discrimination against women in the field of employment.

ICRMW, art. 6 & 25: All migrant workers, including undocumented workers, should enjoy treatment that is not less favourable than that which applies to nationals in respect of remuneration and other conditions of work and terms of employment, such as overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship, and minimum age of employment. States are required to take all appropriate measures to ensure that migrant workers are not deprived of these rights because of any

irregularity in their residence or employment status. Employers shall not be relieved from their legal or contractual obligations because of such irregularities (art. 25). No migrant worker or member of his or her family, including undocumented workers, may be arbitrarily deprived of his or her property. If assets are appropriated, the person concerned has the right to a fair and adequate compensation (art. 6).⁶²

ILO Convention No. 95 on Protection of the Right to Wages: Wages include any remuneration or earnings that can be expressed in money and are fixed by mutual agreement or by national laws or regulations, and which are payable in virtue of a written or unwritten contract between an employer and an employed person for work or services done or to be done. The Convention applies to all persons to whom wages are paid or payable, but States can make an exception for domestic workers and people who do no manual labour (if you want to use this Convention, check whether your State has made an exception. They have to make this exception in the first report to the ILO about the implementation of the Convention). Wages must be paid directly to the worker and on a regular basis. Employers may not in any way limit the freedom of workers to dispose of their wages. Workers may not be forced to make use of stores or services operated by the employer. The employer may not make deductions from wages unless this is prescribed by national laws or regulations. This includes deductions by employers or middlemen (e.g. labour contractors or recruiters) to obtain or retain employment. When the contract comes to an end, a final settlement of all wages due must be made in accordance with national laws or, in the absence of applicable laws, within a reasonable time.

ILO Convention No. 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers: Part I of the Convention deals with migration in abusive conditions and applies to all migrant workers, including undocumented workers. Part II deals with equality of opportunity and treatment and

⁶² More information can be found in factsheet 24, published by the High Commissioner for Human Rights: www.ohchr.org/EN/PublicationsResources/Pages/FactSheets.aspx (in Arabic, Chinese, English, French and Spanish).

applies only to documented migrant workers. States that ratify the Convention have the option to accept the whole instrument or one or other of its two parts. The Convention provides (among other things) that States must respect the basic human rights of all migrant workers and must pursue a policy to secure equality of treatment of migrants in respect of matters such as employment and occupation, social security, and trade union and cultural rights.

With regard to undocumented workers, 2 articles are of special importance:

Art. 8 of the Convention states that “migrant workers shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit”.

Art. 9 states that undocumented migrant workers should enjoy “equal treatment in respect of rights arising out of past employment as regards remuneration, social security and other benefits” (art. 9.1). In the event of disputes over these, workers must have the possibility of presenting their case to a competent body, either personally or through a representative (art. 9.2).

ILO Convention no. 97 on Migration for Employment Convention (Revised): Requires States to put migrants who are lawfully residing within their territory on the same footing as their own nationals in applying labour-related laws and regulations, without discrimination on the grounds of nationality, race, religion or sex.

3. Other relevant documents

ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998).⁶³

With this declaration, the ILO establishes a set of minimum standards of rights that should apply to all workers, national and migrants, documented and undocumented. Art. 2 of the Declaration states: “All Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact

of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

- a) freedom of association and the effective recognition of the right to collective bargaining;
- b) the elimination of all forms of forced or compulsory labour;
- c) the effective abolition of child labour;
- d) the elimination of discrimination in respect of employment and occupation.”

ILO Resolution Concerning a Fair Deal for Migrant Workers in a Global Economy, 2004

The Resolution, adopted at the General Conference of the International Labour Organization in 2004, states:

*“it is important to ensure that the human rights of irregular migrant workers are protected. It should be recalled that the ILO instruments apply to all workers, unless otherwise stated. Consideration should be given to the situation of irregular migrant workers, ensuring that their human rights and fundamental labour rights are effectively protected, and that they are not exploited or treated arbitrarily.”*⁶⁴

ILO Migrant Workers Recommendation, 1975 (no.151)⁶⁵

This recommendation is addressed to regular migrants, but there are some provisions that also address undocumented migrants. Art. 8 states:

“Migrant workers whose position has not been or could not be regularised should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights”..... “In case of expulsion of the worker or his family, the cost should not be borne by them”.

⁶³ See: www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm.

⁶⁴ See: www.ilo.org/public/english/protection/migrant/download/ilcmig_res-eng.pdf.

⁶⁵ See: www.ilo.org/ilolex/cgi-lex/convde.pl?R151

Art. 34 states:

“A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his stay therein, to any outstanding remuneration for work performed, including severance payments normally due”.

4. Questions to consider

Before you set out to answer the questions, go through them carefully and select only those relevant to your situation.

I General

1. *What are your reasons to believe that the policy affects the right to:*
 - *freely choose one’s work;*
 - *just and favourable working conditions (including fair wages, safe and healthy working conditions, rest, leisure and reasonable limitation of working hours);*
 - *be paid for the work one has done, including undocumented workers who are arrested and/or deported and trafficked persons?*

What groups are affected?

II Affected groups and the right to just and favourable working conditions and to be paid for work done

2. *Does the policy expose (members of) the affected groups to unsafe and exploitative working conditions? Does it negatively affect their ability to recover unpaid wages or earnings? If so:*
 - *Can they give examples? Is the government aware of the situation? Did it take any measures to protect their rights or to redress the situation?*
 - *Are there mechanisms through which they can file a complaint or seek redress? If not, what are the barriers and obstacles? Did they ever successfully make use of these mechanisms?*
3. *Does the policy disproportionately affect specific groups, for example women, migrant domestic workers, sex workers or undocumented migrant workers?*
4. *Does the policy negatively influence their ability to file a complaint or seek redress in the event of unsafe or exploitative working conditions or unpaid wages? If so:*
 - *Is the government aware of this? Did it take any measures to redress the situation?*

III Government and the right to safe, just and favourable working conditions and to be paid for work done

5. *Are there laws or policies protecting the right to safe, just and favourable working conditions? Do these apply to the groups affected? If not, why not? If yes, are they enforced?*
6. *Are there laws or policies ensuring that (members of) the affected groups can recover unpaid wages when they are arrested and/or deported? If so, are these applied?*
7. *Is the government aware that the policy may lead to unsafe and exploitative working conditions and/or negatively affect the ability of the affected groups to recover unpaid wages or earnings? If so:*
 - *Did it take any measures to prevent such abuses, to protect the groups affected and to ensure that they are able to recover unpaid wages? What measures? Are these effective?*
8. *Is the government aware of cases of unsafe and exploitative working conditions or denial of payment of due wages as a result of the policy? If so:*
 - *Can it describe these cases?*
 - *Did it take measures to redress the situation?*
9. *Are there mechanisms through which people can file a complaint and/or obtain a remedy in the event of unsafe and exploitative working conditions, or if they are denied due wages?*
 - *Are these accessible for people from the affected groups? If not, what are the barriers and obstacles? Did they ever successfully make use of these mechanisms?*
10. *Has any civil society organisation, national human rights institution, researcher, journalist or others documented and/or reported cases of violations of the right to*

safe, just and favourable working conditions and/or failure to recover unpaid wages or earnings as a result of, or in relation to, the policy?

11. *Do the Concluding Observations of the Supervisory Bodies for ICESCR or CEDAW say anything about the right to safe, just and favourable working conditions and/or the ability to recover unpaid wages or earnings in your country? (e.g. in relation to migrant domestic workers).*

IV Trafficked persons and the right to just and favourable working conditions and to be paid for work done

12. *Are there laws or policies ensuring that trafficked persons or victims of forced labour, servitude or slavery-like practices can recover unpaid wages or earnings, for example, as part of compensation for damages suffered? If yes, are these applied in practice?*
13. *Does the policy negatively affect the ability of victims to recover unpaid wages or earnings (for example, by deporting them before they can do so, or through lack of enforcement mechanisms)? If so, is the government aware of it? Has it taken measures to redress the situation?*
14. *Have there been cases in which the right of victims to recover unpaid wages or earnings has been violated? If yes: How did this happen?*
15. *Are there mechanisms through which victims can file a complaint and/or obtain a remedy if they are denied due wages?*
 - *Are these accessible to them? Did they ever successfully make use of these mechanisms?*

V In case of a policy being planned

16. *Do you have reasons to believe that the planned policy may affect the right to:*
 - *freely choose one's work*
 - *just and favourable working conditions (including fair wages, safe and healthy working conditions, rest, leisure and reasonable limitation of working hours);*
 - *be paid for the work one has done, including undocumented workers who are arrested and/or deported and victims of trafficking, forced labour, servitude or slavery-like practices?*

What groups are affected?

17. *Do you think the policy will disproportionately affect women or other particular groups?*
18. *If you believe that the planned policy could affect the right to safe, just and favourable working conditions, and to get paid for work done, is the government aware of the situation? If so, has the government taken any measures to address the situation? If so, do you consider these measures to be adequate?*

Factsheet 14:

Right to Peaceful Assembly and Freedom of Association

1. What does the right mean?

You have the right to form and be part of a trade union, political party or other association or voluntary group. You have the right to cooperate, unite and create associations to express your opinions, engage in collective bargaining and advocate for your rights. You also have the right to protest by holding meetings and demonstrations together with other people. This applies to everybody, documented and undocumented migrants, sex workers and non sex workers, women and men. But you must act peacefully, without employing violence or the threat of violence. Nobody has the right to force you to join a protest, trade union, political party or other association.

2. Where can you find this right?

UDHR, art. 20 & 23: Everyone has the right to freedom of peaceful assembly and association; no one should be compelled to belong to an association (art. 20). Everyone has the right to form and join trade unions for the protection of his or her interests (art. 23).

ICCPR, art. 22: Everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his or her interests.

ICERD, art. 5: Ensures the enjoyment of the right to form and join trade unions without distinction as to race, colour, or national or ethnic origin.

ICESCR, art. 8: Everyone has the right to form trade unions and join the trade union of his or her choice for the promotion and protection of his or her economic and social interests. This right may only be restricted when this is necessary in a democratic society in the

interests of national security or public order, or for the protection of the rights and freedoms of others. Any restriction must be laid down in the law. Everyone has the right to strike, provided that this right is exercised in conformity with the laws of the particular country.

CEDAW, art. 14: States must take measures to eliminate discrimination against women in rural areas to ensure that they participate in and benefit from rural development. In particular, they must ensure women have the right to organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment.

ICRMW, art. 26 & 40: Migrant workers and members of their families have the right to take part in meetings and activities organised by trade unions and any other associations established in accordance with the law. They have the right to freely join any trade union or association, as well as to form associations and trade unions in the State where they are employed to promote and protect their economic, social, cultural and other interests.

ILO Convention No. 87, art. 11: States must undertake all necessary and appropriate measures to ensure that workers and employers may freely exercise the right to organise.

ILO Convention No. 98, art. 1: Workers must be adequately protected against acts of anti-union discrimination in respect of their employment.

ECHR, art. 11: Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

3. Other relevant documents

The **Yogyakarta Principles no. 19 to 21** emphasise the importance of the freedom to express oneself, one's identity and one's sexuality without State interference based on sexual orientation or gender identity, including the right to participate peacefully in public assemblies and events, and otherwise associate in community with others.

4. Questions to consider

Before you set out to answer the questions, go through them carefully and select only those relevant to your situation.

I General

1. *What are your reasons to believe that the policy negatively affects the freedom of association and the right to peacefully gather or demonstrate? What groups are affected?*

II Affected groups and protection of the right to the freedom of assembly and association

2. *Has the policy led to violations of their right to organise, join a trade union and/or to peacefully gather or demonstrate, or does it negatively affect this right? If so:*
 - Can they give examples? Did the government take any measures to redress the situation?
 - Have they ever been intimidated, harassed, punished, arrested or detained for peacefully demonstrating or participating in union meetings as a result of – or in relation with - the policy?
 - Are there mechanisms through which they can file a complaint or seek redress? Are these accessible to people from the affected groups? Did they ever successfully make use of these mechanisms?
3. *Does the policy disproportionately affect specific groups, for example women, migrant domestic workers, sex workers or undocumented migrant workers?*

III Government and protection of the right to freedom of assembly and association

4. *Are there laws or policies protecting the right to organise, to form or join a trade union and to peacefully gather or demonstrate? Do they apply to the affected groups?*
5. *Is the government aware that the policy has led, or may lead to, restrictions on people's freedom to organise, to form or join a trade union and/or to peacefully gather or demonstrate? If so:*
 - Did it take any measures to protect this right?
6. *Is the government aware of cases in which the right of the affected groups to organise, join a trade union and peacefully gather or demonstrate was violated as a result of the policy? If so:*
 - Can it describe these cases? Did it take measures to redress the situation?
7. *Are there mechanisms through which people can file a complaint and/or obtain a remedy? If so:*
 - Are these accessible to people from the affected groups? Have they ever been successfully used by them?
8. *Has any civil society organisation, national human rights institution, researcher, journalist or others documented and/or reported violations of the right of the affected groups to organise, to form or join a union and/or to peacefully gather or demonstrate as a result of the policy?*
9. *Do the Concluding Observations of the Human Rights Committee (the Supervisory Body for the ICCPR) or the Supervisory Bodies of ICESCR or CEDAW say anything about the right to organise, to form or join a trade union and/or to peacefully gather or demonstrate in your country?*
10. *Do ILO reports mention any problems with regard to the freedom of assembly and association in your country?*

IV Trafficked persons and protection of the right to freedom of assembly and association

11. *Does the policy affect the ability of trafficked persons, or victims of forced labour, servitude or slavery-like practices, to organise or to peacefully gather or*

demonstrate to defend their interests? (for example, to claim their wages and/or compensation from their employers, or to change State policies towards trafficked persons)?

12. *Is the government aware that the policy leads or may lead to violations of the freedom of trafficked persons or victims of forced labour, servitude or slavery-like practices to peacefully gather and organise?*

V In case of a policy being planned

13. *Do you have reasons to believe that the planned policy will affect the ability of members of the affected groups to peacefully gather or demonstrate and/or to form and join a union?*
- What experiences or arguments lead you to think this?
 - Do you think that the policy will particularly affect women or other specific groups?
 - Is the government aware of the situation? Has it taken measures to address these risks? If so, do you consider these measures to be adequate?

Factsheet 15: Right to Health

1. What does the right mean?

Everyone has the right to the highest attainable standard of physical and mental health. Everyone has the right to control his or her health and body (including sexual and reproductive freedom).

Health is a fundamental right and one that influences all aspects of life. It is therefore closely related to other human rights. The freedom to control one's body is an important element of (women's) right to health. According to General Comment no. 14 of the supervisory committee of ICESCR, 4 important elements of the right to health are availability, accessibility, acceptability and quality of health care and health determinants.

Availability means that functioning public health and health care facilities must be available in sufficient quantity within a country. *Accessibility* means that health facilities, goods and services must be accessible to everyone without discrimination. This includes the removal of barriers faced by vulnerable or marginalised groups. *Acceptability* means that all health facilities, goods and services must be respectful of medical ethics and culturally appropriate. This implies that they are respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as designed to respect confidentiality and improve the health status of those concerned. *Quality* means that health facilities, goods and services must be scientifically as well as medically appropriate and of good quality. *Determinants of health* are conditions that make it possible to live in health, such as access to safe water, adequate food and housing, and safe and healthy working conditions. Resource distribution, gender differences and access to health-related education and information (including

information on sexual and reproductive health) are also health determinants.

Barriers that people face in accessing health rights may be practical, such as high fees for health-care services, but they may also be discriminatory cultural or social attitudes and practices. The participation of the population in all health-related decision-making and in the development, implementation and evaluation of policies is an important aspect in shaping the right to health. Individuals and groups should be involved in making decisions regarding policies that affect their health (ICESCR General Comment 14). They should also have an opportunity to make complaints about the negative effects of laws and policies.

2. Where can you find this right?

UDHR, art. 25: Everyone has the right to a standard of living adequate for the health and well-being of themselves and their family, including food, clothing, housing and medical care and necessary social services. Everyone also has the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood created by circumstances beyond his or her control. Mothers and children are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

ICESCR, art. 7 & 12: Everyone has the right to “the highest attainable standard of physical and mental health”. The article identifies a number of steps the State has to take to promote conditions in which people can lead a healthy life. These include: improvement in environmental and industrial hygiene; preventive health care (including prevention of occupational and other diseases) and treatment

of diseases; and creation of conditions that ensure medical assistance to all persons in case of sickness. Art. 7 refers to the right of everyone to the enjoyment of just and favourable conditions of work, including safe and healthy working conditions.

General Recommendation no. 14 on the right to the highest attainable standard of health of the Committee on Economic, Social and Cultural Rights explains the meaning of the right to health. It defines health as a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity. The right to health is not confined to health care, but includes socio-economic factors. It extends to the underlying determinants of health, such as distribution of resources, gender, food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions and a healthy environment. The right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health. Para. 34 specifically refers to the rights of undocumented workers. It outlines that States have the obligation to respect the right to health by refraining from denying or limiting equal access for all persons, “including prisoners or detainees, minorities, asylum seekers and illegal immigrants”, to preventive, curative and palliative health services. The same recommendation spells out that States must refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information (including sex education and information), and from preventing people’s participation in health-related matters.⁶⁶

CEDAW, art. 11, 12 & 14: Obliges States to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure that women have, on an equal footing with men, access to health care services, including those related to family

planning (art. 12). Art. 11 refers specifically to ‘the right to protection of health and safety in working conditions’.

General Recommendation no. 19 on Violence against women of the CEDAW Committee stipulates that States have the obligation to prevent violence against women, and to investigate and punish acts of violence, because they impair women’s enjoyment of physical and mental health rights and put women’s lives at risk.

CERD, art. 5: Everyone has the right to enjoy, without distinction as to race, colour, national or ethnic origin, the right to public health, medical care, social security and social services.

General Recommendation no. 30 of the Committee on the Elimination of Racial Discrimination, on Discrimination Against Non Citizens, calls on State parties to respect the rights of non-citizens to an adequate standard of physical and mental health, including by refraining from denying or limiting their access to preventive, curative and palliative health services (para 7).

ICRMW, art. 28: Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life, or for the avoidance of irreparable harm to their health, on an equal basis with nationals. They should not be refused such medical care because of any irregularity with regard to residence or employment.

3. Other relevant documents

In addition to the supervisory bodies of the various treaties, several international institutions are charged with protecting the right to the highest attainable standard of health. The most prominent is the World Health Organisation (WHO), which has several programmes and standards in place that deal with, inter alia, preventing and treating HIV/AIDS.

⁶⁶ See: www.unhcr.ch/tbs/doc.nsf/0/40d009901358boe2c1256915005090be?Opendocument

In 2002, a Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health was appointed. The Rapporteur monitors the situation throughout the world, identifies general trends related to the right to health, undertakes country visits, and communicates with states and other concerned parties on alleged violations of the right to health.

Other relevant consensus documents are the **Beijing Platform for Action** (para. 89-105, Strategic Objective C1-C5) and the **Yogyakarta Principles**.⁶⁷

4. Questions to consider

Before you set out to answer the questions, go through them carefully and select only those relevant to your situation.

I General

1. *Do you have reasons to believe that the policy negatively affects the availability, accessibility, acceptability, quality and/or confidentiality of health services (including access to contraceptives and other means of maintaining sexual and reproductive health, such as condoms)? What groups are affected?*
2. *Do you have reasons to believe that the policy affects the right to control over one's health and body (including sexual and reproductive freedom)? What groups are affected?*

II Affected groups and the right to health

3. *Does the policy negatively affect the access of (members of) the affected groups to health services (including access to contraceptives and other means of maintaining sexual and reproductive health), that are of good quality, affordable and acceptable? Does the policy negatively affect the confidentiality of health services? If so:*

- Can they give examples? Is the government aware of this? Did it take any measures to address the situation?
4. *Does the policy negatively affect their right to control their health and body (including sexual and reproductive freedom)? If so:*
 - Can they give examples? Is the government aware of this? Did it take any measures to address the situation?
 5. *Are there mechanisms through which they can make a complaint or seek redress? Did they ever successfully make use of these mechanisms?*
 6. *Does the policy disproportionately affect access to confidential, affordable, acceptable and quality health services of specific groups, such as women, sex workers, migrant domestic workers or undocumented migrant workers? Does the policy disproportionately affect the right of specific groups to control their health and body? If so:*
 - Is the government aware of this? Did it take any measures to address the situation?

III Government and protection of the right to health

7. *Are there laws, policies or programmes to protect and realise health rights (for example, a national health policy or other relevant policies on access to health care and health-related information, sexual and reproductive rights etc.)?*
8. *Is the government aware that the policy negatively affects the health rights of (members of) the affected groups? If so, did it take measures to address this situation? Are these effective?*
9. *Are there mechanisms through which people can file a complaint and/or obtain an effective remedy when their health rights are negatively affected? If so:*
 - Are these accessible to people from the affected groups? Have they ever successfully been used by them?
10. *Has any civil society organisation, national human rights institution, researcher, journalist or others documented and/or*

⁶⁷ See: www.yogyakartaprinciples.org/index.php?item=25.

reported violations of the health rights of the affected groups, including trafficked persons and victims of forced labour, servitude or slavery-like practices, as a result of – or in relation to – the policy?

11. *Do the Concluding Observations of the Committee on Economic, Social and Cultural Rights or the CEDAW Committee say anything on the health rights of the affected groups, or about the policy itself?*

IV Trafficked persons and the right to health

12. *Does the policy negatively affect access to and/or confidentiality of health services for trafficked persons, or victims of forced labour, servitude or slavery-like practices? If so:*

- Have there been cases of violations of the health rights of these groups as a result of – or in relation with - the policy? How did this happen?
- Is the government aware of the situation? Did it take measures to redress the situation?

13. *Does the policy negatively affect the right of trafficked persons or victims of forced labour, servitude or slavery-like practices to control their health and body? If so, how?*

14. *Are there mechanisms through which trafficked persons or victims of forced labour, servitude or slavery-like practices can file a complaint or seek redress? Have they ever successfully made use of these mechanisms?*

V In case of a policy being planned

15. *Do you have reasons to believe that the policy will negatively affect the confidentiality, availability, accessibility, acceptability and/or quality of health services (including access to contraceptives and other means of maintaining sexual and reproductive health, such as condoms) of trafficked persons or other groups? If so:*

- What experiences or arguments make you think so?
- Do you think that women or other specific groups will be especially affected?
- Is the government aware of the situation? Has it taken any measures to address this situation? If so, do you consider these measures to be adequate?

16. *Do you have reasons to believe that the policy will affect the right of trafficked persons or other particular groups to control over their health and body? If so:*

- What experiences or arguments make you think so?
- Do you think that the policy will disproportionately affect women or other specific groups?
- Is the government aware of the situation? Has it taken any measures to address this situation? If so, do you consider these measures to be adequate?